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Legislative Document

No. 236

S.P. 72

In Senate, February 5, 2013

An Act To Protect the Privacy of Citizens from Domestic Unmanned Aerial Vehicle Use

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator PATRICK of Oxford.
Cosponsored by Representative PETERSON of Rumford and
Senators: DUTREMBLE of York, LACHOWICZ of Kennebec, VALENTINO of York,
Representatives: BRIGGS of Mexico, CHIPMAN of Portland, DION of Portland, GILBERT of
Jay, MASTRACCIO of Sanford.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 25 MRSA Pt. 12** is enacted to read:

3 **PART 12**

4 **UNMANNED AERIAL VEHICLES**

5 **CHAPTER 551**

6 **REGULATION OF UNMANNED AERIAL VEHICLES**

7 **§4501. Definitions**

8 As used in this chapter, unless the context otherwise indicates, the following terms
9 have the following meanings.

10 **1. Law enforcement agency.** "Law enforcement agency" has the same meaning as
11 in section 3701, subsection 1.

12 **2. Unmanned aerial vehicle.** "Unmanned aerial vehicle" means an aircraft that is
13 operated without a physical human presence within or on the aircraft and guided by
14 remote control.

15 **§4502. Operation of unmanned aerial vehicles**

16 **1. Acquisition of unmanned aerial vehicles.** The acquisition of an unmanned aerial
17 vehicle must be approved by the governing body of the governmental unit overseeing the
18 law enforcement agency seeking to make such an acquisition.

19 **2. Operation of unmanned aerial vehicles.** Operation of an unmanned aerial
20 vehicle must fully comply with all Federal Aviation Administration requirements and
21 guidelines. A law enforcement agency may not operate an unmanned aerial vehicle or
22 collect, disclose or receive information acquired through the operation of an unmanned
23 aerial vehicle except:

24 A. Pursuant to an emergency enforcement exception under section 4504;

25 B. To collect, disclose or receive information about a person or the person's
26 residence, property or area if that person has given written consent;

27 C. To assist a person in an emergency circumstance in which it is reasonable to
28 believe that there is an imminent threat to the life or safety of the person, subject to
29 the following limitations:

30 (1) The law enforcement agency documents the factual basis for the emergency;
31 and

32 (2) Not later than 48 hours after the emergency operation begins, a supervisory
33 official for the law enforcement agency files a sworn statement setting forth the
34 grounds for the emergency operation;

35 D. Pursuant to a warrant issued under Title 15, section 55; or

1 E. Pursuant to an order issued by a court of competent jurisdiction if a law
2 enforcement agency offers specific and articulable facts demonstrating that there is a
3 reasonable suspicion of criminal activity, that the operation of the unmanned aerial
4 vehicle will uncover such activity and that alternative methods of collecting
5 information either are cost-prohibitive or present a significant risk to a person's
6 bodily safety. An order issued under this paragraph may not allow operation for a
7 period greater than 48 hours. An extension of an order issued under this paragraph
8 may be granted for a period no longer than the court determines necessary to achieve
9 the purposes for which it was granted but not to exceed 30 days.

10 **3. Restrictions on operation.** The operation of an unmanned aerial vehicle may
11 not:

12 A. Be conducted for a purpose other than a specific purpose allowed under
13 subsection 2 or section 4504;

14 B. Be conducted by a person other than a law enforcement agency pursuant to this
15 chapter or a person otherwise authorized by law;

16 C. Employ the use of facial recognition technology or other biometric technology; or

17 D. Collect information on a person, residence, property or area not related to a
18 permitted purpose of operation under subsection 2.

19 An unmanned aerial vehicle may not be equipped with a weapon.

20 **§4503. Retention of information**

21 Information collected by an unmanned aerial vehicle may not be used, copied or
22 disclosed for any purpose other than for a lawful purpose under section 4502, subsection
23 2. Information collected by an unmanned aerial vehicle for any purpose other than for a
24 lawful purpose under section 4502, subsection 2 must be deleted as soon as possible and
25 no later than 24 hours after collection. Information collected by an unmanned aerial
26 vehicle under section 4502, subsection 2 may be received in evidence in a trial, hearing or
27 other proceeding in or before a court, grand jury, department, officer, agency, regulatory
28 body, legislative committee or other authority of the State or a municipality only if the
29 use of that information as evidence was part of the lawful purpose allowing the unmanned
30 aerial vehicle operation under section 4502, subsection 2.

