

AMENDED IN SENATE JULY 16, 2015

AMENDED IN SENATE JULY 7, 2015

AMENDED IN SENATE JUNE 24, 2015

AMENDED IN ASSEMBLY APRIL 22, 2015

AMENDED IN ASSEMBLY APRIL 8, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 56

**Introduced by Assembly Member Quirk
(Principal coauthor: Assembly Member Campos)**

December 2, 2014

An act to add Section 6254.31 to the Government Code, and to add Title 14 (commencing with Section 14350) to Part 4 of the Penal Code, relating to unmanned aircraft systems.

LEGISLATIVE COUNSEL'S DIGEST

AB 56, as amended, Quirk. Unmanned aircraft systems.

Existing federal law, the Federal Aviation Administration Modernization and Reform Act of 2012, provides for the integration of civil unmanned aircraft systems, commonly known as drones, into the national airspace system by September 30, 2015. Existing federal law requires the Administrator of the Federal Aviation Administration to develop and implement operational and certification requirements for the operation of public unmanned aircraft systems in the national airspace system by December 31, 2015.

This bill would generally prohibit law enforcement agencies from using unmanned aircraft systems, obtaining an unmanned aircraft system

from another public agency by contract, loan, or other arrangement, or using information obtained from an unmanned aircraft system used by another public agency, except as provided by the bill's provisions. The bill would authorize a law enforcement agency to use an unmanned aircraft system if the law enforcement agency complies with specified requirements, including, among others, that before the use of an unmanned aircraft system, the law enforcement agency ~~develops and~~ *develops*, makes available to the ~~public~~ *public*, and, *at least once every 3 years, reviews*, a policy on the use of an unmanned aircraft system, as provided, and that the law enforcement agency complies with protections against unreasonable searches guaranteed by the United States Constitution and the California Constitution, *protection of the right of privacy guaranteed by the California Constitution*, federal law applicable to the use of an unmanned aircraft system by an agency, state and local law applicable to any agency's use of surveillance technology that can be attached to an unmanned aircraft system, and the unmanned aircraft system policy developed by the law enforcement agency pursuant to the bill's provisions. *The bill would require a law enforcement agency that uses an unmanned aircraft system to ensure that information and data gathered through the use of the system is protected with reasonable operational, administrative, technical, and physical safeguards, and to implement and maintain reasonable security procedures and practices in order to protect information and data gathered through the use of that system from unauthorized access, destruction, use, modification, or disclosure.* The bill would prohibit a law enforcement agency from using an unmanned aircraft system to surveil private property unless, among other justifications, the law enforcement agency obtains a search warrant.

The bill would require images, footage, or data obtained through the use of an unmanned aircraft system under these provisions to be permanently destroyed within one year, except as specified. ~~The bill would generally prohibit images, footage, or data of private property obtained through the use of an unmanned aircraft system under these provisions from being disseminated outside the collecting law enforcement agency, except as specified.~~ Unless authorized by federal law, the bill would prohibit a person or entity, including a public agency subject to these provisions, or a person or entity under contract to a public agency, for the purpose of that contract, from equipping or arming an unmanned aircraft system with a weapon or other device that may be carried by, or launched or directed from, an unmanned aircraft system

and that is intended to cause incapacitation, bodily injury or death, or damage to, or the destruction of, real or personal property. By creating a new crime, the bill would impose a state-mandated local program. *The bill would require a law enforcement agency that operates an unmanned aircraft system to keep a record of the use of that system, including information on whether a search warrant was sought before the system was used, and, in situations where a warrant was sought, whether the warrant was granted or denied.* The bill would also provide that specified surveillance restrictions on electronic devices apply to the use or operation of an unmanned aircraft system by a law enforcement agency.

The bill would make its provisions applicable to all law enforcement agencies and private entities when contracting with or acting as the agent of a law enforcement agency for the use of an unmanned aircraft system.

