
Public Safety Committee

HB 1771

Brief Description: Establishing standards for the use of public unmanned aircraft systems.

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

Brief Summary of Bill

- Requires approval before public agencies can obtain a public unmanned aircraft system: from the legislature for state agencies and from a local governing body for local agencies.
- Allows a public unmanned aircraft system to be operated, or information gained there from, to be disclosed pursuant to:
 - a criminal warrant;
 - an administrative or inspection warrant; or
 - in an emergency.

Hearing Date: 2/21/13

Staff: Sarah Koster (786-7303).

Background:

The Federal Aviation Authority (FAA) first authorized the use of unmanned aircraft systems or "UAS," in the national airspace in 1990. The FAA defines unmanned aircraft as "a device used or intended to be used for flight in the air that has no onboard pilot."

In 2012 the FAA established the Unmanned Aircraft Systems Integration Office to provide a one-stop portal for civil and public use UAS in the United States airspace. This office is developing a comprehensive plan to integrate and establish operational and certification requirements for UAS. It will also oversee and coordinate UAS research and development.

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.

In the FAA Modernization and Reform Act of 2012, Congress directed the FAA to establish a program to integrate UAS into the national airspace system at six test ranges. The designation and operation of test sites will be a tool for testing all aspects of UAS integration.

There are currently two ways to get FAA approval to operate a UAS. The first is to obtain an experimental airworthiness certificate for private sector (civil) aircraft to do research and development, and training and flight demonstrations. The second is to obtain a Certificate of Waiver or Authorization (COA), which can only be obtained by federal, state, or local governmental agencies.

Public Unmanned Aircraft Systems.

A COA is available to a public entity that wants to fly a UAS in civil airspace. Common uses today include law enforcement, firefighting, border patrol, disaster relief, search and rescue, military training, and other government operational missions.

- Applicants make their request through an online process and the FAA evaluates the proposed operation to see if it can be conducted safely.
- The COA allows an operator to use a defined block of airspace and includes special provisions unique to the proposed operation. A COA is usually issued for a specific period—up to two years in many cases.
- Most COAs require coordination with an appropriate air traffic control facility and may require a transponder on the UAS to operate in certain types of airspace.
- Because UAS technology cannot currently comply with "see and avoid" rules that apply to all aircraft, a visual observer or an accompanying "chase plane" must maintain visual contact with the UAS and serve as its "eyes" when operating outside airspace restricted from other users.

Year	COAs Issued by the FAA
2009	146
2010	298
2011	313

There were 345 COAs active at the end of November 2012.

Summary of Bill:

"Unmanned aircraft" means an aircraft that is operated without the possibility of human intervention from within or on the aircraft.

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

A public agency must seek permission, from the Legislature for a state agency or from a local governing body for a local agency, before the agency may obtain a PUAS.

A PUAS may only be used, or information gathered from a PUAS disclosed, pursuant to a criminal warrant, an administrative search warrant, or in an emergency.

Criminal Warrant Provisions.

To obtain a criminal warrant to use a PUAS, a law enforcement officer must petition a judicial officer of a court of competent jurisdiction and provide an affidavit detailing:

- the identity of the applicant, agency, and the individual who is the focus of the warrant, as well as; and
- specific and articulable facts demonstrating probable cause to believe that there is criminal activity and that the operation of the PUAS will uncover evidence of such activity of facts to support the finding that there is criminal activity or probable cause for an administrative warrant.

The judge may issue the search warrant if the judge finds that there is probable cause to believe that a crime has been committed, is being committed, or will be committed and that there is probable cause to believe the personal information likely to be obtained from the use of the PUAS will be evidence of the crime. A warrant shall be limited to 48 hours or, if necessary, 30 days.

The person whose information was collected must be served with the warrant within 10 days unless:

- the court grants a request to delay this notification for up to 90 days because there is reason to believe notification may have an "adverse result."

