

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7037 PCB OTM 19-09 OGSR/Automated License Plate Recognition Systems
SPONSOR(S): Oversight, Transparency & Public Management Subcommittee; Fernández
TIED BILLS: **IDEN./SIM. BILLS:** SB 7034

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Oversight, Transparency & Public Management Subcommittee	13 Y, 0 N	Toliver	Harrington
1) Transportation & Infrastructure Subcommittee	14 Y, 0 N	Roth	Vickers
2) State Affairs Committee	23 Y, 0 N	Toliver	Williamson

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

An automated license plate recognition (ALPR) system 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. ALPR systems can “capture thousands of images per hour,” with those images capturing “a substantial part of the vehicle, including its occupants and immediate facility.” The resulting portion of the image that contains the license plate is converted into machine-readable text and coupled with other information gathered at the moment to assist law enforcement agencies in pursuing leads in criminal activities.

In 2014, the Legislature created a public record exemption for information collected through the use of an ALPR system. The public record exemption protects the following information held by an agency from public disclosure:

- 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 information may be disclosed in certain instances.

The bill saves from repeal the public record exemption, which will repeal on October 2, 2019, if this bill does not become law.

The bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²

The Act 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:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect 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.
- Protect trade or business secrets.³

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.⁴ If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created then a public necessity statement and a two-thirds vote for passage are not required.

Automated License Plate Recognition System

An automated license plate recognition (ALPR) system 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.⁵ The cameras used in an ALPR system may be mobile or stationary and are small enough to be mounted on police cars, road signs, or traffic lights, or placed at the sides of roads or on bridges.⁶ ALPR systems can "capture thousands of images per hour," with those images capturing "a substantial part of the vehicle, including its occupants and immediate facility."⁷ The resulting portion of the image that contains the license plate is converted into machine-readable text and coupled with other information gathered at the moment (e.g. time, date, location).⁸ Such information can be used to assist law enforcement agencies in detection, identification, and recovery of stolen vehicles, wanted persons, missing or endangered children and adults, and persons who have committed serious and violent crime, as well as aid detectives in developing and pursuing leads in criminal investigations.⁹

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Section 24(c), Art. I, FLA. CONST.

⁵ Section 316.0777(1)(c), F.S.

⁶ Pam Greenburg, *Automated License Plate Readers*, National Conference of State Legislatures (Feb. 2015), available at <http://www.ncsl.org/research/telecommunications-and-information-technology/automated-license-plate-readers.aspx> (last visited January 30, 2019).

⁷ National Association of Criminal Defense Lawyers, *Automated License Plate Readers*, available at https://www.law.berkeley.edu/wp-content/uploads/2015/04/2016-4-28_ALPR-Primer_Final.pdf (last visited January 30, 2019).

⁸ *Id.*

⁹ Criminal and Juvenile Justice Information Systems Council, *Guidelines for the Use of Automated License Plate Readers*, available at <http://www.fdle.state.fl.us/CJIS/Documents/CJIS-Council-ALPR-Guidelines.aspx> (last visited on January 30, 2019).

Once an ALPR system scans or captures license plate information, it compares the information to vehicles associated with crimes or criminals.¹⁰

ALPR Data Collection in Florida

Many Florida law enforcement agencies currently use ALPR systems.¹¹ The Criminal and Juvenile Justice Information Systems Council¹² has issued and adopted uniform statewide guidelines for the use of ALPR systems in Florida.¹³ The guidelines require the following of Florida law enforcement agencies using or possessing an ALPR system:

- Each agency must implement and enforce a policy that regulates the operation and use of ALPRs and the use, storage, access, and retention of ALPR data;
- ALPRs and data generated by ALPRs must only be used for a criminal justice purpose;
- Each agency must restrict the use of ALPR scanning to vehicles exposed to public view;
- Each agency must require supervisory approval of any ALPR deployment or use;
- Only trained members of a criminal justice agency who are authorized by the chief executive may operate an ALPR; and
- Each agency must restrict access to ALPR data to only those authorized persons trained on the proper use of ALPR data.¹⁴

Such ALPR records must be retained “until obsolete, superseded, or [their] administrative value is lost, but no longer than 3 anniversary years unless required to be retained under another record series.”¹⁵

Public Record Exemption under Review

In 2014, the Legislature created a public record exemption for information collected through the use of an ALPR system.¹⁶ Specifically, the following information held by an agency is confidential and exempt¹⁷ from public record requirements:

- 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.

