SENATE DOCKET, NO. 899 FILED ON: 1/20/2011

SENATE . . . . . No. 1778

The Commonwealth of Massachusetts

PRESENTED BY:

Marc R. Pacheco

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act concerning the safety of school children embarking and disembarking school buses.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Marc R. Pacheco	*[District]*
Richard T. Moore	*[District]*
James B. Eldridge	*[District]*
Michael J. Rodrigues	*[District]*
Michael O. Moore	*[District]*

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SENATE . . . . . No. 1778

By Mr. Pacheco, petition (accompanied by bill, Senate, No. 1778) of Moore, Rodrigues, Eldridge and other members of the Senate for legislation concerning the safety of school children embarking and disembarking school buses [Joint Committee on Transportation].

The Commonwealth of Massachusetts

An Act concerning the safety of school children embarking and disembarking school buses.

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

SECTION 1. Section 14 of Chapter 90 of the General Laws is hereby amended by inserting after section 14B the following section:-

Section 14C. (a) In addition to other monitoring devices lawfully authorized to be installed in school buses and notwithstanding any general or special law to the contrary, any city, town or local school department within the Commonwealth, is hereby authorized to install and operate live digital video school bus violation detection monitoring systems for purpose of enforcing violations against the owner of a motor vehicle whose vehicle failed to stop for a bus when required to do so by the provisions of Section 14. Such systems shall be limited to monitor and detect violations of motorists failing to stop for a school bus.

(b) (1) As used in this section, the following words shall have the following meanings:

"School bus violation detection monitoring system" a camera system that shall monitor and detect motor vehicles overtaking or passing school buses when said buses are stopped and displaying front and rear alternating flashing red signal lamps as provided in section seven B, and which has been stopped to allow pupils to alight from or board the same. It shall be a system with two or more camera sensors and computers that produce live digital and recorded video and 2 or more film or digital photographic still images of each motor vehicle at the time it is used or operated in a manner that is in violation of Section 14 of Chapter 90.

"Stop arm traffic control sign" a stop sign mounted on a mechanical arm installed on a school bus which is deployed when a school bus is stopped to allow pupils to alight from or board the same and notify motorists when it they are required to stop and when they can proceed.

"Violation" the failure of an operator of a motor vehicle to comply with the laws, codes, regulations, by-laws, ordinances, rules or other forms of legislation governing the traffic control

23 requirements for school buses stopped to allow pupils to alight from or board same for which a
24 school bus violation detection monitoring system is installed and in operation.

25 (2) All systems installed for use under this section shall produce an evidence file that
26 includes a live visual image viewable remotely, a recorded image of the license plate and be able
27 to record the date, time and location of the vehicle committing the violation. An affidavit shall
28 be signed by a person trained to observe and detect such violations who witnesses the violation
29 via live video provided by the school bus violation detection monitoring system.

30 (3) Recorded video images and still photographic images must record the rear of the
31 motor vehicle, with at least 1 photographic image and one recorded video image clearly
32 recording the motor vehicle immediately before the violation of the stop arm traffic control sign
33 and at least 1 photographic image and one recorded video image recording the motor vehicle
34 passing the stopped school bus with the stop arm traffic control sign deployed in violation of the
35 stop arm traffic control sign. Additionally, at least 1 photographic image and 1 recorded video
36 image must clearly identify the license plate of the motor vehicle.

37 (4) To the extent practicable, any school bus violation detection monitoring system shall
38 use necessary technologies to ensure that photographs or recorded video images produced by the
39 school bus violation detection monitoring system shall not include a frontal view photograph or
40 video image of the motor vehicle that is in violation of the stop arm traffic control sign or images
41 that identify the operator, the passengers, or the contents of the vehicle, but no notice of liability
42 issued under this section shall be dismissed solely because a photograph or recorded video image
43 allow for the identification of the operator, passengers, or contents of a vehicle as long as a
44 reasonable effort has been made to comply with this paragraph.

45 (5) Any school bus installed with a school bus violation detection monitoring system
46 shall post warning signage indicating the use of such system. The signage shall remain on each
47 bus as long as a school bus violation detection monitoring system is in operation.

48 (6) A penalty imposed for a violation of this section shall not be considered a criminal
49 conviction and shall not be considered a moving violation of the motor vehicle laws for the
50 purpose of determining surcharges on motor vehicle premiums pursuant to Section113B of
51 Chapter 175 although as provided in this section the violation shall be noted on the registered
52 owner or owner's driving record.

