S T A T E O F N E W Y O R K

6541

2013-2014 Regular Sessions

I N A S S E M B L Y

April 4, 2013

Introduced by M. of A. ENGLEBRIGHT, COOK, SEPULVEDA -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the civil rights law, in relation to the use of unmanned aerial vehicles

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Legislative findings. The legislature hereby finds that:

(a) unmanned aerial vehicle technology has begun expanding out of its traditional military markets and into civilian markets;

(b) Congress has ordered the Federal Aviation Administration to integrate unmanned aerial vehicles into the air traffic control system by 2015;

(c) 81 agencies across the United States have applied to the Federal Aviation Administration for licenses to operate unmanned aerial vehicles;

(d) the use of unmanned aerial vehicles represents both a great tool for law enforcement and a great risk to civil liberties; and

(e) legislation is required to ensure that the future use of unmanned aerial vehicles complies with the level of privacy that New Yorkers have come to expect in their lives.

S 2. The civil rights law is amended by adding a new article 6-A to read as follows:

ARTICLE 6-A

USE OF UNMANNED AERIAL VEHICLES

SECTION 66. USE OF UNMANNED AERIAL VEHICLES; DEFINITION.

66-A. LAWFUL USE OF UNMANNED AERIAL VEHICLES.

66-B. DATA RETENTION.

66-C. ADMINISTRATIVE DISCIPLINE FOR MISUSE OF UNMANNED AERIAL VEHICLES.

66-D. REPORTING.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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S 66. USE OF UNMANNED AERIAL VEHICLES; DEFINITION. AS USED IN THIS ARTICLE, "UNMANNED AERIAL VEHICLE" MEANS ANY AIRCRAFT THAT IS OPERATED WITHOUT THE POSSIBILITY OF DIRECT HUMAN INTERVENTION FROM WITHIN OR ON THE AIRCRAFT.

S 66-A. LAWFUL USE OF UNMANNED AERIAL VEHICLES. 1. EVERY USE OF UNMANNED AERIAL VEHICLES SHALL FULLY COMPLY WITH ALL FEDERAL AVIATION ADMINISTRATION REQUIREMENTS AND GUIDELINES, AND ACQUISITION OF UNMANNED AERIAL VEHICLES BY LAW ENFORCEMENT AGENCIES MUST BE APPROVED BY THE GOVERNING BODY OF THE POLITICAL SUBDIVISION OVERSEEING THE LAW ENFORCEMENT AGENCY SEEKING TO ACQUIRE THE UNMANNED AERIAL VEHICLES.

2. EXCEPT AS PROVIDED IN SUBDIVISION THREE OF THIS SECTION, IT IS UNLAWFUL FOR AN AGENT OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF TO OPERATE AN UNMANNED AERIAL VEHICLE, OR TO DISCLOSE OR RECEIVE INFORMATION ACQUIRED THROUGH THE OPERATION OF AN UNMANNED AERIAL VEHICLE.

3. THE FOLLOWING SHALL BE EXCEPTIONS FROM THE PROHIBITION ESTABLISHED IN SUBDIVISION TWO OF THIS SECTION:

(A) IT SHALL NOT BE UNLAWFUL PURSUANT TO THIS SECTION TO DISCLOSE OR RECEIVE INFORMATION ABOUT ANY PERSON OR THEIR REAL PROPERTY ACQUIRED THROUGH THE OPERATION OF AN UNMANNED AERIAL VEHICLE IF SUCH PERSON HAS GIVEN WRITTEN CONSENT TO SUCH DISCLOSURE;

(B) IT SHALL NOT BE UNLAWFUL PURSUANT TO THIS SECTION FOR AN AGENT OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF TO OPERATE AN UNMANNED AERIAL VEHICLE AND FOR INFORMATION FROM SUCH OPERATION TO BE DISCLOSED OR RECEIVED IF THE UNMANNED AERIAL VEHICLE IS USED IN CIRCUMSTANCES IN WHICH IT IS REASONABLE TO BELIEVE THAT THERE IS AN IMMINENT THREAT TO THE LIFE OR SAFETY OF A PERSON, AND TO THEREBY ASSIST SUCH PERSON, PROVIDED THAT NOT LATER THAN FORTY-EIGHT HOURS AFTER THE AGENT OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF BEGINS OPERATION OF THE UNMANNED AERIAL VEHICLE, A SUPERVISORY OFFICIAL OF THE STATE OR SUCH POLITICAL SUBDIVISION SHALL FILE THE SWORN STATEMENT WITH A COURT HAVING JURISDICTION OVER THE AREA OF THE EMERGENCY SETTING FORTH THE FACTUAL BASIS AND GROUNDS FOR THE EMERGENCY ACCESS;

