

HOUSE BILL REPORT

ESHB 1093

As Passed House:
March 4, 2015

Title: An act relating to unmanned aircraft.

Brief Description: Concerning unmanned aircraft.

Sponsors: House Committee on Technology & Economic Development (originally sponsored by Representatives Morris and Moeller).

Brief History:

Committee Activity:

Technology & Economic Development: 1/21/15, 1/29/15 [DPS].

Floor Activity:

Passed House: 3/4/15, 94-3.

Brief Summary of Engrossed Substitute Bill

- Prohibits operation of an unmanned aircraft (UA) in Washington airspace if the UA has an active sensory device onboard that collects personal information about any individual without the individual's consent, unless the federal government has specifically authorized the operation and certain conditions are met.
- Establishes a criminal penalty for unlawful operation of an UA with intent to capture any type of personal information for an illicit purpose.
- States that it shall not be construed as authorizing the use of, prohibiting the use of, or regulating in any manner the use of an UA by a public agency.
- Requires the UA to be clearly and conspicuously labeled with the name and contact information of the aircraft's owner and operator.
- Establishes a private right of action for an individual whose reasonable expectation of privacy is violated by the use of UA equipped with an active sensing device.
- Makes a legislative finding that the reasonable expectation of privacy of a person is violated under certain circumstances when the person whose image has been captured is on private property.

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.

HOUSE COMMITTEE ON TECHNOLOGY & ECONOMIC DEVELOPMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Morris, Chair; Tarleton, Vice Chair; Smith, Ranking Minority Member; Fey, Harmsworth, Hudgins, Nealey, Ryu, Santos and Wylie.

Minority Report: Without recommendation. Signed by 2 members: Representatives Magendanz and Young.

Staff: Jasmine Vasavada (786-7301).

Background:

An unmanned aircraft system (UAS), also commonly known as an unmanned aerial vehicle or drone, is an aircraft without a human pilot onboard. The flight is controlled either autonomously by computers onboard or under by the remote control of a pilot on the ground or in another vehicle. There are a wide variety of UAS shapes, sizes, configurations, and characteristics. According to the Government Accountability Office, current domestic use of UAS includes law enforcement, forest fire monitoring and control, border security, weather research, and scientific data collection by the federal government.

Regulation by the Federal Aviation Administration.

In 2012 Congress enacted the Federal Aviation Administration Modernization and Reform Act (FMRA), directing the Federal Aviation Administration (FAA) to establish a comprehensive plan for fully integrating UAS into the national airspace by September 30, 2015. Under FMRA, there are three types of UAS: civil (non-governmental use), public (governmental use), and model aircraft (recreational or hobbyist use).

An unmanned aircraft system cannot be used commercially without the FAA's authorization. Civil UAS operators may only access the national airspace for purposes other than recreation or hobby if they receive specific authorization from the FAA by obtaining either a Special Airworthiness Certificate in the experimental category ("Experimental certificate") or a grant of petition for exemption.

Experimental certificates preclude carrying people or property for compensation or hire, but do allow operations for research and development, flight and sales demonstrations, and crew training. Petitions for exemption, filed under authority of FMRA Section 333, allow the FAA to specifically authorize a company to operate UAS for a commercial purpose, including, for example, estate photography and agriculture crop scouting. More than 200 petitions have been filed, for purposes ranging from real estate photography to precision agriculture crop scouting.

Federal Aviation Administration Modernization and Reform Act Special Rule for Model Aircraft.

Under FMRA Section 336, Congress enacted a "special rule for model aircraft," defined as "an unmanned aircraft" that is "(1) capable of sustained flight in the atmosphere; (2) flown within visual line of sight of the person operating the aircraft; and (3) flown for hobby or recreational purposes."

