

# HOUSE . . . . . No. 4138

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## The Commonwealth of Massachusetts

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HOUSE OF REPRESENTATIVES, May 10, 2001.

The committee on Public Safety, to whom were referred the petition (accompanied by bill, House, No. 3402) of Thomas M. Menino, Kevin G. Honan, Anthony Petrucci and Paul C. Demakis for legislation to permit the use of photomonitoring devices as a means of promoting traffic safety in the cities of Boston and Cambridge, and the petition (accompanied by bill, House, No. 3590) of Paul E. Caron for legislation to permit the use of photomonitoring devices as a means of promoting traffic safety, reports recommending that the accompanying bill (House, No. 4138) ought to pass.

For the committee,

TIMOTHY J. TOOMEY, JR.

## The Commonwealth of Massachusetts

In the Year Two Thousand and One.

AN ACT PERMITTING THE USE OF PHOTOMONITORING DEVICES AS A MEANS OF PROMOTING TRAFFIC SAFETY IN THE CITIES OF BOSTON AND CAMBRIDGE.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. (a) Notwithstanding the provisions of any general  
2 or special law to the contrary, the City of Boston and the city of  
3 Cambridge may, upon the acceptance of this act, employ a traffic  
4 control signal violation monitoring system along any portion of  
5 any ways within their control and may promulgate local measures  
6 imposing a penalty on the owner of a vehicle for failure by the  
7 operator thereof to comply with the traffic control signals in said  
8 cities pursuant to this act.

9 (b) As used in this act, the following words shall, unless the  
10 content clearly indicates otherwise, have the following meanings:

11 “Local measure”, shall mean the ordinances, rules and regula-  
12 tions adopted by the city of Boston and the city of Cambridge  
13 establishing a schedule of fines;

14 “Owner”, shall have the meaning provided in section 1 of chap-  
15 ter 90 of the General Laws;

16 “Traffic control signal violation monitoring system”, shall mean a  
17 vehicle sensor installed to work in conjunction with a traffic control  
18 signal which automatically produces one or more photographs, one  
19 or more microphotographs or other recorded images of each  
20 vehicle at the time it is used or operated in a manner that is a vio-  
21 lation under this act;

22 “Violation”, shall mean the failure of an operator of a vehicle to  
23 comply with the traffic control signals.

24 (c) No traffic control signal violation monitoring system shall  
25 be utilized in such a manner as to take a frontal view photograph  
26 of the vehicle as evidence of having committed a violation.

27 (d) A certificate, or a facsimile thereof, based upon inspection  
28 of photographs, microphotograph or other recorded images pro-  
29 duced by a traffic control signal violation monitoring system, and  
30 sworn to or affirmed by a police officer, shall be prima facie evi-  
31 dence of the facts contained therein. Any photographs, micropho-  
32 tographs or other recorded images evidencing such a violation  
33 shall only be admissible in any judicial or administrative pro-  
34 ceeding to adjudicate the liability for such violation.

35 (e) For each violation pursuant to this act, the owner of a  
36 vehicle shall be liable for the penalty imposed by a local measure;  
37 provided, however, that no owner of a vehicle shall be liable for a  
38 penalty imposed pursuant to this act where the operator of such  
39 vehicle has been convicted of the underlying violation pursuant to  
40 a citation issued in accordance with section 2 of chapter 90C of the  
41 General Laws; and provided, further, that the maximum penalty that  
42 may be imposed shall be One Hundred Dollars (\$100.00) for each  
43 violation.

44 (f) A penalty imposed by a local measure may, if so provided in  
45 the local measure, be increased by up to  $33\frac{1}{3}\%$  if said fine  
46 remains unpaid in excess of 30 days after a notice of violation has  
47 been issued pursuant to section 20A½ of chapter 90 of the General  
48 Laws.