53 (7) The fines contained in this section and section 14 for a failure to stop for a school bus
54 shall be applied whether the violation is detected through the use of a school bus mounted
55 violation detection monitoring system or by a police officer on scene who issues a written
56 citation to the operator of the motor vehicle. Pursuant to the provisions of Section 2 of Chapter
57 280, all fines imposed for a violation of failing to stop for school bus in accordance with section
58 14 that is detected by a school bus violation detection monitoring system or by a police officer

59 who cites the operator in hand shall be paid over to the treasury of the city or town where the
60 offense was committed.

61 (8) A city, town or local school department may enter into an agreement with a private
62 vendor or manufacturer to provide a school bus violation detection monitoring system on each
63 bus within its fleet whether owned or leased, up to and including the installation, operation and
64 maintenance of such systems. Compensation paid to the manufacturer or vendor of the school
65 bus violation detection monitoring system as authorized by this section shall not be based solely
66 upon the revenue generated by the use of such systems. The compensation paid to the
67 manufacturer or vendor of the equipment shall be based upon the value of the equipment
68 installed and the recurring services provided in support of the school bus violation detection
69 monitoring systems including processing of evidence files, cost of the technology provided and
70 maintenance of such technology.

71 (9) A city or town shall provide reimbursement of expenses to the private vendor or
72 manufacturer for the installation, operation and maintenance of the school bus violation detection
73 monitoring systems in operation and acknowledged by an agreement between the private vendor
74 and the school department that has adopted this section. Notwithstanding the terms and
75 conditions contained in any such agreement, reimbursement shall be made from ticket revenue
76 proceeds incurred under this section only if received as currently allocated under the laws of the
77 Commonwealth for said citations so as to eliminate any cost to the city or town for installation,
78 operation and maintenance of the school bus violation detection monitoring systems in its
79 municipality. Such reimbursement shall be made to the private vendor or manufacturer within
80 30 days following the submittal of request for cost reimbursement. Such reimbursement shall
81 not exceed 82.5% of the ticket revenue proceeds in any preceding period. If such violations
82 occur on highways or roads controlled by the Commonwealth, then reimbursement for installing,
83 operating, and maintaining school bus violation detection systems shall be permitted from the
84 Commonwealth to the private vendor from ticket proceeds pursuant to this section only.

85 (c) (1) An evidence file of the alleged violation and the signed affidavit shall be
86 forwarded to a trained law enforcement officer in the jurisdiction who is trained to observe and
87 detect a violation for failure to stop for a stopped school bus allowing pupils to alight or board
88 the same. The officer shall issue a citation if he or she is satisfied that a violation was committed
89 under section 14 and the vehicle committing such violation can be indentified from its
90 registration plate. A certificate, or a facsimile thereof sworn to or affirmed by a police officer or
91 other law enforcement officer authorized to issue motor vehicle citations for violations of traffic
92 laws, stating that based upon inspection of the evidence file produced by a school bus violation
93 detection monitoring system, the vehicle was in violation of this section, shall be prima facie
94 evidence of the facts contained therein. Any recorded video images or still photographic images
95 produced by a school bus violation detection monitoring system evidencing the violation shall be
96 available for inspection in any proceeding to adjudicate the liability for the violation adopted
97 under this section.

98 (2) In all prosecutions of civil traffic violations based on evidence obtained from a school
99 bus violation detection monitoring system the registered owner of the motor vehicle shall be
100 primarily responsible pursuant to the provisions of this chapter except as otherwise provided in
101 this section. In the event the registered owner of the vehicle operated in violation of this chapter
102 was not the operator of the vehicle at the time of the violation the registered owner of the vehicle
103 shall either (a) assume liability for the violation by paying the fine or; (b) upon written receipt of
104 the citation provide the issuing authority within 30 days of the date of issuance, the name,
105 address and registration number {license plate}of the operator of the vehicle who was
106 responsible along with a signed affidavit acknowledging such or; (c) defend the violation
107 pursuant to the procedures established for traffic violations under this section. A vehicle owned
108 or leased to a corporation that is identified by a school bus violation detection monitoring system
109 under this section shall be primarily responsible for a violation pursuant to section 14 even if a
110 person who normally operates the vehicle for the corporation denies that he or she was operating
111 the vehicle at the time of the violation although no entry shall be made on the person's driving
112 record.

