

**ACT 234**

S.B. NO. 632

A Bill for an Act Relating to Traffic Enforcement.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that traffic violations in Hawaii, especially on the island of Oahu, have become intolerable, particularly the offenses of speeding and running red lights. Both of these violations endanger the lives of residents and compound the already hazardous conditions for both pedestrians and motorists on Hawaii's roads and highways. News items are increasingly common that describe hit-and-run drivers who have run over small children or the elderly, both inside and outside crosswalks, who may not be able to react quickly enough to a racing drunk driver or someone speeding through an intersection after the light has already turned red.

The legislature further finds that two recent technological innovations that address the hazards caused by speeding and disregarding red lights have already

been in place and demonstrated their reliability and effectiveness in other jurisdictions—namely, photo speed imaging detector and photo red light imaging systems. The legislature finds that these innovations—both of which are completely automated—are appropriate for Hawaii's increasingly deteriorating traffic conditions, and are capable of safely and efficiently diffusing dangerous traffic control problems while at the same time freeing up police officers to handle more pressing problems.

The photo speed imaging detector system is a unit that mounts in a sport utility vehicle or van that detects, photographs, and records information on speeders. A vehicle with the speed detector unit is parked at the roadside and monitors the speeds of passing motorists, and is linked to a controlled console with a central processor and speed display. When a vehicle exceeding a preset threshold enters the beam of the speed detector, a high resolution camera photographs the front of the vehicle, capturing the front license plate, while a second camera photographs the rear of the vehicle. The scene is lit by a powerful strobe flash for evidentiary quality images. Tickets are processed automatically, so there is no need for an officer to make a stop and issue a ticket. In addition, since the violator's face and license plate are on record, compliance rates are considerably higher than with officer-generated tickets.

The legislature finds that a photo speed imaging detector system is safe, quick, cost-effective, and efficient. With no stop involved, the officer is not at risk from passing traffic or armed violators. Moreover, while a motivated traffic officer may average fifteen or twenty tickets per shift, the photo speed imaging detector system can write two tickets per second.

The photo speed imaging detector system is essentially a turnkey operation; all of the equipment, including a fully-outfitted police vehicle, speed detector systems, printer, film or image processing, and all supplies, as well as officer training, are provided by a private company. The private company identifies vehicle owners, prints and mails tickets, monitors compliance, and makes regular status reports. The company also charges a small fee per paid ticket, while the violator pays for everything else.

In addition, only one officer using the photo speed imaging detector system can be as productive, if only in terms of numbers of traffic tickets issued, as an entire traffic division. Officers can be assigned higher priority duties, while the system handles speed enforcement. Finally, these systems have proven their reliability for over twenty years in police departments in countries around the world.

The second major innovation is the photo red light imaging system. In this system, a camera is positioned at intersections where red light violations are a major cause of collisions. Rather than placing an officer at the intersection full-time, the red light camera serves as a twenty-four hour deterrent to running a red light. Sensors are buried under a crosswalk leading to a self-contained camera system that is mounted on a nearby pole. When a vehicle enters the intersection against a red light, the camera takes a telephoto color picture of the rear of the car as it rolls over the stop bar, capturing the rear license plate as evidence. A second wide-angle photograph takes in the entire intersection, including other traffic.

A sign may be posted at the intersection indicating that it is a photo-monitored intersection; however, the camera can be moved to different poles or intersections that are equipped to hold the camera, so that motorists do not know when they are being photographed. As with the photo speed imaging detector system, the private company that supplies the red light camera also processes the film, accesses motor vehicle records, checks the license plate against registration records, and mails out citations.

The legislature finds that the photo red light imaging system, like the photo speed imaging detector system, also has numerous benefits. As with the photo speed imaging detector system, not only are streets safer after the implementation of the

system, but police officers are freed from time-consuming traffic stops and have more time to make priority calls. A violator is less likely to go to court, since the color photograph of the violation in progress can be used as evidence in court. Imprinted on the photograph are the time, date, and location of the violation; the number of seconds the light had been red before the violator entered the intersection; and the violator's speed. Few cases are contested in other jurisdictions using this system, and officers make fewer court appearances, resulting in cost savings.

