

AMENDED IN ASSEMBLY AUGUST 2, 2010

AMENDED IN ASSEMBLY JUNE 30, 2010

AMENDED IN SENATE MAY 25, 2010

AMENDED IN SENATE MAY 11, 2010

AMENDED IN SENATE MARCH 23, 2010

**SENATE BILL**

**No. 1362**

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**Introduced by Senator Simitian**  
**(Coauthors: Senators Ashburn and Huff)**  
(Coauthor: Assembly Member Hill)

February 19, 2010

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An act to amend Sections 21455.5 and 40518 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 1362, as amended, Simitian. Vehicles: automated traffic enforcement systems.

(1) Existing law authorizes the limit line, intersection, or other places where a driver is required to stop to be equipped with an automated enforcement system, as defined, if the system meets certain requirements. Existing law authorizes a governmental agency to contract out the operation of the system under certain circumstances, except for specified activities, that include, among other things, establishing guidelines for selection of location. A violation of the Vehicle Code is a crime.

This bill would require that, *no later than January 1, 2012*, those requirements include identifying the system by signs posted ~~at each~~ *within 200 feet of an* intersection where a system is operating. The bill

would require the governmental agency to adopt a finding of fact establishing the need for the system at a specific location for reasons related to safety *for those systems installed after January 1, 2011*.

The bill would ~~prohibit~~ *require, if* an employee, agent, or representative of the governmental agency or of a law enforcement agency ~~from contacting~~ *contacts* the registered owner of a vehicle prior to issuing a notice to appear, ~~either directly or indirectly,~~ in an effort to determine the identity of ~~an alleged automated traffic enforcement system violator without making the driver,~~ the registered owner *to be made aware*, in a clear and prominent fashion, that the registered owner is not required to provide that information and that failure to provide that information ~~shall not result in any adverse action or relieve the registered owner or alleged automated traffic enforcement system violator of any~~ *will not result in additional* responsibility or liability associated with the alleged violation.

The bill would prohibit a governmental agency that ~~operates~~ *proposes to install or* an automated traffic enforcement system from considering revenue generation, beyond recovering its actual costs of operating the system, as a factor when considering whether or not to *install or* operate a system within its local jurisdiction. The bill would require the manufacturer or supplier that operates an automated traffic enforcement system, in cooperation with the governmental agency, to submit an annual report to the Judicial Council that includes specified information.

(2) Existing law provides special written, mailed notice to appear procedures in connection with certain alleged violations recorded by an automated traffic enforcement system and provides that whenever a written notice to appear has been issued by a peace officer or by a qualified employee of a law enforcement agency on a form approved by the Judicial Council for an alleged traffic violation recorded by an automated traffic enforcement system, and delivered by mail within 15 days of the alleged violation to the current address of the registered owner of the vehicle on file with the Department of Motor Vehicles, with a certificate of mailing obtained as evidence of service, an exact and legible duplicate copy of the notice when filed with the magistrate constitutes a complaint to which the defendant may enter a plea.

This bill would expand the information that must be included on a notice to appear. The bill would authorize the mailing of a specified courtesy notice or any other notice other than a notice to appear by the issuing agency to the registered owner or the alleged violator prior to issuing a notice to appear that is required to contain specified

information. The bill would prohibit a manufacturer or supplier of an automated traffic enforcement system or the governmental agency operating the system from altering the notice to appear or any other form approved by the Judicial Council. If a form is found to have been materially altered, the bill would authorize that the citation, based on the altered form, be dismissed. The bill would also require that the citation be dismissed if a magistrate or judge makes a finding that there are grounds for dismissal, in certain circumstances.

(3) Because it is unlawful and constitutes an infraction for any person to violate, or fail to comply with any provision of the Vehicle Code, this bill would impose a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 21455.5 of the Vehicle Code is amended  
2 to read:

3 21455.5. (a) The limit line, the intersection, or a place  
4 designated in Section 21455, where a driver is required to stop,  
5 may be equipped with an automated traffic enforcement system if  
6 the governmental agency utilizing the system meets all of the  
7 following requirements:

8 (1) ~~Identifies~~ *No later than January 1, 2012, identifies* the  
9 system by signs posted ~~at each~~ *within 200 feet of an* intersection  
10 where a system is operating that clearly indicate the system's  
11 presence and are visible to traffic approaching from all directions  
12 in which the automated traffic enforcement system is being utilized  
13 to issue citations. A governmental agency utilizing such a system  
14 does not need to post signs visible to traffic approaching the  
15 intersection from directions not subject to *an* automated traffic  
16 enforcement *system*.

17 (2) If it locates the system at an intersection, and ensures that  
18 the system meets the criteria specified in Section 21455.7.

