

AMENDED IN SENATE SEPTEMBER 1, 2015

AMENDED IN SENATE JULY 16, 2015

AMENDED IN SENATE JULY 7, 2015

AMENDED IN SENATE JUNE 24, 2015

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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, makes available to the 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,~~ *all applicable federal, state, and local law* 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. 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, authorize 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. award attorney's fees, as specified, and would specify that the bill's provisions do not impair or impede any other rights, causes of action, claims, or defenses available under other law and that the remedies provided by the bill's provisions are cumulative with any other remedies available under other law.~~

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:

1 TITLE 14. UNMANNED AIRCRAFT SYSTEMS

2
3 14350. (a) A law enforcement agency shall not use an
4 unmanned aircraft system, obtain an unmanned aircraft system
5 from another public agency by contract, loan, or other arrangement,
6 or use information obtained from an unmanned aircraft system
7 used by another public agency, except as provided in this title.
8 This title shall apply to all law enforcement agencies and private
9 entities when contracting with or acting as the agent of a law
10 enforcement agency for the use of an unmanned aircraft system.

11 (b) A law enforcement agency may use an unmanned aircraft
12 system, or use information obtained from an unmanned aircraft
13 system used by another public agency, if the law enforcement
14 agency complies with the requirements of this title and all
15 applicable federal, state, and local law, ~~including the following:~~
16 *law.*

17 ~~(1) Protections against unreasonable searches guaranteed by the~~
18 ~~United States Constitution and the California Constitution.~~

19 ~~(2) Protection of the inalienable right of privacy guaranteed by~~
20 ~~the California Constitution.~~

21 ~~(3) Federal law applicable to the use of an unmanned aircraft~~
22 ~~system by an agency, including, but not limited to, regulations of~~
23 ~~the Federal Aviation Administration.~~

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

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

33 (d) (1) A law enforcement agency shall develop a policy on
34 the use of unmanned aircraft systems and 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.

1 (2) A law enforcement agency shall use the unmanned aircraft
2 system consistent with the policy developed pursuant to this
3 subdivision.

4 (3) Before finalizing the policy required by this subdivision,
5 the law enforcement agency shall present the proposed policy at
6 a regularly scheduled and noticed public meeting of its governing
7 body with an opportunity for public comment.

8 (4) The policy required by this subdivision shall specify, at a
9 minimum, all of the following:

10 (A) How the collection, use, maintenance, sharing, and
11 dissemination of information and data gathered through the use of
12 an unmanned aircraft system is consistent with respect for an
13 individual’s privacy and civil liberties.

14 (B) The authorized purposes for using an unmanned aircraft
15 system and for collecting information or data using that technology,
16 including the circumstances under which an unmanned aircraft
17 system may and may not be used. The policy shall identify any
18 time limits applicable to the use of an unmanned aircraft system
19 and the rules and procedures to be followed before such use.

20 (C) A description of the employees who are authorized to use
21 or access information or data collected through the use of an
22 unmanned aircraft system. The policy shall identify the training
23 requirements necessary for those authorized employees, as well
24 as the circumstances under which they may use or access this
25 information or data.

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

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

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

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

39 (H) The purpose of, and process for, sharing or disseminating
40 information or data gathered through the use of an unmanned

1 aircraft system with other law enforcement agencies and public
2 agencies. The policy shall also identify how the use or further
3 sharing or dissemination of that information or data will be
4 restricted in order to ensure respect for an individual’s privacy and
5 civil liberties.

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

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

9 (K) The policy shall prohibit the use of an unmanned aircraft
10 system solely for the purpose of monitoring activities protected
11 by the First Amendment to the United States Constitution, or the
12 lawful exercise of other rights secured by the United States
13 Constitution, the California Constitution, and federal and state
14 law. The policy shall also prohibit the use of an unmanned aircraft
15 system to engage in discrimination on the basis of race, ethnicity,
16 gender, national origin, religion, sexual orientation, or gender
17 identity.

18 (5) The policy required by this subdivision shall be reviewed
19 at least once every three years to evaluate whether changes may
20 be needed as a result of innovations or developments in unmanned
21 aircraft system technology, to identify potential risks to individual
22 privacy and civil liberties, and to ensure compliance with existing
23 laws and regulations.

24 (e) A law enforcement agency that uses an unmanned aircraft
25 system shall ensure that information and data gathered through
26 the use of the system is protected with reasonable operational,
27 administrative, technical, and physical safeguards to ensure its
28 confidentiality and integrity. A law enforcement agency that uses
29 an unmanned aircraft system shall implement and maintain
30 reasonable security procedures and practices in order to protect
31 information and data gathered through the use of that system from
32 unauthorized access, destruction, use, modification, or disclosure.

33 (f) A law enforcement agency shall not use an unmanned aircraft
34 system, or information obtained from an unmanned aircraft system
35 used by another public agency, to surveil private property unless
36 the law enforcement agency has obtained either of the following:

- 37 (1) A search warrant based on probable cause.
38 (2) The express permission of the person or entity with the legal
39 authority to authorize a search of the specific private property to
40 be subjected to surveillance.

