
HOUSE BILL 1771

State of Washington

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2013 Regular Session

By Representatives Taylor, Shea, Overstreet, Condotta, Ryu, Scott, Pike, Blake, Schmick, Morris, Haler, MacEwen, Hope, Appleton, Goodman, Buys, Moscoso, Kristiansen, Upthegrove, and Carlyle

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1 AN ACT Relating to protecting Washington citizens from warrantless
2 surveillance, reducing liability, and establishing clear standards
3 under which agencies may utilize unmanned aerial vehicles; adding a new
4 chapter to Title 10 RCW; prescribing penalties; and declaring an
5 emergency.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** The legislature finds that technological
8 advances have provided new, unique equipment that may be utilized for
9 surveillance purposes. These technological advances often outpace
10 statutory protections and can lead to inconsistent or contradictory
11 interpretations between jurisdictions. The legislature finds that
12 regardless of application or size, the use of unmanned aerial vehicles,
13 without public debate or clear legal authority, creates uncertainty for
14 citizens and agencies throughout Washington state. As stated in the
15 congressional research service report entitled 'Integration of Drones
16 into Domestic Airspace,' "the extent of their potential domestic
17 application is bound only by human ingenuity. . .the full-scale
18 introduction of drones into U.S. skies will inevitably generate a host
19 of legal issues. . .With the ability to house high-powered cameras,

1 infrared sensors, facial recognition technology, and license plate
2 readers, some argue that drones present a substantial privacy risk."
3 The legislature finds that drones do present a substantial privacy risk
4 potentially contrary to the strong privacy protections enshrined in
5 Article I, section 7 of the Washington state Constitution that reads
6 "No person shall be disturbed in his private affairs, or his home
7 invaded, without authority of law."

8 The legislature further finds that the lack of clear statutory
9 authority for the use of unmanned aerial vehicles may increase
10 liability to state and local jurisdictions. It is the intent of the
11 legislature to provide clear standards for the lawful use of unmanned
12 aerial vehicles by state and local jurisdictions.

13 NEW SECTION. **Sec. 2.** The definitions in this section apply
14 throughout this chapter unless the context clearly requires otherwise.

15 (1) "Agency" means any agency, authority, board, department,
16 division, commission, institution, bureau, or like governmental entity
17 of the state or of any unit of local government including counties,
18 cities, towns, regional governments, and the departments thereof, and
19 includes constitutional officers, except as otherwise expressly
20 provided by law. "Agency" also means each component part of the
21 legislative, executive, or judicial branches of state and local
22 government, including each office, department, authority, post,
23 commission, committee, and each institution or board created by law to
24 exercise some regulatory or sovereign power or duty as distinguished
25 from purely advisory powers or duties. "Agency" also includes any
26 entity, whether public or private, with which any of the foregoing has
27 entered into a contractual relationship for the operation of a system
28 of personal information to accomplish an agency function.

29 (2) "Biometric identification system" is a system that collects
30 unique physical and behavioral characteristics including, but not
31 limited to, biographical data, facial photographs, fingerprints, and
32 iris scans to identify individuals.

33 (3) "Court of competent jurisdiction" includes any district court
34 of the United States or any United States court of appeals that has
35 jurisdiction over the offense being investigated; is in a district in
36 which the public unmanned aircraft will conduct a search or a court of

1 general jurisdiction authorized by the state of Washington to issue
2 search warrants.

3 (4) "Inspection warrant" is an order in writing, made in the name
4 of the state, signed by any judge of the court whose territorial
5 jurisdiction encompasses the property or premises to be inspected or
6 entered, and directed to a state or local official, commanding him or
7 her to enter and to conduct any inspection, testing, or collection of
8 samples for testing required or authorized by state or local law or
9 regulation.

10 (5) "Judicial officer" means a judge, magistrate, or other person
11 authorized to issue a criminal, inspection, or administrative search
12 warrant.

13 (6) "Law enforcement officer" means any general authority, limited
14 authority, or specially commissioned Washington peace officer or
15 federal peace officer as those terms are defined in RCW 10.93.020.

16 (7) "Person" includes any individual, corporation, partnership,
17 association, cooperative, limited liability company, trust, joint
18 venture, government, political subdivision, or any other legal or
19 commercial entity and any successor, representative, agent, agency, or
20 instrumentality thereof.

