

MAINE STATE LEGISLATURE

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MINORITY

L.D. 236

Date: 6/13/2013

(Filing No. S-282)

JUDICIARY

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STATE OF MAINE

SENATE

126TH LEGISLATURE

FIRST REGULAR SESSION

COMMITTEE AMENDMENT "B" to S.P. 72, L.D. 236, Bill, "An Act To Protect the Privacy of Citizens from Domestic Unmanned Aerial Vehicle Use"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

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

PART 12

UNMANNED AERIAL VEHICLES

CHAPTER 551

REGULATION OF UNMANNED AERIAL VEHICLES

§4501. Definitions

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

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

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

§4502. Operation of unmanned aerial vehicles

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

COMMITTEE AMENDMENT

1 **2. Law enforcement operation of unmanned aerial vehicles.** A law enforcement
2 agency may not operate an unmanned aerial vehicle or collect, disclose or receive
3 information acquired through the operation of an unmanned aerial vehicle except:

4 A. Pursuant to an emergency enforcement or administrative investigation exception
5 under section 4503;

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

8 C. Pursuant to a warrant issued under Title 15, section 55; or

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

18 **3. Restrictions on operation.** An unmanned aerial vehicle may not employ the use
19 of facial recognition technology or be equipped with a weapon except for research and
20 development purposes.

21 **§4503. Exceptions; allowed use of unmanned aerial vehicle**

22 Notwithstanding any other provision in this chapter, the following are not prohibited
23 uses of unmanned aerial vehicles.

24 **1. Emergency enforcement exception.** A law enforcement agency may operate an
25 unmanned aerial vehicle and collect, disclose or receive information from the operation if
26 the law enforcement agency reasonably determines that an emergency enforcement
27 exception is required.

28 A. An emergency enforcement exception may be required because a situation exists:

29 (1) That threatens national security;

30 (2) That threatens state or local security; or

31 (3) That threatens the life or safety of one or more individuals.

32 B. When a law enforcement agency has used an unmanned aerial vehicle to collect
33 or receive information pursuant to this subsection, the law enforcement agency shall
34 document the factual basis for the emergency enforcement exception in an affidavit
35 that the law enforcement agency retains.

36 **2. Administrative investigation exception.** The State or any political subdivision
37 of the State may operate an unmanned aerial vehicle:

38 A. To investigate and respond to natural disasters;

39 B. To monitor the status of dams and flood-control systems;

- 1 C. To conduct surveys, including, but not limited to, surveys conducted by the Maine
- 2 Geological Survey;
- 3 D. To aid in weather forecasting; or
- 4 E. To conduct search and rescue activities.

5 **§4504. Warrant provisions**

6 **1. Absence of a warrant or court order.** If the information sought by the operation

7 of an unmanned aerial vehicle is obtained prior to the issuance of a warrant or court order

8 under section 4502, subsection 2, paragraph C or D, the law enforcement agency shall

9 immediately terminate the operation of the unmanned aerial vehicle.

10 **2. Denial of warrant or court order.** If an application for a warrant or court order

11 under section 4502, subsection 2, paragraph C or D is denied, the law enforcement

12 agency shall immediately terminate the operation of the unmanned aerial vehicle

13 underlying the application and may not retain or disclose any information obtained from

14 the operation of the unmanned aerial vehicle.

15 **3. Delayed notice.** When a warrant or court order is sought under section 4502,

16 subsection 2, paragraph C or D, a law enforcement agency may request an order delaying

17 the notice required under the Maine Rules of Criminal Procedure, Rule 41B(b)(4) for a

18 period not to exceed 10 days. The court may grant the request if the court determines that

19 providing the notice of the warrant or court order may have an adverse result, which

20 includes:

- 21 A. The endangerment of the life or physical safety of a person;
- 22 B. A person's fleeing from prosecution;
- 23 C. Destruction of or tampering with evidence;
- 24 D. A person's intimidating potential witnesses; and
- 25 E. An event that seriously jeopardizes an investigation or unduly delays a trial.

26 **4. Extension.** The court may grant an extension of the delayed notice under

27 subsection 3 for up to 10 days for each extension upon application by the law

28 enforcement agency.