113 (3) A penalty imposed may, if so provided in writing, be increased by up to 33 1/3% if
114 the penalty remains unpaid in excess of 45 days after a citation has been issued consistent with
115 the procedures established in this section and there has been no request for a hearing under
116 paragraph (3) of subsection (d).

117 (d) (1) Upon the determination of a violation through the use of a school bus violation
118 detection monitoring system, it shall be the duty of the chief of police of the city or town, or any
119 designee of the chief, to issue the owner or owners of the vehicle a citation pursuant to the
120 provisions of Chapter 90C. The citation shall require the owner or owners to pay the fine
121 amount issued pursuant to section 14 or appear before the parking clerk not later than 30 days
122 after the date the citation was sent under the procedures established pursuant to violations under
123 this section. The citation shall be mailed to the address of the registered owner or owners as
124 contained in the registry or in records of the Department of Motor Vehicles in the jurisdiction in
125 which the vehicle is registered if other than the Commonwealth for any motor vehicle identified
126 by the school bus violation detection monitoring system as evidence of a violation of this section.
127 Citations shall be mailed by first class mail, post marked no later than 14 days after the date of
128 the alleged violation, inclusive of Sundays and holidays. In the case of any motor vehicle
129 registered under the laws of another state or country, if the address is unavailable, it shall be
130 sufficient to mail the citation to the official in the state or country having charge of the
131 registration of the motor vehicle. The citation shall be considered sufficient notice, and a
132 certificate of the chief of police or the chief's designee mailing the citation stating that it has
133 been mailed in accordance with this section shall be deemed prima facie evidence thereof and
134 shall be admissible in any judicial or administrative proceeding as to the facts contained therein.
135 It shall be sufficient to commence a prosecution. The chief or the chief's designee shall retain
136 and safely preserve a copy of the Citation and shall at a time no later than the beginning of the

137 next business day of the city or town after mailing to the owner or owners, deliver another copy
138 to the parking clerk before whom the owner or owners have been notified to appear. The parking
139 clerk shall maintain a docket of all such notices to appear. For purposes of this section, the date
140 of issuance shall be the date of mailing.

141 The police officer issuing the citation shall certify that the evidence obtained from the
142 school bus violation detection monitoring system was sufficient to demonstrate a violation of
143 section 14. Such certification shall be sufficient in all prosecutions pursuant to this section to
144 justify the entry of a default judgment in all cases where the citation is not answered within the
145 time period permitted under this section.

146 The citation issued by the trained law enforcement officer in the jurisdiction shall contain
147 but not be limited to the following information:

148 (i) a citation for the violation, which shall include the name and address of the person or
149 persons liable as an owner or owners of the motor vehicle for the violation of this section, the
150 registration number and state of issuance of the registration number of the vehicle involved in the
151 violation, the date, time and location of the violation, the specific violation charged, the amount
152 of the penalty for the violation, and the date by which the penalty shall be paid;

153 (ii) a copy of two or more still photographs, microphotographs, video or other recorded
154 images showing the vehicle in violation of the stop arm traffic sign;

155 (iii) a copy of the certificate or affidavit of the police officer under paragraph (1) of
156 subsection (c);

157 (iv) a statement that recorded video images and photographic images are evidence of a
158 violation of section 14;

159 (v) a schedule of fines for the violation as established by the Commonwealth;

160 (vi) instructions for the return of the citation notice including but not limited to the
161 following text:— "This notice and the required payment may be returned in person, by mail, or
162 by a duly authorized agent. A hearing to contest liability may be obtained upon the written
163 request of the registered owner. Failure to pay the penalty or to contest liability within 30 days of
164 issuance of this notice is an admission of liability and may result in a default judgment being
165 entered against the owner to whom the violation has been issued and/or non-renewal or
166 suspension of the license to drive and the certificate of registration of the registered owner.";

167 (vii) an affidavit form approved by the parking clerk for the purpose of complying with
168 paragraph (5); and

169 (viii) a statement explaining the procedure to adjudicate the violation by mail under
170 paragraph (6) .

