

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 555 Pub. Rec./Automated Traffic Law Enforcement System

SPONSOR(S): Transportation & Highway Safety Subcommittee

TIED BILLS: **IDEN./SIM. BILLS:** SB 1476

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|--------|----------|--|
| Orig. Comm.: Transportation & Highway Safety Subcommittee | | Thompson | Miller |

SUMMARY ANALYSIS

Current law authorizes the Department of Highway Safety and Motor Vehicles (DHSMV), counties, and municipalities to employ "traffic infraction detector" (red light camera) programs. Red light cameras are used by local law enforcement as a method of enforcement of potential red light violations at selected intersections. In Florida, red light camera technology has been utilized by local and state law enforcement for the last several years.

The bill creates a public record exemption for recorded images obtained through the use of a red light camera. Specifically, recorded images obtained through the use of a red light camera and held by an agency are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.

Such recorded images may be disclosed for the following reasons:

- By or to a "criminal justice agency" in the performance of the criminal justice agency's official duties.
- A recorded image evidencing a red light camera infraction may be admissible in a proceeding resulting from the issuance of a "notice of violation" or a "uniform traffic citation" pursuant to s. 316.0083.
- To a person to whom the license plate is registered, unless such information constitutes "active," "criminal intelligence information," or active, "criminal investigative information."
- To any person authorized by DHSMV who is engaged in the use of such records or information for bona fide research and statistical purposes. The individual or entity must enter into a privacy and security agreement with DHSMV and comply with all laws and rules governing the use of such records and information for research and statistical purposes. Information identifying the subjects of such recorded images must be treated as confidential by the researcher and not released in any form.

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 will not have a fiscal impact to the state, local governments, or the private sector.

The bill provides an effective date that is contingent on the passage of HB 7005 or similar legislation.

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.¹

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 Act² 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.

Red Light Cameras in Florida

In 2010, the Florida Legislature expressly preempted³ to the state regulation of the use of cameras for enforcing the provisions of the "Florida Uniform Traffic Control Law."⁴ The law also authorized the Department of Highway Safety and Motor Vehicles (DHSMV), counties, and municipalities to employ red light camera programs.⁵

Traffic infraction detectors,⁶ otherwise known as red light cameras, must meet requirements established by the Department of Transportation (DOT) and be tested at regular intervals according to procedures prescribed by DOT.⁷ If DHSMV, a county, or a municipality installs a red light camera at an intersection, the respective governmental entity must notify the public that a camera is in use at that intersection, including specific notification of enforcement of right-on-red violations.⁸ Such signage must meet specifications adopted by DOT pursuant to s. 316.0745, F.S.⁹

¹ Section 24(c), Art. I of the State Constitution.

² See s. 119.15, F.S.

³ chapter 2010-80, Laws of Florida; codified in s. 316.0076, F.S.

⁴ chapter 316, F.S.

⁵ Section 316.0083, F.S.

⁶ Section 316.003(87), F.S., defines "traffic infraction detector" as "[a] vehicle sensor installed to work in conjunction with a traffic control signal and a camera or cameras synchronized to automatically record two or more sequenced photographic or electronic images or streaming video of only the rear of a motor vehicle at the time the vehicle fails to stop behind the stop bar or clearly marked stop line when facing a traffic control signal steady red light. Any notification under s. 316.0083(1)(b) or traffic citation issued by the use of a traffic infraction detector must include a photograph or other recorded image showing both the license tag of the offending vehicle and the traffic control device being violated."

⁷ Section 316.0776, F.S.

⁸ Section 316.0776(2), F.S.

⁹ Id.

In FY 2012 – 2013, there were 77 jurisdictions operating red light camera programs throughout the state.¹⁰

The Violation Process

When a red light violation occurs there is a process that the violation follows. The process may vary slightly depending on the jurisdiction; however, the process typically begins with a still photograph and sometimes a video clip being captured and sent to the red light camera vendor.¹¹ The vendor then queries the State of Florida database of registered vehicles and obtains the needed data relevant to the vehicle (i.e., make and model of the vehicle, registered owner, and owner's address). Then the vendor reviews the photographic evidence and makes a determination as to whether the evidence supports the issuance of a notice of violation.¹²

Once the vendor has reviewed the evidence, potential violations are forwarded to the law enforcement agency for review and verification. In the review process, the officer verifies whether or not a violation occurred based on the photographic and video evidence, and the vehicle and owner information are correct and complete. If the officer ascertains that a violation did not occur, or if vehicle and owner information cannot be obtained or corrected, the notice of violation may not be issued. A large majority of photographs are not referred to law enforcement for further consideration as a potential violation.¹³

Red Light Camera Data

License plate images and data associated with these images are the primary forms of information collected by red light cameras. The images show the driver and the vehicle's license plate. They also show the vehicle just prior to entering the intersection while the light is red and the vehicle within the intersection while the light is red. Data files compiled by red light camera systems may contain the:

- Intersection (and intersection code) where the violation occurred;
- Date and time the violation occurred;
- Age and gender of the violator;
- Car (i.e., vehicle make) driven by the violator;
- Model year of the vehicle driven by the violator;
- Vehicle speed (i.e., measured speed) at the time of the violation; and
- Elapsed time from the onset of red signal until the time of the violation.¹⁴

Currently, the Florida Department of State's record retention schedule for state and local agencies requires surveillance recordings to be retained for at least 30 days.¹⁵ After 30 days, recordings that are

¹⁰ The Department of Revenue makes its most-recent data available online at <http://dor.myflorida.com/dor/taxes/distributions.html> (Last visited on November 25, 2013).