49 (g) A penalty imposed by a local measure for a violation pur-  
50 suant to this act shall not be deemed a criminal conviction and  
51 shall not be made part of the operating record of the person upon  
52 whom such liability is imposed, nor shall such imposition of a  
53 penalty be subject to merit rating for insurance purposes and no  
54 surcharge points shall be imposed in the provision of motor  
55 vehicle insurance coverage.

56 (h) If an owner receives a notice of violation pursuant to this  
57 act for any time period during which the vehicle was reported to  
58 the police department of any state, city or town as having been  
59 stolen, it shall be a valid defense to a violation pursuant to this act  
60 that the vehicle had been reported to such police department as  
61 stolen prior to the time the violation occurred and had not been  
62 recovered prior to such time.

63 (i) Any owner who incurs a penalty pursuant to this act and  
64 who was not the operator of the vehicle at the time of the violation

65 may maintain a civil action, in the courts of the commonwealth,  
66 for indemnification against the operator.

1 SECTION 2. (a) The parking clerk designated or appointed by  
2 the city shall supervise and coordinate the administration of viola-  
3 tions issued pursuant to Section 1. The parking clerk shall have  
4 the authority to hire and designate such personnel as may be nec-  
5 essary or contract for such services to implement the provisions of  
6 this section.

7 (b) It shall be the duty of the parking clerk of the city employ-  
8 ing its traffic control signal violation monitoring system to deliver  
9 the notice of violation to the registered owner of any vehicle iden-  
10 tified in any photographs, microphotographs or other recorded  
11 images produced by such device as evidence of a violation pur-  
12 suant to this act. Such notice shall contain but not be limited to the  
13 following information: a copy of the aforementioned recorded  
14 image showing the vehicle; the registration number and state of  
15 issuance of said registration number of the vehicle; the date, time  
16 and place of the violation; the specific violation charged; a  
17 schedule of fines for such violation as established by the city or  
18 town; instructions for the return of the notice; and text as follows:  
19 "This notice may be returned personally, by mail, or by an agent  
20 authorized in writing. A hearing may be obtained upon the written  
21 request of the registered owner in writing. Failure to obey this  
22 notice within 30 days of issuance of this notice will result in the  
23 non-renewal or suspension of the license to drive and the certifi-  
24 cate of registration of the registered owner."

25 (c) In the case of a violation involving a motor vehicle regis-  
26 tered under the laws of the Commonwealth, such notice of viola-  
27 tion shall be mailed within 14 days of the violation, exclusive of  
28 Sundays and holidays, to the address of the registered owner as  
29 listed in the records of the register of motor vehicles. In the case  
30 of any motor vehicle registered under the laws of another state or  
31 country, such notice of violation shall be mailed within 21 days of  
32 the violation, exclusive of Sundays and holidays, to the address of  
33 the registered owner as listed in the records of the official in such  
34 state or country having charge of the registration of such motor  
35 vehicle. If said address is unavailable, it shall be sufficient for the

36 parking clerk to mail notice of violation to the official in such  
37 state or country having charge of the registration of such motor  
38 vehicle.

39 (d) Notice of violation shall be sent by first class mail in accor-  
40 dance with subsection (c). A manual or automatic record of  
41 mailing prepared by the parking clerk in the ordinary course of  
42 business shall be prima facie evidence thereof, and shall be  
43 administered in any judicial or administrative proceeding, as the  
44 facts contained therein.

45 (e) Any owner to whom notice of violation has been issued pur-  
46 suant to this section may admit responsibility for such violation  
47 and pay the fine provided therein. Payment shall be made either  
48 personally or through a duly authorized agent, or by appearing  
49 before the parking clerk during normal office hours, or by mailing  
50 both payment and notice of the violation to the parking clerk.  
51 Payment by mail shall be made only by money order, credit card  
52 or check made out to the parking clerk. Payment of the established  
53 fine and any applicable penalties shall operate as a final disposi-  
54 tion of the case.

