

SHB 1639 - H AMD 135

By Representative Goodman

ADOPTED 3/4/2015

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

3 NEW SECTION. **Sec. 1.** The legislature finds that Washington is
4 a leader in responsible, effective, innovative government and the
5 industries that help make this possible. The legislature finds that
6 advances in technology have created valuable opportunities for
7 government agencies to carry out their missions more efficiently,
8 cost-effectively, precisely, and comprehensively. However, these
9 technological advances have provided new, unique equipment that may
10 be utilized for surveillance purposes. These technological advances
11 often outpace statutory protections and can lead to inconsistent or
12 contradictory interpretations between jurisdictions. The legislature
13 finds that regardless of application or size, the use of these
14 extraordinary surveillance technologies, without public debate or
15 clear legal authority, creates uncertainty for citizens and agencies
16 throughout Washington state. The legislature finds that extraordinary
17 surveillance technologies do present a substantial privacy risk
18 potentially contrary to the strong privacy protections enshrined in
19 Article I, section 7 of the Washington state Constitution that reads
20 "No person shall be disturbed in his private affairs, or his home
21 invaded, without authority of law." The legislature further finds
22 that the lack of clear statutory authority for the use of
23 extraordinary surveillance technologies may increase liability to
24 state and local jurisdictions. It is the intent of the legislature to
25 allow for the performance of legitimate state and local agency
26 functions in accordance with clear standards for the lawful use of
27 extraordinary sensing devices. Nothing in this act is intended to
28 affect the leasehold rights of the residents of Washington state.

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

1 (1) "Agency" means the state of Washington, its state and local
2 agencies, political subdivisions, and their respective employees and
3 agents, except the Washington national guard in Title 32 U.S.C.
4 status.

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

8 (3) "Extraordinary sensing device" means a sensing device
9 attached to or used in conjunction with an aircraft that is operated
10 without the possibility of human intervention from within or on such
11 aircraft, together with its associated elements.

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

18 (5) "Personal information" means any information relating to a
19 particular identified or identifiable individual including, but not
20 limited to: (a) An individual's location; (b) the categories of
21 information identified in RCW 19.255.010(5); (c) the categories of
22 information identified in RCW 42.56.230; and (d) information obtained
23 from a particular vehicle or particular residence, including the
24 curtilage thereof, relating to that individual. Personal information
25 does not include information that an agency does not associate with a
26 particular individual. The information may be in the form of, but is
27 not limited to:

28 (a) Images obtained from any part of the electromagnetic spectrum
29 including, but not limited to, visible, ultraviolet, and infrared
30 light; X-rays and other radiation; and radio waves;

31 (b) Sounds of any frequency, including infrasonic, audible, and
32 ultrasonic frequencies; or

33 (c) Scents of any type, whether or not detectable by the human
34 nose.

35 (6)(a) "Sensing device" means a device capable of remotely
36 acquiring personal information from its surroundings.

37 (b) "Sensing device" does not include equipment whose sole
38 function is to provide information directly necessary for safe air
39 navigation or operation of a vehicle.

1 NEW SECTION. **Sec. 3.** (1) No state agency including, but not
2 limited to, the Washington state patrol and the department of natural
3 resources, shall procure an extraordinary sensing device unless
4 moneys are expressly appropriated by the legislature for this
5 specific purpose.

6 (2) No local agency shall procure an extraordinary sensing device
7 without the explicit approval of the governing body of such locality,
8 given for that specific extraordinary sensing device to be used for a
9 specific purpose.