The legislature realizes that Hawaii's prior conversion to administrative adjudication of traffic offenses has eliminated the need for police officers to testify in most cases. However, to the extent that fewer citations are actually contested, cost savings will be realized and contested cases will receive a faster hearing. More importantly, compliance with traffic laws has generally increased in those jurisdictions; installation of this type of system has had an immediate effect on the behavior of drivers and has nearly eliminated violations in other jurisdictions.

The legislature finds that the implementation of both photo speed imaging detector and photo red light imaging systems will result in an increase in driver awareness leading to a reduction in traffic speeds and red light violations, and may also result in lower insurance costs for safe drivers with an overall reduction in crashes and injuries. Moreover, these programs place the cost of the programs on the violators, not the taxpayers. Traffic laws are enforced without discrimination, and safety and efficiency are increased by reducing the number of high-speed chases and the number of personnel required for traffic accident clean-up, investigation, and court testimony.

In addition, the legislature finds that there is a need to exempt contracts entered into with the private company that is to supply the photo speed imaging detector and photo red light imaging systems from the civil service, compensation, and collective bargaining laws. In Konno v. County of Hawaii, 85 Haw. 61, 937 P.2d 397 (1997), the Hawaii Supreme Court adopted the "nature of the services" test, holding that the protection of the civil service laws extends to those services that have been "customarily and historically" provided by civil servants. Because police officers may be held to be customarily and historically responsible for issuing tickets to speeding motorists and other functions that may now be contracted out to a private entity, there is a need to specifically exempt any such contracts from the civil service and compensation laws so that those contracts are not voided by Konno. Although the Konno opinion did not reach the decision whether privatization is subject to mandatory collective bargaining, this Act also exempts contracts entered into with a private entity from collective bargaining laws as well, to ensure that these contracts are not subsequently voided for failure to comply with those laws as a result of a subsequent court interpretation.

Finally, the legislature finds that speeding—whether on a highway or through a red light—frequently causes injury and death. When speeding occurs, the accidents involved are almost always more serious. Photo speed imaging detector and photo red light imaging systems have been proven in many locations throughout the United States, Canada, Europe, and numerous other countries around the world as deterrents to red light traffic violations and speeding and, consequently, injuries and death. The legislature finds that there is an immediate need to remedy the steadily worsening traffic conditions in Hawaii, and that the implementation of photo speed imaging detector and photo red light imaging systems will help to protect the health, safety, and welfare of the people of this State, while at the same time offering substantial cost savings and increased revenues.

The purpose of this Act is to:

- (1) Establish a three-year demonstration project in selected areas on state or county highways in each of the counties to provide for the imple-

mentation of photo speed imaging detector and photo red light imaging systems to improve traffic enforcement; and

- (2) Allow the county to contract with an appropriate provider of these systems pursuant to the public procurement laws while:
  - (A) Exempting such contracts from civil service, compensation, and collective bargaining laws;
  - (B) Permitting the contractor to have access to information as set forth in this Act; and
  - (C) Allowing the contractor to issue citations or summonses by mail.

## PART I

SECTION 2. Section 286-45, Hawaii Revised Statutes, is amended to read as follows:

**“§286-45 Records of county finance director.** (a) The director of finance shall file each application received and register the vehicle therein described in a record or book to be kept by the director of finance under the following headings:

- (1) Vehicle registration number;
- (2) Name of owner; and
- (3) Vehicle identification number.

The director of finance may microfilm vehicle registration and ownership records which are a year old and may discard the original records. The director of finance may discard vehicle registration and ownership records which are older than six years.

(b) Any private contractor that has entered into a contract with a county to implement the photo red light imaging and photo speed imaging detector demonstration project pursuant to Act 234, Session Laws of Hawaii 1998, may obtain from the county finance director the names and addresses of registered motor vehicle owners, which shall be used only as is necessary to carry out the provisions of the contract and the purposes of that Act and may not otherwise be publicly disclosed.”

