

1 HB609  
2 168681-1  
3 By Representative Coleman-Evans  
4 RFD: Public Safety and Homeland Security  
5 First Read: 05-MAY-15

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SYNOPSIS:            This bill would authorize the city council or other governing body of any Class 6 municipality to adopt a municipal ordinance providing for automated speeding enforcement.

                      This bill would authorize automated speeding enforcement in a Class 6 municipality as a civil violation.

                      This bill would authorize the municipality to adopt a municipal ordinance consistent with this act.

                      This bill would provide certain procedures to be followed by the municipality using automated photographic speeding enforcement.

                      This bill would provide that the owner of the vehicle involved shall be presumptively liable for a civil violation and the payment of a civil fine, but providing procedures to contest liability.

                      This bill would provide for jurisdiction in the municipal court of the municipality over the

1 civil violations and allowing appeals to the  
2 circuit court of the county where the city hall of  
3 the municipality is situated for trial de novo.

4 This bill would create a cause of action for  
5 any person held responsible for payment of the  
6 civil fine against the person who was actually  
7 operating a vehicle while speeding.

8 This bill would prohibit the tampering with  
9 automated speeding enforcement devices or equipment  
10 systems, except by authorized persons.

11  
12 A BILL  
13 TO BE ENTITLED  
14 AN ACT  
15

16 Relating to Class 6 municipalities; authorizing  
17 automated speeding enforcement in a Class 6 municipality as a  
18 civil violation; authorizing the municipality to adopt a  
19 municipal ordinance consistent with this act; providing  
20 certain procedures to be followed by the municipality using  
21 automated photographic speeding enforcement; providing that  
22 the owner of the vehicle involved is presumptively liable for  
23 a civil violation and the payment of a civil fine, but  
24 providing procedures to contest liability; providing for  
25 jurisdiction in the municipal court of the municipality over  
26 the civil violations and allowing appeals to the circuit court  
27 of the county where the city hall of the municipality is

1 situated for trial de novo; creating a cause of action for any  
2 person held responsible for payment of the civil fine against  
3 the person who was actually operating a vehicle while  
4 speeding; and prohibiting the tampering with automated  
5 speeding enforcement devices or equipment systems, except by  
6 authorized persons.

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

8 Section 1. Each Class 6 municipality, by municipal  
9 ordinance, may adopt the procedures set out in this act.

10 Section 2. The Legislature finds and declares the  
11 following:

12 (1) Accident data establishes that speeding vehicles  
13 have been and are a dangerous problem in a municipality.

14 (2) Studies have found that automated speeding  
15 enforcement in a municipal area is a highly accurate method  
16 for detecting speeding violations and is very effective in  
17 reducing the number of speeding violations and decreasing the  
18 number of traffic accidents, deaths, and injuries.

19 (3) Current Alabama law provides that speeding is a  
20 criminal misdemeanor. Under Alabama law, one who commits such  
21 a misdemeanor is subject to prosecution only if the  
22 misdemeanor was witnessed by either a duly empowered police  
23 officer or other witness who makes a verified complaint to a  
24 sworn magistrate.

25 (4) Many jurisdictions that have adopted laws that  
26 allow the use of automated speeding enforcement have  
27 experienced a significant reduction in the instances of

1 speeding, and the Legislature finds that it should adopt  
2 legislation that would authorize a Class 6 municipality to  
3 implement a program for automated speeding enforcement of  
4 speeding violations.

5 (5) By allowing a program for the use of automated  
6 traffic cameras in speeding enforcement by a Class 6  
7 municipality, the Legislature hopes to both decrease the rate  
8 of speeding violations.

9 Section 3. As used in this act, the following terms  
10 shall have the following meanings:

11 (1) CIVIL FINE. The monetary amount assessed by the  
12 Class 6 municipality pursuant to this act for an adjudication  
13 of civil liability for a speeding violation, including  
14 municipal court costs associated with the infraction.

