

## Department of Planning and Budget 2020 Fiscal Impact Statement

**1. Bill Number:** HB1442H1

<b>House of Origin</b>	<input type="checkbox"/> Introduced	<input checked="" type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
<b>Second House</b>	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

**2. Patron:** Jones

**3. Committee:** Transportation

**4. Title:** Handheld speed monitoring devices; civil penalty.

**5. Summary:** Provides that the Department of State Police (VSP) and any local law enforcement officers may operate photo speed monitoring devices, as defined in the bill, to measure the speed of motor vehicles in school crossing zones and highway work zones. The bill requires a conspicuous sign to be placed within 1,000 feet of any school crossing zone or highway work zone at which such a device is used, indicated the use of the device.

The operator of a vehicle is liable for a monetary civil penalty which shall not exceed \$125 if such vehicle is found, as evidenced by information obtained from such device, to be traveling at speeds of at least 10 miles per hour above the posted speed limit within such school crossing zone or highway work zone. Civil penalties collected resulting from a summons issued by a local law enforcement officer are paid to the locality in which the violation occurred. Penalties collected from a summons issued by a law enforcement officer employed by VSP are paid into the state treasury and allocated to a special non-reverting fund for VSP. These penalties shall not be deemed a conviction as an operator and shall not be made part of the operating record of the person upon whom such liability is imposed, nor shall it be used for insurance purposes. However, if a law enforcement officer uses the device to record such violations and personally issues a summons at the time of the violation, the conviction that results shall be made a part of the driver's driving record and used for insurance purposes.

If a photo speed monitoring device is used, proof of such violations shall be evidenced by information obtained from the device. A certificate, or facsimile thereof, sworn to or affirmed by a law enforcement officer, based upon inspection of photographs, microphotographs, videotapes, or other recorded images produced by the device, shall be prima facie evidence of the facts contained therein. Any such evidence of a violation shall be available for inspection in any proceeding to adjudicate liability for such violations. In the prosecution of such violations, such prima facie evidence, together with proof that the defendant was at the time of such violation, the owner, lessee, or renter of the vehicle, shall constitute in evidence a rebuttable presumption that such person committed the violation. The bill provides for methods by which this presumption may be rebutted.

Summonses for violations of this section may be executed by mailing a first class copy to the owner, lessee, or renter of the vehicle. The bill provides for the documentation that must be included in such mailing. No proceedings for contempt or arrest of a person summoned by

mailing shall be instituted for failure to appear on the return date of the summons. The summons is eligible for all legal collections activities for summonses issued to persons with vehicles registered outside of the Commonwealth who fail to appear. Any summons executed pursuant to this section must provide the person summoned with at least 30 days from the mailing of the summons to inspect information collected by the device in connection with the violation. If a summons is not issued by a law enforcement agency within 30 days from the date of the violation, all information collected pertaining to the suspected violation shall be purged within 60 days from the violation date.

The calibration or testing for such a device is valid for longer than a 12 month period. The bill provides that the Commissioner of the Department of Motor Vehicles (DMV) must release vehicle owner data to the operator of such a device. Such information is limited to the name and address of the owner of the vehicle that committed the violation, and the vehicle information, including all descriptive vehicle data and title and registration data for such vehicle.

A private vendor may enter into an agreement with a law enforcement agency or a locality to be compensated for providing a device and all related support services, including consulting, operations, and administration. However, only a law enforcement officer may swear to or affirm the certificate required by this subsection. Any such agreement for compensation shall be based on the value of the goods and services provided, not on the number of violations pair or penalties imposed. Any private vendor may enter into an agreement with DMV to obtain vehicle owner information regarding the registered owners of the vehicles that committed such violations. Any such information provided to a private vendor must be protected in a database.

The bill provides that any information collected by such devices shall be limited exclusively to the information that is necessary for the enforcement of school crossing zone and highway work zone speeding violations. Such information must be protected in a secure database and only be used for law enforcement purposes against violators of this section. Such information shall not be open to the public; sold or used for sales, solicitation, or marketing purposes; disclosed to any other entity except as may be necessary for the enforcement of this section, or to a vehicle owner or operator as part of a challenge to the violation; or used in a court in a pending action or proceeding unless it relates to such a violation, or the information is requested by an order from a court of competent jurisdiction. Information must be purged and not retained later than 60 days after the collection of any civil penalties. Any law enforcement agency using such device shall annually certify their compliance with this section and make all records pertaining to such system available for inspection and audit by the Commissioner of Highways or the Commissioner of DMV or his designee. Any person who discloses information in violation of this section is subject to a civil penalty of \$1,000 per disclosure.

**6. Budget Amendment Necessary:** No.

**7. Fiscal Impact Estimates:** Preliminary. See Item 8.

- 8. Fiscal Implications:** The proposed legislation would allow law enforcement officers employed by localities or the Department of State Police (VSP) to use photo speed monitoring devices in school crossing zones and highway work zones. Any civil penalties imposed from summonses issued by VSP officers are paid into the state treasury and allocated to a special non-reverting fund for VSP. It is expected that that any fees collected from civil penalties imposed pursuant to this bill would be sufficient to fund any expenditures the agency may incur. Any potential one-time or ongoing costs to support the use of such devices (to be paid for out of fees collected) is indeterminate at this time.

According to the Department of Motor Vehicles (DMV), there is no anticipated fiscal impact on the agency's operations as a result of the provisions of this bill.

This bill requires a conspicuous sign indicating that photo speed devices are being used to be placed within 1,000 feet of any school crossing zone or highway work zone where such devices are in use. According to the Virginia Department of Transportation (VDOT), signs in highway work zones can be absorbed by the agency's construction and maintenance budget.

Civil penalties imposed by a local law enforcement officer are paid to the locality in which the violation occurred. Any potential impact on local law enforcement agencies is indeterminate at this time.

- 9. Specific Agency or Political Subdivisions Affected:** Virginia Department of Transportation, Department of Motor Vehicles, Department of State Police, local law enforcement agencies.

- 10. Technical Amendment Necessary:** No.

- 11. Other Comments:** In the 2019 Session of the General Assembly, §46.2-288 was amended (SB1521, Chapter 842 Acts of Assembly). The legislation that passed included the following provisions: 1) that the provisions of the first and second enactments of the act shall not become effective unless reenacted by the 2020 Session of the General Assembly; and 2) that the Secretary of Public Safety and Homeland Security, in consultation with the Virginia State Police, the Virginia Sheriffs' Association, and the Virginia Association of Chiefs of Police, shall review the proposed use of handheld photo speed monitoring devices and consider legal and constitutional implications of dedicating civil penalties to any fund other than the Literary Fund. The Secretary of Public Safety and Homeland Security shall report the results of such review to the Chairmen of the Senate Committee for Courts of Justice, the Senate Committee on Finance, the House Committee for Courts of Justice, and the House Committee on Appropriations by November 1, 2019.

The current bill, HB1442 (2020 Session of the general Assembly) amends §46.2-288.