21 (8) "Personal information" means all information that (a)
22 describes, locates, or indexes anything about a person including, but
23 not limited to, his or her social security number, driver's license
24 number, agency-issued identification number, student identification
25 number, real or personal property holdings derived from tax returns,
26 and his or her education, financial transactions, medical history,
27 ancestry, religion, political ideology, or criminal or employment
28 record; (b) affords a basis for inferring personal characteristics,
29 such as finger and voice prints, photographs, or things done by or to
30 such person; and the record of his or her presence, registration, or
31 membership in an organization or activity, or admission to an
32 institution; or (c) describes, locates, or indexes anything about a
33 person including, but not limited to, intellectual property, trade
34 secrets, proprietary information, or operational information.

35 (9) "Public unmanned aircraft system" means an unmanned aircraft
36 and associated elements, including communications links, sensing
37 devices, and the components that control the unmanned aircraft,

1 operated by an agency or at the direction of or under the control of an
2 agency.

3 (10) "Sensing device" means a device capable of acquiring data or
4 information from its surroundings including, but not limited to,
5 cameras using visible, ultraviolet, or infrared frequencies,
6 microphones, thermal detectors, chemical detectors, radiation gauges,
7 and wireless receivers in any frequency.

8 (11) "Trade secrets" means all forms and types of financial,
9 business, scientific, technical, economic, or engineering information,
10 including patterns, plans, compilations, program devices, formulas,
11 designs, prototypes, methods, techniques, processes, procedures,
12 programs, or codes whether tangible or intangible, and whether or how
13 stored, compiled, or memorialized physically, electronically,
14 graphically, photographically, or in writing, which the owner has taken
15 reasonable measures to protect and has an independent economic value.

16 (12) "Unmanned aircraft" means an aircraft that is operated without
17 the possibility of human intervention from within or on the aircraft.

18 (13) "Unmanned aircraft system" means an unmanned aircraft and
19 associated elements, including communication links and components that
20 control the unmanned aircraft that are required for the pilot in
21 command to operate safely and efficiently in the national airspace
22 system.

23 NEW SECTION. **Sec. 3.** Except as otherwise specifically authorized
24 in this chapter, it shall be unlawful to operate a public unmanned
25 aircraft system or disclose personal information about any person
26 acquired through the operation of a public unmanned aircraft system.

27 NEW SECTION. **Sec. 4.** (1) No state agency or organization having
28 jurisdiction over criminal law enforcement or regulatory violations
29 including, but not limited to, the Washington state patrol, shall
30 procure a public unmanned aircraft system without the approval of the
31 legislature.

32 (2) No department of law enforcement of any city, county, or town
33 or any local agency having jurisdiction over criminal law enforcement
34 or regulatory violations shall procure a public unmanned aircraft
35 system without the approval of the governing body of such locality.

1 NEW SECTION. **Sec. 5.** All operations of a public unmanned aircraft
2 system or disclosure of personal information about any person acquired
3 through the operation of a public unmanned aircraft system shall be
4 conducted in such a way as to minimize the collection and disclosure of
5 personal information not authorized under this chapter.

6 NEW SECTION. **Sec. 6.** A public unmanned aircraft system may be
7 operated and personal information from such operation disclosed in
8 order to collect personal information only pursuant to a criminal
9 warrant issued by a court of competent jurisdiction or as otherwise
10 provided in this section.

11 (1) Each petition for a search warrant from a judicial officer to
12 permit the use of a public unmanned aircraft system and personal
13 information collected from such operation shall be made in writing,
14 upon oath or affirmation, to a judicial officer in a court of competent
15 jurisdiction for the geographic area in which a public unmanned
16 aircraft system is to be operated or where there is probable cause to
17 believe the offense for which the public unmanned aircraft system is
18 sought has been committed, is being committed, or will be committed.

19 (2) The law enforcement officer shall submit an affidavit that
20 shall include:

21 (a) The identity of the applicant and the identity of the agency
22 conducting the investigation;

23 (b) The identity of the individual and jurisdictional area for
24 which use of the public unmanned aircraft is being sought;

25 (c) Specific and articulable facts demonstrating probable cause to
26 believe that there is criminal activity and that the operation of the
27 public unmanned aircraft system will uncover evidence of such activity
28 or facts to support the finding that there is probable cause for
29 issuance of an administrative search warrant pursuant to applicable
30 requirements; and

31 (d) The name of the county or city where there is probable cause to
32 believe the offense for which use of the unmanned public aircraft
33 system is sought has been committed, is being committed, or will be
34 committed.