15 (2) CIVIL VIOLATION. There is hereby created a  
16 non-criminal category of law called a civil violation created  
17 and existing for the sole purpose of carrying out the terms of  
18 this act. The penalty for violation of a civil violation shall  
19 be the payment of a civil fine, the enforceability of which  
20 shall be accomplished through civil action. The prosecution of  
21 a civil violation created hereby shall carry reduced  
22 evidentiary requirements and burden of proof as set out in  
23 Section 6, and in no event shall an adjudication of liability  
24 for a civil violation be punishable by a criminal fine or  
25 imprisonment.

26 (3) MUNICIPALITY. Class 6 Municipality.

1           (4) OWNER. The owner of a motor vehicle as shown on  
2 the motor vehicle registration records of the Alabama  
3 Department of Revenue or the analogous department or agency of  
4 another state or country. The term shall not include a motor  
5 vehicle rental or leasing company when a motor vehicle  
6 registered by the company is rented or leased to another  
7 person under a rental or lease agreement with the company, in  
8 which event "owner" shall mean the person to whom the vehicle  
9 is rented or leased; nor shall the term include motor vehicles  
10 displaying dealer license plates, in which event "owner" shall  
11 mean the person to whom the vehicle is assigned for use; nor  
12 shall the term include the owner of any stolen motor vehicle,  
13 in which event "owner" shall mean the person who is guilty of  
14 stealing the motor vehicle.

15           (5) PHOTOGRAPHIC SPEEDING ENFORCEMENT OR AUTOMATED  
16 SPEEDING ENFORCEMENT SYSTEM. A camera system which is designed  
17 and installed to work in conjunction with an electrically  
18 operated speed detection device synchronized to automatically  
19 record digital imaging of a motor vehicle while speeding.

20           The device shall be capable of producing at least  
21 two recorded images, at least one of which is capable of  
22 clearly depicting the license plate of a motor vehicle that is  
23 speeding.

24           (6) SPEEDING VIOLATION. Any violation of a motor  
25 vehicle at a speed that exceeds the legal maximum speed limits  
26 presented in or adopted pursuant to Article 8, Chapter 5A,  
27 Title 32, Sections 32-5A-170 to 32-5A-178, inclusive, Code of

1 Alabama 1975; provided, however, that speed limits set by  
2 action of a Class 6 municipality as found in the City Code of  
3 the Class 6 municipality shall supersede the limits set in  
4 Article 8, Chapter 5A, Title 32, Sections 32-5A-170 to  
5 32-5A-178, inclusive, Code of Alabama 1975. A speeding  
6 violation shall be a civil violation as defined in this act.

7 (7) TRAINED TECHNICIAN. A sworn law enforcement  
8 officer employed by the Class 6 municipality, who  
9 alternatively:

10 a. Is a professional engineer in the field of civil  
11 engineering.

12 b. Has received instruction and training in the  
13 proper use of the automated photographic speeding enforcement  
14 system to be used by the municipality's traffic engineer or  
15 his or her designee.

16 c. Has been trained by the vendor installing the  
17 equipment. Under no circumstances shall the salary or other  
18 compensation of the trained technician be related to the  
19 number of notices of violation issued or amount of fines  
20 collected.

21 Section 4. (a) The Class 6 municipality may utilize  
22 an automated photographic speeding enforcement system to  
23 detect and record speeding violations, to issue notices of  
24 civil violations by mail, and to prosecute civil violations  
25 for the recorded speeding violations which may occur within  
26 the corporate limits of the Class 6 municipality as provided  
27 in this act. A civil fine assessed under this act shall not

1 exceed one hundred dollars (\$100), and municipal court costs  
2 may be assessed in the same manner and in the same amounts  
3 prescribed for municipal criminal speeding violations  
4 prosecuted as a misdemeanor. An additional fee of ten dollars  
5 (\$10) shall be added to the costs authorized to be collected  
6 in connection with notices issued under this act. Court costs  
7 collected pursuant to this act shall be distributed in the  
8 same manner as prescribed by law for the distribution of  
9 municipal court costs for misdemeanor violations. The  
10 additional ten dollars (\$10) authorized by this act shall be  
11 paid to the Alabama Criminal Justice Information Center as  
12 compensation for record keeping with respect to speeding  
13 violation notices issued pursuant to this act.

