

RESOLUTION NO. 59

PUBLIC HEARING ON PROPOSED LOCAL LAW NO. "C" FOR 2021 A LOCAL LAW ESTABLISHING A DEMONSTRATION PROGRAM IMPOSING OWNER LIABILITY FOR FAILURE OF AN OPERATOR TO STOP FOR A SCHOOL BUS DISPLAYING A RED VISUAL SIGNAL AND STOP-ARM

Introduced: 2/8/21

By Mr. Efekoro:

RESOLVED, By the County Legislature of the County of Albany that a public hearing on proposed Local Law No. "C" for 2021, "A LOCAL LAW ESTABLISHING A DEMONSTRATION PROGRAM IMPOSING OWNER LIABILITY FOR FAILURE OF AN OPERATOR TO STOP FOR A SCHOOL BUS DISPLAYING A RED VISUAL SIGNAL AND STOP-ARM" to be held remotely by the Albany County Legislature at 7:15 p.m. on Tuesday, March 23, 2021, with participation information to be made available on the Albany County website, and the Clerk of the County Legislature is directed to cause notice of such hearing to be published containing the necessary information in accordance with the applicable provisions of law.

Referred to Law and Mass Transit Committees – 2/8/21

Favorable Recommendation Law Committee – 2/24/21

Favorable Recommendation Mass Transit Committee – 2/24/21

Adopted by unanimous vote – 3/8/21

LOCAL LAW NO. "C" FOR 2021

A LOCAL LAW ESTABLISHING A DEMONSTRATION PROGRAM IMPOSING OWNER LIABILITY FOR FAILURE OF AN OPERATOR TO STOP FOR A SCHOOL BUS DISPLAYING A RED VISUAL SIGNAL AND STOP-ARM

Introduced: 2/8/21

By Mr. Efekoro, Ms. Lekakis, Messrs. A. Joyce, Feeney and Miller:

BE IT ENACTED by the County Legislature of the County of Albany as follows:

Section 1. Legislative Intent

In April 2019, the Governor signed legislation (S04524-B/A04950) authorizing local governments to enter into agreements with school districts for the installation and operation of school bus photo violation monitoring systems on school buses owned or operated by such school districts.

The State legislation allows local governments to impose liability on the owners of motor vehicles for the failure of the drivers of such vehicles to comply with the Law prohibiting the overtaking and/or passing of stopped school buses displaying red visual signals.

Multiple jurisdictions across the state and country have enacted similar legislation in response to a growing concern over the number of violations that occur while a school bus stop-arm is deployed; thereby endangering the lives of children.

Technological advancements now allow for the monitoring, capture, transfer and review of school bus stop arm infractions in violation of New York State Vehicle and Traffic Law. This Legislature finds that the use of comprehensive school bus photo violation monitoring systems can play an instrumental role in ensuring child safety and motorist accountability throughout Albany County; therefore

BE IT ENACTED by the Legislature of the County of Albany as follows:

Section 2. Definitions

For purposes of this Local Law, the following terms shall have the following meanings:

- a. "County" shall mean the County of Albany;
- b. "Manual on uniform traffic control devices" or "MUTCD" shall mean the manual and specifications for a uniform system of traffic control devices maintained by the Commissioner of Transportation pursuant to section 680 of the New York Vehicle and Traffic Law;

- c. "Owner" shall have the meaning provided in article two-b of the New York Vehicle and Traffic Law; and
- d. "School bus photo violation monitoring system" shall mean a device that is capable of operating independently of an enforcement officer which is installed to work in conjunction with a school bus stop arm which automatically produces two or more photographs, two or more microphotographs, a videotape or other recorded images of a vehicle at the time it is used or operation in violation of subdivision (a) of section 1174 of the New York Vehicle and Traffic Law.

Section 3. Program Established

- a. There is hereby established a demonstration program imposing monetary liability on owners of vehicles for failure of the operators thereof to comply with section 1174 of the New York Vehicle and Traffic Law.
- b. Under such demonstration program the County is empowered to install and operate school bus photo violation monitoring systems which may be stationary or mobile, and which may be installed, pursuant to an agreement with a school district within the County on school buses owned and operated by such school district or privately owned and operated for compensation under contract with such district. Provided however, that:
 - i. No stationary school bus photo violation monitoring system shall be installed or operated by the County except on roadways under jurisdiction of the County.
 - ii. No mobile school bus photo violation monitoring system shall be installed or operated on any such school buses unless the County and such district enter into an agreement for such installation and operation.
- c. The County Executive is hereby authorized to enter into agreements with school districts for the installation, maintenance and use of school bus photo violation monitoring systems, for the proper handling and custody of photographs, microphotographs, videotapes, other recorded images and data produced by such systems, and for the forwarding of such photographs, microphotographs, videotapes, other recorded images and data to the County, subject to the provisions of this Section and §1174 of the New York State Vehicle and Traffic Law. Provided however, that the County shall not enter into an agreement with any city school district wholly contained within a city.
- d. Nothing in this Local Law shall be construed to prevent the County or a school district at any time from withdrawing or terminating any agreement entered

into pursuant to this Local Law; provided, however, that the County or the school district shall provide no less than thirty (30) days' notice to other signatories of such agreement before withdrawing or terminating.

