

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: SB 7034

INTRODUCER: Infrastructure and Security Committee

SUBJECT: OGSR/Automated License Plate Recognition System

DATE: March 5, 2019

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------------------|-----------------------------|-----------|---------------------------------------|
| | <u>Proctor</u> | <u>Miller</u> | | IS Submitted as Committee Bill |
| 1. | <u>Ponder</u> | <u>McVaney</u> | <u>GO</u> | Favorable |
| 2. | <u> </u> | <u> </u> | <u>RC</u> | <u> </u> |

I. Summary:

SB 7034 amends s. 316.0777, F.S., to save from repeal the exemption from public disclosure for all images obtained from an automatic license plate recognition system as well as any personal identifying information in any data generated from images obtained from such a system. The bill removes the scheduled repeal date of the exemption, resulting in the continuation of the exemption.

The bill is not anticipated to impact state and local revenues and expenditures.

The bill takes effect on October 1, 2019.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(a).

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that:

[i]t is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁵

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House and the Senate.⁹ The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.¹⁰ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.¹¹

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹² Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature.

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

¹² If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.¹³

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁴ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹⁵ In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹⁶ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁷
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁸ or
- It protects trade or business secrets.¹⁹

The OGSR also requires specified questions to be considered during the review process.²⁰ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²¹ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote

¹³ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁴ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

¹⁵ Section 119.15(3), F.S.

¹⁶ Section 119.15(6)(b), F.S.

¹⁷ Section 119.15(6)(b)1., F.S.

¹⁸ Section 119.15(6)(b)2., F.S.

¹⁹ Section 119.15(6)(b)3., F.S.

²⁰ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²¹ FLA. CONST. art. I, s. 24(c).

for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²²

Automated License Plate Recognition System

An automated license plate recognition system (ALPRS) is a system of one or more mobile or fixed high-speed cameras combined with computer algorithms to convert images of license plates into computer-readable data.²³ ALPRS uses computerized optical character recognition to extract vehicle license plate information from an image or a sequence of images. Data files compiled in ALPR systems typically contain the following information:

- Black and white plate image;
- Contextual color image;
- Electronically readable format of plate alphanumeric characters of license plate numbers;
- Location and GPS coordinates;
- Time and date of image capture; and
- Camera identification (mobile cameras may capture officer and vehicle/unit number).²⁴

Although the full extent of ALPRS use is unknown, surveys conducted as part of this OGSR provided responses from 19 police departments and five agencies. Of the 24 respondents eight respondents stated they are using an ALPRS.

Data obtained from an ALPRS is generally used to check license plates against law enforcement hot lists. Hot lists contain a list of stolen plates and vehicles entered into the National Crime Information Center database, the Florida Crime Information Center database, Driver and Vehicle Information Database, and any information entered manually by the operating member. Examples of manual entries include, but are not limited to: attempt to locate; AMBER/SILVER alerts, child abductions, missing or wanted persons, and registered sexual predators.²⁵

Though designed to assist law enforcement with day-to-day vehicle violations, an ALPRS may collect and store extensive location information about each vehicle in its field of vision. Photographs captured by an ALPRS may contain more than simply the license plate, and sometimes include a substantial part of a vehicle, its occupants, and its immediate vicinity. Law enforcement can use captured photographs to verify witness descriptions of vehicles and confirm identifying features. Florida Law requires the Department of State in consultation with the Department of Law Enforcement to establish a retention schedule for records containing images and data generated through the use of an ALPRS. The retention schedule must establish a maximum period that the records may be retained.²⁶

²² Section 119.15(7), F.S.

²³ Section 316.0778(1), F.S.

²⁴ U.S. Department of Justice report on “ALPR Use by Law Enforcement: Policy and Operational Guide, Summary” available at: <https://www.ncjrs.gov/pdffiles1/nij/grants/239605.pdf> (last visited on February 6, 2019).

²⁵ Florida Department of Highway Safety and Motor Vehicles’ “Florida Highway Patrol Policy Manual” on ALPRS available at: <https://www.flhsmv.gov/pdf/fhp/policies/1725.pdf> (last visited on February 6, 2019).

²⁶ Section 316.0778(2), F.S.

The Department of State specifies the retention of license plate recognition records: “Retain until obsolete, superseded, or administrative value is lost, but no longer than 3 anniversary years unless required to be retained under another record series.”²⁷

Open Government Sunset Review of the Public Record Exemption for the Automatic License Plate Recognition System

In 2014, the Legislature created s. 316.0777, F.S., to exempt from the public record requirements information obtained by an ALPRS. The exemption applies to ALPRS images and data containing or providing personal identifying information, as well as personal identifying information derived from ALPRS data or images. The information collected from ALPRS and held by an agency is confidential and exempt from s. 119.07(1), F.S. and s. 24(a), Art. I of the State Constitution.²⁸

Such information may be disclosed under the following conditions:

- By or to a criminal justice agency, as defined in s. 119.011(4), F.S. in performance of the agency’s official duties.
- To a license plate registrant requesting his or her own information, as long as it is not related to any ongoing criminal investigation, as defined in s. 119.011(3), F.S.²⁹

In creating the exemption, the Legislature found that exempting the release of personal identifying information collected by an ALPRS is a public necessity. The Legislature recognized that disclosure of such information could enable a third party to track a person’s movements and would be an invasion of personal privacy.³⁰ The Legislature further found that the public disclosure of sensitive personal information could be defamatory or jeopardize an individual’s safety and that the harm from public disclosure outweighs any public benefit.³¹

Section 316.0777, F.S., is subject to the OGSR and stands repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

Based upon a review of this public records exemption under the OGSR and discussions with the Florida Department of Highway Safety and Motor Vehicles, the professional staff of the Senate Infrastructure and Security Committee recommends that the Legislature retain the public records exemption established in s. 316.0777, F.S.

III. Effect of Proposed Changes:

The bill is based on an Open Government Sunset Review of a public records exemption for information obtained by an ALPRS. The justification upon which the public records exemption is based remains valid.

²⁷ Florida Department of State, General Records Schedule GS2 for Law Enforcement, Correctional Facilities and District Medical Examiners, Effective: August 2017 available at: <https://dos.myflorida.com/media/698314/gs2-sl-2017-final.pdf> (last visited January 14, 2019).

²⁸ Ch. 2014-170, Laws of Fla.

²⁹ *Id.*

³⁰ Section 2, ch. 2014-170, Laws of Fla.

³¹ *Id.*

The bill amends s. 316.0777, F.S., to delete the scheduled repeal of the current public records exemption for all images obtained from an automatic license plate recognition system as well as any personal identifying information in any data generated from images obtained from ALPRS held by an agency. These records will continue to be confidential and exempt from public disclosure.

The bill takes effect October 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. This bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill continues a current public records exemption beyond its current date of repeal; thus, the bill does not require an extraordinary vote for enactment.

Public Necessity Statement

Article 1, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill continues a current public records exemption without expansion. Thus, a statement of public necessity is not required.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of this law is to protect all images obtained from an automatic license plate recognition system as well as any personal identifying information in any data generated from images obtained from such a system. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 316.0777 of the Florida Statutes:

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.