¹¹ American Traffic Solutions, Inc., provides recorded video of multiple red light running incidents on its Media Center website. These videos can be accessed at: <http://www.atsol.com/media-center/videos/>. (Last viewed 3/18/14).

¹² City of Tallahassee, Office of the City Auditor, Red Light Camera Program report to the City Commission and City management, Audit Report #1220. This document is on file with the Transportation and Highway Safety Subcommittee.

¹³ According to the City of Tallahassee Red Light Camera Program Audit Report #1220, out of 251,863 total camera actuations (photographs), 201,367 were not forwarded to the Tallahassee Police Department (TPD) and 50,929 were forwarded to TPD. The reasons for not forwarding include, but are not limited to, there was no red light violation (for example, the traffic light was green or yellow, there was a funeral procession, or an emergency vehicle with lights flashing); the violation could not be attributed to a specific vehicle for reasons that were outside the controls of the vendor (for example, the photo was not sufficient quality because of the glare on the license plate or camera, there was no license plate on the vehicle, or the license plate was damaged and unreadable); for reasons the vendor could potentially have controlled (for example, the photo was not of sufficient quality to read the license plate, or a malfunction of the equipment).

¹⁴ The National Highway Traffic Safety Administration (NHTSA), Analysis of Red Light Violation Data Collected from Intersections Equipped with Red Light Photo Enforcement Cameras, March 2006, at p. 11. This document is on file with the Transportation and Highway Safety Subcommittee.

¹⁵ According to the State of Florida General Records Schedule GS1-SL for State and Local Government Agencies, October 1, 2013, at page 37 Item #302, surveillance recordings are only required to be maintained for 30 days. This document can be viewed at http://dls.dos.state.fl.us/barm/genschedules/GS1-SL-2013_Final.pdf. (Last viewed 3/17/14).

not under active criminal investigation¹⁶ can be deleted or written over, or stored for longer periods of time. This includes red light camera recordings.¹⁷

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.¹⁸ Recorded images obtained by the use of a red light camera 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.

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.

¹⁶ s. 119.071(2)(c)1., F.S., exempts “active criminal intelligence information” and “active criminal investigative information” from public inspection.

¹⁷ According to Xerox’ Red Light Camera System (RLCS) Intersection Safety Solutions, the red light camera software can independently program and set up the enforcement system settings to eight lanes and four different signal phases per controller, simultaneously with the single system. High-definition (HD) video is used to record video clips of the violation and for 60-day video storage. This document can be viewed at: http://www.acs-inc.com/transportation/ov_red_light_rlcs.pdf. (Last viewed 3/17/14).

¹⁸ See *Woolling v. Lamar*, 764 so. 2d 765, 768 (Fla. 5th DCa 2000), review denied, 786 so. 2d 1186 (Fla. 2001).

Proposed Changes

The bill defines traffic infraction detectors, to have the same meaning as provided in s. 316.003, F.S.; active, criminal intelligence information, and criminal investigative information, to have the same meanings as provided in s. 119.011(3), F.S.; agency, to have the same meaning as provided in s. 119.011, F.S.; and criminal justice agency, to have the same meaning as provided in s. 119.011, F.S.

The bill creates a public record exemption for recorded images obtained through the use of a traffic infraction detector. Specifically, recorded images obtained through the use of a traffic infraction detector and held by an agency are confidential and exempt¹⁹ from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

Such recorded images may be disclosed for the following reasons:

- A recorded image may be made available by or to a criminal justice agency in the performance of the criminal justice agency's official duties.
- A recorded image evidencing a red light camera infraction may be admissible in a proceeding resulting from the issuance of a notice of violation or a uniform traffic citation pursuant to s. 316.0083.
- To the individual whom a license plate is registered, unless such information constitutes active criminal intelligence information or active criminal investigative information.
- To any person authorized by DHSMV who is engaged in the use of such records or information for bona fide research and statistical purposes. The individual or entity must enter into a privacy and security agreement with DHSMV and comply with all laws and rules governing the use of such records and information for research and statistical purposes. Information identifying the subjects of such recorded images must be treated as confidential by the researcher and not released in any form.

The bill provides for retroactive application²⁰ 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 recorded images obtained through the use of traffic infraction detectors.
- Section 2: provides a public necessity statement.
- Section 3: provides an effective date contingent upon the passage of HB 7005 or similar legislation.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

¹⁹ 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).

²⁰ 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).

1. Revenues:

None.

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. 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 recorded images obtained through the use of a traffic infraction detector.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Retroactive Application

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.²¹ The bill contains a provision requiring retroactive application. Red light cameras have been utilized by local law enforcement in Florida for the past several years.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

²¹ *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).