

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 Transportation

BILL: CS/SB 226

INTRODUCER: Transportation Committee and Senator Brandes

SUBJECT: Public Records/Automated License Plate Recognition Systems Exemption

DATE: January 9, 2014

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|---------------|
| 1. | Everette | Eichin | TR | Fav/CS |
| 2. | | | GO | |
| 3. | | | RC | |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

Senate Bill 226 creates definitions and a confidential and exempt standard for images and personal identifying information obtained and held by an agency through the use of an automated license plate recognition system.

The bill further specifies disclosure conditions for any such information:

- By or to a criminal justice agency in the performance of its official duties.
- To a license plate registrant requesting his or her own information.

The confidential and exempt public records requirement applies to information held by an agency retroactive of the July 1, 2014 effective date.

II. Present Situation:

An automated license plate recognition system (ALPRS) uses computerized optical character recognition to extract vehicle license plate information from an image or a sequence of images. It is sometimes also referred to as automated number plate recognition system or automated licensed reader. The extracted information can be used with or without a database in many applications, such as electronic payment systems (toll payment, parking fee payment), and

freeway and arterial monitoring systems for traffic surveillance. The ALPRS uses either a color, black and white, or ultraviolet camera to take images of passing license plates and quickly processes the data under different environmental conditions, such as indoors, outdoors, day or night.

Data obtained from an ALPRS is generally used to check license plates against law enforcement “hot” lists. This captured information (i.e., license plate number, date, time, and location) is collected, matched to personal identifying databases and sometimes pooled into regional sharing systems. As a result, enormous databases may house the location and travel patterns of thousands, if not millions of individual motorists.

As an operational tool for law enforcement, ALPRSs scan the license plates of moving or parked vehicles while either mounted on a moving patrol car or attached to a fixed location, such as a toll plaza or free-standing installation. 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.

In July 2012, the American Civil Liberties Union (ACLU) sent public records act requests to nearly 600 local and state police departments and other state and federal agencies to obtain information on how these agencies use such information.¹ In response, 26,000 pages were received detailing the use of the technology around the country. The ACLU report found that although police departments typically only have a few of its vehicles equipped with the ALPRSs, they project increased numbers within the next 5 years. The same report found that law enforcement agencies were increasingly capturing drivers’ locations outside church, the doctor’s office, and school, etc., giving law enforcement and private companies the ability to build detailed pictures of citizens’ lives. In some instances the stored information stretched back months, even years.²

The ACLU recommends the following principles for the use and disclosure of automated license plate recognition systems:

- Law enforcement agencies must place access controls on license plate reader databases. Only agents who have been trained in the departments’ policies governing such databases should be permitted access, and departments should log access records pertaining to the databases.
- People should be able to find out if plate data of vehicles registered to them are contained in a law enforcement agency’s database. They should also be able to access the data. This policy should also apply to disclosure to a third party if the registered vehicle owner consents, or for criminal defendants seeking relevant evidence.

¹ <https://www.aclu.org/alpr> (last visited on 1/06/14)

² i.d.

- Law enforcement agencies should not share license plate reader data with third parties that do not conform to the above retention and access principles, and should be transparent regarding with whom license plate reader data are shared.³

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.⁴ The records of the legislative, executive, and judicial branches are specifically included.⁵

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act⁶ guarantees every person's right to inspect and copy any state or local government public record⁷ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸

Only the Legislature may create an exemption to public records requirements.⁹ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹⁰ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions¹¹ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹²

³<https://www.aclu.org/files/assets/071613-aclu-alprreport-opt-v05.pdf> (last visited 1/7/14)

⁴ FLA CONST., art. I, s. 24(a).

⁵ Id.

⁶ Chapter 119, F.S.

⁷ Section 119.011(12), F.S., defines "public records" 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" to mean 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." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

⁸ Section 119.07(1)(a), F.S.

⁹ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *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 (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 2004); and *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).

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ The bill may, however, contain multiple exemptions that relate to one subject.

¹² FLA. CONST., art. I, s. 24(c).

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹³ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁴ The Act 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 to meet such public purpose.

There is no specific public records exemption for data generated by automated license plate recognition systems in the State of Florida. Thus, the program has never been subject to s. 119.07, F.S., and s. 24(a), Article I of the State Constitution.

III. Effect of Proposed Changes:

Section 1 creates a confidential and exempt standard of protection for data generated by automated license plate recognition system. Section 316.0777, F.S., defines “agency” as having the same meaning as in s. 119.011, F.S.,¹⁵ and “automated license plate recognition 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 requires that such information may be disclosed as follows:

- By or to a criminal justice agency, as defined in s. 119.011(4),¹⁶ in performance with the agency’s official duties.
- To a license plate registrant requesting his or her own such information as long as it is not related to any ongoing criminal investigation.

The exemption applies to personal identifying information images and data held by any agency before, on, or after the passage of this exemption, July 1, 2014.

The bill further requires, in accordance with s. 119.15, F.S., this section is subject to the Open Government Sunset Review Act and will repeal on October 2, 2019 if not reviewed and saved from repeal through reenactment by the Legislature.

Section 2, provides that personal identifying information images and data obtained and held through the use of automated license plate recognition systems by an agency are confidential and exempt from public records disclosure requirements. The bill clarifies the release of such images could enable a third party to track a person’s movements and use personal images and data in a negative way against that person. Therefore, the exemption is necessary to keep a person’s

¹³ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

¹⁴ Section 119.15(3), F.S.

¹⁵ “Agency” means 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.

¹⁶ See supra note 7.

privacy private. The harm that could befall an individual outweighs any measure of public benefit from access to such personal identifying information.

The act shall take effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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 creates section 316.0777 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Transportation on January 9, 2014:

The CS differs from the original bill in that it:

- Changes the standard of protection from “exempt” to “confidential and exempt”¹⁷ in order to specify conditions for disclosure.
- Specifies the following conditions under which the confidential and exempt information may be disclosed:
 - For any such information, by or to a criminal justice agency in the performance of its official duties.
 - For any information relating to a license registered to an individual, to such individual.
Such information may not be released if it is relevant to an ongoing criminal investigation.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

¹⁷ For an explanation of the difference between the standards, see supra note 9.