171 (2) Any person notified to appear before the parking clerk, as provided in this section,
172 may appear before the parking clerk, or his designee, and confess the offense charged, either
173 personally or through a duly authorized agent or by mailing to the parking clerk the notice
174 accompanied by the fine provided therein, such payment to be made only by postal note, money
175 order or check made out to the parking clerk. Payment of the penalty established shall operate as
176 a final disposition of the case.

177 (3) Except as expressly provided, all prosecutions based on evidence produced by a
178 school bus violation detection monitoring system shall follow the procedures of this section.
179 Notwithstanding the installation and use of a live digital video school bus violation detection
180 monitoring system on a school bus, a trained police officer in whose presence of motorist failing
181 to stop for a stopped school bus as required under section 14, may issue a citation at the scene to
182 the operator of such vehicle for such violation pursuant to section 14. An owner of a vehicle
183 shall not be liable for a citation as a result of a school bus violation detection monitoring system
184 if the operator of the vehicle was cited directly by a police officer at the scene of the violation.

185 (4) Should any person notified to appear hereunder fail to appear and, if a penalty is
186 provided hereunder, to pay the same, or if the person requests a hearing to contest liability, the
187 parking clerk shall forthwith schedule the matter before a person referred to in this section as a
188 hearing officer. The hearing officer shall be the parking clerk of the city or town in which the
189 violation occurred or any other person or persons that the parking clerk may designate. Written
190 notice of the date, time and place of the hearing shall be sent by first-class mail to the registered
191 owner or owners. The hearing shall be informal, the rules of evidence shall not apply and the
192 decision of the hearing officer shall be final subject to judicial review as provided by Section 14
193 of Chapter 30A. Within 21 days of the hearing, the hearing officer shall send by first class mail
194 to the registered owner or owners the decision of the hearing officer, including the reasons for
195 the outcome.

196 (5) Any owner to whom a citation has been issued shall not be liable for a violation of
197 this section (a) if the violation was necessary to allow the passage of an emergency vehicle; (b) if
198 the violation was necessary in order to protect the property or person of another; (c) if the
199 violation was incurred while participating in a funeral procession; (d) if the violation was
200 incurred during a period of time in which the motor vehicle was reported to the police
201 department of any state, city or town as having been stolen and had not been recovered before
202 the time the violation occurred; (e) if the operator of the motor vehicle was operating the motor
203 vehicle under a rental or lease agreement and the owner of the motor vehicle is a rental or leasing
204 company; (f) if the operator of the motor vehicle was convicted of the underlying violation under
205 a citation issued in accordance with Section 2 of Chapter 90C; (g) if the violation was necessary
206 to comply with an order of a law enforcement officer or of a flagger directing traffic flow; or (h)
207 if the vehicle was subject to the exceptions granted to an authorized emergency vehicle under
208 Section 7B of Chapter 89. An owner disputing a violation under this subsection shall, within 30
209 days of issuance of the notice, provide the parking clerk with an affidavit signed under the pains

210 and penalties of perjury in a form approved by the parking clerk, as provided for in clause (vii)
211 of paragraph (1) of this subsection stating (1) the reason for disputing the violation; (2) the full
212 legal name and address of the owner of the motor vehicle; (3) the names and addresses of all
213 witnesses supporting the owner's defense and the specifics of their knowledge; and where
214 applicable (4) the signed statements from witnesses. The affidavit shall be filed with the request
215 for a hearing.

216 (6) Any person notified to appear before the parking clerk, as provided in this paragraph,
217 may without waiving his right to a hearing before the parking clerk or hearing officer as provided
218 by this subsection, and also without waiving judicial review under Section 14 of Chapter 30A,
219 challenge the validity of the citation and receive a review and disposition of the violation from
220 the parking clerk or a hearing officer by mail. The owner may, upon receipt of the citation, send
221 a signed statement explaining his objections to the violation notice as well as signed statements
222 from witnesses, police officers, government officials and any other relevant parties.
223 Photographs, diagrams, maps and other documents may also be sent with the statements. Any
224 statements or materials sent to the parking clerk for review shall have attached the person's name
225 and address as well as the citation number and the date of the violation. The parking clerk or
226 hearing officer shall, within 21 days of receipt of this material, review the material and dismiss
227 or uphold the violation and notify, by mail, the owner or owners of the disposition of the written
228 review. If the outcome of the written review is adverse to the owner or owners, the parking clerk
229 or hearing officer shall explain the reasons for the outcome on the notice. The review and
230 disposition handled by mail shall be informal, the rules of evidence shall not apply, and the
231 decision of the parking clerk or hearing officer based upon the written materials shall be final,
232 unless the owner invokes the hearing provisions under this section or judicial review under
233 Section 14 of Chapter 30A.

