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**HOUSE BILL 2016**

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**State of Washington 64th Legislature 2015 Regular Session**

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

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

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

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

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

(1)(a) "Agency" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Prior to using an unmanned aerial vehicle, an agency need not obtain a warrant or other order from a court of competent jurisdiction unless required by Article I, section 7 of the state Constitution, or by another applicable law or rule. Such order shall be issued by a court of competent jurisdiction if the agency, upon application to a court of competent jurisdiction, shows by clear and convincing evidence that (a) the collection of the information was unintentional or inadvertent, (b) the agency followed the minimization policies and protocols identified in subsection (1)(d) of this section, and (c) it has a compelling interest in use of the information. If the agency intends to use the information in the agency's capacity as a law enforcement agency, or if a law enforcement agency requests such information, the law enforcement agency must comply with section 4 of this act. If an agency inadvertently or unintentionally collects information of an individual as a result of an intrusion on the private affairs of a person, as defined by Article I, section 7 of the state Constitution, the agency may not use such information for any purpose, unless it has complied with subsection (1) of this section and prior to use of such inadvertently or unintentionally collected information, obtained an order from a court of competent jurisdiction permitting the use of such information.

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

(a) Operator name;

(b) Identity of the agency;

(c) Date and time of flight;

(d) Categories of information collected for each use;

(e) The purpose of using the unmanned aerial vehicle; and

(f) Whether an order was obtained prior to use.

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

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

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

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

(2) Prior to using an unmanned aerial vehicle, a law enforcement agency must either obtain a warrant supported by probable cause in the case of a criminal investigation or prosecution or obtain an order from a court of competent jurisdiction in the case of a civil or administrative investigation or prosecution, if the:

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

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

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

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

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

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

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

(5) A law enforcement agency may, when a warrant is sought, include in the petition a request for an order delaying the initial notification for a period not to exceed ninety days, which order shall be granted if the court determines that there is a reason to believe that notification of the use of an unmanned aerial vehicle may:

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

(b) Cause a person to flee from prosecution;

(c) Cause the destruction of or tampering with evidence;

(d) Cause the intimidation of potential witnesses; or

(e) Jeopardize an investigation or unduly delay a trial.

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

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

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

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

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

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

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

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

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

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

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

(4) For traffic crash scene photography;

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

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

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

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

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

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

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

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

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