14 (b) If an ordinance is adopted for automated  
15 speeding enforcement, the municipality shall cause a sign to  
16 be posted at each of a minimum of 10 roadway entry points to  
17 the municipality to provide motorists with notice that  
18 automated photographic speeding enforcement systems are in  
19 use. The sign shall comply with this requirement if it states  
20 substantially the following: "AUTOMATED CAMERAS USED IN  
21 SPEEDING ENFORCEMENT," or if it otherwise gives sufficient  
22 notice.

23 (c) Prior to operating such an enforcement system,  
24 the municipality shall make a public announcement and conduct  
25 a public awareness campaign of the use of an automated  
26 photographic speeding enforcement system a minimum of 30 days  
27 before using the devices. The municipality may place



1 photographic speeding enforcement systems at locations without  
2 public notice of the specific location, may change locations  
3 without public notice, and may install and move as needed  
4 decoy devices designed to resemble photographic speeding  
5 enforcement systems.

6 (d) The municipality shall post signs warning of the  
7 use of an automated photographic device for speeding  
8 enforcement within 60 yards of every speed detection device  
9 used. Each sign shall be placed at least five feet from the  
10 edge of the road or street and shall be placed not lower than  
11 two feet and not higher than eight feet.

12 Section 5. (a) Prior to imposing a civil penalty  
13 pursuant to this act, the municipality shall first mail a  
14 notice of violation by certified U.S. mail, return receipt  
15 requested, to the owner of the motor vehicle which is recorded  
16 by the automated photographic speeding enforcement system that  
17 committed a speeding violation. The notice shall be sent not  
18 later than the 30th day after the date the speeding violation  
19 is recorded to the following:

20 (1) The owner's address as shown on the registration  
21 records of the Alabama Department of Revenue.

22 (2) If the vehicle is registered in another state or  
23 country, to the owner's address as shown on the motor vehicle  
24 registration records of the department or agency of the other  
25 state or country analogous to the Alabama Department of  
26 Revenue.

1 (b) A notice of violation issued under this act  
2 shall contain the following:

3 (1) Description of the speeding violation alleged.

4 (2) The date, time, and location of the violation.

5 (3) A copy of recorded images of the vehicle  
6 involved in the violation.

7 (4) The amount of the civil penalty to be imposed  
8 for the violation.

9 (5) The date by which the civil penalty must be  
10 paid.

11 (6) A statement that the person named in the notice  
12 of violation may pay the civil penalty in lieu of appearing at  
13 an administrative adjudication hearing.

14 (7) Information that informs the person named in the  
15 notice of violation of the following:

16 a. The right to contest the imposition of the civil  
17 penalty in an administrative adjudication.

18 b. The manner and time in which to contest the  
19 imposition of the civil penalty.

20 c. That failure to pay the civil penalty or to  
21 contest liability is an admission of liability.

22 (8) A statement that a recorded image is evidence in  
23 a proceeding for the imposition of a civil penalty.

24 (9) A statement that failure to pay the civil  
25 penalty within the time allowed shall result in the imposition  
26 of a late penalty not exceeding twenty-five dollars (\$25).

1           (10) Any other information deemed necessary by the  
2 municipality.

3           (c) A notice of violation under this act is presumed  
4 to have been received on the 10th day after the date the  
5 notice of violation is placed in the United States mail.

6           (d) The civil penalty imposed shall be paid within  
7 30 days of the 10th day after the date the notice of violation  
8 is mailed.

