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SENATE BILL NO. 219
AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by the House Committee on Transportation
 on _____)

(Patron Prior to Substitute—Senator Jones)

A BILL to amend and reenact § 46.2-882.1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 46.2-882.2, relating to photo speed monitoring devices; placement and operation.

Be it enacted by the General Assembly of Virginia:

1. That § 46.2-882.1 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 46.2-882.2 as follows:

§ 46.2-882.1. Use of photo speed monitoring devices in highway work zones, school crossing zones, and high-risk intersection segments; civil penalty.

A. For the purposes of this section:

"High-risk intersection segment" means any highway or portion thereof located not more than 1,000 feet from the limits of the property of a school that is part of or adjacent to an intersection containing a marked crosswalk that is identified in the manner provided in this section as one in which a traffic fatality has occurred since January 1, 2014.

"Highway work zone" has the same meaning ascribed to it in § 46.2-878.1.

"Photo speed monitoring device" means equipment that uses radar or LIDAR-based speed detection and produces one or more photographs, microphotographs, videotapes, or other recorded images of vehicles.

"Operating costs" means the costs attributable to a locality's photo speed monitoring device program, including costs for (i) devices and associated equipment, including the installation and operation of such devices and equipment; (ii) signs and speed display signs indicating the use of a photo speed monitoring device; (iii) contracts with private vendors; and (iv) personnel costs.

"Retired sworn law-enforcement officer" means any officer of the United States, or of a state or political subdivision thereof, who was empowered by law to conduct investigations and make arrests and any attorney authorized by law to prosecute or participate in the prosecution of such offenses, who at the time of retirement kept an up-to-date certification and retired honorably in good standing. A retired sworn law-enforcement officer shall not be required to keep an up-to-date certification after the date of his retirement.

"School crossing zone" has the same meaning ascribed to it in § 46.2-873.

"Speed display sign" means a self-contained system that uses radar or LIDAR-based speed detection to measure the real-time speed of an approaching vehicle and displays that speed to the driver.

"Vehicle speed violation" means a violation of this title resulting from the operation of a vehicle in excess of the speed limit, including a violation of § 46.2-873 or 46.2-878.1.

"Workers are present" means one or more individuals are physically present and providing highway maintenance or construction services pursuant to a contract with the Department of Transportation or a political subdivision of the Commonwealth.

B. A state or local law-enforcement agency may place and operate a photo speed monitoring device in school crossing zones for the purposes of recording violations of § 46.2-873 and, *when workers are present*, in highway work zones for the purposes of recording violations of § 46.2-878.1.

A state or local law-enforcement agency may place and operate a photo speed monitoring device at a high-risk intersection segment located within the locality for the purpose of recording vehicle speed violations, provided that such law-enforcement agency certifies that a traffic fatality has occurred since January 1, 2014, in such segment.

C. The operator of a vehicle shall be liable for a monetary civil penalty imposed pursuant to this section if such vehicle is found, as evidenced by information obtained from a photo speed monitoring device, to be traveling at speeds of at least 10 miles per hour above the posted speed limit in the zone monitored by the photo speed monitoring device, *provided that if such zone is a highway work zone, workers are present*. Such civil penalty shall not exceed \$100, and any prosecution shall be instituted and conducted in the same manner as prosecution for traffic infractions. Civil penalties collected under this section resulting from a summons issued by a local law-enforcement officer or retired sworn law-enforcement officer employed by a locality shall be paid to the locality in which such violation occurred *to be used for its photo speed monitoring device program. Any funds in excess of those allocated for such purposes shall be deposited in a local fund used solely for planning, design and construction, implementation, administration, and operation of initiatives, projects, or programs that improve traffic safety, speed management, bicycle and pedestrian safety, public transit, and local systemic safety initiatives otherwise eligible for funding through the Virginia Highway Safety Improvement Program established pursuant to § 33.2-373. Any such excess funds shall first be used for such purposes in highway work zones, high-risk intersection segments, or school crossing zones prior to*

