

HOUSE BILL REPORT

HB 1909

As Reported by House Committee On:
Transportation

Title: An act relating to automated license plate recognition systems.

Brief Description: Authorizing the use of automated license plate recognition systems.

Sponsors: Representatives Appleton, Taylor, Ryu, Harmsworth, Condotta, Buys, Goodman, Shea and Morris.

Brief History:

Committee Activity:

Transportation: 2/20/17, 2/23/17 [DPS].

Brief Summary of Substitute Bill

- Regulates the use of automated license plate recognition systems (ALPRS) by various governmental entities, including law enforcement and parking enforcement agencies.
- Forbids the use of an ALPRS for any other purpose beyond what is allowed under the act, makes ALPRS data inadmissible in court if obtained in violation of the act, creates a cause of action for violations of the act, and requires annual reporting by agencies using an ALPRS.

HOUSE COMMITTEE ON TRANSPORTATION

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 17 members: Representatives Clibborn, Chair; Farrell, Vice Chair; Fey, Vice Chair; Wylie, Vice Chair; Orcutt, Ranking Minority Member; Harmsworth, Assistant Ranking Minority Member; Chapman, Gregerson, Kloba, Lovick, McBride, Morris, Ortiz-Self, Riccelli, Shea, Tarleton and Young.

Minority Report: Do not pass. Signed by 4 members: Representatives Hargrove, Assistant Ranking Minority Member; Hayes, Pike and Stambaugh.

Minority Report: Without recommendation. Signed by 1 member: Representative Irwin.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: David Munnecke (786-7315).

Background:

Traffic Safety Cameras.

Pursuant to state statutes, local governments may use automated traffic safety cameras to detect stoplight, railroad crossing, or school speed zone violations. The use of such cameras is restricted to two-arterial intersections, railroad crossings, and school speed zones. Prior to use of such cameras, the local legislative authority must adopt an ordinance allowing their use. All locations where an automated traffic safety camera is used must be clearly marked by placing signs in locations that clearly indicate to a driver that he or she is entering a zone where traffic laws are enforced by an automated traffic safety camera. Automated traffic safety cameras may only take pictures of the vehicle and vehicle license plate while an infraction is occurring, and must not reveal the face of the driver or passengers.

Photo Toll Systems.

Photo toll systems are camera-based imaging systems that use digital video or still image formats to record license plate images of vehicles using toll lanes for the purpose of collecting a photo toll. The Washington State Department of Transportation (WSDOT) has the authority to issue a civil penalty to the registered owner of the vehicle when a toll is assessed through the use of a photo toll system and the toll is not paid by the toll payment due date. Similar to automated traffic safety cameras, photo toll systems may only take pictures of the vehicle and vehicle license plate and all locations where a photo toll system is used must be clearly marked by placing signs in locations that clearly indicate to a driver that he or she is entering a zone where tolls are assessed.

Use of Camera Images.

Images, photographs, and other electronic images obtained via a traffic safety camera or a photo toll system are for the exclusive use of law enforcement in the enforcement of infractions generated by a traffic safety camera or the tolling agency for toll collection and enforcement. Such images are not open to the public and may not be used in court in a pending action or proceeding unless the action or proceeding relates specifically to the traffic violation or toll collection penalties in question.

Automated License Plate Recognition Systems.

Automated license plate recognition systems (ALPRS) generally consist of one or more cameras to capture images of a license plate; a processor and application capable of performing optical character recognition (OCR) to extract the alphanumeric characters from an image; application software to compare the license plate characters to a database; and a user interface to display the images, the OCR data, and an alert, if the license plate characters are a match to particular databases.

The Washington State Patrol (WSP) currently uses an ALPRS in several of its divisions and programs, including:

- commercial vehicles;
- motor carrier safety;
- homeland security;
- criminal investigations; and

- vehicle license fraud.
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Summary of Substitute Bill:

Governmental Usage of Automated License Plate Recognition Systems.

An ALPRS may be used as a component of an authorized photo toll system or an authorized automated traffic safety camera.

A law enforcement or parking enforcement agency may use an ALPRS to locate vehicles on a watch list. A watch list must be updated with current information at least every 24 hours, and if there is no match to a license plate on the watch list, the data generated by the system may not be:

- used to identify the owner or driver of a vehicle;
- shared with any other agency, entity, or person;
- used for any other purpose; or
- retained for more than 12 hours.

A watch list used by a parking enforcement agency may contain only license plates of vehicles subject to impoundment or immobilization pursuant to local ordinance. A watch list used by a law enforcement agency may contain only license plates of:

- stolen vehicles or stolen license plates;
- vehicles listed as part of an "Amber Alert;"
- vehicles associated with individuals for whom there are outstanding felony warrants; and
- vehicles associated with individuals for whom there is probable cause to believe they have committed a felony, but exigent circumstances prevent the immediate procurement of a warrant. The license plate of such a vehicle may not be included in a watch list for more than 48 hours.

A parking enforcement agency may use an ALPRS to enforce time restrictions on the use of parking spaces. Any data generated by such a system may only be used to detect whether a vehicle has violated a time restriction on parking. Unless such a violation is detected, the data may not be used, shared, or retained in the manner described above.

A transportation agency may use an ALPRS to provide real-time traffic information to the public, traffic modeling, and traffic studies. Any data generated by such a system may only be used to compute travel times or speeds of vehicles, and may not be:

- used to identify the owner or driver of a vehicle;
- shared with any other agency, entity, or person; or
- retained for more than 60 days.

A transportation agency may use an ALPRS for commercial vehicle systems at the WSP enforcement sites and weigh stations. Any noncommercial vehicle data may not be:

- used to identify the owner or driver of a vehicle;
- shared with any other agency, entity, or person; or
- retained for more than four hours.