35 (3) If the judicial officer finds, based on the affidavit
36 submitted, that there is probable cause to believe that a crime has
37 been committed, is being committed, or will be committed and that there

1 is probable cause to believe the personal information likely to be
2 obtained from the use of the public unmanned aircraft system will be
3 evidence of the commission of such offense, the judicial officer may
4 issue a search warrant authorizing the use of the public unmanned
5 aircraft system. The search warrant shall authorize the collection of
6 personal information contained in or obtained from the public unmanned
7 aircraft system but shall not authorize the use of a biometric
8 identification system.

9 (4) Warrants shall not be issued for a period greater than forty-
10 eight hours. Extensions may be granted but shall be no longer than the
11 authorizing judicial officer deems necessary to achieve the purposes
12 for which it was granted and in no event for longer than thirty days.

13 (5) Within ten days of the execution of a search warrant, the
14 officer executing the warrant must serve a copy of the warrant upon the
15 person or persons upon whom personal information was collected except
16 notice may be delayed under section 7 of this act.

17 NEW SECTION. **Sec. 7.** A governmental entity acting under this
18 section may, when a warrant is sought, include in the petition a
19 request, which the court shall grant, for an order delaying the
20 notification required under section 6(5) of this act for a period not
21 to exceed ninety days if the court determines that there is a reason to
22 believe that notification of the existence of the warrant may have an
23 adverse result.

24 (1) An adverse result for the purposes of this section is:

- 25 (a) Placing the life or physical safety of an individual in danger;
- 26 (b) Causing a person to flee from prosecution;
- 27 (c) Causing the destruction of or tampering with evidence;
- 28 (d) Causing the intimidation of potential witnesses; or
- 29 (e) Jeopardizing an investigation or unduly delaying a trial.

30 (2) The governmental entity shall maintain a copy of certification.

31 (3) Extension of the delay of notification of up to ninety days
32 each may be granted by the court upon application or by certification
33 by a governmental entity.

34 (4) Upon expiration of the period of delay of notification under
35 subsection (1) or (3) of this section, the governmental entity shall
36 serve a copy of the warrant upon, or deliver it by registered or first-

1 class mail to, the person or persons upon whom personal information was
2 collected together with notice that:

3 (a) States with reasonable specificity the nature of the law
4 enforcement inquiry; and

5 (b) Informs the person or persons upon whom personal information
6 was collected (i) that notification was delayed; (ii) what governmental
7 entity or court made the certification or determination pursuant to
8 which that delay was made; and (iii) which provision of this section
9 allowed such delay.

10 NEW SECTION. **Sec. 8.** It shall be lawful under this section for
11 any law enforcement officer or other public official to operate a
12 public unmanned aircraft system and disclose personal information from
13 such operation if:

14 (1) Such officer reasonably determines that an emergency situation
15 exists that involves immediate danger of death or serious physical
16 injury to any person and:

17 (a) Requires operation of a public unmanned aircraft system before
18 a warrant authorizing such interception can, with due diligence, be
19 obtained;

20 (b) There are grounds upon which such a warrant could be entered to
21 authorize such operation; and

22 (c) An application for a warrant providing such operation is made
23 within forty-eight hours after the operation has occurred or begins to
24 occur.

25 (2) In the absence of a warrant, an operation of a public unmanned
26 aircraft system carried out under this subsection shall immediately
27 terminate when the personal information sought is obtained or when the
28 application for the warrant is denied, whichever is earlier.

29 (3) In the event such application for approval is denied, the
30 personal information obtained from the operation of a device shall be
31 treated as having been obtained in violation of this section and an
32 inventory shall be served on the person named in the application.

33 NEW SECTION. **Sec. 9.** A public unmanned aircraft system may be
34 operated and personal information from such operation disclosed in
35 order to collect information pursuant to administrative search warrant
36 or inspection warrant issued by a court of competent jurisdiction by

1 any judicial officer having authority to issue such warrants whose
2 territorial jurisdiction encompasses the area to be inspected or
3 entered or as otherwise provided in this section.

