

SHB 1771 - H AMD 337

By Representative Taylor

NOT CONSIDERED

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that technological
4 advances have provided new, unique equipment that may be utilized for
5 surveillance purposes. These technological advances often outpace
6 statutory protections and can lead to inconsistent or contradictory
7 interpretations between jurisdictions. The legislature finds that
8 regardless of application or size, the use of unmanned aerial vehicles,
9 without public debate or clear legal authority, creates uncertainty for
10 citizens and agencies throughout Washington state. As stated in the
11 congressional research service report entitled 'Integration of Drones
12 into Domestic Airspace,' "the extent of their potential domestic
13 application is bound only by human ingenuity. . .the full-scale
14 introduction of drones into U.S. skies will inevitably generate a host
15 of legal issues. . .With the ability to house high-powered cameras,
16 infrared sensors, facial recognition technology, and license plate
17 readers, some argue that drones present a substantial privacy risk."
18 The legislature finds that drones do present a substantial privacy risk
19 potentially contrary to the strong privacy protections enshrined in
20 Article I, section 7 of the Washington state Constitution that reads
21 "No person shall be disturbed in his private affairs, or his home
22 invaded, without authority of law."

23 The legislature further finds that the lack of clear statutory
24 authority for the use of unmanned aerial vehicles may increase
25 liability to state and local jurisdictions. It is the intent of the
26 legislature to provide clear standards for the lawful use of unmanned
27 aerial vehicles by state and local jurisdictions.

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

1 (1) "Agency" means any agency, authority, board, department,
2 division, commission, institution, bureau, or like governmental entity
3 of the state, except the Washington national guard in Title 32 U.S.C.
4 status, or of any unit of local government including counties, cities,
5 towns, regional governments, and the departments thereof, and includes
6 constitutional officers, except as otherwise expressly provided by law.
7 "Agency" also means each component part of the legislative, executive,
8 or judicial branches of state and local government, including each
9 office, department, authority, post, commission, committee, and each
10 institution or board created by law to exercise some regulatory or
11 sovereign power or duty as distinguished from purely advisory powers or
12 duties. "Agency" also includes any entity, whether public or private,
13 with which any of the foregoing has entered into a contractual
14 relationship for the operation of a system of personal information to
15 accomplish an agency function.

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

20 (3) "Court of competent jurisdiction" includes any district court
21 of the United States or any United States court of appeals that has
22 jurisdiction over the offense being investigated; is in a district in
23 which the public unmanned aircraft will conduct a search or a court of
24 general jurisdiction authorized by the state of Washington to issue
25 search warrants.

26 (4) "Judicial officer" means a judge, magistrate, or other person
27 authorized to issue a search warrant.

28 (5) "Law enforcement officer" means any general authority, limited
29 authority, or specially commissioned Washington peace officer or
30 federal peace officer as those terms are defined in RCW 10.93.020.

31 (6) "Person" includes any individual, corporation, partnership,
32 association, cooperative, limited liability company, trust, joint
33 venture, government, political subdivision, or any other legal or
34 commercial entity and any successor, representative, agent, agency, or
35 instrumentality thereof.

36 (7) "Personal information" means all information that (a)
37 describes, locates, or indexes anything about a person including, but
38 not limited to, his or her social security number, driver's license

1 number, agency-issued identification number, student identification
2 number, real or personal property holdings derived from tax returns,
3 and his or her education, financial transactions, medical history,
4 ancestry, religion, political ideology, or criminal or employment
5 record; (b) affords a basis for inferring personal characteristics,
6 such as finger and voice prints, photographs, or things done by or to
7 such person; and the record of his or her presence, registration, or
8 membership in an organization or activity, or admission to an
9 institution; or (c) describes, locates, or indexes anything about a
10 person including, but not limited to, intellectual property, trade
11 secrets, proprietary information, or operational information.

12 (8) "Public unmanned aircraft system" means an unmanned aircraft
13 and associated elements, including communications links, sensing
14 devices, and the components that control the unmanned aircraft,
15 operated by an agency or at the direction of or under the control of an
16 agency.