The bill would authorize, in addition to any other sanctions, penalties, or remedies provided by law, an individual who has been harmed by a violation of the bill's provisions to bring a civil action in any court of competent jurisdiction against a person who knowingly caused that violation, and would authorize the court to award, among other things, actual damages, punitive damages, and other preliminary and equitable relief as the court determines to be appropriate.

Existing law, the California Public Records Act, requires state and local agencies to make public records available for inspection, subject to certain exceptions.

This bill would make certain images, footage, or data obtained through the use of an unmanned aircraft system under its provisions, or any related record, including, but not limited to, usage logs or logs that identify any person or entity that subsequently obtains or requests records of that system, subject to disclosure. The bill would except from the disclosure requirements discussed above images, footage, data, and records obtained through the use of an unmanned aircraft system if disclosure would endanger the safety of a person involved in an investigation, or would endanger the successful completion of the investigation.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Because this bill would require local entities to comply with additional rules and requirements regarding the use of information obtained from unmanned aircraft systems, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6254.31 is added to the Government
2 Code, to read:

3 6254.31. (a) Notwithstanding any provision of this chapter,
4 images, footage, or data obtained through the use of an unmanned
5 aircraft system, including use pursuant to Title 14 (commencing
6 with Section 14350) of Part 4 of the Penal Code, or any related
7 record, including, but not limited to, usage logs or logs that identify
8 any person or entity that subsequently obtains or requests records
9 of that system, are public records subject to disclosure.

10 (b) Notwithstanding subdivision (a), nothing in this chapter or
11 any other law requires the disclosure of images, footage, or data
12 obtained through the use of an unmanned aircraft system, or any
13 related record, including, but not limited to, usage logs or logs that
14 identify any person or entity that subsequently obtains or requests
15 records of that system, to the extent that disclosure of the images,
16 footage, data, or records would endanger the safety of a person
17 involved in an investigation, or would endanger the successful
18 completion of the investigation.

19 SEC. 2. Title 14 (commencing with Section 14350) is added
20 to Part 4 of the Penal Code, to read:

21
22 TITLE 14. UNMANNED AIRCRAFT SYSTEMS

23
24 14350. (a) A law enforcement agency shall not use an
25 unmanned aircraft system, obtain an unmanned aircraft system

1 from another public agency by contract, loan, or other arrangement,
2 or use information obtained from an unmanned aircraft system
3 used by another public agency, except as provided in this title.
4 This title shall apply to all law enforcement agencies and private
5 entities when contracting with or acting as the agent of a law
6 enforcement agency for the use of an unmanned aircraft system.

7 (b) A law enforcement agency may use an unmanned aircraft
8 system, or use information obtained from an unmanned aircraft
9 system used by another public agency, if the law enforcement
10 agency complies with *the requirements of this title and all of*
11 *applicable federal, state, and local law, including the following:*

12 (1) Protections against unreasonable searches guaranteed by the
13 United States Constitution and the California Constitution.

14 (2) *Protection of the inalienable right of privacy guaranteed by*
15 *the California Constitution.*

16 ~~(2)~~

17 (3) Federal law applicable to the use of an unmanned aircraft
18 system by an agency, including, but not limited to, regulations of
19 the Federal Aviation Administration.

20 ~~(3)~~

21 (4) State and local law applicable to any agency's use of
22 surveillance technology that can be attached to an unmanned
23 aircraft system, including, but not limited to, Chapter 1.5
24 (commencing with Section 630) of Title 15 of Part 1.

25 ~~(4)~~

26 (c) If the use of an unmanned aircraft system by a local law
27 enforcement agency may involve the collection of images, footage,
28 or data from another county, city, or city and county, the law
29 enforcement agency shall obtain a warrant based on probable cause,
30 unless an exigent circumstance exists.