9           (e) It shall be within the discretion of the trained  
10 technician to determine which of the recorded speeding  
11 violations are prosecuted based upon the quality and  
12 legibility of the recorded image. In lieu of issuing a notice  
13 of violation, the municipality may mail a warning notice to  
14 the owner during the initial warning period.

15           Section 6. (a) The municipal court of the  
16 municipality is vested with the power and jurisdiction to hear  
17 and adjudicate the civil violations provided for in this act  
18 and to issue orders imposing the civil fines and costs set out  
19 in this act.

20           (b) A person who receives a notice of violation may  
21 contest the imposition of the civil fine by submitting a  
22 request for a hearing on the adjudication of the civil  
23 violation, in writing, within 15 days of the 10th day after  
24 the date the notice of violation is mailed. Upon receipt of a  
25 timely request, the municipality shall notify the person of  
26 the date and time of the adjudicative hearing by U.S. mail.

1 (c) Failure to pay a civil penalty or to contest  
2 liability in a timely manner is an admission of liability in  
3 the full amount of the civil fine assessed in the notice of  
4 violation.

5 (d) The civil fine shall not be assessed if, after a  
6 hearing, the municipal judge of the municipality enters a  
7 finding of no liability.

8 (e) If an adjudicative hearing is requested, the  
9 municipality shall have the burden of proving the speeding  
10 violation by a preponderance of the evidence. The reliability  
11 of the automated photographic speeding enforcement system used  
12 to produce the recorded image of the violation may be attested  
13 to by affidavit of a trained technician. An affidavit of a  
14 trained technician that alleges a violation based on an  
15 inspection of the pertinent recorded image or video is  
16 admissible in a proceeding under this act and is evidence of  
17 the facts contained in the affidavit.

18 (f) The notice of violation, the recorded and  
19 reproduced images of the violation, regardless of the media on  
20 which they are recorded, accompanied by a certification of  
21 authenticity of a trained technician, and evidence of  
22 ownership of a vehicle as shown by copies or summaries of  
23 official records shall be admissible into evidence without  
24 foundation unless the municipal court finds there is an  
25 indication of untrustworthiness, in which case the  
26 municipality shall be given a reasonable opportunity to lay an  
27 evidentiary foundation.

1 (g) All other matters of evidence and procedure not  
2 specifically addressed in this act shall be subject to the  
3 rules of evidence and the rules of procedure as they apply in  
4 the small claims courts of this state, except that on any  
5 appeal to county circuit court where the city hall of the  
6 municipality is situated for trial de novo the evidence and  
7 procedures shall be as for any civil case in the circuit court  
8 except as otherwise provided in this act.

9 (h) A person who is found liable for the civil  
10 violation after an adjudicative hearing or who requests an  
11 adjudicative hearing and thereafter fails to appear at the  
12 time and place of the hearing is liable for court costs and  
13 fees as set out herein in addition to the amount of the civil  
14 fine assessed for the violation. A person who is found liable  
15 for a civil violation after an adjudicative hearing shall pay  
16 the civil fine and costs within 10 days of the hearing.

17 (i) Whenever payment of a civil fine is owed to the  
18 municipality, the amount of the civil fine as set by ordinance  
19 may not be increased, decreased, or remitted by the municipal  
20 court, and the liability may be satisfied only by payment.

21 (j) It shall be an affirmative defense to the  
22 imposition of civil liability under this act, to be proven by  
23 a preponderance of the evidence, that:

24 1. The operator of the motor vehicle was acting in  
25 compliance with the lawful order or direction of a police  
26 officer.

1                   2. The motor vehicle was being operated as an  
2 authorized emergency vehicle under Sections 32-5A-7 and  
3 32-5-213 of the Code of Alabama 1975, and that the operator  
4 was acting in compliance with that chapter.