4 (1) Each petition for a warrant from a judicial officer to permit
5 the use of a public unmanned aircraft system and information collected
6 from such operation shall be made in writing, upon oath or affirmation,
7 to a judicial officer in a court of competent jurisdiction for the
8 geographic area in which a public unmanned aircraft system is to be
9 operated or where there is probable cause, supported by affidavit,
10 particularly describing the place, property, things, or persons to be
11 inspected, tested, or information collected and the purpose for which
12 the inspection, testing, or collection of information is to be made.

13 (2) Probable cause shall be deemed to exist if either:

14 (a) Reasonable legislative or administrative standards for
15 conducting such inspection, testing, or information collected are
16 satisfied with respect to the particular place, property, thing, or
17 person; or

18 (b) There is cause to believe that there is such a condition,
19 object, activity, or circumstance that legally justifies such
20 inspection, testing, or collection of information.

21 (3) The agency official shall submit an affidavit that shall
22 include the identity of the applicant and the identity of the agency
23 conducting the inspection.

24 (4) The supporting affidavit shall contain either a statement that
25 consent to the search and collection of information has been sought and
26 refused or facts or circumstances reasonably justifying the failure to
27 seek such consent in order to enforce effectively the safety and health
28 laws, regulations, or standards of the warrant based on legislative or
29 administrative standards for inspection.

30 (5) The affidavit shall contain factual allegations sufficient to
31 justify an independent determination by a judge that the search is
32 based on reasonable standards and the standards are being applied to a
33 particular area in a neutral and fair manner.

34 (6) The issuing judicial officer may examine the affiant under oath
35 or affirmation to verify the accuracy of any matter in the affidavit.

36 (7) Any warrant issued shall be effective for the time specified
37 therein, but not for a period of more than fifteen days unless extended
38 or renewed by the judicial officer who signed and issued the original

1 warrant. The warrant shall be executed and shall be returned to the
2 judicial officer by whom it was issued within the time specified in the
3 warrant or within the extended or renewed time. The return shall list
4 the information collected pursuant to the warrant. After the
5 expiration of such time, the warrant, unless executed, shall be void.

6 (8) No warrant shall be executed in the absence of the owner,
7 tenant, operator, or custodian of the premises unless the issuing
8 judicial official specifically authorizes that such authority is
9 reasonably necessary to affect the purposes of the law or regulation.
10 Entry pursuant to such a warrant shall not be made forcibly. The
11 issuing officer may authorize a forcible entry where the facts (a)
12 create a reasonable suspicion of immediate threat to the health or
13 safety of persons or to the environment or (b) establish that
14 reasonable attempts to serve a previous warrant have been unsuccessful.
15 If forcible entry is authorized, the warrant shall be issued jointly to
16 the applicant agency and a law enforcement officer shall accompany the
17 agency official during the execution of the warrant.

18 (9) No court of the state shall have jurisdiction to hear a
19 challenge to the warrant prior to its return to the issuing judicial
20 officer, except as a defense in a contempt proceeding or if the owner
21 or custodian of the place to be inspected submits a substantial
22 preliminary showing by affidavit and accompanied by proof that (a) a
23 statement included by the affiant in his or her affidavit for the
24 administrative search warrant was false and made knowingly and
25 intentionally or with reckless disregard for the truth and (b) the
26 false statement was necessary to the finding of probable cause. The
27 court may conduct in camera review as appropriate.

28 (10) After the warrant has been executed and returned to the
29 issuing judicial officer, the validity of the warrant may be reviewed
30 either as a defense to any notice of violation or by declaratory
31 judgment action brought in court. The review shall be confined to the
32 face of the warrant, affidavits, and supporting materials presented to
33 the issuing judicial officer. If the owner or custodian of the place
34 inspected submits a substantial showing by affidavit and accompanied by
35 proof that (a) a statement included in the warrant was false and made
36 knowingly and intentionally or with reckless disregard for the truth
37 and (b) the false statement was necessary to the finding of probable

1 cause, the reviewing court shall limit its inquiry to whether there is
2 substantial evidence in the record supporting the issuance of the
3 warrant and may conduct a de novo determination of probable cause.