55 (f) Any owner to whom a notice of violation has been issued  
56 may, within 30 days of the mailing of said notice by the parking  
57 clerk, request a hearing to contest the liability alleged in said  
58 notice. A hearing request shall be made either personally or  
59 through a duly authorized or authorized agent by appearing before  
60 the parking clerk during regular business hours or by mailing a  
61 request in writing to the parking clerk. Upon receipt of a hearing  
62 request, the parking clerk shall forthwith schedule the matter  
63 before a person hereafter referred to as a hearing officer, said  
64 hearing officer to be the parking clerk of the city wherein the vio-  
65 lation occurred or such other person or persons as the parking  
66 clerk may designate. Written notice of the date, time and place of  
67 said hearing shall be sent by first class mail to the registered  
68 owner. Said hearing shall be informal, the rules of evidence shall  
69 not apply, and the decision of the hearing officer shall be final  
70 subject to judicial review as outlined by section 14 of Chapter 30A  
71 of the General Laws.

72 (g) If an owner to whom notice of violation has been issued  
73 either fails to pay the fine provided for in said notice in accor-

74 dance with subsection (e), or fails to receive a favorable adjudica-  
75 tion of said notice from a hearing officer in accordance with sub-  
76 section (f), the parking clerk shall notify the registrar of motor  
77 vehicles who shall place the matter on record. Upon notification  
78 to the registrar of two or more notices under this act and sec-  
79 tions 20A and 20A½ of chapter 90 of the General Laws from the  
80 parking clerk of either city or state authorities or agencies, the  
81 registrar shall not issue or renew or may suspend such owner's  
82 license to operate a motor vehicle or motor vehicle registration  
83 until after notification from the parking clerk of each city, agency  
84 or authority, from whom the registrar received notification, that all  
85 fines, taxes and penalties owed by such owner pursuant to either  
86 this section, or arising out of the parking or usage of such owner's  
87 motor vehicles, have been disposed of in accordance with law.  
88 Upon such notification to the registrar, an additional charge of \$20  
89 payable to the registrar but collected by the city, and an additional  
90 charge of \$20 payable to and collected by the city, shall be  
91 assessed against the registered owner of said motor vehicle. It  
92 shall be the duty of the parking clerk to notify the registrar forth-  
93 with that such case has been so disposed; provided, however, that  
94 certified receipt of full and final payment from the parking clerk  
95 of the city or state agency or authority issuing such violation shall  
96 also serve as legal notice to the registrar that said violation has  
97 been disposed of in accordance with law. The certified receipt  
98 shall be printed in such form as the registrar of motor vehicles  
99 may approve.

100 (h) Upon the accumulation by an owner of five or more out-  
101 standing notices under this act or sections 20A and 20A½ of  
102 chapter 90 of the General Laws on account of violations of any  
103 statute, ordinance, order, rule or regulation relating to the opera-  
104 tion, control or parking of motor vehicles in a particular city,  
105 notwithstanding any notification to the registrar, the parking clerk  
106 of such city may notify the chief of police or director of traffic  
107 and parking of such city that the vehicle bearing the registration to  
108 which said notices have been issued shall be removed and stored  
109 or otherwise immobilized by a mechanical device at the expense  
110 of the registered owner of such vehicle until such time as all fines,  
111 taxes and penalties owed by such owner pursuant to either this  
112 section, or arising out of the parking or usage of such owner's

113 motor vehicle have been disposed of in accordance with law. No  
114 vehicle shall be removed, stored, or otherwise immobilized until  
115 and unless the owner of such vehicle shall have received 10 days  
116 notification by mail that such vehicle may be removed, stored, or  
117 immobilized without further notification. It shall be sufficient for  
118 the parking clerk to mail, postage prepaid, said notification to the  
119 last known address of the registered owner. It shall be sufficient  
120 for the parking clerk, in the case of a vehicle registered in another  
121 state or country, to mail notification to the official in such state or  
122 country having charge of the registration of such motor vehicle.