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

¹⁰ *Id.*

¹¹ *Id.*

¹² The Criminal Juvenile Justice Information Systems Council was created within the FDLE and is charged with facilitating the identification, standardization, sharing, and coordination of criminal and juvenile justice data; adopting uniform information exchange standards, methodologies, and best practices, applying national standards and models when appropriate, in order to guide local and state criminal justice agencies; and providing statewide oversight and supporting the development of plans and policies relating to public safety information systems in order to facilitate the effective identification, standardization, access, sharing, integrating, and coordinating of criminal and juvenile justice data among federal, state, and local agencies. Sections 943.06 and 943.08, F.S.

¹³ Criminal and Juvenile Justice Information Systems Council, *Guidelines for the Use of Automated License Plate Readers*, available at <http://www.fdle.state.fl.us/CJJIS/Documents/CJJIS-Council-ALPR-Guidelines.aspx> (last visited January 30, 2019).

¹⁴ *Id.*

¹⁵ General Records Schedule GS2 for Law Enforcement, Correctional Facilities and District Medical Examiners, pg. 14, Department of State, incorporated by reference by Rule 1B-24.003(1)(b), F.A.C.

¹⁶ Chapter 2014-170, L.O.F., codified as s. 316.0777, F.S.

¹⁷ There is a difference between records the Legislature designates 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 statute. (*See Attorney General Opinion 85-62*, August 1, 1985).

The 2014 public necessity statement¹⁸ for the exemption provides that:

The exemption protects sensitive personal information that, if released, could be defamatory to an individual or jeopardize the safety of an individual by allowing a third party to track a person's movements and compile a history on where a person has driven. This exemption is necessary because the public disclosure of such information constitutes an unwarranted invasion into the personal life and privacy of a person.¹⁹

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2019, unless reenacted by the Legislature.²⁰

During the 2018 interim, subcommittee staff sent questionnaires to all categories of affected entities: Florida Department of Law Enforcement, Department of State, Department of Highway Safety and Motor Vehicles, Fish and Wildlife Conservation Commission, and local law enforcement agencies.²¹ All respondents that utilized an ALPR system recommended reenactment of the exemption.²² When asked if the exemption had served the purpose stated in its public necessity statement, one respondent answered in the affirmative and noted that if the information was not protected it "could potentially allow a person to 'track' another person's movements,"²³ while another respondent stated that if the information were made open for public dissemination, the information would "be available to those individuals who have [a] desire to use said information for malevolent intentions."²⁴ All respondents stated they have not had any complaints regarding the exemption.²⁵

Effect of the Bill

The bill removes the scheduled repeal date of the public record exemption, thereby maintaining the public record exemption for images and data containing, or providing, personal identifying information obtained through an ALPR system and personal identifying information of an individual in data generated, or resulting from, images obtained through an ALPR system.

B. SECTION DIRECTORY:

Section 1 amends s. 316.0777, F.S., to remove the scheduled repeal date of the public record exemption.

Section 2 provides an effective date of October 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

¹⁸ Article I, s. 24(c), FLA. CONST., requires each public record exemption "state with specificity the public necessity justifying the exemption."

¹⁹ Chapter 2014-170, L.O.F.

²⁰ Section 316.0777(5), F.S.

²¹ Questionnaire responses on file with the House Oversight, Transparency & Public Management Subcommittee.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to 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 reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.