
Public Safety Committee

HB 2016

Brief Description: Concerning unmanned aerial vehicles.

Sponsors: Representatives Klippert and Sullivan; by request of Office of the Chief Information Officer.

Brief Summary of Bill

- Requires an agency, not acting as a law enforcement agency (LEA), prior to use of a unmanned aerial vehicle (UAV), to develop a public statement: (1) describing the purpose for the UAV; (2) establishing a policy surrounding the information collected and the use of such information; and (3) identifying a point of contact for citizen complaints.
- Provides that an agency, not acting as a LEA, need not obtain a warrant for UAV use unless required to do so by the state Constitution and establishes criteria for obtaining such a warrant.
- Establishes requirements for use of unintentionally collected information and requires an agency to maintain records relating to all UAV use.
- Authorizes an agency, not acting as a LEA, to use UAVs for training purposes.
- Authorizes a LEA to use UAVs for administrative use, civil or criminal investigations, and for prosecutions.
- Requires a LEA to obtain a warrant, in certain situations, prior to using an UAV.
- Requires a LEA to: (1) mark the UAVs being used; (2) establish a policy to minimize collection of information; and (3) identify a point of contact for citizen complaints.
- Provides limited circumstances when an agency is not required to comply with its written policies or obtain a warrant for UAV use.
- Subjects an agency that knowingly violates the act to legal action for damages.

Hearing Date: 2/18/15

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.

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Background:

Unmanned Aircraft Systems.

An unmanned aircraft system (UAS) is an unmanned aircraft (UA) and all of the associated support equipment necessary to operate the UA. The UA is the flying portion of the system, flown by a pilot via a ground control system, or autonomously through use of an on-board computer, communication links, and any additional equipment. The Federal Aviation Administration (FAA) first authorized the use of UAs in the National Airspace System (NAS) in 1990.

Today, UAs are flying in the NAS under controlled conditions, and are involved in border and port surveillance, scientific research and environmental monitoring, uses by law enforcement agencies, state universities' research, and various other missions for government entities. Operations range from ground level to above 50,000 feet, depending on the specific type of aircraft. Currently, UAS operations are not authorized in Class B airspace, which exists over major urban areas and contains the highest density of manned aircraft in the NAS.

Constitution Limitations.

The Fourth Amendment of the United States Constitution protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." Article 1, section 7 of the Washington State Constitution provides, "No person shall be disturbed in his private affairs, or his home invaded, without authority of law." These provisions have been interpreted by courts to prohibit the government or a state actor from conducting certain searches of individuals without a warrant issued by a court of competent jurisdiction. This prohibition is enforced by excluding evidence obtained in violation of the warrant requirement, unless an exception applies. However, many kinds of government surveillance are not considered a search requiring a warrant under the federal or state Constitution. This may include surveillance of activities occurring in open fields or in plain view, and sometimes, the government's acquisition of information from a third-party. Congress and state legislatures may choose to establish stronger regulations on government surveillance than the floor established by either the federal or states constitutions.

Summary of Bill:

Agency Uses (Non-Law Enforcement).

Any agency, not acting as a law enforcement agency (LEA), may procure or use a UAV. However, prior to using the UAV, the agency must develop and make publicly available a written statement:

- describing the purposes for using a UAV;
- describing the categories of information that the agency intends to collect, how it furthers the agencies purposes, and how it will use the information;
- establishing a policy for minimizing the collection of personal information;
- establishing a policy to prevent unauthorized access to personal information collected by the UAV;
- identifying a unique registration number affixed to the UAV; and
- identifying a point of contact for citizen complaints.

An agency, not acting as a LEA, does not need to obtain a warrant prior to use of a UAV unless required by Article 1, section 7 of the state Constitution. In order to obtain such a warrant, the agency must show by clear and convincing evidence that:

- the collection of the information was unintentional;
- the agency followed its minimization protocols; and
- the agency has a compelling interest in use of the information.

If the agency unintentionally collects information in violation of Article 1, section 7 of the state Constitution, the agency may not use the information for any purpose unless it has followed its written policies regarding notice to the public, minimization of collection, etc., and prior to use of the information the agency obtains an order from a court allowing the use of the information.

Agencies must maintain records relating to each use of a UAV. Agencies may use UAVs for training purposes as long as the UAV does not collect peoples' personal information without consent.

Personal information means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted: Social Security number, driver's license number or Washington identification card number, account, credit, or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial account.

Law Enforcement Uses for Criminal or Civil Law Enforcement Investigations.

A LEA may procure and use a UAV for administrative, civil or criminal investigation, and prosecution of an individual or an entity.

Prior to use of a UAV, a LEA must obtain a warrant (in the case of a criminal investigation) or a court order (in the case of a civil or administrative investigation) if:

- use of the UAV without a warrant would violate Article 1, section 7 of the state Constitution;
- the agency seeks information collected by another agency that was not acting as a LEA;
- the agency collects data regarding individuals located on private property without prior consent for a total of 60 minutes in a 24-hour period or on more than three occasions in any 72-hour period.

Prior to use of a UAV, a LEA conducting an administrative or civil investigation must obtain an order from a court. In order to obtain the order, the agency must present an application setting forth:

- specific and articulable facts showing that there are reasonable grounds showing a violation of a law, rule, or regulation;
- clear and convincing evidence that the information to be collected by the UAV cannot be obtained by other reasonable alternatives, is evidence of a violation of the law, rule, or regulation, and would be limited to the information sought to be collected.

A LEA may request an order delaying notification of the warrant under certain circumstances.

Prior to use, a LEA must do the following:

- affix a unique registration number to the UAV;
- identify and make publicly available an individual point of contact for citizen complaints and concerns; and
- establish policies and procedures to minimize collection of information.

Other Agency Uses.

An agency need not comply with its written policies regarding notice to the public, minimization of collection, etc. and need not obtain a warrant prior to use of a UAV in the following circumstances:

- in response to a terrorist attack;
- if the agency has a reasonable belief that use of the UAV will prevent imminent harm to life or property or destruction of evidence;
- in an attempt to locate a missing person;
- for traffic crash scene photography;
- in response to a proclaimed state of emergency;
- for discovering and preventing forest fires; and
- for military training or emergency response.

Private Cause of Action.

An agency that knowingly violates the act is subject to a legal action for damages by a person who suffers injury to his or her business, person, or reputation.

Appropriation: None.

Fiscal Note: Available.

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