SECTION 3. Section 286-172, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Subject to authorization granted by the chief justice with respect to the traffic records of the violations bureaus of the district courts and of the circuit courts, the director of transportation shall furnish information contained in the statewide traffic records system in response to:

- (1) Any request from a state, a political subdivision of a state, or a federal department or agency, or any other authorized person pursuant to rules adopted by the director of transportation under chapter 91;
- (2) Any request from a person having a legitimate reason, as determined by the director, as provided under the rules adopted by the director under paragraph (1), to obtain the information for verification of vehicle ownership, traffic safety programs, or for research or statistical reports; [or]
- (3) Any request from a person required or authorized by law to give written notice by mail to owners of vehicles[.]; or
- (4) Any request from a private contractor that has entered into a contract with a county as may be necessary to implement the photo red light imaging and photo speed imaging detector demonstration project pursuant to Act 234, Session Laws of Hawaii 1998. The private contractor may obtain from the director of transportation the names and addresses

of registered motor vehicle owners, which shall be used only as is necessary to carry out the provisions of the contract and the purposes of that Act and may not otherwise be publicly disclosed.”

SECTION 4. Section 291C-163, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) This chapter shall not be deemed to prevent counties with respect to streets and highways under their jurisdiction from:

- (1) Regulating or prohibiting stopping, standing, or parking except as provided in section 291C-111;
- (2) Regulating traffic by means of police officers or official traffic-control devices;
- (3) Regulating or prohibiting processions or assemblages on the highways;
- (4) Designating particular highways or roadways for use by traffic moving in one direction;
- (5) Establishing speed limits for vehicles in public parks;
- (6) Designating any highway as a through highway or designating any intersection as a stop or yield intersection;
- (7) Restricting the use of highways;
- (8) Regulating the operation and equipment of and requiring the registration and inspection of bicycles, including the requirement of a registration fee;
- (9) Regulating or prohibiting the turning of vehicles or specified types of vehicles;
- (10) Altering or establishing speed limits;
- (11) Requiring written accident reports;
- (12) Designating no-passing zones;
- (13) Prohibiting or regulating the use of controlled-access roadways by any class or kind of traffic;
- (14) Prohibiting or regulating the use of heavily traveled streets by any class or kind of traffic found to be incompatible with the normal and safe movement of traffic;
- (15) Establishing minimum speed limits;
- (16) Designating hazardous railroad grade crossing;
- (17) Designating and regulating traffic on play streets;
- (18) Prohibiting pedestrians from crossing a roadway in a business district or any designated highway except in a crosswalk;
- (19) Restricting pedestrian crossing at unmarked crosswalks;
- (20) Regulating persons propelling push carts;
- (21) Regulating persons upon skates, coasters, sleds, and other toy vehicles;
- (22) Adopting and enforcing such temporary or experimental regulations as may be necessary to cover emergencies or special conditions;
- (23) Adopting maximum and minimum speed limits on streets and highways within their respective jurisdictions;
- (24) Adopting requirements on stopping, standing, and parking on streets and highways within their respective jurisdictions except as provided in section 291C-111;
- (25) Entering into an agreement with any private contractor to implement the photo red light imaging and photo speed imaging detector demonstration project pursuant to Act 234, Session Laws of Hawaii 1998; or
- [(25)] (26) Adopting such other traffic regulations as are specifically authorized by this chapter.”

## PART II

SECTION 5. **Definitions.** As used in this Act, unless the context otherwise requires:

“Contractor” means a private person or entity who has entered into a contract with a county pursuant to this Act.

“County” means the council, the mayor, or other person having the authority to enter into a contract pursuant to this Act on behalf of the county of Maui, Kauai, Hawaii, or the city and county of Honolulu.

“County highway” has the same meaning as used in section 265A-1, Hawaii Revised Statutes.

“Department” means the department of transportation.

“Director” means the director of transportation.

“Motor vehicle” has the same meaning as defined in section 291C-1, Hawaii Revised Statutes.

“Photo speed imaging detector” means a device used for traffic enforcement consisting substantially of a speed reduction unit and a camera mounted in or on a vehicle that automatically produces photographic identification of a vehicle traveling in excess of the legal speed limit in violation of section 291C-102, Hawaii Revised Statutes.

“Photo red light imaging” means a device used for traffic enforcement consisting substantially of a vehicle sensor installed to work in conjunction with a traffic-control signal that automatically produces photographic identification of a vehicle which disregards a steady red signal in violation of section 291C-32(a)(3), Hawaii Revised Statutes.

“Traffic-control signal” has the same meaning as defined in section 291C-1, Hawaii Revised Statutes.