Any agency may use an ALPRS to control access to secured areas. Any data generated by such a system may only be used for comparison against a list of vehicles authorized to enter the area. If access to the area is not granted, the data may not be:

- used to identify the owner or driver of a vehicle;
- shared with any other agency, entity, or person; or
- retained for more than four hours.

An agency may use an ALPRS only as allowed under the act, and an agency may not obtain or use information collected by a system operated by a third-party entity unless that entity follows the requirements of the act.

Legal Proceedings.

Information that is obtained in violation of the restrictions in the act is declared to be inadmissible in any civil or criminal case in any state court. There is an exception from this restriction in the case of an action for damages brought by a person claiming that their rights were violated by the use of an ALPRS that was used in violation of the restrictions in the act, but only when the permission of that person is granted.

A person who violates any of the restrictions in the act is subject to legal action for damages, which may be brought by any person claiming that a violation of the restrictions in the act has injured their business, person, or reputation. An injured person is entitled to actual damages, including mental pain and suffering, or liquidated damages of \$1,000. An injured person may also be awarded reasonable attorneys' fees and costs.

Reporting.

An agency that uses an ALPRS to locate vehicles on a watch list must annually report on its usage on the agency's public website. This report must include the:

- number of license plates scanned;
- source and categories of information included on watch lists used by the agency;
- number of confirmed matches and the number of tentative matches that upon further investigation did not correlate to an actual match;
- number of matches that resulted in arrest and prosecution;
- number of stolen vehicles and stolen license plates recovered due to use of the ALPRS; and
- number of vehicles impounded or immobilized due to use of the ALPRS.

Definitions.

"Agency" means the State of Washington, its state and local agencies and political subdivisions, and their respective employees and agents. "Automated license plate recognition system" or "system" means any system consisting of one or more cameras combined with OCR or other computer algorithms to convert images of license plates into computer-readable or human-readable characters. "Parking enforcement agency" means a public agency that enforces parking regulations. "Secured area" means an area, enclosed by clear boundaries, to which access is not open to the public and to which entry is only obtainable through specific access control points. "Watch list" means a list of license plate numbers to be compared against a license plate number obtained from an ALPRS, but does not include a list not used for comparison to license plate numbers obtained from an ALPRS.

The entirety of the act is created as a new chapter in Title 46 RCW.

Substitute Bill Compared to Original Bill:

The substitute bill broadens the allowable use of an ALPRS by transportation agencies to include traffic modeling and traffic studies. It also modifies the allowable use of data from an ALPRS by transportation agencies to allow the computing of travel times and traffic studies and allows such data to be retained for 60 days rather than four hours. Finally, the substitute bill allows transportation agencies to use an ALPRS for commercial vehicle systems at the WSP enforcement sites and weigh stations, while placing restrictions on the use and retention of the data.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill is important for privacy. Automated license plate recognition systems create a record of where people are, and there is currently no restriction on their use. This bill would allow for legitimate use, but not broader use. The bill continues to allow for law enforcement use, but does not allow for general use. It also prevents the indefinite retention of the information generated by the ALPRS.

The bill does not apply to the private sector, but creates a transparent standard for government. These systems are already in use, and anyone's data may already have been captured.

The law often lags behind technology. An ALPRS can be mobile or fixed, but the real concern is how many plates can be scanned. Newer systems can scan 1,800 plates per minute, as well as the surroundings. A system can cost as little as \$10,000, and one survey found that 23 percent of police departments are now using them.

Automated license plate recognition system technology is in use, and it can have a chilling effect on constitutional rights because the data it generates can be obtained through public record requests. The technology creates a record of a person's location by virtue of driving on a public road. Many current uses of the technology are allowed, and with the data being vulnerable, this bill would provide protection by creating requirements for the storage and retention of the data. Automated license plate recognition system data is already requested in lawsuits.

There are certainly modifications that can be made to the bill, and potentially other approaches that can be taken to the issue.

Address confidentiality programs protect people who are trying to get out of dangerous relationships and avoid a former partner. An ALPRS can be used to locate license plates, and then people who are trying to hide from domestic abuse.

An ALPRS is a potential mass surveillance system. It can help to determine people's interests and beliefs in all facets of their lives. If we allow the use of these systems, then we cannot allow the data to be retained.

(Opposed) An ALPRS allows for license plates to be looked-up in a more efficient fashion. No one is opposed to doing this manually, so why should people be opposed to doing it more efficiently through automation.

(Other) The City of Tacoma uses an ALPRS for parking enforcement. It needs a longer timeframe for data retention if it is going to continue to use the technology for parking enforcement and parking zones.

The WSP is concerned about the effect of this bill on commercial vehicle enforcement. There is a one-year requirement for data retention under federal law so that carrier safety can be determined. An ALPRS also allows for weigh-in-motion systems, rather than requiring all trucks to stop at weigh stations. The WSP has training requirements for users of an ALPRS.

The WSDOT uses ALPRS for traffic studies, and more than four hours for data retention is needed if this use is to continue. The WSDOT also wants to insure that photo tolls are exempt from the requirements of the bill.

Persons Testifying: (In support) Representative Appleton, prime sponsor; William Covington, University of Washington School of Law; Beth Hutchens; Elizabeth Smith, American Civil Liberties Union of Washington; Melanie Melanie; and Christopher Sheats, Seattle Community Technology Advisory Board.

(Opposed) James McMahon, Washington Association of Sheriffs and Police Chiefs.

(Other) Randall Lewis, City of Tacoma; Monica Alexander, Washington State Patrol; and Allison Camden, Washington State Department of Transportation.

Persons Signed In To Testify But Not Testifying: None.