- e. The cost to the school district of the installation, maintenance and uses of school bus photo violation monitoring systems pursuant to an agreement authorized by this Local Law shall be borne entirely by the County. On or before September first of each year, the school district shall determine and certify to the County the total cost to the school district for the school year ending the preceding June thirtieth of installing, maintaining and using such systems within the County, for the proper handling and custody of photographs, microphotographs, videotapes, other recorded images and data produced by such systems, and for the forwarding of such photographs, microphotographs, videotapes, other record images and data produced by such systems to the County. On or before the following December first of each year, the County shall pay to the school district such cost so certified to it on or before the preceding September first.
- f. The County shall adopt and enforce measures to protect the privacy of drivers, passengers, pedestrians and cyclists whose identity and identifying information may be captured by a school bus photo violation monitoring device. Such measures shall include:
 - i. The utilization of necessary technologies to ensure, to the extent practicable, that photographs produced by such school bus violation monitoring systems shall not include images that identify the driver, the passengers, or the contents of the vehicle, pedestrians and cyclists;
 - A. However, a Notice of Liability issued pursuant to this Section shall not be dismissed solely because a photograph or photographs allow for the identification of the contents of a vehicle, provide however that the County has made reasonable efforts to comply with the provisions of this paragraph;
 - ii. A prohibition on the use or dissemination of vehicle's license plate information and other information and images captured by school bus photo violation monitoring systems except: (a) as required to establish liability under this section or collect payment of penalties; (b) as required by court order; or (c) as otherwise required by law;

- iii. The installation of signage in conformance with standards established in the MUTCD at each roadway entrance of the jurisdictional boundaries of the County giving notice that school bus photo violation monitoring systems are used to enforce restrictions on vehicles violating section 1174 of the New York State Vehicle and Traffic Law. For purposes of this paragraph the terms “roadway” shall not include state expressway routes or state interstate routes but shall include controlled-access highway exit ramps that enter the boundaries of the County; and
- iv. Oversight procedures to ensure compliance with the aforementioned privacy protection measures.

Section 4. Penalties

An owner found liable for a violation of subdivision (a) of section 1174 of the New York Vehicle and Traffic Law shall be liable pursuant to this Local Law for monetary penalties in accordance with the following fee schedule of fines and penalties:

- a. Two hundred and fifty dollars for a first violation;
- b. Two hundred and seventy five dollars for a second violation committed within eighteen months of the first violation;
- c. Three hundred dollars for a third or subsequent violation, all of which were committed within eighteen months from the first violation, and
- d. An additional penalty of twenty-five dollars for each violation for the failure to respond to a notice of liability within the prescribed time period.

Section 5. Notice of Liability

- a. A Notice of Liability shall be sent by first class mail to each person alleged to be liable as an owner of a vehicle, for a violation of subdivision (a) of section 1174 of the New York Vehicle and Traffic Law. Personal delivery on the owner shall not be required. A manual or automatic record of mailing prepared in the ordinary course of business shall be prima facie evidence of delivery to the owner of the vehicle.
- b. A Notice of Liability shall contain:
 - i. the name and current address of the person alleged to be liable as an owner for a violation of subdivision (a) of section 1174 of the New York Vehicle and Traffic Law; and
 - ii. the registration number of the vehicle involved in such violation; and
 - iii. the specific location where such violation took place, including the name of the road/street, the abutting address, the town/city/village, and the county and state; and
 - iv. the date and time of such violation; and

- v. the identification number of the camera which recorded the violation or other document locator number.
- c. A Notice of Liability shall contain information advising the owner of the manner and the time in which he or she may contest the liability alleged in the notice.
- d. Such Notice of Liability shall also contain a warning to advise the owners that failure to contest in the manner and time provided shall be deemed an admission of liability and that a default judgment may be entered thereon.
- e. The Notice of Liability shall be prepared and mailed by the County or local municipality in which the violation occurred, or by an entity authorized by the County or local municipality to prepare and mail said Notice of Liability.