An adverse result is: (1) endangering a person's life or personal safety; (2) causing a person to flee from prosecution; (3) causing the destruction or tampering with of evidence; or (4) jeopardizing an investigation or delaying a trial.

If the delay is granted, the person must, at the end of the period of delay, be notified that the notification was delayed and why.

Administrative and Inspection Warrant Provisions.

To obtain an administrative search warrant or inspection warrant to use a PUAS, a public official must petition a judicial officer of a court of competent jurisdiction and provide an affidavit detailing:

- the identity of the applicant and agency conducting the inspection;
- a statement that consent to the search has been sought and refused or facts and circumstances reasonably justifying the failure to seek such consent; and
- factual allegations sufficient to justify an independent determination by a judge that the search is based on reasonable standards and the standards are being applied to a particular area in a neutral and fair manner.

Probable cause exists if:

- reasonable legislative or administrative standards for conducting such inspection, testing or information collected are satisfied; or
- there is cause to believe that there is a condition, object, activity or circumstance that legally justifies such inspection, testing or collection of information.

An administrative search or inspection warrant shall be effective for up to 15 days, unless extended. The owner, tenant or custodian of the premises must be present for issuance of warrant unless the judge specifically finds that it is necessary to affect the purposes of the law or regulation.

An administrative search warrant or inspection warrant issued under this section does not allow forcible entry unless the issuing officer finds that:

- the facts create a reasonable suspicion of immediate threat to the health or safety of persons or the environment; or
- that reasonable efforts to serve a previous warrant have been unsuccessful.

An administrative search warrant or inspection warrant can be challenged prior to return if: (1) the owner makes a showing that the affidavit was knowingly or recklessly false in a material way; or (2) as a defense in a contempt proceeding. The warrant can be challenged after return: (1) as a defense to a notice of violation; or (2) by declaratory judgment action.

Warrant Exception.

A law enforcement officer or public official may use a PUAS and disclose personal information gathered by PUAS without a warrant if the officer reasonably determines that an emergency situation involves immediate danger of death or serious physical injury and:

- requires use of a PUAS before a warrant can be obtained; or
- there are grounds upon which a warrant could be entered to authorize the PUAS use.

An application for a warrant must be made within 48 hours after the use. The PUAS use under this section must end when the personal information sought is obtained or when the application for a warrant is denied, whichever is earlier.

Use and Storage of Information Gathered.

Personal information gathered by PUAS may not be used in a trial unless collected pursuant to this act. If the information gathered is about a person or area other than the target of the warrant, the information must be deleted within 24 hours. If the information is about the target person or area, it must be deleted within 30 days, unless there is a reasonable belief that the information is evidence of criminal activity or civil liability related to the reason for the use of the PUAS.

Reporting Requirements.

Annual reports of the PUAS warrants requested and granted are required as follows:

- Judicial officers who issue warrants for PUAS must report to the Chief Justice of the Supreme Court by July 1 of each year.
- Law enforcement agencies which applied for criminal search warrants for PUAS shall report to the Chief of the Washington State Patrol by July 1 of each year.
- State Agencies which applied for administrative or inspection warrants or extension of PUAS must report to the Governor by July 1 of each year.
- The Chief Justice, the Chief of the Washington State Patrol, and the Governor must provide a report, including a summary analysis of all reported data, provided to the Legislature by December 1 of each year.

The reports must include descriptions of the kind of warrants requested, details about the warrants and the information gathered, the resources used in the collection, and the number of resulting arrests.

Other Provisions.

Any locality which allows the use of PUAS must publish publically available policies and procedures. Localities allowing the PUAS must also:

- require the local law enforcement agency to maintain records of use;
- conduct annual audits; and
- annually review the use of PUAS and weight the benefits and risks to privacy before reauthorizing their use.

The disclosure of the existance of a PUAS search warrant, an affidavit filed in support of such warrant, or any personal information obtained as a result of such warrant is, unless authorized by a court or law enforcement officer, a class C felony.

Appropriation: None.

Fiscal Note: Requested on February 17, 2013.

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