
HOUSE BILL 2016

State of Washington

64th Legislature

2015 Regular Session

By Representatives Klippert and Sullivan; by request of Office of the Chief Information Officer

Read first time 02/06/15. Referred to Committee on Public Safety.

1 AN ACT Relating to unmanned aerial vehicles; and adding new
2 sections to chapter 9.73 RCW.

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

4 NEW SECTION. **Sec. 1.** Washington is a leader in responsible,
5 effective, innovative government and the industries that help make
6 this possible. The legislature finds that advances in unmanned aerial
7 vehicle technology have created valuable opportunities for government
8 agencies to carry out their missions more efficiently, cost-
9 effectively, precisely, and comprehensively. With these significant
10 benefits in mind, the legislature finds government agencies should be
11 permitted to use unmanned aerial vehicles and that certain limited
12 additional protections are appropriate to ensure that collection of
13 data by unmanned aerial vehicles is properly balanced against the
14 privacy interests of Washington state residents. These additional
15 limitations are intended to supplement the already existing
16 protections afforded by the Article I, section 7 of the state
17 Constitution, and are not intended to change its meaning or
18 interpretation. Consequently, this act imposes limitations on the
19 collection of information regarding individuals on private property.

1 NEW SECTION. **Sec. 2.** The definitions in this section apply
2 throughout this subchapter unless the context clearly requires
3 otherwise.

4 (1)(a) "Agency" means:

5 (i) The state of Washington, its agencies and political
6 subdivisions, a city, county, or municipal authority, excluding the
7 national guard in Title 32 U.S.C. service.

8 (ii) Any entity or individual, whether public or private, with
9 whom any of the entities identified in (a)(i) of this subsection has
10 entered into a contractual relationship or any other type of
11 relationship, with or without consideration, for purpose of operating
12 an unmanned aerial vehicle.

13 (b) An agency is considered and treated as a law enforcement
14 agency for the purpose of this subchapter when the agency is engaged
15 in an administrative, civil, or criminal investigation and/or
16 prosecution of an individual or entity for violation of a statute,
17 rule, regulation, or ordinance. An agency is not considered a law
18 enforcement agency under this subsection when it is lawfully engaged
19 in a function other than to undertake an administrative, civil, or
20 criminal investigation and/or prosecution of an individual, and where
21 it takes no steps beyond those necessary to discharge that function
22 or functions.

23 (2) "Court of competent jurisdiction" means any district or
24 magistrate court of the United States, or a court of general
25 jurisdiction authorized by the state of Washington to issue search
26 warrants.

27 (3) "Governing body" means the council, commission, board, or
28 other controlling body of an agency in which legislative powers are
29 vested, except that for a state agency for which there is no
30 governing body other than the legislature, "governing body" means the
31 chief executive officer responsible for the governance of the agency.

32 (4) "Unmanned aerial vehicle" means an aircraft that is operated
33 without the possibility of human intervention from on or within the
34 aircraft.

35 NEW SECTION. **Sec. 3.** Any agency, not acting as a law
36 enforcement agency, or the agency's employee, officer, or agent may
37 procure or use an unmanned aerial vehicle, subject to the following
38 conditions:

1 (1) Prior to using an unmanned aerial vehicle, an agency's
2 governing body must develop and make publicly available, through the
3 web site described in subsection (6) of this section, a written
4 statement:

5 (a) Describing the purposes for using an unmanned aerial vehicle
6 and, if applicable, any agency program or study pursuant to which it
7 intends to use the unmanned aerial vehicle;

8 (b) Describing categories of information, if any, that the agency
9 intends to collect during the operation of such unmanned aerial
10 vehicle, how the collection of such information furthers the agency's
11 purposes stated pursuant to (a) of this subsection, and how the
12 agency plans to use such information;

13 (c) Establishing policies and procedures for minimizing the
14 collection of information not specified in (b) of this subsection,
15 including personal information;

16 (d) Establishing policies and procedures to prevent unauthorized
17 access to personal information, which may be collected through the
18 agency's use of unmanned aerial vehicles, and which policies and
19 procedures may include technical measures such as encryption,
20 hashing, anonymization, and/or deidentification of collected
21 information;

22 (e) Identifying the unique registration number the agency has
23 affixed, or has previously been affixed, including by another agency,
24 to the unmanned aerial vehicle it is intending to use; and

25 (f) Identifying a point of contact for citizen complaints and
26 concerns regarding the agency's use and operation of a unmanned
27 aerial vehicle.