31 **§4504. Emergency enforcement exception**

32 **1. Emergency enforcement exception.** A law enforcement agency may operate an
33 unmanned aerial vehicle and collect, disclose or receive information from the operation if
34 the law enforcement agency reasonably determines that an emergency enforcement
35 exception is required because a situation exists:

36 A. That involves a conspiratorial activity that threatens the national security interest
37 or that is characteristic of organized crime;

38 B. That requires the operation of an unmanned aerial vehicle before a warrant under
39 section 4502, subsection 2, paragraph D or court order under section 4502, subsection
40 2, paragraph E with due diligence can be obtained;

1 C. In which there are grounds upon which a warrant under section 4502, subsection
2 2, paragraph D or court order under section 4502, subsection 2, paragraph E could be
3 entered to authorize the operation of an unmanned aerial vehicle; and

4 D. For which an application for a warrant under section 4502, subsection 2,
5 paragraph D or court order under section 4502, subsection 2, paragraph E approving
6 the operation is made within 48 hours after the operation of an unmanned aerial
7 vehicle has occurred.

8 **2. Absence of a warrant or court order.** If the information sought by the operation
9 of an unmanned aerial vehicle is obtained prior to the issuance of a warrant or court order
10 under subsection 1, the law enforcement agency shall immediately terminate the
11 operation of the unmanned aerial vehicle.

12 **3. Denial of warrant or court order.** If the application for a warrant or court order
13 under subsection 1 is denied, the operation of the unmanned aerial vehicle underlying the
14 application must be immediately terminated and any information obtained from the
15 operation of the unmanned aerial vehicle must be treated as having been obtained in
16 violation of this chapter.

17 **§4505. Delayed notice**

18 **1. Delayed notice.** When a warrant or court order is sought under section 4502,
19 subsection 2, paragraph D or E or section 4504, a law enforcement agency may request
20 an order delaying the notice required under the Maine Rules of Criminal Procedure, Rule
21 41B(b)(4) for a period not to exceed 10 days. The court may grant the request if the court
22 determines that the notification of the warrant or court order may have an adverse result
23 under subsection 2.

24 **2. Adverse result.** An adverse result for the purposes of a delayed notice under
25 subsection 1 includes the subject of the warrant or court order or other person of interest:

26 A. Endangering the life or physical safety of a person;

27 B. Fleeing from prosecution;

28 C. Destroying or tampering with evidence;

29 D. Intimidating potential witnesses; and

30 E. Otherwise seriously jeopardizing an investigation or unduly delaying a trial.

31 **3. Extension.** The court may grant an extension of the delayed notice under
32 subsection 1 for up to 10 days for each extension upon application by the law
33 enforcement agency.

34 **4. Expiration of delayed notice.** Upon expiration of the period of delayed notice
35 under subsection 1, the law enforcement agency shall serve upon, or deliver by registered
36 or first-class mail to, the person about whom information was collected a copy of the
37 warrant or court order together with notice that:

38 A. States with reasonable specificity the nature of the law enforcement inquiry; and

- 1 B. Informs the person about whom information was collected:
2 (1) That notification of the warrant or court order was delayed;
3 (2) What law enforcement agency made the request for delayed notice;
4 (3) What court made the determination to delay notice; and
5 (4) Which provision of subsection 2 supported the court's determination.

6 **§4506. Violations**

7 **1. Private right of action.** If a law enforcement agency violates any provision of
8 this chapter, the person about whom information was collected personally or as owner of
9 a residence, property or area in violation of this chapter may institute and prosecute in
10 that person's own name and on that person's behalf a civil action for legal or equitable
11 relief. In addition to compensatory damages, a person whose rights have been violated by
12 a violation of this chapter may recover no more than \$5,000 plus reasonable attorney's
13 fees and court costs.

14 **2. Attorney General.** The Attorney General may bring a civil action to enforce the
15 provisions of this chapter.