4 NEW SECTION. **Sec. 10.** Whenever any personal information from a
5 public unmanned aircraft system has been acquired, no part of such
6 personal information and no evidence derived therefrom may be received
7 in evidence in any trial, hearing, or other proceeding in or before any
8 court, grand jury, department, officer, agency, regulatory body,
9 legislative committee, or other authority of the state or a political
10 subdivision thereof if the collection or disclosure of that personal
11 information would be in violation of this chapter.

12 NEW SECTION. **Sec. 11.** No personal information collected on an
13 individual or area other than the target that justified the issuance of
14 a search warrant may be used, copied, or disclosed for any purpose.
15 Such personal information shall be deleted as soon as possible, and in
16 no event later than twenty-four hours after collection.

17 NEW SECTION. **Sec. 12.** Personal information collected on any
18 individual or area specified in the warrant shall be deleted within
19 thirty days unless there is a reasonable belief that the personal
20 information is evidence of criminal activity or civil liability related
21 to the reason that allowed the use of the unmanned public aircraft
22 system.

23 NEW SECTION. **Sec. 13.** The disclosure or publication, without
24 authorization of a court, by a court officer, law enforcement officer,
25 or other person responsible for the administration of this section of
26 the existence of a search warrant issued pursuant to this section,
27 application for such search warrant, any affidavit filed in support of
28 such warrant, or any personal information obtained as a result of such
29 search warrant is punishable as a class C felony.

30 NEW SECTION. **Sec. 14.** Any use of unmanned aircraft systems shall
31 fully comply with all federal aviation administration requirements and
32 guidelines.

1 NEW SECTION. **Sec. 15.** By July 1st of each year, any judicial
2 officer who has authorized the issuance of a search warrant or
3 extension of a public unmanned aircraft system that expired during the
4 preceding year or who has denied approval during that year shall report
5 to the chief justice of the Washington supreme court or his or her
6 designee the following information:

7 (1) The fact that a warrant or extension was applied for;

8 (2) The kind of warrant or extension applied for;

9 (3) The fact that the warrant or extension was granted as applied
10 for, was modified, or was denied;

11 (4) The period of interceptions authorized by the order, and the
12 number and duration of any extensions of the order;

13 (5) The offense or purpose specified in the petition and the
14 probable cause giving rise to such warrant or extension of such
15 warrant; and

16 (6) The identity of the applying state agency applicant or law
17 enforcement officer, the agency making the application, and the
18 judicial officer authorizing the petition.

19 NEW SECTION. **Sec. 16.** By July 1st of each year, any law
20 enforcement agency who applied for a criminal search warrant for the
21 use of a public unmanned aircraft system shall report to the chief of
22 the Washington state patrol or his or her designee the following
23 information:

24 (1) The information required by section 15 of this act with respect
25 to each application for a search warrant or extension made during the
26 preceding calendar year;

27 (2) The general description of the information gathered under such
28 search warrant or extension including:

29 (a) The approximate nature and frequency of incriminating conduct
30 gathered;

31 (b) The approximate number of persons upon whom information was
32 gathered; and

33 (c) The approximate nature, amount, and cost of the manpower and
34 other resources used in the collection;

35 (3) The number of arrests resulting from information gathered under
36 such search warrant or extension and the offenses for which arrests
37 were made;

- 1 (4) The number of trials resulting from such information;
- 2 (5) The number of motions to suppress made with respect to such
3 information and the number granted or denied;
- 4 (6) The number of convictions resulting from such information and
5 the offenses for which the convictions were obtained and a general
6 assessment of the importance of the information; and
- 7 (7) The information required by section 15 of this act with respect
8 to search warrants or extensions obtained in the preceding calendar
9 year.