10 NEW SECTION. **Sec. 4.** (1) The governing body for each local
11 agency and elected or appointed official in charge for each state
12 agency must develop and make publicly available, including on the
13 agency web site, written policies and procedures for the use of any
14 extraordinary sensing device procured, and provide notice and
15 opportunity for public comment prior to adoption of the written
16 policies and procedures. Such written policies and procedures must:
17 (a) Describe the purposes for using an extraordinary sensing device
18 and, if applicable, any agency program or study pursuant to which it
19 intends to use the extraordinary sensing device; (b) describe
20 categories of personal information, if applicable, that the agency
21 intends to collect during the operation of such extraordinary sensing
22 device, how the collection of such information furthers the agency's
23 purposes stated pursuant to (a) of this subsection, and how the
24 agency plans to use such information; (c) establish policies and
25 procedures for minimizing the collection of information not specified
26 in (b) of this subsection; (d) establish policies and procedures to
27 prevent unauthorized access to personal information, which may be
28 collected through the agency's use of extraordinary sensing devices,
29 and which policies and procedures may include technical measures such
30 as encryption, hashing, anonymization, and/or deidentification of
31 collected information; (e) identify the unique registration number
32 the agency has affixed, or has previously been affixed, including by
33 another agency, to the extraordinary sensing device it is intending
34 to use; and (f) identify a point of contact for citizen complaints
35 and concerns regarding the agency's use and operation of an
36 extraordinary sensing device.

37 (2) Within one hundred eighty days of the effective date of this
38 section, the office of the chief information officer shall construct
39 a web site publicly listing every agency's written policies and

1 procedures mandated by this section. The web site shall be easily
2 accessible by the public and a hyperlink to this web site shall
3 appear on <http://access.wa.gov>, or other similar web site, if this
4 web site is altered or ceases to exist.

5 (3) The operation of an extraordinary sensing device by an agency
6 is prohibited unless the agency has affixed a unique identifier
7 registration number assigned by the agency.

8 NEW SECTION. **Sec. 5.** Except as otherwise specifically
9 authorized in this subchapter, it is unlawful for an agency to
10 operate an extraordinary sensing device or use or disclose personal
11 information about any person acquired through the operation of an
12 extraordinary sensing device.

13 NEW SECTION. **Sec. 6.** All operations of an extraordinary sensing
14 device, by an agency, or disclosure of personal information about any
15 person acquired through the operation of an extraordinary sensing
16 device, by an agency, must be conducted in such a way as to minimize
17 the collection and disclosure of personal information not authorized
18 under this subchapter. If an agency complies with section 4 of this
19 act and adheres to the minimization policies and procedures it adopts
20 pursuant to section 4 of this act, there is a rebuttable presumption
21 that the agency has complied with the minimization requirement under
22 this section. This presumption can be overcome by clear and
23 convincing evidence to the contrary.

24 NEW SECTION. **Sec. 7.** (1) It is lawful under this section for an
25 agency to operate an extraordinary sensing device without obtaining a
26 warrant if the agency reasonably determines that the operation does
27 not intend to collect personal information. Allowable purposes under
28 this subsection include, but are not limited to:

29 (a) Monitoring to discover, locate, observe, and prevent forest
30 fires;

31 (b) Monitoring an environmental or weather-related catastrophe or
32 damage from such an event;

33 (c) Surveying for wildlife management, habitat preservation, or
34 environmental damage; and

35 (d) Surveying for the assessment and evaluation of environmental
36 or weather-related damage, erosion, flood, or contamination.

1 (2) No agency may make any effort to identify an individual from
2 the information collected by the operation or to associate any
3 information collected by the operation with a particular individual,
4 nor shall the information be disclosed to a third party unless that
5 party agrees to be bound by the same restrictions. These restrictions
6 shall not apply if there is probable cause that the information is
7 evidence of criminal activity.

8 NEW SECTION. **Sec. 8.** (1) It is lawful under this section for
9 any agency to operate an extraordinary sensing device and disclose
10 personal information from the operation without obtaining a warrant
11 if:

12 (a) The agency reasonably determines that:

13 (i) An emergency situation exists that involves criminal activity
14 and presents immediate danger of death or serious physical injury to
15 any person, including risk of terrorist activity;

16 (ii) The emergency situation requires operation of an
17 extraordinary sensing device before a warrant authorizing the use
18 can, with due diligence, be obtained; and

19 (iii) There are grounds upon which a warrant could be entered to
20 authorize such operation;

21 (b) The agency reasonably determines that an emergency situation
22 exists that:

23 (i) Does not involve criminal activity;

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

26 (iii) Has characteristics such that operation of an extraordinary
27 sensing device may reasonably reduce the danger of death or serious
28 physical injury;