(b) Prior to issuing citations under this section, a local jurisdiction utilizing an automated traffic enforcement system shall commence a program to issue only warning notices for 30 days. The local jurisdiction shall also make a public announcement of the automated traffic enforcement system at least 30 days prior to the commencement of the enforcement program.

(c) Only a governmental agency, in cooperation with a law enforcement agency, may operate an automated traffic enforcement system. A governmental agency that operates an automated traffic enforcement system shall do all of the following:

(1) Develop uniform guidelines for screening and issuing violations and for the processing and storage of confidential information, and establish procedures to ensure compliance with those guidelines.

(2) Perform administrative functions and day-to-day functions, including, but not limited to, all of the following:

(A) Establishing guidelines for selection of location. Prior to installing an automated traffic enforcement system *after January 1, 2011*, the government agency shall make and adopt a finding of fact establishing that the system is needed at a specific location for reasons related to safety.

(B) Ensuring that the equipment is regularly inspected.

(C) Certifying that the equipment is properly installed and calibrated, and is operating properly.

(D) Regularly inspecting and maintaining warning signs placed under paragraph (1) of subdivision (a).

(E) Overseeing the establishment or change of signal phases and the timing thereof.

(F) Maintaining controls necessary to ensure that only those citations that have been reviewed and approved by law enforcement are delivered to actual violators. ~~An employee, agent, or representative of the governmental agency or of the law enforcement agency shall not contact the registered owner of a vehicle prior to issuing a notice to appear either directly or indirectly in an effort to determine the identity of an alleged automated traffic enforcement system violator without making the registered owner aware, in a clear and prominent fashion, that the registered owner is not required to provide that information and that failure to provide that information shall not result in any adverse action or relieve the registered owner or alleged automated~~

1 ~~traffic enforcement system violator of any responsibility or liability~~  
2 ~~associated with the alleged violation.~~

3 (d) The activities listed in subdivision (c) that relate to the  
4 operation of the system may be contracted out by the governmental  
5 agency, if it maintains overall control and supervision of the  
6 system. However, the activities listed in paragraph (1) of, and  
7 subparagraphs (A), (D), (E), and (F) of paragraph (2) of,  
8 subdivision (c) may not be contracted out to the manufacturer or  
9 supplier of the automated traffic enforcement system.

10 (e) (1) Notwithstanding Section 6253 of the Government Code,  
11 or any other provision of law, photographic records made by an  
12 automated traffic enforcement system shall be confidential, and  
13 shall be made available only to governmental agencies and law  
14 enforcement agencies and only for the purposes of this article.

15 (2) Confidential information obtained from the Department of  
16 Motor Vehicles for the administration or enforcement of this article  
17 shall be held confidential, and may not be used for any other  
18 purpose.

19 (3) Except for court records described in Section 68152 of the  
20 Government Code, the confidential records and information  
21 described in paragraphs (1) and (2) may be retained for up to six  
22 months from the date the information was first obtained, or until  
23 final disposition of the citation, whichever date is later, after which  
24 time the information shall be destroyed in a manner that will  
25 preserve the confidentiality of any person included in the record  
26 or information.

27 (f) Notwithstanding subdivision ~~(d)~~ (e), the registered owner or  
28 any individual identified by the registered owner as the driver of  
29 the vehicle at the time of the alleged violation shall be permitted  
30 to review the photographic evidence of the alleged violation.

31 (g) (1) A contract between a governmental agency and a  
32 manufacturer or supplier of automated traffic enforcement  
33 equipment may not include provision for the payment or  
34 compensation to the manufacturer or supplier based on the number  
35 of citations generated, or as a percentage of the revenue generated,  
36 as a result of the use of the equipment authorized under this section.

37 (2) Paragraph (1) does not apply to a contract that was entered  
38 into by a governmental agency and a manufacturer or supplier of  
39 automated traffic enforcement equipment before January 1, 2004,

1 unless that contract is renewed, extended, or amended on or after  
2 January 1, 2004.

3 (3) A governmental agency that ~~operates~~ *proposes to install or*  
4 *operate* an automated traffic enforcement system shall not consider  
5 revenue generation, beyond recovering its actual costs of operating  
6 the system, as a factor when considering whether or not to *install*  
7 *or operate* a system within its local jurisdiction.

8 (h) A manufacturer or supplier that operates an automated traffic  
9 enforcement system pursuant to this section shall, in cooperation  
10 with the governmental agency, submit an annual report to the  
11 Judicial Council that includes, but is not limited to, all of the  
12 following information *if this information is in the possession of,*  
13 *or readily available to, the manufacturer or supplier:*

14 (1) The number of alleged violations captured by the systems  
15 they operate.

16 (2) The number of citations issued by a law enforcement agency  
17 based on information collected from the automated traffic  
18 enforcement system.