28 (2) Prior to using an unmanned aerial vehicle, an agency need not
29 obtain a warrant or other order from a court of competent
30 jurisdiction unless required by Article I, section 7 of the state
31 Constitution, or by another applicable law or rule. Such order shall
32 be issued by a court of competent jurisdiction if the agency, upon
33 application to a court of competent jurisdiction, shows by clear and
34 convincing evidence that (a) the collection of the information was
35 unintentional or inadvertent, (b) the agency followed the
36 minimization policies and protocols identified in subsection (1)(d)
37 of this section, and (c) it has a compelling interest in use of the
38 information. If the agency intends to use the information in the
39 agency's capacity as a law enforcement agency, or if a law
40 enforcement agency requests such information, the law enforcement

1 agency must comply with section 4 of this act. If an agency
2 inadvertently or unintentionally collects information of an
3 individual as a result of an intrusion on the private affairs of a
4 person, as defined by Article I, section 7 of the state Constitution,
5 the agency may not use such information for any purpose, unless it
6 has complied with subsection (1) of this section and prior to use of
7 such inadvertently or unintentionally collected information, obtained
8 an order from a court of competent jurisdiction permitting the use of
9 such information.

10 (3) An agency must maintain records identifying each use of an
11 unmanned aerial vehicle. The records must include:

- 12 (a) Operator name;
- 13 (b) Identity of the agency;
- 14 (c) Date and time of flight;
- 15 (d) Categories of information collected for each use;
- 16 (e) The purpose of using the unmanned aerial vehicle; and
- 17 (f) Whether an order was obtained prior to use.

18 (4) An agency may use an unmanned aerial vehicle for training as
19 long as the unmanned aerial vehicle does not collect personal
20 information without the specific written consent of the individuals'
21 whose information is collected.

22 (5) For the purposes of this section, "personal information" has
23 the same meaning as defined in RCW 19.255.010(5).

24 (6) Within one hundred eighty days of the effective date of this
25 section, the office of the chief information officer shall construct
26 a web site publicly listing every agency statement mandated by
27 subsection (1) of this section. The web site shall be easily
28 accessible by the public and a hyperlink to this web site shall
29 appear on <http://access.wa.gov>, or other similar web site, if this
30 web site is altered or ceases to exist.

31 NEW SECTION. **Sec. 4.** (1) A law enforcement agency may procure
32 and use an unmanned aerial vehicle to collect information in
33 furtherance of an administrative, civil, or criminal investigation
34 and/or prosecution of an individual or entity for violation of a
35 statute, rule, regulation, or ordinance.

36 (2) Prior to using an unmanned aerial vehicle, a law enforcement
37 agency must either obtain a warrant supported by probable cause in
38 the case of a criminal investigation or prosecution or obtain an

1 order from a court of competent jurisdiction in the case of a civil
2 or administrative investigation or prosecution, if the:

3 (a) Use of an unmanned aerial vehicle without a warrant would
4 constitute an intrusion on the private affairs of an individual as
5 defined by Article I, section 7 of the state Constitution or
6 otherwise required by any other applicable law or rule;

7 (b) Law enforcement agency seeks to obtain information from an
8 agency that collected information using an unmanned aerial vehicle
9 pursuant to section 3 of this act, without using the information
10 collected by the agency as evidence supporting application for the
11 warrant or order;

12 (c) Law enforcement agency collects data regarding any individual
13 or individuals using an unmanned aerial vehicle when such individual
14 or individuals are located on private property without prior consent:

15 (i) For a total of sixty minutes or more in any twenty-four hour
16 period of time; or

17 (ii) On more than three instances in any seventy-two hour period
18 of time.

19 (3) A law enforcement agency may apply for the warrant or order
20 specified in this section in the superior court of any county in
21 which the law enforcement agency intends to collect information with
22 an unmanned aerial vehicle or the superior court of Thurston county.
23 The superior court is authorized to and shall issue a warrant or
24 order upon a sufficient showing from the law enforcement agency.

25 (4) A law enforcement agency engaged in an administrative or
26 civil investigation or prosecution seeking to use an unmanned aerial
27 vehicle pursuant to subsection (2) of this section must present to a
28 court of competent jurisdiction an application setting forth specific
29 and articulable facts showing that there are reasonable grounds
30 showing a violation of a law, rule, regulation, or ordinance, and
31 show by clear and convincing evidence that the information or
32 evidence to be collected by the unmanned aerial vehicle (a) cannot be
33 obtained by any other reasonable alternatives, taking into account
34 cost and safety; (b) constitutes evidence of a violation of a law,
35 rule, regulation, or ordinance; and (c) would be limited to the
36 information sought to be collected. Upon such showing, the court of
37 competent jurisdiction to which the application is made must grant
38 the application and issue the order sought.