31 ~~(5) (A) The~~

32 (d) (1) ~~A law enforcement agency develops and makes available~~
33 ~~to the public shall develop~~ a policy on the use of ~~an~~ unmanned
34 ~~aircraft-system systems and-trains train~~ the law enforcement
35 agency's officers and employees on the policy, before the use of
36 the unmanned aircraft system. *This policy shall be made available*
37 *to the public in writing, and, if the law enforcement agency has*
38 *an Internet Web site, the policy shall be posted conspicuously on*
39 *that Internet Web site.*

40 ~~(B) The~~

1 (2) A law enforcement agency ~~uses~~ *shall use* the unmanned
2 aircraft system consistent with the policy developed pursuant to
3 ~~this paragraph.~~ *subdivision.*
4 ~~(C)~~
5 (3) Before finalizing the policy required by this ~~paragraph,~~
6 *subdivision*, the law enforcement agency shall present the proposed
7 policy at a regularly scheduled and noticed public meeting of its
8 governing body with an opportunity for public comment.
9 ~~(D)~~
10 (4) The policy required by this ~~paragraph~~ *subdivision* shall
11 specify, at a minimum, all of the following:
12 ~~(i) The circumstances under which an unmanned aircraft system~~
13 ~~may and may not be used.~~
14 ~~(ii) The time limits applicable to each circumstance.~~
15 ~~(iii) The rules and processes required before such use.~~
16 ~~(iv) The individuals who may access or use an unmanned aircraft~~
17 ~~system or its collected information and the circumstances under~~
18 ~~which they may do so.~~
19 ~~(v) The safeguards to protect unauthorized use or access.~~
20 ~~(vi) Training required for any individual authorized to use or~~
21 ~~access the sharing or information.~~
22 ~~(vii) Sharing of images, data, or footage with other law~~
23 ~~enforcement agencies and public agencies.~~
24 ~~(viii) The~~
25 *(A) How the collection, use, maintenance, sharing, and*
26 *dissemination of information and data gathered through the use*
27 *of an unmanned aircraft system is consistent with respect for an*
28 *individual's privacy and civil liberties.*
29 *(B) The authorized purposes for using an unmanned aircraft*
30 *system and for collecting information or data using that technology,*
31 *including the circumstances under which an unmanned aircraft*
32 *system may and may not be used. The policy shall identify any time*
33 *limits applicable to the use of an unmanned aircraft system and*
34 *the rules and procedures to be followed before such use.*
35 *(C) A description of the employees who are authorized to use*
36 *or access information or data collected through the use of an*
37 *unmanned aircraft system. The policy shall identify the training*
38 *requirements necessary for those authorized employees, as well*
39 *as the circumstances under which they may use or access this*
40 *information or data.*

1 (D) A description of how the use of an unmanned aircraft system
2 will be monitored to ensure compliance with all applicable privacy
3 laws and a process for periodic system audits.

4 (E) A description of reasonable measures that will be used to
5 ensure the accuracy of information or data gathered through the
6 use of an unmanned aircraft system, and a process to correct
7 errors.

8 (F) A description of how the law enforcement agency will comply
9 with the security procedures and practices implemented and
10 maintained pursuant to subdivision (e).

11 (G) The official custodian or owner of information or data
12 gathered through the use of an unmanned aircraft system, and the
13 employee or employees that have the responsibility and
14 accountability for implementing this subdivision.

15 (H) The purpose of, and process for, sharing or disseminating
16 information or data gathered through the use of an unmanned
17 aircraft system with other law enforcement agencies and public
18 agencies. The policy shall also identify how the use or further
19 sharing or dissemination of that information or data will be
20 restricted in order to ensure respect for an individual's privacy
21 and civil liberties.

22 (I) The manner in which information obtained from another
23 public agency will be used.

24 ~~(ix)~~

25 (J) Mechanisms to ensure the policy is followed.