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being used for such purposes in any other area. Civil penalties collected under this section resulting from a summons issued after July 1, 2026, by a law-enforcement officer or retired sworn law-enforcement officer employed by the Department of State Police shall be paid into the Literary Fund to the Department of State Police to be deposited in a fund used solely for the payment of the agreed-upon compensation and actual program costs incurred by the Department of State Police in placing and operating such photo speed monitoring devices, except that any excess moneys in such fund shall be paid to the Commonwealth Transportation Board to be used for the Virginia Highway Safety Improvement Program established pursuant to § 33.2-373. However, all civil penalties collected under this section resulting from a summons issued based on evidence obtained from a photo speed monitoring device placed and operated at a high-risk intersection segment shall be paid to the Commonwealth Transportation Board to be used for the Virginia Highway Safety Improvement Program established pursuant to § 33.2-373.

D. If a photo speed monitoring device is used, proof of a vehicle speed violation shall be evidenced by information obtained from such device. A certificate, or a facsimile thereof, sworn to or affirmed by a law-enforcement officer or a retired sworn law-enforcement officer, based upon inspection of photographs, microphotographs, videotapes, or other recorded images produced by a photo speed monitoring device, shall be prima facie evidence of the facts contained therein. However, for any photo speed monitoring device placed in a school crossing zone, such sworn certificate or facsimile thereof shall not be prima facie evidence of the facts contained therein unless such photographs, microphotographs, videotapes, or other recorded images, or documentation, depict or confirm a portable sign or tilt-over sign that is in position or blinking sign that is activated, indicating the school crossing zone pursuant to § 46.2-873, at the time of such vehicle speed violation. However, for any photo speed monitoring device placed in a highway work zone, such sworn certificate or facsimile thereof shall not be prima facie evidence of the facts contained therein unless the operator of the photo speed monitoring device provides a sworn certification verifying that workers were present at the time of such violation. Any photographs, microphotographs, videotapes, or other recorded images evidencing such a violation shall be available for inspection in any proceeding to adjudicate the liability for such vehicle speed violation.

E. In the prosecution for a vehicle speed violation in which a summons was issued by mail, prima facie evidence that the vehicle described in the summons issued pursuant to this section was operated in a manner constituting a vehicle speed violation, 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 owner, lessee, or renter of the vehicle was the person who committed the violation. Such presumption shall be rebutted if the owner, lessee, or renter of the vehicle (i) files an affidavit by regular mail with the clerk of the general district court that he was not the operator of the vehicle at the time of the alleged violation and provides the name and address of the person who was operating the vehicle at the time of the alleged violation or (ii) testifies in open court under oath that he was not the operator of the vehicle at the time of the alleged violation and provides the name and address of the person who was operating the vehicle at the time of the alleged violation. Such presumption shall also be rebutted if a certified copy of a police report, showing that the vehicle had been reported to the police as stolen prior to the time of the alleged vehicle speed violation, is presented, prior to the return date established on the summons issued pursuant to this section, to the court adjudicating the alleged violation.

F. Imposition of a penalty pursuant to this section by mailing a summons 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 in the provision of motor vehicle insurance coverage. However, if a law-enforcement officer uses a photo speed monitoring device to record a vehicle speed violation and personally issues a summons at the time of the violation, the conviction that results shall be made a part of such driver's driving record and used for insurance purposes in the provision of motor vehicle insurance coverage.

G. 1. The Supreme Court of Virginia shall develop a summons for purposes of this section. Every summons issued pursuant to this section shall be such a summons.