17 (9) "Sensing device" means a device capable of acquiring data or
18 information from its surroundings including, but not limited to,
19 cameras using visible, ultraviolet, or infrared frequencies,
20 microphones, thermal detectors, chemical detectors, radiation gauges,
21 and wireless receivers in any frequency.

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

30 (11) "Unmanned aircraft" means an aircraft that is operated without
31 the possibility of human intervention from within or on the aircraft.

32 (12) "Unmanned aircraft system" means an unmanned aircraft and
33 associated elements, including communication links and components that
34 control the unmanned aircraft that are required for the pilot in
35 command to operate safely and efficiently in the national airspace
36 system.

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

5 NEW SECTION. **Sec. 4.** (1) No state agency or organization having
6 jurisdiction over criminal law enforcement or regulatory violations
7 including, but not limited to, the Washington state patrol, shall
8 procure a public unmanned aircraft system without the explicit approval
9 of the legislature, given for that specific public unmanned aircraft
10 system to be used for a specific purpose.

11 (2) No local agency having jurisdiction over criminal law
12 enforcement or regulatory violations shall procure a public unmanned
13 aircraft system without the explicit approval of the governing body of
14 such locality, given for that specific public unmanned aircraft system
15 to be used for a specific purpose.

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

21 NEW SECTION. **Sec. 6.** A public unmanned aircraft system may be
22 operated and personal information from such operation disclosed in
23 order to collect personal information pursuant to a search warrant
24 issued by a court of competent jurisdiction as provided in this
25 section.

26 (1) Each petition for a search warrant from a judicial officer to
27 permit the use of a public unmanned aircraft system and personal
28 information collected from such operation shall be made in writing,
29 upon oath or affirmation, to a judicial officer in a court of competent
30 jurisdiction for the geographic area in which a public unmanned
31 aircraft system is to be operated or where there is probable cause to
32 believe the offense for which the public unmanned aircraft system is
33 sought has been committed, is being committed, or will be committed.

34 (2) The law enforcement officer shall submit an affidavit that
35 shall include:

1 (a) The identity of the applicant and the identity of the agency
2 conducting the investigation;

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

5 (c) Specific and articulable facts demonstrating probable cause to
6 believe that there has been, is, or will be criminal activity and that
7 the operation of the public unmanned aircraft system will uncover
8 evidence of such activity or facts to support the finding that there is
9 probable cause for issuance of a search warrant pursuant to applicable
10 requirements; and

11 (d) A statement that other methods of data collection have been
12 investigated and found to be either cost prohibitive or pose an
13 unacceptable safety risk to a law enforcement officer or to the public.

14 (3) If the judicial officer finds, based on the affidavit
15 submitted, there is probable cause to believe a crime has been
16 committed, is being committed, or will be committed and there is
17 probable cause to believe the personal information likely to be
18 obtained from the use of the public unmanned aircraft system will be
19 evidence of the commission of such offense, the judicial officer may
20 issue a search warrant authorizing the use of the public unmanned
21 aircraft system. The search warrant shall authorize the collection of
22 personal information contained in or obtained from the public unmanned
23 aircraft system but shall not authorize the use of a biometric
24 identification system.

25 (4) Warrants shall not be issued for a period greater than ten
26 days. Extensions may be granted but shall be no longer than the
27 authorizing judicial officer deems necessary to achieve the purposes
28 for which it was granted and in no event for longer than thirty days.

29 (5) Within ten days of the execution of a search warrant, the
30 officer executing the warrant must serve a copy of the warrant upon the
31 target of the warrant, except if notice is delayed pursuant to section
32 7 of this act.

33 NEW SECTION. **Sec. 7.** A governmental entity acting under this
34 section may, when a warrant is sought, include in the petition a
35 request, which the court shall grant, for an order delaying the
36 notification required under section 6(5) of this act for a period not

1 to exceed ninety days if the court determines that there is a reason to
2 believe that notification of the existence of the warrant may have an
3 adverse result.

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

5 (a) Placing the life or physical safety of an individual in danger;

6 (b) Causing a person to flee from prosecution;

7 (c) Causing the destruction of or tampering with evidence;

8 (d) Causing the intimidation of potential witnesses; or

9 (e) Jeopardizing an investigation or unduly delaying a trial.