SECTION 6. **Photo red light imaging and photo speed imaging detector demonstration project.** Subject to this Act, each county may establish a three-year demonstration project in selected areas of that county to provide for the implementation of photo red light imaging and photo speed imaging detector systems to improve traffic enforcement as provided in this Act. The demonstration project shall be limited to state or county highways and shall document the effectiveness of these systems. The contractor shall provide a public information campaign to inform local drivers about the use of the photo red light imaging and photo speed imaging detector systems before any citation or summons is actually issued.

SECTION 7. **Photo speed imaging detector system.** (a) Subject to this Act, each county may establish a photo speed imaging detector system imposing monetary liability on the registered owner of a motor vehicle for failure to comply with speeding laws in accordance with this Act. Each county may provide for the installation and operation of photo speed imaging detector systems on no more than twenty-five state or county highways at any one time in any county.

(b) Proof of a speeding violation shall be evidenced by information obtained from the photo speed imaging detector system authorized pursuant to this Act. A certificate, sworn to or affirmed by the contractor or the contractor’s agent or employee, or a facsimile thereof, based upon inspection of photographs, micro-photographs, videotape, or other recorded images produced by the system, shall be prima facie evidence of the facts contained therein. Any photographs, micro-photographs, videotape, or other recorded images, including digitally produced images, evidencing a violation shall be available for inspection in any proceeding to adjudicate the liability for that violation.

(c) A contractor may issue a citation or summons pursuant to section 10 on the basis of a photo speed imaging detector if the following conditions are met:

- (1) The photo speed imaging detector equipment is operated by a uniformed police officer out of a marked police vehicle;
- (2) An indication of the speed of the motor vehicle is displayed within one hundred fifty feet of the location of the photo speed imaging detector unit;
- (3) Signs indicating that speeds are enforced by a photo speed imaging detector are posted on all major routes entering the area in question, as far as practicable, providing notice to a motorist that a photo speed imaging detector may be used; and
- (4) The photo speed imaging detector system is used for no more than four hours per day in any one location from thirty minutes after sunrise to thirty minutes before sunset.

The conditions specified in this subsection shall not apply when the information gathered is used for highway safety research or to issue warning citations not involving a fine, court appearance, or a person's driving record.

**SECTION 8. Photo red light imaging system.** (a) Subject to this Act, each county may establish a photo red light imaging system imposing monetary liability on the operator of a motor vehicle for failure to comply with traffic-control signal laws in accordance with this Act. Each county may provide for the installation and operation of photo red light imaging systems at no more than twenty-five intersections in any one county at any one time.

(b) Proof of a traffic-control signal violation shall be evidenced by information obtained from the photo red light imaging system authorized pursuant to this Act. A certificate, sworn to or affirmed by the contractor or the contractor's agent or employee, or a facsimile thereof, based upon inspection of photographs, micro-photographs, videotape, or other recorded images produced by the system, shall be prima facie evidence of the facts contained therein. Any photographs, micro-photographs, videotape, or other recorded images evidencing a violation shall be available for inspection in any proceeding to adjudicate the liability for that violation.

(c) A contractor may issue a citation or summons pursuant to section 10 on the basis of the photo red light imaging system if the following conditions are met:

- (1) Signs indicating that the photo red light imaging system is in use are posted at all intersections at which the system may be used; and
- (2) Before issuing any citation, the contractor commences a program to issue only warning notices for fourteen days.

The conditions specified in this subsection shall not apply when the information gathered is used for highway safety research or to issue warning citations not involving a fine, court appearance, or a person's driving record.

**SECTION 9. Designation of appropriate locations.** (a) Each county shall designate locations on state or county highways in that county that are appropriate for the installation of:

- (1) Photo red light imaging systems, with the assistance of the director; and
- (2) Photo speed imaging detector systems, without the assistance of the director.

(b) Signs and other official traffic-control devices that designate photo red light imaging and photo speed imaging detector systems shall be placed and maintained to advise drivers of the existence and operation of those systems.

**SECTION 10. Summons or citation.** (a) Notwithstanding any law to the contrary, whenever any motor vehicle is determined by means of:

- (1) The photo red light imaging system to have disregarded a steady red signal in violation of section 291C-32(a)(3), Hawaii Revised Statutes; or
- (2) The photo speed imaging detector system to be in excess of the legal speed limit in violation of section 291C-102, Hawaii Revised Statutes,

the contractor shall cause a summons or citation as described in this section to be sent by certified or registered mail, with a return receipt that is postmarked within forty-eight hours of the time of the incident, to the registered owner of the vehicle at the address on record at the vehicle licensing division. If the end of the forty-eight hour period falls on a Saturday, Sunday, or holiday, then the ending period shall run until the end of the next day which is not a Saturday, Sunday, or holiday.