5                   3. The motor vehicle was stolen or being operated by  
6 a person other than the owner of the vehicle without the  
7 effective consent of the owner.

8                   4. The license plate depicted in the recorded image  
9 of the violation was a stolen plate and being displayed on a  
10 motor vehicle other than the motor vehicle for which the plate  
11 had been issued.

12                  5. The person who received the notice of violation  
13 was not the owner of the motor vehicle at the time of the  
14 violation.

15                  (k) To demonstrate that at the time of the violation  
16 the motor vehicle was a stolen vehicle or the license plate  
17 displayed on the motor vehicle was a stolen plate, the owner  
18 must submit proof acceptable to the hearing officer that the  
19 theft of the vehicle or license plate, prior to the time of  
20 the violation, had been timely reported to the appropriate law  
21 enforcement agency.

22                  (1) Notwithstanding anything in this act to the  
23 contrary, a person who fails to pay the amount of a civil fine  
24 or to contest liability in a timely manner is entitled to an  
25 adjudicative hearing on the violation if:

26                  1. The person files an affidavit with the hearing  
27 officer stating the date on which the person received the

1 notice of violation that was mailed to the person, if not  
2 received by the 10th day after same is mailed as set out in  
3 subsection (a) of Section 5.

4 2. Within the 15 days of the date of actual receipt,  
5 the person requests an administrative adjudicative hearing.

6 Section 7. (a) Following an adjudicative hearing,  
7 the municipal court judge shall issue an order stating the  
8 following:

9 (1) Whether the person charged with the civil  
10 violation is liable for the violation and, if so,

11 (2) The amount of the civil fine assessed against  
12 the person, along with the fees and costs of court provided  
13 for herein.

14 (b) The orders issued under this section may be  
15 filed in the office of the judge of probate where the city  
16 hall of the municipality is located and shall operate as a  
17 judicial lien in the same manner and with the same weight and  
18 effect as any other civil judgment filed therein.

19 (c) A person who is found liable after an  
20 adjudicative hearing may appeal that finding of civil  
21 liability to the circuit court of the county where the city  
22 hall of the municipality is situated by filing a notice of  
23 appeal with the clerk of the municipal court. The notice of  
24 appeal must be filed not later than the 14th day after the  
25 date on which the municipal court judge entered the finding of  
26 civil liability. The filing of a notice of appeal shall stay

1 the enforcement of the civil fine penalty. An appeal shall be  
2 determined by the circuit court by trial de novo.

3 Section 8. (a) The circuit court hearing an appeal  
4 shall use the procedures that apply to criminal convictions in  
5 municipal court with the following qualifications:

6 (1) The proceedings shall retain their civil nature  
7 on appeal with the circuit court applying the preponderance of  
8 the evidence standard.

9 (2) If the person is adjudicated by the circuit  
10 court to be responsible for payment of the civil fine, circuit  
11 court costs shall be owed by the person adjudicated  
12 responsible, with 100 percent of those court costs retained by  
13 the circuit court. Court costs in the circuit court shall be  
14 calculated as are court costs for criminal appeals from the  
15 municipal court, and in the event the circuit court finds the  
16 person appealing not to be responsible, no municipal court  
17 costs shall be owed to the municipality.

18 (3) Regardless of the civil nature of the  
19 proceedings, the circuit court, in its discretion and for its  
20 administrative convenience, may assign case numbers as for  
21 criminal appeals and place the appeals on criminal dockets in  
22 the same manner as criminal appeals from municipal court.

23 (4) The circuit court shall sit as trier of both  
24 fact and law in the civil proceedings in the circuit court.

25 (5) The municipality shall be responsible for  
26 providing an attorney to represent the municipality and to  
27 prosecute the civil proceedings in the circuit court.