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

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

14 (4) Upon expiration of the period of delay of notification under
15 subsection (1) or (3) of this section, the governmental entity shall
16 serve a copy of the warrant upon, or deliver it by registered or first-
17 class mail to, the target of the warrant, together with notice that:

18 (a) States with reasonable specificity the nature of the law
19 enforcement inquiry; and

20 (b) Informs the target of the warrant (i) that notification was
21 delayed; (ii) what governmental entity or court made the certification
22 or determination pursuant to which that delay was made; and (iii) which
23 provision of this section allowed such delay.

24 NEW SECTION. **Sec. 8.** (1) It shall be lawful under this section
25 for any law enforcement officer or other public official to operate a
26 public unmanned aircraft system and disclose personal information from
27 such operation if such officer reasonably determines that an emergency
28 situation exists that involves criminal activity and presents immediate
29 danger of death or serious physical injury to any person and:

30 (a) Requires operation of a public unmanned aircraft system before
31 a warrant authorizing such interception can, with due diligence, be
32 obtained;

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

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

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

5 (3) In the event such application for approval is denied, the
6 personal information obtained from the operation of a device shall be
7 treated as having been obtained in violation of this chapter, except
8 for purposes of section 12 of this act, and an inventory shall be
9 served on the person named in the application.

10 NEW SECTION. **Sec. 9.** (1) It shall be lawful under this section
11 for 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 (a) Such officer reasonably determines that an emergency situation
15 exists that:

16 (i) Does not involve criminal activity;

17 (ii) Presents immediate danger of death or serious physical injury
18 to any person; and

19 (iii) Requires operation of a public unmanned aircraft system to
20 reduce the danger of death or serious physical injury;

21 (b) The official reasonably determines that the operation does not
22 intend to collect personal information and is unlikely to accidentally
23 collect personal information, and such operation is not for purposes of
24 regulatory enforcement;

25 (c) The operation is part of a training exercise conducted on a
26 military base and the public unmanned aircraft system does not collect
27 personal information on persons located outside the military base; or

28 (d) The operation is for training and testing purposes by an agency
29 and does not collect personal information.

30 (2) Upon completion of the operation of a public unmanned aircraft
31 system pursuant to this section, any personal information obtained
32 shall be treated as information collected on an individual other than
33 a target for purposes of section 11 of this act.

34 NEW SECTION. **Sec. 10.** Whenever any personal information from a
35 public unmanned aircraft system has been acquired, no part of such
36 personal information and no evidence derived therefrom may be received

1 in evidence in any trial, hearing, or other proceeding in or before any
2 court, grand jury, department, officer, agency, regulatory body,
3 legislative committee, or other authority of the state or a political
4 subdivision thereof if the collection or disclosure of that personal
5 information would be in violation of this chapter.

6 NEW SECTION. **Sec. 11.** Personal information collected during the
7 operation of a public unmanned aircraft system authorized by and
8 consistent with this chapter may not be used, copied, or disclosed for
9 any purpose after conclusion of the operation, unless there is probable
10 cause that the personal information is evidence of criminal activity.
11 Personal information shall be deleted as soon as possible after there
12 is no longer probable cause that the personal information is evidence
13 of criminal activity; this must be within thirty days if the personal
14 information was collected on the target of a warrant authorizing the
15 operation of the public unmanned aircraft system, and within ten days
16 for other personal information collected incidentally to the operation
17 of a public unmanned aircraft system otherwise authorized by and
18 consistent with this chapter. There shall be a presumption that
19 personal information is not evidence of criminal activity if that
20 personal information is not used in a criminal prosecution within one
21 year of collection.

22 NEW SECTION. **Sec. 12.** Any person who knowingly violates the
23 provisions of this chapter shall be subject to legal action for
24 damages, to be brought by any other person claiming that a violation of
25 this chapter has injured his or her business, his or her person, or his
26 or her reputation. A person so injured shall be entitled to actual
27 damages and reasonable attorneys' fees and other costs of litigation.