2. A summons for a vehicle speed violation issued by mail pursuant to this section may be executed pursuant to § 19.2-76.2. Notwithstanding the provisions of § 19.2-76, a summons issued by mail pursuant to this section may be executed by mailing by first-class mail a copy thereof to the owner, lessee, or renter of the vehicle. In the case of a vehicle owner, the copy shall be mailed to the address contained in the records of or accessible to the Department. In the case of a vehicle lessee or renter, the copy shall be mailed to the address contained in the records of the lessor or renter. Every such mailing shall include, in addition to the summons, a notice of (i) the summoned person's ability to rebut the presumption that he was the operator of the vehicle at the time of the alleged violation through the filing of an affidavit as provided in subsection E and (ii) instructions for filing such affidavit, including the address to which the affidavit is to be sent. Every such mailing shall also include an explanation of and any information necessary for the process of contesting such an alleged violation and payment of a civil penalty. If the summoned person fails to appear on the date of return set out in the summons mailed pursuant to this section, the summons shall be executed in the manner set out in notwithstanding the provisions of § 19.2-76.3, a second summons shall be mailed pursuant

to this section. If such person fails to appear on the date of return set out in the second summons mailed pursuant to this section, the court shall notify the Commissioner, who shall refuse to issue or renew the vehicle registration certificate or the license plate issued for such vehicle in the manner described in § 46.2-819.10, *mutatis mutandis*, until the civil penalties imposed pursuant to subsection C and any administrative fees have been paid. The date of return set out in the second summons mailed pursuant to this section shall be no fewer than 30 days from the mailing of such second summons. 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. If the ~~summons~~ *is summonses* are issued to an owner, lessee, or renter of a vehicle with a registration outside the Commonwealth and such person fails to appear on the date of return set out in the second summons mailed pursuant to this section, the summons will be eligible for all legal collections activities. Any summons executed for a vehicle speed violation issued pursuant to this section shall provide to the person summoned at least 30 days from the mailing of the summons to inspect information collected by a photo speed monitoring device in connection with the violation, *including proof of calibration of the photo speed monitoring device used to record the alleged vehicle speed violation if the citation is contested*. If the law-enforcement agency that was operating the photo speed monitoring device does not execute a summons for a vehicle speed violation issued pursuant to this section within 30 days from the date of the violation, all information collected pertaining to that suspected violation shall be purged within 60 days from the date of the violation.

H. A private vendor may enter into an agreement with a law-enforcement agency to be compensated for providing a photo speed monitoring device and all related support services, including consulting, operations, and administration. However, only a law-enforcement officer or retired sworn law-enforcement officer may swear to or affirm the certificate required by this section. Any such agreement for compensation shall be based on the value of the goods and services provided, not on the number of violations paid or monetary penalties imposed. *Any such agreement for compensation shall provide that if such private vendor is responsible for mailing a summons pursuant to this section, such private vendor shall not impose or collect any additional fee, including any administrative fee, and shall only collect a civil penalty as authorized pursuant to this section, except that a reasonable postage and convenience fee for electronic payment of the civil penalty, not to exceed five percent of the civil penalty, may be imposed and collected.* Any private vendor contracting with a law-enforcement agency pursuant to this section may enter into an agreement with the Department, in accordance with the provisions of subdivision B 31 of § 46.2-208, to obtain vehicle owner information regarding the registered owners of vehicles that committed a vehicle speed violation. Any such information provided to such private vendor shall be protected in a database. *Any such private vendor providing a photo speed monitoring device that is also compensated for the calibration of such device shall calibrate such device in the same manner and to the same specifications as all other devices determining speed, to the extent that such devices utilize the same method of speed detection as such photo speed monitoring device, that are used by the law-enforcement agency with which such vendor has entered into an agreement. Upon request of any person who received a summons by mail for a vehicle speed violation recorded by a photo speed monitoring device provided by such a private vendor and who contests such citation, such private vendor shall deliver proof of calibration of such photo speed monitoring device for the time period in which the alleged violation was recorded to such person and to the court in which such citation is to be contested. If such proof of calibration is delivered by mail, it shall be postmarked within 10 days of such request for such proof of calibration, and if such proof of calibration is electronically delivered, it shall be electronically delivered within 10 days of such request for such proof of calibration. Such summons shall include notice of such person's right to request such proof of calibration. Any private vendor that fails to provide such proof of calibration within the time specified shall be subject to a civil penalty of \$1,000. All civil penalties received pursuant to this subsection shall be paid to the Commonwealth Transportation Board to be used for the Virginia Highway Safety Improvement Program established pursuant to § 33.2-373.*