29 (c) The agency determines that operation is reasonably necessary
30 to locate a missing person;

31 (d) The operation is limited to use for traffic crash scene
32 photography;

33 (e) The operation is part of a training exercise conducted on a
34 military base and the extraordinary sensing device does not collect
35 personal information on persons located outside the military base;

36 (f) The operation is for training, testing, or research purposes
37 by an agency and is not intended to collect personal information
38 without the specific written consent of any individual whose personal
39 information is collected; or

1 (g) The operation is part of the response to an emergency or
2 disaster for which the governor has proclaimed a state of emergency
3 under RCW 43.06.010(12).

4 (2) Upon completion of the operation of an extraordinary sensing
5 device pursuant to subsection (1)(b) through (g) of this section, any
6 personal information obtained must be treated as information
7 collected on an individual other than a target of a warrant for
8 purposes of section 10 of this act.

9 NEW SECTION. **Sec. 9.** (1) An extraordinary sensing device may be
10 operated by an agency and personal information from the operation
11 disclosed, if the operation and collection of personal information is
12 pursuant to a search warrant issued by a court of competent
13 jurisdiction, and the operation, collection, and disclosure are
14 compliant with the provisions of this chapter.

15 (2) Warrants may not be issued for a period greater than ten
16 days. Extensions may be granted, but no longer than the authorizing
17 judicial officer deems necessary to achieve the purposes for which it
18 was granted and in no event for longer than thirty days.

19 (3) Within ten days of the execution of a search warrant, the
20 officer executing the warrant must serve a copy of the warrant upon
21 the target of the warrant, except if notice is delayed pursuant to
22 this section.

23 (4) An agency acting under this section may, when a warrant is
24 sought, include in the petition a request, which the court shall
25 grant, for an order delaying the notification for a period not to
26 exceed ninety days if the court determines that there is reason to
27 believe that notification of the existence of the warrant may have an
28 adverse result.

29 (5) An adverse result for the purposes of this section is:

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

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

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

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

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

36 (6) The agency shall maintain a copy of the warrant.

37 (7) Extension of the delay of notification of up to ninety days
38 each may be granted by the court upon certification by the agency

1 that there is reason to believe that notification of the extension of
2 the warrant may have an adverse result.

3 (8) Upon expiration of the period of delay of notification under
4 subsection (4) or (7) of this section, the agency shall serve a copy
5 of the warrant upon, or deliver it by registered or first-class mail
6 to the target of the warrant, together with notice that:

7 (a) States with reasonable specificity the nature of the law
8 enforcement inquiry; and

9 (b) Informs the target of the warrant: (i) That notification was
10 delayed; (ii) what agency or court made the certification or
11 determination pursuant to which that delay was made; and (iii) the
12 provision of this section allowing the delay.

13 NEW SECTION. **Sec. 10.** (1) Personal information collected during
14 the operation of an extraordinary sensing device authorized under
15 sections 7 through 9 of this act may not be used, copied, or
16 disclosed for any purpose after conclusion of the operation for which
17 the extraordinary sensing device was authorized, unless there is
18 probable cause that the personal information is evidence of criminal
19 activity.

20 (2) Personal information must be deleted, within thirty days if
21 the personal information was collected on a target of a warrant
22 authorizing the operation of the extraordinary sensing device and
23 within ten days for other personal information, after there is no
24 longer probable cause that the personal information is evidence of
25 criminal activity that may be prosecuted. The foregoing shall only
26 apply to the extent the personal information can be destroyed without
27 destroying other evidence relevant to a pending criminal
28 investigation or case. There is a presumption that personal
29 information is not evidence of criminal activity if that personal
30 information is not used in a criminal prosecution within one year of
31 collection.

32 NEW SECTION. **Sec. 11.** Whenever any personal information from an
33 extraordinary sensing device has been acquired, no part of such
34 personal information and no evidence derived therefrom may be
35 received in evidence in any trial, hearing, or other proceeding in or
36 before any court, grand jury, department, officer, agency, regulatory
37 body, legislative committee, or other authority of the state or a

1 political subdivision thereof if the collection or disclosure of that
2 personal information would be in violation of this subchapter.