26 ~~(e)~~

27 (K) The policy shall prohibit the use of an unmanned aircraft
28 system solely for the purpose of monitoring activities protected by
29 the First Amendment to the United States Constitution, or the
30 lawful exercise of other rights secured by the United States
31 Constitution, the California Constitution, and federal and state
32 law. The policy shall also prohibit the use of an unmanned aircraft
33 system to engage in discrimination on the basis of race, ethnicity,
34 gender, national origin, religion, sexual orientation, or gender
35 identity.

36 (5) The policy required by this subdivision shall be reviewed at
37 least once every three years to evaluate whether changes may be
38 needed as a result of innovations or developments in unmanned
39 aircraft system technology, to identify potential risks to individual

1 *privacy and civil liberties, and to ensure compliance with existing*
2 *laws and regulations.*

3 (e) *A law enforcement agency that uses an unmanned aircraft*
4 *system shall ensure that information and data gathered through*
5 *the use of the system is protected with reasonable operational,*
6 *administrative, technical, and physical safeguards to ensure its*
7 *confidentiality and integrity. A law enforcement agency that uses*
8 *an unmanned aircraft system shall implement and maintain*
9 *reasonable security procedures and practices in order to protect*
10 *information and data gathered through the use of that system from*
11 *unauthorized access, destruction, use, modification, or disclosure.*

12 (f) *A law enforcement agency shall not use an unmanned aircraft*
13 *system, or information obtained from an unmanned aircraft system*
14 *used by another public agency, to surveil private property unless*
15 *the law enforcement agency complies with subdivision (b) and*
16 *has obtained either of the following:*

17 (1) *A search warrant based on probable cause.*

18 (2) *The express permission of the person or entity with the legal*
19 *authority to authorize a search of the specific private property to*
20 *be subjected to surveillance.*

21 ~~(e)~~

22 (g) *Notwithstanding subdivision ~~(e)~~, (f), a law enforcement*
23 *agency may use an unmanned aircraft system to surveil private*
24 *property if an exigent circumstance exists, including, but not*
25 *limited to, either of the following circumstances:*

26 (1) *In emergency situations if there is an imminent threat to life*
27 *or of great bodily harm, including, but not limited to, fires, hostage*
28 *crises, barricaded suspects, “hot pursuit” situations if reasonably*
29 *necessary to prevent harm to law enforcement officers or others,*
30 *and search and rescue operations on land or water.*

31 (2) *To determine the appropriate response to an imminent or*
32 *existing environmental emergency or disaster, including, but not*
33 *limited to, ~~oil~~ oil spills or chemical spills.*

34 14351. (a) *Images, footage, or data obtained through the use*
35 *of an unmanned aircraft system shall be permanently destroyed*
36 *within one year, except that a law enforcement agency may retain*
37 *the images, footage, or data in both of the following circumstances:*

38 (1) *For training purposes. Images, footage, or data retained for*
39 *training purposes shall be used only for the education and*
40 *instruction of a law enforcement agency’s employees in matters*

1 related to the mission of the law enforcement agency and for no
2 other purpose.

3 (2) For academic research or teaching purposes. Images, footage,
4 or data retained for academic research or teaching purposes shall
5 be used only for the advancement of research and teaching
6 conducted by an academic or research institution and matters
7 related to the mission of the institution and for no other purpose.

8 (b) Notwithstanding subdivision (a), a law enforcement agency
9 may retain beyond one year images, footage, or data obtained
10 through the use of an unmanned aircraft system in both of the
11 following circumstances:

12 (1) If a search warrant authorized the collection of the images,
13 footage, or data.

14 (2) If the images, footage, or data are evidence in any claim
15 filed or any pending litigation, internal disciplinary proceeding,
16 enforcement proceeding, or criminal investigation.