I. Information collected by a photo speed monitoring device operated pursuant to this section shall be limited exclusively to that information that is necessary for the enforcement of vehicle speed violations. Information provided to the operator of a photo speed monitoring device shall be protected in a database and used only for enforcement of vehicle speed violations and enforcement against individuals who violate the provisions of this section. Notwithstanding any other provision of law, all photographs, microphotographs, videotapes, or other recorded images collected by a photo speed monitoring device shall be used exclusively for enforcing vehicle speed violations and shall not be (i) open to the public; (ii) sold or used for sales, solicitation, or marketing purposes; (iii) disclosed to any other entity except as may be necessary for the enforcement of a vehicle speed violation or to a vehicle owner or operator as part of a challenge to the violation; or (iv) used in a court in a pending action or proceeding unless the action or proceeding relates to a vehicle speed violation or a violation of this section, or such information is requested upon order from a court of competent jurisdiction. Information collected under this section pertaining to a specific violation shall be purged and not retained ~~later than 60 days after~~ *21 days after the date of its capture in such a manner that such data is destroyed and not recoverable by either a private vendor or the law-enforcement agency, except*

184 *that when a summons is issued for a violation, such information may be retained until the collection of any*
185 *civil penalties or the final disposition of any civil matter related to the information. A law-enforcement*
186 *agency or private vendor using such a database shall maintain records sufficient to facilitate reporting as*
187 *required by this section. Any law-enforcement agency using photo speed monitoring devices shall annually*
188 *certify compliance with this section and make all records pertaining to such system available for inspection*
189 *and audit by the Commissioner of Highways or the Commissioner of the Department of Motor Vehicles or*
190 *his designee. Any person who discloses personal information in violation of the provisions of this subsection*
191 *shall be subject to a civil penalty of \$1,000 per disclosure.*

192 *J. A conspicuous sign At least two conspicuous signs shall be placed, from any direction, within 1,000 feet*
193 *of any school crossing zone, highway work zone, or high-risk intersection segment at which a photo speed*
194 *monitoring device is used, indicating the use of the device. At least one of such signs shall be a speed display*
195 *sign. There shall be a rebuttable presumption that such sign was in place at the time of the commission of*
196 *the vehicle speed limit violation.*

197 *K. Any state or local law-enforcement agency that places and operates a photo speed monitoring device*
198 *pursuant to the provisions of this section shall report to the Department of State Police, in a format to be*
199 *determined by the Department of State Police, by January November 15 of each year on the number of traffic*
200 *violations prosecuted, the number of successful prosecutions, the operating costs of the use of such photo*
201 *speed monitoring device, and the total amount of monetary civil penalties collected. Any such local law-*
202 *enforcement agency shall also report to the Department of State Police, in a format to be determined by the*
203 *Department of State Police, by November 15 of each year on (i) the projects and initiatives funded by moneys*
204 *in the local fund created pursuant to subsection C, (ii) the change in number of summonses issued over the*
205 *course of the reporting period relative to the prior reporting periods, (iii) the number of unsuccessful*
206 *prosecutions and dismissed summons, and (iv) the percentage of vehicles that receive a summons pursuant to*
207 *this section relative to the total vehicle throughput. The Department of State Police shall aggregate such*
208 *information and report it to the General Assembly by February December 15 of each year and make such*
209 *information publicly available on its website.*

210 *L. Any state or local law-enforcement agency that places and operates a photo speed monitoring device*
211 *pursuant to the provisions of this section shall develop an emergency action plan for addressing issues with*
212 *such photo speed monitoring devices, including system malfunctions. Such law-enforcement agency shall*
213 *follow current guidance published by the U.S. Department of Transportation regarding the use of photo*
214 *speed monitoring devices. Such law-enforcement agency shall annually review its use of photo speed*
215 *monitoring devices to ensure effective distribution of such devices to properly address safety needs and*
216 *address racial, economic, and other equity issues and public concerns.*