19 (3) The number of citations issued for each type of violation.

20 (4) The number and percentage of citations that are paid in full.

21 (5) The number of traffic collisions at each intersection that  
22 have occurred prior to, and after the installation of, the automated  
23 traffic enforcement system.

24 SEC. 2. Section 40518 of the Vehicle Code is amended to read:

25 40518. (a) Whenever a written notice to appear has been issued  
26 by a peace officer or by a qualified employee of a law enforcement  
27 agency on a form approved by the Judicial Council for an alleged  
28 violation of Section 22451, or, based on an alleged violation of  
29 Section 21453, 21455, or 22101 recorded by an automated traffic  
30 enforcement system pursuant to Section 21455.5 or 22451, and  
31 delivered by mail within 15 days of the alleged violation to the  
32 current address of the registered owner of the vehicle on file with  
33 the department, with a certificate of mailing obtained as evidence  
34 of service, an exact and legible duplicate copy of the notice when  
35 filed with the magistrate shall constitute a complaint to which the  
36 defendant may enter a plea. Preparation and delivery of a notice  
37 to appear pursuant to this section is not an arrest.

38 (b) (1) A notice to appear shall contain the name and address  
39 of the person, the license plate number of the person's vehicle, the  
40 violation charged, including a description of the offense, and the

1 time and place when, and where, the person may appear in court  
2 or before a person authorized to receive a deposit of bail. The time  
3 specified shall be at least 10 days after the notice to appear is  
4 delivered. If, after the notice to appear has been issued, the citing  
5 peace officer or qualified employee of a law enforcement agency  
6 determines that, in the interest of justice, the citation or notice  
7 should be dismissed, the citing agency may recommend, in writing,  
8 to the magistrate or the judge that the case be dismissed. The  
9 recommendation shall cite the reasons for the recommendation  
10 and be filed with the court. If the magistrate or judge makes a  
11 finding that there are grounds for dismissal, the finding shall be  
12 entered on the record and the infraction dismissed.

13 (2) A notice to appear shall also contain all of the following  
14 information:

15 (A) The methods by which the registered owner of the vehicle  
16 or the alleged violator may view and discuss with the issuing  
17 agency, both by telephone and in person, the evidence used to  
18 substantiate the violation.

19 (B) The contact information of the issuing agency.

20 (C) Information provided by the manufacturer or supplier of  
21 the automated traffic enforcement system or the governmental  
22 agency with which it contracts that clearly and conspicuously  
23 identifies the manufacturer or supplier of the system.

24 (c) This section and Section 40520 do not preclude the issuing  
25 agency from mailing a courtesy notice or any other notice other  
26 than a notice to appear to the registered owner of the vehicle or  
27 the alleged violator prior to issuing a notice to appear. The courtesy  
28 notice or other notice other than a notice to appear shall be, *no*  
29 *later than January 1, 2012*, on a form approved by the Judicial  
30 Council, *in consultation with the traffic and transportation*  
31 *committee of the California Police Chiefs Association*, and shall  
32 contain all of the following information:

33 (1) The methods by which the registered owner of the vehicle  
34 or the alleged violator may view and discuss with the issuing  
35 agency, both by telephone and in person, the evidence used to  
36 substantiate the violation.

37 (2) The contact information of the issuing agency.

38 (3) Information provided by the manufacturer or supplier of the  
39 automated traffic enforcement system or the governmental agency

1 with which it contracts that clearly and conspicuously identifies  
2 the manufacturer or supplier of the system.

3 (d) A manufacturer or supplier of an automated traffic  
4 enforcement system or the governmental agency operating the  
5 system shall not alter the notice to appear or any other form  
6 approved by the Judicial Council. If a form is found to have been  
7 materially altered, the citation based on the altered form may be  
8 dismissed.

9 (e) *If an employee, agent, or representative of the governmental*  
10 *agency or law enforcement agency contacts the registered owner*  
11 *of a vehicle prior to issuing a notice to appear in an effort to*  
12 *determine the identity of the driver, the registered owner shall be*  
13 *made aware, in a clear and prominent fashion, that the registered*  
14 *owner is not required to provide the information and that failure*  
15 *to provide the information will not result in additional*  
16 *responsibility or liability associated with the alleged violation.*

17 SEC. 3. No reimbursement is required by this act pursuant to  
18 Section 6 of Article XIII B of the California Constitution because  
19 the only costs that may be incurred by a local agency or school  
20 district will be incurred because this act creates a new crime or  
21 infraction, eliminates a crime or infraction, or changes the penalty  
22 for a crime or infraction, within the meaning of Section 17556 of  
23 the Government Code, or changes the definition of a crime within  
24 the meaning of Section 6 of Article XIII B of the California  
25 Constitution.