29 **5. Expiration of delayed notice.** Upon expiration of the period of delayed notice

30 under subsection 3, the law enforcement agency shall serve upon, or deliver by registered

31 or first-class mail to the person about whom information was collected, a copy of the

32 warrant or court order together with notice that:

- 33 A. States with reasonable specificity the nature of the law enforcement inquiry; and
- 34 B. Informs the person about whom information was collected:
 - 35 (1) That notification of the warrant or court order was delayed;
 - 36 (2) What law enforcement agency made the request for delayed notice;
 - 37 (3) What court made the determination to delay notice; and
 - 38 (4) Which provision of subsection 3 supported the court's determination.

1 **§4505. Violations; private right of action**

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

8 **SUMMARY**

9 This amendment is the minority report of the Joint Standing Committee on Judiciary.
10 It replaces the bill.

11 This amendment retains a broad definition of "unmanned aerial vehicle."

12 This amendment requires approval of the acquisition of an unmanned aerial vehicle
13 by the governing body of a law enforcement agency. It prohibits a law enforcement
14 agency from operating an unmanned aerial vehicle or collecting, disclosing or receiving
15 information acquired through the operation of an unmanned aerial vehicle except when
16 pursuant to an emergency enforcement or administrative investigation exception, with the
17 written consent of the person or property owner, pursuant to a warrant or pursuant to a
18 court order.

19 This amendment prohibits the operation of an unmanned aerial vehicle that employs
20 the use of facial recognition technology or that is equipped with a weapon except for
21 research and development purposes.

22 This amendment provides for emergency enforcement exceptions to the use of an
23 unmanned aerial vehicle without a warrant or court order. An emergency enforcement
24 exception may be required because a situation exists that threatens national security, state
25 or local security or the life or safety of one or more individuals. When a law enforcement
26 agency has used an unmanned aerial vehicle to collect or receive information under an
27 emergency enforcement exception, the law enforcement agency is required to document
28 the factual basis for the emergency enforcement exception in an affidavit that the law
29 enforcement agency retains.

30 This amendment provides for administrative investigation exceptions for the use of
31 an unmanned aerial vehicle by the State or any political subdivision of the State to
32 investigate and respond to natural disasters, to monitor the status of dams and flood-
33 control systems, to conduct surveys, including but not limited to surveys conducted by
34 the Maine Geological Survey, and to aid in weather forecasting.

35 This amendment provides that if the operation of an unmanned aerial vehicle is
36 started before a warrant or court order is obtained and the information being sought is
37 collected before the warrant or court order is obtained, the law enforcement agency must
38 immediately terminate the operation of the unmanned aerial vehicle. If the warrant or
39 court order is denied, the law enforcement agency must immediately terminate the
40 operation of the unmanned aerial vehicle and the law enforcement agency may not retain
41 or disclose any information obtained from the operation of the unmanned aerial vehicle.

1 When a warrant or court order is sought, the law enforcement agency may request an
2 order delaying the notice required under the Maine Rules of Criminal Procedure. The
3 delay may not exceed 10 days, and 10-day extensions may be granted. When the order
4 for delayed notice has expired, the law enforcement agency is required to provide the
5 notice to the person about whom the information was collected. The notice must include
6 the nature of the law enforcement inquiry, the information that was collected and the
7 justification for the delay.

8 This amendment creates a private right of action against a law enforcement agency
9 for violations of the new law. A person may collect compensatory damages plus up to
10 \$5,000 and reasonable attorney's fees and court costs.

FISCAL NOTE REQUIRED
(See attached)



126th MAINE LEGISLATURE

LD 236

LR 19(03)

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

Fiscal Note for Bill as Amended by Committee Amendment

B(5-282)

Committee: Judiciary

Fiscal Note Required: Yes

Fiscal Note

Potential current biennium cost increase - General Fund

Correctional and Judicial Impact Statements

Increases civil actions and caseloads.

The collection of additional filing fees may also increase General Fund revenue by minor amounts.

Fiscal Detail and Notes

The Department of the Attorney General has identified the need for a General Fund appropriation of \$47,210 in fiscal year 2014-15 for one half-time Assistant Attorney General position to address an anticipated increase in workload from additional warrants and court orders and potential costs to defend State agencies. No funding is provided in this bill. The actual increase in workload will depend on the use of unmanned aerial vehicles in the State and cannot be fully estimated at this time.