10 NEW SECTION. **Sec. 17.** By July 1st of each year, each state agency
11 that applied for an administrative search warrant or inspection warrant
12 or extension of a public unmanned aircraft system shall report to the
13 governor or his or her designee the following information:

- 14 (1) The fact that such a warrant or extension was applied for;
- 15 (2) The kind of order or extension applied for;
- 16 (3) The fact that the order or extension was granted as applied
17 for, was modified, or denied;
- 18 (4) The period of interceptions authorized by the order and the
19 number and duration of any extensions of the order;
- 20 (5) The identity of the applicant and state agency making the
21 petition and the judicial officer authorizing the petition;
- 22 (6) The probable cause giving rise to the issuance of the
23 administrative search warrant or inspection warrant in the petition or
24 extension of such warrant, including the conditions, object, activity,
25 or circumstance that legally justified such inspection, testing, or
26 collection of information;
- 27 (7) The general description of the information gathered under such
28 warrant or extension, including:
 - 29 (a) The approximate nature and frequency of the information
30 gathered, collected, or inspected from such place, property, things, or
31 persons;
 - 32 (b) The approximate number of persons upon whom personal
33 information was gathered; and
 - 34 (c) The approximate nature, amount, and cost of the manpower and
35 other resources used in the collection or inspection; and
- 36 (8) If applicable, the identity of the judicial officer authorizing

1 forcible entry, the identity of the law enforcement officer who
2 assisted the agency official, and information justifying the issuance
3 of the forcible entry order.

4 NEW SECTION. **Sec. 18.** By December 1st of each year, the chief
5 justice of the Washington supreme court or his or her designee, the
6 chief of the Washington state patrol or his or her designee, and the
7 governor or his or her designee shall transmit to the legislature a
8 full and complete report concerning the number of applications for
9 search warrants authorizing or approving operation of a public unmanned
10 aircraft system or disclosure of information or data from the operation
11 of a public unmanned aircraft system pursuant to this section and the
12 number of search warrants and extensions granted or denied pursuant to
13 this section during the preceding calendar year. Such report shall
14 include a summary and analysis of all the data required to be filed
15 with the Washington supreme court, the Washington state patrol, and the
16 governor.

17 NEW SECTION. **Sec. 19.** Excluding personally identifiable
18 information, records required by sections 15 through 18 of this act
19 shall be open to public disclosure under the Washington public records
20 act, chapter 42.56 RCW.

21 NEW SECTION. **Sec. 20.** The governing body of any locality
22 permitting the use of public unmanned aircraft systems shall publish
23 publicly available written policies and procedures for the use of
24 public unmanned aircraft systems by the law enforcement agencies of
25 such locality.

26 NEW SECTION. **Sec. 21.** The governing body of any locality
27 permitting the use of public unmanned aircraft systems shall, by
28 ordinance, require the law enforcement agency of such locality
29 operating a public unmanned aircraft system to maintain records of each
30 use of a public unmanned aircraft system, including the date, time,
31 location of use, target of data collection, type of data collected, the
32 justification for the use, the operator of the public unmanned aircraft
33 system, and the person who authorized the use.

1 NEW SECTION. **Sec. 22.** The governing body of any locality
2 permitting the use of a public unmanned aircraft system shall conduct
3 an annual comprehensive audit on the operation of all public unmanned
4 aircraft systems, including the law enforcement log book, corresponding
5 emergency telephone calls, warrants, and other documentation of the
6 justification for use and data collected. The audit shall be publicly
7 available. The audit shall include:

8 (1) The number of uses of a public unmanned aircraft system
9 organized by types of incidents and types of justification for use;

10 (2) The number of crime investigations aided by the use and how the
11 use was helpful to the investigation;

12 (3) The number of uses of a public unmanned aircraft system for
13 reasons other than criminal investigations and how the use was helpful;

14 (4) The frequency and type of data collected for individuals or
15 areas other than targets;

16 (5) The total cost of the public unmanned aircraft system; and

17 (6) Additional information and analysis the governing body deems
18 useful.

19 NEW SECTION. **Sec. 23.** The governing body of any locality
20 permitting the use of a public unmanned aircraft system shall, upon
21 completion of the publicly available annual audit on the use of public
22 unmanned aircraft systems, review the use of public unmanned aircraft
23 systems and consider both the benefits and risks to privacy before
24 authorizing the continued operation of a public unmanned aircraft
25 system in such locality.

26 NEW SECTION. **Sec. 24.** Sections 1 through 23 of this act
27 constitute a new chapter in Title 10 RCW.

28 NEW SECTION. **Sec. 25.** This act is necessary for the immediate
29 preservation of the public peace, health, or safety, or support of the
30 state government and its existing public institutions, and takes effect
31 immediately.

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