1           Section 9. If the evidence produced by an automated  
2 photographic speeding enforcement system does not produce an  
3 image of the license plate with sufficient clarity for a  
4 trained technician to determine the identity of the owner, and  
5 if the identity cannot otherwise be reliably established, then  
6 no notice of violation may be issued pursuant to this act. If,  
7 however, a notice of violation is issued, to the degree  
8 constitutionally allowed, those issues related to the identity  
9 of the vehicle or its owner shall affect the weight to be  
10 accorded the evidence and shall not affect its admissibility.

11           Section 10. The municipality may provide by  
12 ordinance that a late fee not exceeding twenty-five dollars  
13 (\$25) shall attach to untimely paid civil fines that are  
14 authorized in this act. No person may be arrested or  
15 incarcerated for nonpayment of a civil fine or late fee. No  
16 record of an adjudication of civil violation made under this  
17 act shall be listed, entered, or reported on any criminal  
18 record or driving record, whether the record is maintained by  
19 the municipality or an outside agency. An adjudication of  
20 civil violation provided for in this act shall not be  
21 considered a conviction for any purpose, shall not be used to  
22 increase or enhance punishment for any subsequent offense of a  
23 criminal nature, shall not be considered a moving violation,  
24 and shall not be used by any insurance company to determine or  
25 affect premiums or rates unless an accident occurred due to  
26 the violation. The fact that a person is held liable or  
27 responsible for a civil fine for a speeding violation shall

1 not be used as evidence that the person was guilty of  
2 negligence or other culpable conduct, and any evidence  
3 generated by an automated photographic speeding enforcement  
4 system may only be used as evidence in other proceedings if it  
5 is or becomes admissible under the rules of evidence  
6 applicable therein.

7 Section 11. The municipality shall keep statistical  
8 data regarding the effectiveness of automated photographic  
9 speeding enforcement systems in reducing speeding violations  
10 and collisions and shall communicate the data on an annual  
11 basis to the Alabama Department of Transportation and the  
12 Alabama Criminal Justice Information Center.

13 Section 12. A civil penalty may not be imposed and  
14 no adjudication of liability for a civil violation may be made  
15 under this act if the operator of the vehicle was arrested or  
16 was issued a citation and notice to appear by a sworn police  
17 officer for a criminal violation of any portion of Title 32,  
18 Chapter 5A, Article 8, including, but not limited to, Sections  
19 32-5A-170 to 32-5A-178, inclusive, Code of Alabama 1975, or  
20 any other municipal ordinance which embraces and incorporates  
21 the statutes contained in that article, and which occurred  
22 simultaneously with and under the same set of circumstances  
23 which were recorded by the automated photographic speeding  
24 enforcement system.

25 Section 13. Any person against whom an adjudication  
26 of liability for a civil violation is made pursuant to this  
27 act, or an ordinance passed pursuant hereto, and who actually

1 pays the civil fine imposed thereby shall have a cause of  
2 action against any person who may be shown to have been  
3 operating the vehicle recorded at the time of the violation  
4 for the amount of the civil fine actually paid plus any  
5 consequential or compensatory damages and a reasonable  
6 attorney fee, without regard to the rules regarding joint and  
7 several liability, contribution, or indemnity. Provided,  
8 however, that as a condition precedent to the bringing of a  
9 civil action, that the person held responsible for payment of  
10 the civil fine must first make written demand on the other  
11 person for reimbursement of the civil fine, giving a minimum  
12 of 60 days to remit payment, and if reimbursement is fully  
13 made within the 60-day period then the cause of action shall  
14 be extinguished and no attorney fees or other damages shall  
15 attach to the reimbursement. Any cause of action brought  
16 pursuant to this section must be commenced within two years  
17 from the date of the payment of the civil fine for a speeding  
18 violation.

19 Section 14. The provisions of this act are  
20 severable. If any part of this act is declared invalid or  
21 unconstitutional, that declaration shall not affect the part  
22 which remains.

23 Section 15. This act shall become effective  
24 immediately following its passage and approval by the  
25 Governor, or its otherwise becoming law.