28 NEW SECTION. **Sec. 13.** Any use of unmanned aircraft systems shall
29 fully comply with all federal aviation administration requirements and
30 guidelines. Nothing in this chapter shall be construed to limit the
31 state's ability to establish and operate a test range for the
32 integration of unmanned aviation vehicles into the national airspace.

33 NEW SECTION. **Sec. 14.** By July 1st of each year, any judicial
34 officer who has authorized the issuance of a search warrant or

1 extension thereof for the use of a public unmanned aircraft system that
2 expired during the preceding year or who has denied approval during
3 that year shall report to the chief justice of the Washington supreme
4 court or his or her designee the following information:

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

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

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

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

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

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

17 NEW SECTION. **Sec. 15.** By July 1st of each year, any agency that
18 operated a public unmanned aircraft system pursuant to section 9 of
19 this act shall report to the chief of the Washington state patrol or
20 his or her designee the following information:

21 (1) The type of situation authorizing operation of the public
22 unmanned aircraft system;

23 (2) The number and nature of injuries or deaths avoided by the
24 operation; and

25 (3) The approximate nature, amount, and cost of the manpower and
26 other resources used in the operation.

27 NEW SECTION. **Sec. 16.** By December 1st of each year, the chief
28 justice of the Washington supreme court or his or her designee, and the
29 chief of the Washington state patrol or his or her designee shall
30 transmit to the legislature a full and complete report concerning the
31 number of applications for search warrants authorizing or approving
32 operation of a public unmanned aircraft system or disclosure of
33 information or data from the operation of a public unmanned aircraft
34 system pursuant to this chapter, the number of search warrants and
35 extensions granted or denied pursuant to this chapter during the
36 preceding calendar year, and the number of operations of a public

1 unmanned aircraft system pursuant to section 9 of this act. Such
2 report shall include a summary and analysis of all the data required to
3 be filed with the Washington supreme court and the Washington state
4 patrol.

5 NEW SECTION. **Sec. 17.** The governing body of any locality
6 permitting the use of public unmanned aircraft systems shall publish
7 publicly available written policies and procedures for the use of
8 public unmanned aircraft systems by the law enforcement agencies of
9 such locality.

10 NEW SECTION. **Sec. 18.** The governing body of any locality
11 permitting the use of public unmanned aircraft systems shall require
12 the law enforcement agency of such locality operating a public unmanned
13 aircraft system to maintain records of each use of a public unmanned
14 aircraft system, including the date, time, location of use, target of
15 data collection, type of data collected, the justification for the use,
16 the operator of the public unmanned aircraft system, and the person who
17 authorized the use.

18 NEW SECTION. **Sec. 19.** The governing body of any locality
19 permitting the use of a public unmanned aircraft system shall conduct
20 an annual comprehensive audit on the operation of all public unmanned
21 aircraft systems, including the law enforcement log book, corresponding
22 emergency telephone calls, warrants, and other documentation of the
23 justification for use and data collected. The audit shall be publicly
24 available. The audit shall include:

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

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

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

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

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

34 (6) Additional information and analysis the governing body deems
35 useful.

1 NEW SECTION. **Sec. 20.** Sections 1 through 19 of this act
2 constitute a new chapter in Title 10 RCW."

3 Correct the title.

EFFECT: (1) Clarifies that the bill does not limit the state's ability to establish and operate a test range for the integration of unmanned aviation vehicles (UAVs) into the national airspace.

 (2) Allows warrants to be issued for ten days, rather than 48 hours.

 (3) Allows incidentally collected personal information to be retained for up to 10 days for a person other than the target of the warrant and up to 30 days for a target of the warrant IF there is probable cause that the information is evidence of criminal activity.

 (4) Allows for warrantless use of UAVs if the operation is for training and testing purposes by an agency and does not collect personal information.

 (5) Raises the standard for civil liability under the act from strict liability to a knowing violation.

 (6) Limits damages available to a plaintiff to actual damages, reasonable attorneys' fees and costs.

 (7) Eliminates the requirement that local law enforcement collect and report warranted UAV use annually.

 (8) Eliminates the requirement that localities which permit public UAV use annually review and reconsider the usage before reauthorizing such use.

 (9) Eliminates the emergency clause.

 (10) Makes technical changes.

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