

HOUSE BILL REPORT

HB 1771

As Reported by House Committee On: Public Safety

Title: An act relating to protecting Washington citizens from warrantless surveillance, reducing liability, and establishing clear standards under which agencies may utilize unmanned aerial vehicles.

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 History:

Committee Activity:

Public Safety: 2/21/13 [DPS].

Brief Summary of Substitute 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 law enforcement agencies.
- Allows a public unmanned aircraft system to be operated, or information gained therefrom, to be disclosed:
 - pursuant to a judicial search warrant;
 - if the use is not regulatory enforcement and is reasonably determined to be unlikely to collect personal information; or
 - in an emergency.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Goodman, Chair; Roberts, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Holy, Hope, Moscoso and Takko.

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.

Minority Report: Do not pass. Signed by 1 member: Representative Pettigrew.

Staff: Sarah Koster (786-7303).

Background:

The Federal Aviation Authority (FAA) first authorized the use of unmanned aircraft systems (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 of 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.

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 Substitute 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. The permission must be explicit and specific to a PUAS and a particular purpose.

A PUAS may only be used, or information gathered from a PUAS disclosed, pursuant to a criminal warrant, in an emergency, or if the use is not regulatory enforcement and is reasonably determined to be unlikely to collect personal information.

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 the county or city of the crime;
- 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; and
- a statement that other methods of data collection have been investigated and found to be either cost prohibitive or to pose an unacceptable safety risk to a law enforcement officer or the public.

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; (4) causing the intimidation of potential witnesses; or (5) 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.

Warrant Exception.

A law enforcement officer or public official may use a PUAS and disclose personal information gathered by a PUAS without a warrant if the officer reasonably determines that an emergency situation exists which presents immediate danger of death or serious physical injury to any person.

If the emergency involves criminal activity:

- the emergency must require operation of a PUAS before a judicial warrant could be obtained;
- there must be grounds to support a warrant; and
- an application for a warrant must be made within 48 hours of beginning the operation.

If the emergency does not involve criminal activity:

- the emergency must require operation of a PUAS to reduce the danger of death or serious physical injury.

There are additional exceptions to the warrant requirements:

- A PUAS may be used without a warrant if a public official reasonably determines that the operation does not intend to and is unlikely to collect personal information, and such operation is not for purposes of regulatory enforcement; and
- A PUAS may be used without a warrant if the operation is part of a training exercise conducted on a military base and the PUAS does not collect personal information on anyone outside the military base.

Use and Storage of Information Gathered.

Personal information gathered by a 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 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:

1. Judicial officers who issue warrants for a PUAS must report to the Chief Justice of the Supreme Court by July 1 of each year.
2. Law enforcement agencies which applied for criminal search warrants for a PUAS must report to the Chief of the Washington State Patrol by July 1 of each year.
3. Agencies which used a PUAS without warrants, pursuant to the terms of the bill, must report to the Chief of the Washington State Patrol by July 1 of each year.
4. The Chief Justice and the Chief of the Washington State Patrol must provide a report, including a summary analysis of all reported data, 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 number of resulting arrests, and the cost of the resources used in the operations.

Other Provisions.

Any locality which allows the use of a 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 the PUAS and weigh the benefits and risks to privacy before reauthorizing their use.

The Washington National Guard is exempt from the provisions of the act.

Legal Remedies.

Any person who is damaged by a violation of the act may sue for damages and attorney's fees.