3 NEW SECTION. **Sec. 12.** Any person who knowingly violates this
4 subchapter is subject to legal action for damages, to be brought by
5 any other person claiming that a violation of this subchapter has
6 injured his or her business, his or her person, or his or her
7 reputation. In addition, the individual is entitled to reasonable
8 attorneys' fees and other costs of litigation.

9 NEW SECTION. **Sec. 13.** Any use of an extraordinary sensing
10 device must fully comply with all federal aviation administration
11 requirements and guidelines. Compliance with the terms of this
12 subchapter is mandatory and supplemental to compliance with federal
13 aviation administration requirements and guidelines.

14 NEW SECTION. **Sec. 14.** (1) An agency must maintain records
15 identifying each use of an extraordinary sensing device. The records
16 must include:

- 17 (a) Operator name;
- 18 (b) Identity of the agency;
- 19 (c) Date and time of the flight;
- 20 (d) Categories of information collected for each use;
- 21 (e) The purpose of using the extraordinary sensing device; and
- 22 (f) Whether a warrant was obtained prior to use.

23 (2) Each state agency having jurisdiction over criminal law or
24 regulatory violation enforcement, for any calendar year in which the
25 agency has used an extraordinary sensing device, must prepare an
26 annual report including, at a minimum in each case, the following:

- 27 (a) The number of uses of an extraordinary sensing device
28 organized by types of incidents and types of justification for use;
- 29 (b) The number of criminal or regulatory investigations aided by
30 the use and how the use was helpful to the investigation;
- 31 (c) The number of uses of an extraordinary sensing device for
32 reasons other than criminal or regulatory investigations and how the
33 use was helpful;
- 34 (d) The frequency and type of data collected for individuals or
35 areas other than targets;
- 36 (e) The total cost of the extraordinary sensing device;

1 (f) The dates when personal information and other data was
2 deleted or destroyed in compliance with the act;

3 (g) The number of warrants requested, issued, and extended; and

4 (h) Additional information and analysis the governing body deems
5 useful.

6 (3) Each state agency other than that in subsection (2) of this
7 section, for any calendar year in which the agency has used an
8 extraordinary sensing device, must prepare an annual report
9 including, at a minimum in each case, the following:

10 (a) The types of extraordinary sensing devices used, the purposes
11 for which each type of extraordinary sensing device was used, the
12 circumstances under which use was authorized, and the name of the
13 officer or official who authorized the use;

14 (b) Whether deployment of the device was imperceptible to the
15 public;

16 (c) The specific kinds of personal information that the
17 extraordinary sensing device collected about individuals;

18 (d) The length of time for which any personal information
19 collected by the extraordinary sensing device was retained;

20 (e) The specific steps taken to mitigate the impact on an
21 individual's privacy, including protections against unauthorized use
22 and disclosure and a data minimization protocol; and

23 (f) An individual point of contact for citizen complaints and
24 concerns.

25 (4) The annual reports required pursuant to this section must be
26 filed electronically to the office of financial management, who must
27 compile the results and submit them electronically to the relevant
28 committees of the legislature by September 1st of each year,
29 beginning in 2016.

30 NEW SECTION. **Sec. 15.** Any use of an extraordinary sensing
31 device by an agency must fully comply with all applicable federal
32 aviation administration regulations.

33 NEW SECTION. **Sec. 16.** Nothing in this act abridges, reduces,
34 restricts, or prohibits an officer, employee, or agent of the United
35 States armed forces, or the agent of the United States armed forces
36 to include the national guard in Title 32 U.S.C. from operating an
37 unmanned aerial vehicle.

1 NEW SECTION. **Sec. 17.** Sections 2 through 16 of this act are
2 each added to chapter 9.73 RCW and codified with the subchapter
3 heading of "extraordinary sensing devices."

4 NEW SECTION. **Sec. 18.** If any provision of this act or its
5 application to any person or circumstance is held invalid, the
6 remainder of the act or the application of the provision to other
7 persons or circumstances is not affected."

8 Correct the title.

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