16 **3. Motion to suppress.** A court may not allow to be received into evidence any
17 information collected, disclosed or received in violation of this chapter and shall grant a
18 motion to suppress as evidence any information collected, disclosed or received in
19 violation of this chapter.

20 **§4507. Reporting**

21 **1. Reporting by law enforcement agency.** In June of each year, a law enforcement
22 agency that uses an unmanned aerial vehicle shall report to the Legislature, retain for
23 public viewing and post on its publicly accessible website, if one exists:

24 A. The number of times an unmanned aerial vehicle was operated, organized by the
25 types of incidents and the types of justification for operation;

26 B. The number of criminal investigations aided by the operation of an unmanned
27 aerial vehicle and a description of how the unmanned aerial vehicle aided each
28 investigation;

29 C. The number of times an unmanned aerial vehicle was operated for reasons other
30 than a criminal investigation and a description of how the unmanned aerial vehicle
31 aided each operation;

32 D. The frequency and type of information collected on an individual, residence,
33 property or area that was not the subject of an operation; and

34 E. The total cost of operating the unmanned aerial vehicle for the preceding 12
35 months.

36 **2. Reporting by Attorney General to the court.** In March of each year the
37 Attorney General or the Attorney General's designee shall report to the Administrative
38 Office of the Courts the number of applications for a warrant under section 4502,

1 subsection 2, paragraph D; court order under section 4502, subsection 2, paragraph E;
2 order for delayed notice under section 4505, subsection 1; and extension of delayed
3 notice under section 4505, subsection 3 made during the preceding calendar year. For
4 each warrant, court order, order for delayed notice and extension of delayed notice
5 reported pursuant to this subsection, the report must include:

6 A. A general description of the information collected under the warrant, court order,
7 order for delayed notice or extension of delayed notice, including:

8 (1) The approximate nature and frequency of incriminating conduct;

9 (2) The approximate number of persons about whom information was collected;
10 and

11 (3) The approximate nature, amount and cost of the personnel and other
12 resources used in the collection;

13 B. The number of arrests resulting from the information collected and the offenses
14 for which arrests were made;

15 C. The number of trials resulting from the information collected;

16 D. The number of motions to suppress made with respect to the information
17 collected and the number of those motions granted or denied; and

18 E. The number of convictions resulting from the information collected and the
19 offenses for which the convictions were obtained and a general assessment of the
20 importance of the information.

21 **3. Reporting by Attorney General to the Legislature and public.** The Attorney
22 General shall post in June of each year on the Attorney General's publicly accessible
23 website and transmit to the Legislature a full and complete report listing the number of
24 applications for warrants and court orders authorizing and approving operation of
25 unmanned aerial vehicles and disclosure of information collected from the operation of
26 unmanned aerial vehicles pursuant to this chapter and the number of warrants, court
27 orders, orders for delayed notice and extensions of delayed notice granted and denied
28 pursuant to this chapter during the preceding calendar year.

29 **4. Record keeping.** A law enforcement agency shall keep a detailed record about
30 each operation of an unmanned aerial vehicle including all information required to be
31 reported in this section and make this record available to the Attorney General.

32 SUMMARY

33 This bill regulates unmanned aerial vehicles, including their acquisition and lawful
34 operation by law enforcement agencies in collecting, disclosing and receiving
35 information and the retention of information collected. For the permitted operation of an
36 unmanned aerial vehicle, the bill requires the consent of the subject person, a warrant or
37 court order, an emergency situation that threatens life or serious bodily injury or an
38 emergency enforcement situation that threatens national security or evinces conspiratorial
39 criminal conduct requiring immediate operation of the vehicle before a warrant can be
40 obtained. The bill also allows delayed service of a warrant or court order informing the

1 subject person until after the warrant's or order's issuance if necessary for avoiding certain
2 adverse results. The bill provides for a private right of action or enforcement by the
3 Attorney General for a violation and disallows the use of any information collected in
4 violation as evidence in a hearing or court of law. The bill requires the Attorney General
5 to report certain information concerning the use of unmanned aerial vehicles to the
6 Legislature and the Administrative Office of the Courts and for law enforcement agencies
7 and the Attorney General to post certain information on their publicly accessible
8 websites.