1 (g) Notwithstanding subdivision (f), a law enforcement agency
2 may use an unmanned aircraft system to surveil private property
3 if an exigent circumstance exists, including, but not limited to,
4 either of the following circumstances:

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

10 (2) To determine the appropriate response to an imminent or
11 existing environmental emergency or disaster, including, but not
12 limited to, oil spills or chemical spills.

13 14351. (a) Images, footage, or data obtained through the use
14 of an unmanned aircraft system shall be permanently destroyed
15 within one year, except that a law enforcement agency may retain
16 the images, footage, or data in both of the following circumstances:

17 (1) For training purposes. Images, footage, or data retained for
18 training purposes shall be used only for the education and
19 instruction of a law enforcement agency’s employees in matters
20 related to the mission of the law enforcement agency and for no
21 other purpose.

22 (2) For academic research or teaching purposes. Images, footage,
23 or data retained for academic research or teaching purposes shall
24 be used only for the advancement of research and teaching
25 conducted by an academic or research institution and matters
26 related to the mission of the institution and for no other purpose.

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

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

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

36 14352. Unless authorized by federal law, a person or entity,
37 including a law enforcement agency subject to Section 14350 or
38 a person or entity under contract to a law enforcement agency, for
39 the purpose of that contract, shall not equip or arm an unmanned
40 aircraft system with a weapon or other device that may be carried

1 by, or launched or directed from, an unmanned aircraft system and
2 that is intended to cause incapacitation, bodily injury or death, or
3 damage to, or the destruction of, real or personal property.

4 14353. All unmanned aircraft systems shall be operated so as
5 to minimize the collection of images, footage, or data of persons,
6 places, or things not specified with particularity in the warrant
7 authorizing the use of an unmanned aircraft system, or, if no
8 warrant was obtained, for purposes unrelated to the justification
9 for the operation.

10 14354. A law enforcement agency that operates an unmanned
11 aircraft system shall keep a record of the use of that system, which
12 shall include information on whether a search warrant was sought
13 before the system was used, and, in situations where a warrant was
14 sought, whether the warrant was granted or denied.

15 14355. (a) This title is not intended to conflict with or
16 supersede federal law, including rules and regulations of the
17 Federal Aviation Administration.

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

21 14356. For the purposes of this title, the following definitions
22 shall apply:

23 (a) (1) “Law enforcement agency” means the Attorney General,
24 each district attorney, and each agency of the state or political
25 subdivision of the state authorized by statute to investigate or
26 prosecute law ~~violators~~. *violators and that employs peace officers.*

27 (2) *Notwithstanding paragraph (1), a public agency with a core*
28 *mission to protect an environmental resource is not a law*
29 *enforcement agency for purposes of this title when the agency is*
30 *performing an act directly connected to the agency’s core mission.*

31 (b) “Unmanned aircraft system” means an unmanned aircraft
32 and associated elements, including communication links and the
33 components that control the unmanned aircraft, that are required
34 for the pilot in command to operate safely and efficiently in the
35 national airspace system.

36 14357. Except as provided in this title, the surveillance
37 restrictions on electronic devices described in Chapter 1.5
38 (commencing with Section 630) of Title 15 of Part 1 shall apply
39 to the use or operation of an unmanned aircraft system by a law
40 enforcement agency.

1 14358. ~~In addition to any other sanctions, penalties, or remedies~~
 2 ~~provided by law, an~~ An individual who has been harmed by a
 3 violation of this title may bring a civil action in any court of
 4 competent jurisdiction against a person who knowingly caused
 5 that violation. ~~The~~ *In addition to any other sanctions, penalties,*
 6 *or remedies provided by law, the court may award any of the*
 7 ~~following:~~ *attorneys' fees pursuant to Section 1021.5 of the Code*
 8 *of Civil Procedure. This title does not impair or impede any other*
 9 *rights, causes of action, claims, or defenses available under other*
 10 *law. The remedies provided in this title are cumulative with any*
 11 *other remedies available under other law.*

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

14 ~~(b) Punitive damages upon proof of willful or reckless disregard~~
 15 ~~of the law.~~

16 ~~(c) Reasonable attorney's fees and other litigation costs~~
 17 ~~reasonably incurred.~~

18 ~~(d) Other preliminary and equitable relief as the court determines~~
 19 ~~to be appropriate.~~

20 SEC. 3. The Legislature finds and declares that Section 1 of
 21 this act, which adds Section 6254.31 of the Government Code,
 22 imposes a limitation on the public's right of access to the meetings
 23 of public bodies or the writings of public officials and agencies
 24 within the meaning of Section 3 of Article I of the California
 25 Constitution. Pursuant to that constitutional provision, the
 26 Legislature makes the following findings to demonstrate the interest
 27 protected by this limitation and the need for protecting that interest:

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

31 SEC. 4. No reimbursement is required by this act pursuant to
 32 Section 6 of Article XIII B of the California Constitution because
 33 the only costs that may be incurred by a local agency or school
 34 district under this act would result either from a legislative mandate
 35 that is within the scope of paragraph (7) of subdivision (b) of
 36 Section 3 of Article I of the California Constitution, or because
 37 this act creates a new crime or infraction, eliminates a crime or
 38 infraction, or changes the penalty for a crime or infraction, within
 39 the meaning of Section 17556 of the Government Code, or changes

- 1 the definition of a crime within the meaning of Section 6 of Article
- 2 XIII B of the California Constitution.

O