234 (7) If any person fails to appear before the hearing officer in accordance with the notice,
235 or fails to receive a favorable adjudication of the hearing from a hearing officer and fails to pay
236 the fine within 30 days of the date that the hearing officer has mailed notice of the decision of the
237 hearing officer, the parking clerk shall notify the registrar of motor vehicles, who shall place the
238 matter on record. Upon notification to the registrar of 2 or more citations under this section or
239 section 14 from the parking clerk of the city or town, or state authorities or agencies, the registrar
240 shall not issue or renew or may suspend the owner's license to operate a motor vehicle or motor
241 vehicle registration until after notification from the parking clerk of each city, agency or
242 authority, from whom the registrar received notification, that all fines, taxes and penalties owed
243 by the owner under this section have been disposed of in accordance with law. Upon such
244 notification to the registrar, an additional charge of $20 payable to the registrar but collected by
245 the city or town, and an additional charge of $20 payable to and collected by the city or town,
246 shall be assessed against the registered owner of the motor vehicle. It shall be the duty of the
247 parking clerk to notify the registrar forthwith that the case has been so disposed, but certified
248 receipt of full and final payment from the parking clerk of the city or town, or state agency or

249 authority issuing the violation shall also serve as legal notice to the registrar that the violation has
250 been disposed of in accordance with law. The certified receipt shall be printed in a form
251 approved by the registrar of motor vehicles.

252 (8) Upon the accumulation by an owner of 2 or more outstanding citations under this
253 section or section 14 on account of violations of any statute, ordinance, order, rule or regulation
254 relating to the operation, control or parking of motor vehicles in a particular city or town,
255 notwithstanding any notification to the registrar, the parking clerk of the city or town may notify
256 the chief of police or director of traffic and parking of the city or town that the vehicle bearing
257 the registration to which the notices have been issued shall be removed and stored or otherwise
258 immobilized by a mechanical device at the expense of the registered owner of the vehicle until
259 all fines, taxes and penalties owed by the owner either under this section, or otherwise arising out
260 of the parking or usage of the owner's motor vehicle, have been disposed of in accordance with
261 law. No vehicle shall be removed, stored, or otherwise immobilized unless the owner of the
262 motor vehicle shall have received 10 days prior notification by mail that the motor vehicle may
263 be removed, stored, or immobilized without further notification. It shall be sufficient for the
264 parking clerk to mail, postage prepaid, the notification to the last known address of the registered
265 owner. It shall be sufficient for the parking clerk, in the case of a motor vehicle registered in
266 another state or country, to mail notification to the official in the state or country having charge
267 of the registration of the motor vehicle.

268 (e)(1) Other than for purposes of enforcement of a violation of this section and section 14
269 or for purposes of an owner defending a violation of this section, recorded video images and
270 photographs taken or created under this section may only be obtained under an order by a court
271 of competent jurisdiction.

272 (2) Recorded video images and other photographic information obtained through the use
273 of school bus violation detection monitoring systems authorized in this section that do not
274 identify a violation shall be destroyed within 90 days of the date the image was recorded, unless
275 otherwise ordered by a court of competent jurisdiction. All photographic and other recorded
276 information that identifies a violation shall be destroyed within 1 year of final disposition of
277 proceedings related to the enforcement or defense of a violation, unless otherwise ordered by a
278 court of competent jurisdiction. Each city, town or school department utilizing 1 or more school
279 bus violation detection monitoring systems shall file notice annually with the secretary of state
280 that these records have been destroyed in accordance with this paragraph.

281 (3) The administrator of the school bus violation detection monitoring system within any
282 city or town accepting this section shall also submit an annual report to the Massachusetts
283 Department of Transportation regarding the use and operation of the monitoring system. This
284 annual report shall contain data on the number of citations issued under this section at each
285 particular intersection, and of those citations, shall detail the number paid without a request for a
286 hearing; the number found responsible after a hearing; and the number dismissed after a hearing.

287 In addition, the report shall also include the cost to maintain each said monitoring system and the
288 amount of revenue obtained from each said monitoring system.