17 14352. Unless authorized by federal law, a person or entity,
18 including a law enforcement agency subject to Section 14350 or
19 a person or entity under contract to a law enforcement agency, for
20 the purpose of that contract, shall not equip or arm an unmanned
21 aircraft system with a weapon or other device that may be carried
22 by, or launched or directed from, an unmanned aircraft system and
23 that is intended to cause incapacitation, bodily injury or death, or
24 damage to, or the destruction of, real or personal property.

25 14353. All unmanned aircraft systems shall be operated so as
26 to minimize the collection of images, footage, or data of persons,
27 places, or things not specified with particularity in the warrant
28 authorizing the use of an unmanned aircraft system, or, if no
29 warrant was obtained, for purposes unrelated to the justification
30 for the operation.

31 *14354. A law enforcement agency that operates an unmanned*
32 *aircraft system shall keep a record of the use of that system, which*
33 *shall include information on whether a search warrant was sought*
34 *before the system was used, and, in situations where a warrant*
35 *was sought, whether the warrant was granted or denied.*

36 ~~14354.~~

37 14355. (a) This title is not intended to conflict with or
38 supersede federal law, including rules and regulations of the
39 Federal Aviation Administration.

1 (b) A local legislative body may adopt more restrictive policies
2 than those specified in state law on the acquisition, use, or retention
3 of unmanned aircraft systems.

4 ~~14355.~~

5 *14356.* For the purposes of this title, the following definitions
6 shall apply:

7 (a) “Law enforcement agency” means the Attorney General,
8 each district attorney, and each agency of the state or political
9 subdivision of the state authorized by statute to investigate or
10 prosecute law violators.

11 (b) “Unmanned aircraft system” means an unmanned aircraft
12 and associated elements, including communication links and the
13 components that control the unmanned aircraft, that are required
14 for the pilot in command to operate safely and efficiently in the
15 national airspace system.

16 ~~14356.~~

17 *14357.* Except as provided in this title, the surveillance
18 restrictions on electronic devices described in Chapter 1.5
19 (commencing with Section 630) of Title 15 of Part 1 shall apply
20 to the use or operation of an unmanned aircraft system by a law
21 enforcement agency.

22 *14358.* *In addition to any other sanctions, penalties, or*
23 *remedies provided by law, an individual who has been harmed by*
24 *a violation of this title may bring a civil action in any court of*
25 *competent jurisdiction against a person who knowingly caused*
26 *that violation. The court may award any of the following:*

27 (a) *Actual damages, but not less than liquidated damages in the*
28 *amount of two thousand five hundred dollars (\$2,500).*

29 (b) *Punitive damages upon proof of willful or reckless disregard*
30 *of the law.*

31 (c) *Reasonable attorney’s fees and other litigation costs*
32 *reasonably incurred.*

33 (d) *Other preliminary and equitable relief as the court*
34 *determines to be appropriate.*

35 SEC. 3. The Legislature finds and declares that Section 1 of
36 this act, which adds Section 6254.31 of the Government Code,
37 imposes a limitation on the public’s right of access to the meetings
38 of public bodies or the writings of public officials and agencies
39 within the meaning of Section 3 of Article I of the California
40 Constitution. Pursuant to that constitutional provision, the

1 Legislature makes the following findings to demonstrate the interest
2 protected by this limitation and the need for protecting that interest:

3 In order to ensure the safety of persons involved in investigations
4 and to preserve the integrity of those investigations, it is necessary
5 that this act take effect.

6 SEC. 4. No reimbursement is required by this act pursuant to
7 Section 6 of Article XIII B of the California Constitution because
8 the only costs that may be incurred by a local agency or school
9 district under this act would result either from a legislative mandate
10 that is within the scope of paragraph (7) of subdivision (b) of
11 Section 3 of Article I of the California Constitution, or because
12 this act creates a new crime or infraction, eliminates a crime or
13 infraction, or changes the penalty for a crime or infraction, within
14 the meaning of Section 17556 of the Government Code, or changes
15 the definition of a crime within the meaning of Section 6 of Article
16 XIII B of the California Constitution.