Section 336 prohibits the FAA from promulgating any rule or regulation regarding a model aircraft, or an aircraft being developed as a model aircraft, if:

- the aircraft is flown strictly for hobby or recreational use;
- the aircraft is operated in accordance with a community-based set of safety guidelines and within the programming of a nationwide community-based organization;
- the aircraft is limited to not more than 55 pounds unless otherwise certified through a design, construction, inspection, flight test, and operational safety program administered by a community-based organization;
- the aircraft is operated in a manner that does not interfere with and gives way to any manned aircraft; and
- when flown within five miles of an airport, the operator of the aircraft provides the airport operator and the airport air traffic control tower with prior notice of the operation.

Class G Airspace.

Class G airspace is a civil airspace designation by the FAA, defined as airspace that is not designated as Class A, B, C, D, or E, and is considered uncontrolled. Class G airspace generally lies between the surface and the base of the overlying Class E airspace. Air traffic control does not control air traffic in Class G airspace.

Reasonable Expectation of Privacy.

Courts may determine whether an individual has a "reasonable expectation of privacy" as part of the legal analysis when deciding whether certain actions by government violate an individual's constitutional rights related to privacy and whether certain actions by any person or entity violate common law or statutory rights to privacy.

Summary of Engrossed Substitute Bill:

Prohibition on Operating an Unmanned Aircraft Equipped With an Active Sensory Device.

No person may operate an unmanned aircraft in Washington state airspace that is equipped with an active sensory device unless the federal government has provided "specific authorization" for such operation, or the unmanned aircraft is clearly and conspicuously labeled with the name and contact information of the aircraft's owner and operator and does not have an active sensing device onboard that collects personal information about any individual without the individual's consent.

"Unmanned aircraft" (UA) means an aircraft operated without a physical human presence onboard.

"Washington state airspace" means all airspace within class G airspace and not otherwise classified as controlled by the Federal Aviation Administration (FAA).

"Active sensing device" means a sensing device that is acquiring personal information from its surroundings, as distinguished from a sensing device when such functionality is dormant.

Specific Authorization to Operate an Unmanned Aircraft.

"Specific authorization" from the federal government includes authorization by the FAA under the Federal Aviation Administration Modernization and Reform Act (FMRA) or other federal authority, but does not include operation under the exemption from federal regulation established in the FMRA Special Rule for Model Aircraft.

Applicability to Public Agencies.

None of the provisions may be construed as authorizing the use of, prohibiting the use of, or regulating in any manner the use of an unmanned aircraft by a public agency.

Personal Information.

"Personal information" is defined to include many kinds of identifying information, including but not limited to:

- any information that describes, locates, or indexes anything about a person; and
- any image of a person taken from any location in the Washington state airspace, when the person whose image has been captured is on private property, the landowner and tenants with a right to occupy the private property have not consented to the capture of images of their person on the property, and the taking of such image is in violation of the reasonable expectation of privacy of the person.

Legislative Finding Related to "Reasonable Expectation of Privacy"

The Legislature finds that a person's reasonable expectation of privacy has been violated when the person's image has been captured from outside the boundaries of private property without the consent of the landowner and tenants with the right to occupy the property, if such image could not have been captured from outside the boundaries of the property from an ordinary vantage point and without the assistance of the unmanned aircraft.

Criminal Penalties.

A person who, with the intent to capture any type of personal information for an illicit purpose, violates the conditions for operating a UA is guilty of a misdemeanor. "Illicit purpose" includes a commercial purpose where the commercial use of the unmanned aircraft is not compliant with the requirements of the FMRA or other applicable law.

Civil Remedies.

An individual whose reasonable expectation of privacy is violated by an unlawful operation of an unmanned aircraft equipped with an active sensing device may bring an action for damages, recovering the greater of actual or liquidated damages of \$5,000, and attorneys' fees and costs.

Other.

A severability clause is included. Remedies provided do not restrict other remedies available, and are in addition to any other requirements, rights, penalties, and remedies provided by law.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) None.

(With concerns) Applicability of the bill's provisions to public agencies is a concern that appears to have been addressed.

(Opposed) None.

Persons Testifying: James McMahan, Washington Association of Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying: None.