Substitute Bill Compared to Original Bill:

The substitute bill: (1) prohibits PUAS use under administrative or inspection warrants; (2) expands PUAS use in exigent circumstances or when personal information will not be gathered; (3) replaces criminal penalties for disclosing personal information gained from a PUAS with a private right of action for individuals damaged by a violation of the act; (4) requires that the Legislature or local governing body's approval for obtaining a PUAS be made explicitly for a specific purpose; (5) inserts a requirement that an affidavit to obtain a warrant includes a statement that other methods of data collection have been investigated and found to either be cost prohibitive or to pose an unacceptable safety risk; (6) creates an annual reporting requirement for any agency which used a PUAS under a warrant exception; and (7) exempts the National Guard from the provisions of the act.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) This bill puts some sideboards and clear guidelines on drone use to protect public safety and public rights, and to limit liability. A congressional report said that states needed to adopt policies on the use of drones to limit liability for state and local entities on drone use. Policing that respects the Constitution is the smartest and most effective policing. Our concern is that the technology not outpace the public policy debate, which has not yet taken place. These are reasonable, common sense restrictions. Drones are different than

helicopters because they are cheaper, less noticeable to the public, and have no risk, unlike putting an officer up in the air. So there will be increased surveillance. Another difference is the storage of information is much broader for drones. This bill allows use, but has sideboards to regulate the use. These restrictions are good for public faith in law enforcement. Unregulated drone use would make the government into a despotism. Unless this bill is passed, we are allowing law enforcement to use their own discretion. The Seattle hearings demonstrated that the use of these drones preceded the development of clear rules or policies. It is the Legislature's duty to give guidelines, not the judiciary's duty. Seven hundred lives have been taken overseas by armed drones. Citizens deserve protection from the state from use of taxpayer funds for invasion of privacy. Current laws do not provide clear defined guidelines.

(With concerns) Unmanned airplanes have great potential for monitoring and fighting wildfires and for search and rescue. They can fly at nighttime, so a supervisor can use them 24 hours a day. This bill would have an impact on the state's ability to become an FAA testing site. States across the nation have been eagerly awaiting this opportunity and this bill jeopardizes Washington's ability to compete. This site would provide jobs and economic stability. The unmanned aircraft industry represents 29 percent of the payroll of the workforce in Klickitat County and anything that chills this industry involvement in search and rescue and wildfire suppression would greatly impact the county.

(Other) The sponsors have agreed to an amendment to allow the Department of Natural Resources to use these aircraft for wildfire suppression purposes which would be unsafe for helicopters.

(Opposed) This bill is based on a false difference between drones and other technology. The question is "is it a search or not," and this is a constitutional question for the courts. It does not matter if you use a drone to hover outside a window or if you hold a camera outside a long pole; both are searches and regulated by the Constitution. The bill overturns the longstanding rules of plain view and open view. Under this bill, if you have permission to be there for one purpose, you may not use information gathered there for another purpose, even evidence for another crime. These restrictions are not in place for any other kinds of aircraft. This technology has huge lifesaving possibilities, so why put unique and onerous guidelines on its use? When Ian Stawicki was running around Seattle, killing people, this technology could have found him sooner and prevented deaths and school lockdowns. Washington companies and organizations have formed a consortium to compete to be one of six FAA test sites to see how this technology can be incorporated into the airspace. Many Washington companies are involved in this industry. It provides \$120 million in taxable revenue.

Persons Testifying: (In support) Representative Taylor, prime sponsor; Representative Shea; Mike German and Shankar Narayan, American Civil Liberties Union; Chris Barringer, King County Sheriff's Office; Juan Bocanegra, El Comite; Arsalan Bukhari, Council on American-Islamic Relations of Washington State; Jeff Roberts; Travis Couture; Charlotte Dike; Duane Kinney; Tom Davis, Washington Farm Bureau; and Taylor Dalton, Libertarian Party of Washington.

(With concerns) Miland Walling, Washington Fire Commissioners Association; MaryKaye Bredeson, Center of Excellence for Aerospace; and Dave Sauter, Klickitat County; and Samuel Bellomio

(Other) Alicia Dunkin, Department of Natural Resources.

(Opposed) Mitch Barker, Washington Association of Sheriffs and Police Chiefs; James McMahan, Washington Association of County Officials; Paul Applewhite, Association for Unmanned Vehicle Systems International; and Bart Phillips, Innovate Washington.

Persons Signed In To Testify But Not Testifying: None.