(b) There shall be provided for use by contractors a form of summons or citation for use in citing violators of those traffic laws specified in subsection (a) which do not mandate the physical arrest of those violators. The form and content of the summons or citation shall be as adopted or prescribed by the administrative judge of the district courts and shall be printed on a form commensurate with the form of other summonses or citations used in modern methods of arrest, so designed to include all necessary information to make the summons or citation valid within the laws of the State.

(c) Every citation shall be consecutively numbered and each carbon copy shall bear the number of its respective original.

(d) Upon receipt, the registered owner shall respond as provided for in chapter 291D, Hawaii Revised Statutes. A mail receipt signed by the registered owner is prima facie evidence of notification. The registered owner shall be determined by the identification of the vehicle's registration plates.

**SECTION 11. Registered owner's responsibility for a summons or citation.** In any proceeding for a violation of this Act, the information contained in the summons or citation mailed in accordance with section 10 shall be deemed evidence that the registered vehicle violated section 291C-32(a)(3) or 291C-102, Hawaii Revised Statutes.

**SECTION 12. Prima facie evidence.** (a) Whenever the photo red light imaging system or the photo speed imaging detector system determines a motor vehicle to be in violation of section 291C-102 or 291C-32(a)(3), Hawaii Revised Statutes, as applicable, evidence that the motor vehicle described in the citations or summons issued pursuant to this Act was operated in violation of those sections of the Hawaii Revised Statutes, together with proof that the person to whom the summons or citation was sent was the registered owner of the motor vehicle at the time of the violation, shall constitute prima facie evidence that the registered owner of the motor vehicle was the person who committed the violation.

(b) The registered owner of the vehicle may rebut the prima facie evidence in subsection (a) by:

- (1) Submitting a written statement as provided in section 291D-6(b)(2), Hawaii Revised Statutes;
- (2) Testifying in open court under oath that the person was not the operator of the vehicle at the time of the alleged violation; or
- (3) Presenting, prior to the return date established on the citation or summons issued pursuant to this Act, a letter of verification of loss from the police department to the court adjudicating the alleged violation.

**SECTION 13. Failure to comply with summons or citation.** If the registered owner of the vehicle does not return an answer in response to a summons or citation within a period of fifteen days upon receipt of the summons or citation, the district court shall issue, pursuant to section 291D-7(e), Hawaii Revised Statutes, a notice of entry of judgment of default to the registered owner of the vehicle.

**SECTION 14. Liability for rental or U-drive vehicle.** Notwithstanding any law to the contrary, if the registered owner of record is the lessor of a rental or U-drive motor vehicle, as defined in section 286-2, Hawaii Revised Statutes, pursuant to a written lease agreement, the lessee at the time of the violation shall be responsible for the summons or citation; provided that:

- (1) The lessor shall be responsible for the summons or citation if the lessor does not provide the court, having jurisdiction over the summons or citation, with the name and address of the lessee within thirty days after a notice containing the date, time, and location of the violation and the license number of the vehicle is sent to the lessor; and
- (2) The administrative judge of the court having jurisdiction over the summons or citation may waive the requirement of providing the name and address of the lessee and impose on the lessor an administrative fee of \$50 per citation.

**SECTION 15. Penalty.** The penalties for all consequences of a violation for speeding initiated by the use of a photo speed imaging detector system, or for disregarding a steady red signal initiated by the use of a photo red light imaging system, shall be as provided in section 291C-161, Hawaii Revised Statutes.

**SECTION 16. Request for proposals; prequalification of applicants; prohibition.** (a) The department shall develop a request for proposals to purchase, lease, rent, use, install, maintain, and operate photo red light imaging and photo speed imaging detector systems in any county as provided in this Act. The request for proposals and all aspects of the contract shall be subject to chapter 103D, Hawaii Revised Statutes.

