

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/CS/HB 599 Pub. Rec./Automated License Plate Recognition Systems

**SPONSOR(S):** Economic Affairs Committee; Government Operations Subcommittee; Transportation & Highway Safety Subcommittee; Hutson

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 226

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	10 Y, 0 N, As CS	Thompson	Miller
2) Government Operations Subcommittee	11 Y, 0 N, As CS	Williamson	Williamson
3) Economic Affairs Committee	14 Y, 0 N, As CS	Thompson	Creamer

### SUMMARY ANALYSIS

An “automated license plate recognition system” (ALPR) is a mass surveillance method that uses optical character recognition of images to read vehicle license plates. ALPRs are used by law enforcement as a method of cataloging the movements of traffic or individuals. In Florida, ALPR technology has been utilized by local and state law enforcement for the last several years.

The bill creates a public record exemption for the following information held by an “agency:”

- Images and data containing or providing personal identifying information obtained through the use of an ALPR system; and
- Personal identifying information of an individual in data generated or resulting from images obtained through the use of an ALPR system.

The bill authorizes release of the confidential and exempt information in certain circumstances.

The bill provides for retroactive application of the public record exemption. It provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

The bill could create a minimal fiscal impact on state and local governments. See FISCAL COMMENTS section.

**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 newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Public Records

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.<sup>1</sup>

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>2</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- protects trade or business secrets.

##### Automated License Plate Recognition

ALPR is a surveillance method that uses computerized optical character recognition to extract vehicle license plate information from an image or a sequence of images. ALPR is used by law enforcement as a method of cataloging the movements of traffic or individuals.

ALPR cameras can be set up at fixed locations or mounted on police cars. They can capture over 3,000 license plate images per minute<sup>3</sup> and make a record of the license plate. ALPR images can be captured clearly, day or night, no matter how fast the car is traveling. The data also includes the date, time, and location of the image.<sup>4</sup>

The records are stored in law enforcement databases and checked against hot lists, contained within electronic clearinghouses such as the National Crime Information Center database,<sup>5</sup> for tags associated with criminal activity.

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<sup>1</sup> Section 24(c), Art. I of the State Constitution.

<sup>2</sup> See s. 119.15, F.S.

<sup>3</sup> New York State Division of Criminal Justice Services, Suggested Guidelines: Operation of License Plate Reader Technology 2011, <http://criminaljustice.state.ny.us/ofpa/pdfdocs/finallprguidelines01272011a.pdf>, page 11 (last viewed January 16, 2014).

<sup>4</sup> *Id.*, at pages 5-8.

<sup>5</sup> According to the Federal Bureau of Investigation, the National Crime Information Center database (NCIC) is an electronic clearinghouse of crime data that can be tapped into by virtually every criminal justice agency nationwide, 24 hours a day and 365 days a year. By the end of Fiscal Year (FY) 2011, NCIC contained 11.7 million active records in 19 files. During FY 2011, NCIC averaged 7.9 million transactions per day. The NCIC database currently consists of 21 files. There are seven property files containing records of stolen articles, boats, guns, license plates, parts, securities, and vehicles. There are 14 persons files, including: Supervised Release; National Sex Offender Registry; Foreign Fugitive; Immigration Violator; Missing Person; Protection Order; Unidentified Person; United States Secret Service Protective; Gang; Known or Appropriately Suspected Terrorist; Wanted Person; Identity Theft; Violent Person; and National Instant Criminal Background Check System Denied Transaction. The system also contains images that can be associated with NCIC records to help agencies identify people and property items. The Interstate Identification Index, which contains

License plate images and data associated with these images are the primary forms of information collected by ALPR systems. ALPR data may be stored in an individual ALPR unit until it is either transferred to another server or discarded. Data files compiled in ALPR systems typically contain:

- black and white plate image;
- contextual color image;
- electronically readable format of plate alphanumeric characters (optical character recognition of plate numbers);
- location and GPS coordinates;
- time and date of image capture; and
- camera identification.<sup>6</sup>

The contextual image, sometimes referred to as an overview image, may capture additional identifying features of the vehicle such as make, model, color, bumper sticker, or damage. Also, it may capture the vehicle in context, including the surrounding area.<sup>7</sup>

A 2011 national survey found that nearly three-quarters (71 percent) of the 70 responding agencies reported using ALPRs, and 85 percent plan to acquire or increase their use of the technology over the next five years.<sup>8</sup>

#### ALPR Data Collection in Florida

Florida law enforcement officers currently use ALPR surveillance; however, data collection restrictions for law enforcement do not exist. As such, license plate data can be gathered through the use of an ALPR. In July 2012, the American Civil Liberties Union (ACLU) submitted public record requests to nine cities and counties in Florida to obtain information on how local governments use ALPRs.<sup>9</sup>

The ACLU found that ALPRs capture information including the license plate number, date, time, and location of every scan. The information is collected and pooled into regional sharing systems (databases). The Florida Department of Law Enforcement (FDLE) currently has agreements with 111 police departments and sheriff's offices for access to ALPR data.<sup>10</sup>

#### Relevant Definitions in Current Law

Section 119.071(2)(c)1., F.S., exempts "active," "criminal intelligence information," and active, "criminal investigative information" from public inspection. To be exempt, the information must be both active and constitute either criminal investigative or intelligence information.<sup>11</sup> Recorded images obtained by the use of a LPR that are not considered active and constitute either criminal investigative or intelligence information are open to public records disclosure requirements.

Section 119.011(3)(a), F.S., defines criminal intelligence information as information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.

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automated criminal history record information, is accessible through the same network as NCIC. More information on the NCIC can be found at <http://www.fbi.gov/about-us/cjis/ncic> (last viewed March 7, 2014).