Section 6. Owner Liability

- a. The demonstration program established hereunder shall provide that the owner of a vehicle shall be liable for a penalty imposed pursuant to this Local Law if such vehicle was used or operated with the permission of the owner, express or implied, in violation of subdivision (a) of section 1174 of the New York Vehicle and Traffic Law, and such violation is evidenced by information obtained from a school bus photo violation monitoring system; provided, however, that no owner of a vehicle shall be liable for a penalty imposed pursuant to this section where the operator of such vehicle has been convicted of the underlying violation of NY Vehicle and Traffic Law §1174(a) pursuant to this Local Law. For purposes of this subsection, there shall be a rebuttable presumption that such vehicle was used and operated with the consent of the owner at the time it as used or operated in violation of NY Vehicle and Traffic Law §1174(a).
- b. If an owner receives a Notice of Liability pursuant to this Local Law for any time period during which the vehicle was reported to the police as having been stolen, it shall be a valid affirmative defense to an allegation of liability for a violation of subdivision (a) of section 1174 of the New York Vehicle and Traffic Law pursuant to this Local Law that the vehicle had been stolen and reported to the police as stolen prior to the time the violation occurred and had not been recovered by such time. For purposes of asserting the affirmative defense provided by this subdivision, it shall be sufficient that a certified copy of the police report on the stolen vehicle be sent by first class mail to the court having jurisdiction.
- c. An owner who is a lessor of a vehicle to which a Notice of Liability was issued pursuant to this Local Law shall not be liable for the violation of subdivision (a) of section 1174 of the New York Vehicle and Traffic Law, provided that the

entity or person sends to the Court a copy of the rental, lease or other such contract document covering such vehicle on the date of the violation, with the name and address of the lessee clearly legible, within 37 days after receiving notice from the agency of the date and time of such violation, together with the other information contained in the original notice of liability. Failure to send such information within such 37-day time period shall render the owner liable for the penalty prescribed by this Local Law. Where the Lessor complies with the provisions of this paragraph, the Lessee of such vehicle on the date of such violation shall be deemed to be the owner of such vehicle for purposes of this section, shall be subject to liability for the violation of subdivision (a) of section 1174 of the New York Vehicle and Traffic Law pursuant to this Local Law and shall be sent a notice of liability pursuant to section 4 of this Local Law.

- d. A certificate sworn to or affirmed by a technician employed by the County, or a facsimile thereof, based upon inspection of photographs, microphotographs, videotape or other recorded images produced by a school bus photo violation monitoring system, shall be prima facie evidence of the facts contained therein. Any photographs, microphotographs, videotape or other recorded images evidencing such a violation shall be available for inspection in any proceeding to adjudicate the liability for such violation, and shall be preserved for said proceeding.
- e. It shall be a defense to any prosecution for a violation of subdivision (a) of section 1174 of the New York Vehicle and Traffic Law pursuant to this Local Law that such school bus stop-arms were malfunctioning at the time of the alleged violation, and said photographs, microphotographs, videotape or other recorded images shall be made available to any person or entity issued a Notice of Liability or violation to use for a defense.
- f. For the purpose of informing and educating owners of motor vehicles in this County, during the first thirty-day period in which a school bus violation monitoring system is in operation pursuant to the provisions of this Local Law, all owners of motor vehicles who would otherwise be held liable for failure of operators thereof to comply with subdivision (a) of section 1174 of the New York Vehicle and Traffic Law when meeting a school bus marked and equipped as provided in subdivisions 20 and 21-c of section 375 of such law, shall be issued a written warning in lieu of a notice of liability.

Section 7. Adjudication of Liability

Liability pursuant to the demonstration program established hereunder shall be imposed upon owners by the local municipality wherein such violation occurred.

Section 8. Action for Indemnification

If the owner held liable for a violation of subdivision (a) of section 1174 of the New York Vehicle and Traffic Law pursuant to this Local Law was not the operator of the vehicle at the time of the violation, the owner may maintain an action for indemnification against the operator.

Section 9. Annual Report

- a. The County shall submit an annual report on the results of the use of a school bus photo violation monitoring system as required and provided for in NY Vehicle and Traffic Law § 1174-a(m).
- b. The County shall annually provide a copy of the annual report submitted pursuant to this Local Law, to each local law enforcement agency having jurisdiction to enforce violations of the vehicle and traffic law or any ordinance rule or regulation relating to traffic adopted pursuant to such law on roadways within the County.

Section 10. SEQRA Determination.

This County Legislature determines that the adoption of this Local Law constitutes a “Type II action” as said term is defined in the State Environmental Quality Review Act (“SEQRA”), and that no further action with respect to same is required under SEQRA.

Section 11. Severability

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 12. Effective Date

This Local Law shall be effective upon filing with the Secretary of State.

Referred to Law and Mass Transit Committees – 2/8/21