(b) The request for proposals shall be from a list of applicants prequalified by the department and each county, and shall be applicable to any contract between a county and any contractor entered into under the authority of this Act. Standards for prequalification of applicants under this section shall be determined by the department before the commencement of the selection process; provided that any contract entered into under this Act, at a minimum, shall be negotiated with the private entity found most qualified. The contractor shall demonstrate that it has the qualifications and experience necessary to carry out and expedite the terms of the contract and the ability to comply with applicable laws and court orders. Each contract entered into by a county may include any other requirements that the director considers necessary and appropriate for carrying out the purposes of this Act.

(c) A bidder or prospective bidder shall not have any contract with any member or employee of or consultant to any governmental entity responsible for awarding any contract under this Act from the time a request for proposals is issued until the time a contract is awarded, except if that contract is in writing or in a meeting for which notice was given as prescribed by law.

**SECTION 17. Authority to contract; duration of contract; approval as to form; contract term, renewal, and termination; exemptions.** (a) Each county, with prior approval from the department, may contract with one or more contractors to purchase, lease, rent, use, install, maintain, and operate photo red light imaging and photo speed imaging detector systems as provided in this Act.

(b) Notwithstanding any other law to the contrary, the contractor shall provide the following services and activities to implement the photo speed imaging detector and photo red light imaging systems:

- (1) Equipment installation;
- (2) Data processing, including custom software development and integration;
- (3) Staffing and training of law enforcement personnel and other persons as necessary to provide for effective traffic enforcement;
- (4) Film delivery, retrieval, and processing;
- (5) Image evaluation;
- (6) License plate identification and verification;
- (7) Review of individual motor vehicle registration records, pursuant to sections 286-45 and 286-172, Hawaii Revised Statutes, to obtain access only to the registered motor vehicle owner's name and address; this data shall only be used as is necessary to carry out the provisions of the contract and the purposes of this Act and may not otherwise be publicly disclosed;
- (8) Citation generation, processing, and tracking;
- (9) Data transfer to agency and court;
- (10) Violation and statistical data collection, analysis, and reporting;
- (11) Twenty-four-hour support services, consulting, technical assistance, and Internet access;
- (12) Community awareness and public relations services; and
- (13) Any other services, activities, or equipment deemed necessary by the department and each county.

(c) The contract shall specify such matters as are deemed relevant by the State, each county, and the contractor, and shall be approved as to form and content by the attorney general; provided that the contract:

- (1) Shall not specify any condition for the issuance of a citation or summons other than as provided by this Act or other applicable state law;
- (2) Shall prohibit the contractor, or the contractor's agents or employees, from engaging in any activities prescribed for police officers pursuant to chapter 52D or section 291C-164, Hawaii Revised Statutes, or any other provision of law relating to law enforcement or the use of force, except as otherwise provided in this Act;
- (3) Shall specify that personal and confidential information used for the projects shall become the property of each county at the end of the contract, that all data shall be returned to that county, and that the contractor may use information obtained from the State or that county only as is necessary to carry out the provisions of the contract and the purposes of this Act;
- (4) Shall make the data accessible to the contractor, as set forth in subsection (b)(7);
- (5) Shall provide appropriate security for the data system and equipment; and
- (6) Shall specify that motor vehicle registration records obtained pursuant to the contract, and as set forth in sections 286-45 and 286-172, Hawaii Revised Statutes, are personal and confidential information and may be used only for services related to issuance of traffic citations and court purposes.

(d) No contract shall be renewed unless a county, with the concurrence of the director, determines that the contract offers demonstrable benefits to that county as documented by the county.

(e) A county, upon demonstration that a breach of contract has occurred and that after the passage of a reasonable period of time the breach has not been cured, and without penalty to that county, may cancel a contract at any time after giving three-months' prior written notice.

(f) The department of budget and finance shall create an account and set aside a portion of the revenues received from the fines obtained from citations initiated as a result of the photo speed imaging detector and photo red light imaging demonstration project to offset the contractor's costs of operating the photo speed imaging detector and photo red light imaging systems.

(g) Notwithstanding any other law to the contrary, any contracts entered into by a county with a contractor pursuant to this section shall not be subject to chapters 76, 77, and 89, or section 46-33, Hawaii Revised Statutes.