<sup>6</sup> International Association of Chiefs of Police, Automated License Plate Recognition Systems; Policy and Operational Guidance for Law Enforcement, at [http://www.theiacp.org/Portals/0/pdfs/IACP\\_ALPR\\_Policy\\_Operational\\_Guidance.pdf](http://www.theiacp.org/Portals/0/pdfs/IACP_ALPR_Policy_Operational_Guidance.pdf), page 13 (last viewed November 20, 2013).

<sup>7</sup> *Id.*

<sup>8</sup> Police Executive Research Forum, Critical Issues in Policing Series; How Are Innovations in Technology Transforming Policing? (January 2012), at [http://policeforum.org/library/critical-issues-in-policing-series/Technology\\_web.pdf](http://policeforum.org/library/critical-issues-in-policing-series/Technology_web.pdf), page two (last viewed November 20, 2013).

<sup>9</sup> American Civil Liberties Union Automatic License Plate Reader Documents: Interactive Map - <https://www.aclu.org/maps/automatic-license-plate-reader-documents-interactive-map> (last viewed November 20, 2013).

<sup>10</sup> Email received from FDLE on October 28, 2013 (on file with the Transportation and Highway Safety Subcommittee).

<sup>11</sup> See *Woollong v. Lamar*, 764 so. 2d 765, 768 (Fla. 5th DCa 2000), review denied, 786 so. 2d 1186 (Fla. 2001).

Section 119.011(3)(b), F.S., defines criminal investigative information as information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.

Section 119.011(3)(c), F.S., provides that criminal intelligence and investigative information do not include information such as:

- The time, date, location, and nature of a reported crime;
- The name, sex, age, and address of a person arrested or of the victim of a crime except as provided in s. 119.071(2)(h);
- The time, date, and location of the incident and of the arrest;
- The crime charged; and
- Documents given or required by law or agency rule to be given to the person arrested.

Section 119.011(3)(d), F.S., considers criminal intelligence information to be active as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities; and criminal investigative information is considered active as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.

Section 119.011(3)(a), F.S., defines an 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 chapter 119, 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.

Section 119.011(4), F.S., defines a “criminal justice agency” as any law enforcement agency, court, or prosecutor; any other agency charged by law with criminal law enforcement duties; any agency having custody of criminal intelligence information or criminal investigative information for the purpose of assisting such law enforcement agencies in the conduct of active criminal investigation or prosecution or for the purpose of litigating civil actions under the Racketeer Influenced and Corrupt Organization Act, during the time that such agencies are in possession of criminal intelligence information or criminal investigative information pursuant to their criminal law enforcement duties; or the Department of Corrections.

## **Proposed Changes**

The bill defines an ALPR system as 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. The bill defines the terms active, criminal intelligence information, and criminal investigative information as having the same meanings as provided in s. 119.011(3), F.S. The bill defines agency and criminal justice agency as having the same meaning as provided in s. 119.011, F.S.

The bill creates a public record exemption for information collected through the use of an ALPR system. Specifically, the following information held by an agency is confidential and exempt<sup>12</sup> from public record requirements:

- images and data containing or providing personal identifying information obtained through the use of an ALPR system; and

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<sup>12</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991) If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. See Attorney General Opinion 85-62 (August 1, 1985).

- personal identifying information of an individual in data generated or resulting from images obtained through the use of an ALPR system.

Such information may be disclosed:

- by or to a criminal justice agency in the performance of a criminal justice agency's official duties.
- to an individual to whom the license plate is registered, unless such information constitutes active criminal intelligence information or active criminal investigative information.

The bill provides for retroactive application<sup>13</sup> of the public record exemption.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

#### B. SECTION DIRECTORY:

Section 1: creates s. 316.0777, F.S., to create a public record exemption for certain information collected through the use of ALPR systems.

Section 2: provides a public necessity statement.

Section 3: provides an effective date of July 1, 2014.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS section.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS section.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

#### D. FISCAL COMMENTS:

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<sup>13</sup> The Supreme Court of Florida ruled that a public record exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively. Access to public records is a substantive right. Thus, a statute affecting that right is presumptively prospective and there must be a clear legislative intent for the statute to apply retroactively. *See Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).

The bill could create a minimal fiscal impact on agencies that collect ALPR data. Staff responsible for complying with public record requests could require training related to the creation of the public record exemption. In addition, an agency could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the agency.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

###### 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 newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

###### Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it includes a public necessity statement.

###### Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates the public record exemption to protect from public disclosure images, data, and personal identifying information, held by an agency and obtained through the use of an automated license plate recognition system.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

#### Transportation & Highway Safety Subcommittee

On February 4, 2014, the Transportation & Highway Safety Subcommittee adopted one amendment to HB 599 before reporting it favorably as a committee substitute. The amendment revises the public record exemption so that it specifically addresses the images and data that an ALPR would capture and store.

The analysis is drafted to the committee substitute as approved by the Transportation and Highway Safety Subcommittee.

#### Government Operations Subcommittee

On March 5, 2014, the Government Operations Subcommittee adopted two amendments to CS/HB 599 and reported the bill favorably with committee substitute. The amendments co-located all of the definitions into one section of the bill and corrected a drafting error in the public necessity statement.

The analysis is drafted to the committee substitute as approved by the Government Operations Subcommittee.

Economic Affairs Committee

On March 21, 2014, the Economic Affairs Committee adopted one amendment to CS/CS/HB 599 and reported the bill favorably as a committee substitute. The amendment narrows the exemption to only apply to images and data that contain or provide personal identifying information.

The analysis is drafted to the committee substitute as approved by the Economic Affairs Committee.