39 (5) A law enforcement agency may, when a warrant is sought,
40 include in the petition a request for an order delaying the initial

1 notification for a period not to exceed ninety days, which order
2 shall be granted if the court determines that there is a reason to
3 believe that notification of the use of an unmanned aerial vehicle
4 may:

- 5 (a) Place the life or physical safety of an individual in danger;
- 6 (b) Cause a person to flee from prosecution;
- 7 (c) Cause the destruction of or tampering with evidence;
- 8 (d) Cause the intimidation of potential witnesses; or
- 9 (e) Jeopardize an investigation or unduly delay a trial.

10 (6) Upon application and certification by the law enforcement
11 agency that one of the conditions in subsection (5) of this section
12 exists, the court issuing the warrant may grant an extension of the
13 notification deadline by up to ninety days at a time, with more than
14 one extension available. Upon expiration of the period of delay of
15 notification under subsection (5) of this section, the law
16 enforcement agency may serve a copy of the warrant upon, or deliver
17 it by registered or first-class mail, to the person whose information
18 was collected by use of the unmanned aerial vehicle. The notification
19 must also:

20 (a) State with reasonable specificity the nature of the law
21 enforcement inquiry; and

22 (b) Inform the individual whose information was collected by use
23 of an unmanned aerial vehicle: (i) If notification was delayed, and,
24 if so, for how long; (ii) what governmental entity or court made the
25 certification or determination pursuant to which that delay was made;
26 and (iii) which provision of this section allowed such delay.

27 (7) Prior to use of an unmanned aerial vehicle, the law
28 enforcement agency must:

29 (a) Affix a unique identifier registration number or confirm that
30 a unique identifier registration number has already been affixed to
31 the unmanned aerial vehicle;

32 (b) Identify and make publicly available, including on the law
33 enforcement agency's web site, an individual point of contact for
34 citizen complaints and concerns; and

35 (c) Establish policies and procedures to minimize the collection
36 of information outside the scope of the data sought by the use of an
37 unmanned aerial vehicle or the collection of information unnecessary
38 for the purpose of the use of the unmanned aerial vehicle.

1 NEW SECTION. **Sec. 5.** An agency need not comply with section
2 3(1) of this act or obtain a warrant or order from a court of
3 competent jurisdiction prior to using an unmanned aerial vehicle:

4 (1) In response to or to counter a high risk of a terrorist
5 attack;

6 (2) If the agency has a reasonable belief that use of an unmanned
7 aerial vehicle will prevent imminent harm to life or property, or the
8 destruction of evidence;

9 (3) If the agency is attempting to locate a missing person;

10 (4) For traffic crash scene photography;

11 (5) In response to an emergency or disaster for which the
12 governor has proclaimed a state of emergency under RCW 43.06.010(12);

13 (6) For discovering, locating, observing, and preventing fires;
14 or

15 (7) For military training or emergency response in Titles 32 or
16 10 U.S.C.

17 NEW SECTION. **Sec. 6.** Any agency that knowingly violates this
18 subchapter is subject to legal action for damages, to be brought by
19 any person claiming that a violation of this subchapter has injured
20 his or her business, his or her person, or his or her reputation. A
21 person so injured is entitled to actual damages. In addition, the
22 individual is entitled to reasonable attorneys' fees and other costs
23 of litigation.

24 NEW SECTION. **Sec. 7.** Any use of an unmanned aerial vehicle must
25 fully comply with all applicable federal aviation administration
26 regulations.

27 NEW SECTION. **Sec. 8.** Nothing in this act abridges, reduces,
28 restricts, or prohibits an officer, employee, or agent of the United
29 States armed forces, or the agent of the United States armed forces
30 to include the national guard in Title 32 U.S.C. service from
31 operating an unmanned aerial vehicle.

32 NEW SECTION. **Sec. 9.** If any provision of this act or its
33 application to any person or circumstance is held invalid, the
34 remainder of the act or the application of the provision to other
35 persons or circumstances is not affected.

1 NEW SECTION. **Sec. 10.** Sections 1 through 8 of this act are each
2 added to chapter 9.73 RCW and codified with the subchapter heading of
3 "unmanned aerial vehicles."

--- END ---