**SECTION 18. Fines for unauthorized disclosure.** Any officer, employee, or agent of a contractor who intentionally discloses or provides a copy of personal and confidential information obtained from the State or a county to any person or agency with actual knowledge that disclosure is prohibited by the contractual or statutory provisions set forth in this Act, shall be fined not more than \$500,000; provided that the fine shall not preclude the application of penalties or fines otherwise provided for by law.

**SECTION 19. Powers and duties not delegable to contractor.** A contract entered into under this Act does not authorize, allow, or imply a delegation of authority to the contractor to assume any of the powers delegated to law enforcement personnel by statute except as provided in this Act.

**SECTION 20. Liability and sovereign immunity.** (a) The contractor shall assume all liability arising under a contract entered into pursuant to this Act.

(b) Neither the sovereign immunity of the State nor the sovereign immunity applicable to a county shall extend to the contractor. Neither the contractor nor the insurer of the contractor may plead the defense of sovereign immunity in any action arising out of the performance of the contract or any other application with respect to the implementation of the demonstration project under this Act.

**SECTION 21. Insurance.** (a) The contractor shall indemnify the State and each county, including their officials and agents, against any and all liability. Proof of satisfactory insurance is required in an amount to be determined by the attorney general. The attorney general shall determine the amount and manner of the indemnification.

(b) Subject to subsection (a), the contractor shall provide an adequate plan of insurance as determined by the attorney general. In determining the adequacy of the plan, the attorney general shall determine whether the insurance is adequate to:

- (1) Fully indemnify each county and the State from actions by third parties against the contractor, the county, or the State as a result of the contract;
- (2) Assure the contractor's ability to fulfill its contract with each county in all respects and to assure that the contractor is not limited in this ability due to financial liability that results from judgments;
- (3) Protect each county and the State against claims arising as the result of any occurrence during the term of the contract on an occurrence basis; and
- (4) Satisfy other requirements specified by the State and each county.

**SECTION 22. Rules.** The department shall adopt rules pursuant to chapter 91, Hawaii Revised Statutes, as may be necessary to implement this Act.

**SECTION 23. Report.** Each county shall submit interim and final reports to the legislature as follows:

- (1) The interim report shall document the progress made in implementing the demonstration project and any contract entered into with a private contractor. The interim report shall be submitted to the legislature no later than twenty days before the convening of the regular sessions of 1999 and 2000; and
- (2) The final report shall evaluate the effectiveness of the demonstration project, and shall include the following:
  - (A) The total fine revenue generated by using the photo speed imaging detector and photo red light imaging systems;
  - (B) The number of citations and summonses issued by the photo speed imaging detector and photo red light imaging systems;
  - (C) The amount paid to the contractor providing the photo speed imaging detector and photo red light imaging systems;
  - (D) The effect of the demonstration project on traffic safety;
  - (E) The degree of public acceptance of the project;
  - (F) The process of administration of the project;
  - (G) An evaluation of the costs and benefits of the project;
  - (H) A review of the effectiveness of contracts entered into under this Act and the performance of the contractor;
  - (I) Recommendations for design or planning changes that might reduce traffic congestion on state or county highways; and
  - (J) Findings and recommendations as to whether to continue any contract entered into pursuant to this Act, make the project permanent, or adopt another alternative.

The final report shall include any proposed implementing legislation as may be necessary, and shall be submitted to the legislature no later than twenty days before the convening of the regular session of 2001.

**SECTION 24.** It is the intent of this Act not to jeopardize the receipt of any federal aid nor to impair the obligation of the State or any agency thereof to the holders of any bond issued by the State or by any such agency, and to the extent, and only to the extent, necessary to effectuate this intent, the governor may modify the strict provisions of this Act, but shall promptly report any such modification with reasons therefor to the legislature at its next session thereafter for review by the legislature.

**SECTION 25.** If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

**SECTION 26.** This Act shall apply to contracts entered into on or after the effective date of this Act. The provisions of this Act shall not be applied so as to impair any contract existing as of the effective date of this Act or to otherwise be deemed to violate either the Hawaii Constitution or Article I, section 10, of the United States Constitution.

**SECTION 27.** This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

## **ACT 234**

SECTION 28. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 29. This Act shall take effect on July 1, 1998; provided that on July 1, 2001, this Act shall be repealed and sections 286-45, 286-172(a), and 291C-163(a), Hawaii Revised Statutes, are reenacted in the form in which they read on June 30, 1998.

(Approved July 20, 1998.)