217 *M. Any state or local law-enforcement agency that places and operates a photo speed monitoring device*
218 *pursuant to the provisions of this section shall, on its website and social media accounts, (i) provide*
219 *information regarding procedures for contesting an alleged vehicle speed violation and the process for*
220 *paying the civil penalty for such an alleged violation; (ii) establish a method for answering questions related*
221 *to such photo speed monitoring device; and (iii) publicize any changes to the use of photo speed monitoring*
222 *devices, including the locations of new photo speed monitoring devices and the highway work zones, high-*
223 *risk intersection segments, or school crossing zones in which they are placed. Such requirement shall be*
224 *satisfied if the state or local law-enforcement agency provides a link on its website and social media accounts*
225 *to the website of the private vendor with which it has entered into an agreement pursuant to subsection H,*
226 *provided that such website satisfies the requirements of clauses (i), (ii), and (iii).*

227 *N. For any new photo speed monitoring device placed and operated after July 1, 2026, for the first 30*
228 *days of its operation, the law-enforcement agency shall issue a warning by mail instead of a summons for an*
229 *alleged vehicle speed violation and assess no civil penalty for such violation. Nothing in this subsection shall*
230 *be construed to prevent a law-enforcement officer who uses a photo speed monitoring device to record a*
231 *vehicle speed violation from personally issuing a summons at the time of the violation.*

232 *O. Nothing in this section shall be construed to affect the funding of or investment in any project initiated*
233 *by a locality prior to July 1, 2026.*

234 *P. For any summons issued pursuant to this section, failure to comply with the provisions of this section*
235 *shall render such summons invalid and the court shall dismiss such summons.*

236 **§ 46.2-882.2. Damages for an enforcement action undertaken by a locality with willful disregard for**
237 **applicable law.**

238 *A. Notwithstanding any other provision of law, general or special, any person against whom an*
239 *enforcement action is carried out by a locality or law-enforcement agency, pursuant to the authority granted*
240 *in § 46.2-882.1, where the enforcement action was based upon a willful disregard for applicable law, shall be*
241 *entitled to an award of compensatory damages and to an order remanding the matter to the locality with a*
242 *direction to carry out any further enforcement in a manner consistent with the law and may be entitled to*
243 *reasonable attorney fees and court costs. The total amount of compensatory damages recoverable in any*
244 *action brought pursuant to this section shall not exceed the amount of the civil penalty assessed against the*
245 *plaintiff in the underlying enforcement action.*

246 *B. The court may order that the locality shall be ineligible to receive any funds collected pursuant to*
247 *subsection C of § 46.2-882.1, in excess of those used for its photo speed monitoring device program, upon a*
248 *finding by any court of the Commonwealth that such locality is failing to comply with the order issued*
249 *pursuant to subsection A. Upon such a finding, the court shall declare that any such funds shall be deposited*
250 *in the Virginia Highway Safety Improvement Program, established pursuant to § 33.2-373, until the locality*
251 *comes into compliance with such order.*

252 *C. Any action brought pursuant to this section may be filed with the general district court having*
253 *jurisdiction of the locality, and the court shall hear and determine the case as soon as practicable. A locality*
254 *may appeal any final judgment of the general district court in accordance with the procedural requirements*
255 *of § 16.1-106. Nothing in this section shall be construed to abrogate a claim of qualified immunity.*

256 **2. That the provisions of this act amending subsection J of § 46.2-882.1 of the Code of Virginia to**
257 **require at least two conspicuous signs for photo speed monitoring devices and to require one of such**
258 **signs to be a speed display sign shall become effective on July 1, 2027.**

259 **3. That the Supreme Court of Virginia shall develop a summons for the purposes of § 46.2-882.1 of the**
260 **Code of Virginia, as amended by this act, no later than October 1, 2026.**

261 **4. That the provisions of this act creating subdivision G 1 of § 46.2-882.1 of the Code of Virginia,**
262 **related to the use of a summons developed by the Supreme Court of Virginia, shall become effective on**
263 **January 1, 2027.**