(C) PURSUANT TO THE FOLLOWING WARRANTS:

(1) EAVESDROPPING WARRANT. AN UNMANNED AERIAL VEHICLE MAY BE OPERATED FOR THE PURPOSE OF EAVESDROPPING, AND INFORMATION FROM SUCH OPERATION DISCLOSED ONLY PURSUANT TO AN EAVESDROPPING WARRANT ISSUED PURSUANT TO AND REGULATED BY ARTICLE SEVEN HUNDRED OF THE CRIMINAL PROCEDURE LAW.

(2) VIDEO SURVEILLANCE WARRANT. AN UNMANNED AERIAL VEHICLE MAY BE OPERATED FOR THE PURPOSE OF VIDEO SURVEILLANCE, AND INFORMATION FROM SUCH OPERATION DISCLOSED ONLY PURSUANT TO A VIDEO SURVEILLANCE WARRANT ISSUED PURSUANT TO AND REGULATED BY ARTICLE SEVEN HUNDRED OF THE CRIMINAL PROCEDURE LAW.

A JUDGE MAY ISSUE SUCH WARRANTS SIMULTANEOUSLY OR INDIVIDUALLY AS HE OR SHE SEES FIT.

(D) IT SHALL NOT BE UNLAWFUL PURSUANT TO THIS SECTION FOR AN AGENT OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF TO OPERATE AN UNMANNED AERIAL VEHICLE FOR RESEARCH IN AREAS SUCH AS, BUT NOT LIMITED TO, ATMOSPHERIC STUDIES, AGRICULTURAL STUDIES AND LAND USE STUDIES. PROVIDED THAT NO PART OF ANY INFORMATION AND NO EVIDENCE DERIVED FROM SUCH OPERATION MAY BE RECEIVED AS EVIDENCE IN ANY TRIAL, HEARING OR OTHER PROCEEDING IN OR BEFORE ANY COURT, GRAND JURY, DEPARTMENT, OFFICER, AGENCY, REGULATORY ENFORCEMENT BODY, OR OTHER DISCIPLINARY AUTHORITY OF THE STATE OR A POLITICAL SUBDIVISION THEREOF, OR FOR ANY INTELLIGENCE PURPOSE.

4. WHEN UNMANNED AERIAL VEHICLES ARE USED PURSUANT TO PARAGRAPH (C) OF SUBDIVISION THREE OF THIS SECTION, THEY SHALL BE OPERATED IN A MANNER TO

COLLECT DATA ONLY ON THE TARGET AND TO AVOID DATA COLLECTION ON INDIVIDUALS, HOMES OR AREAS OTHER THAN THE TARGET. NEITHER FACIAL RECOGNITION NOR OTHER BIOMETRIC MATCHING TECHNOLOGY SHALL BE USED ON NON-TARGET DATA COLLECTED BY AN UNMANNED AERIAL VEHICLE.

5. NO UNMANNED AERIAL VEHICLE OPERATED IN THE STATE SHALL BE EQUIPPED WITH ANY LETHAL OR NON-LETHAL WEAPON.

S 66-B. DATA RETENTION. 1. NO DATA COLLECTED PURSUANT TO PARAGRAPH (A), (B) OR (C) OF SUBDIVISION THREE OF SECTION SIXTY-SIX-A OF THIS ARTICLE ON AN INDIVIDUAL HOME OR AREA OTHER THAN THE TARGET THAT JUSTIFIED DEPLOYMENT MAY BE USED, COPIED OR DISCLOSED FOR ANY PURPOSE. SUCH DATA SHALL BE DELETED AS SOON AS POSSIBLE, AND IN NO EVENT LATER THAN TWENTY-FOUR HOURS AFTER COLLECTION.

2. WHENEVER AN AGENT OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF USES AN UNMANNED AERIAL VEHICLE, NO PART OF THE INFORMATION ACQUIRED AND NO EVIDENCE DERIVED THEREFROM SHALL BE RECEIVED IN EVIDENCE IN ANY TRIAL, HEARING OR OTHER PROCEEDING IN OR BEFORE ANY COURT, GRAND JURY, DEPARTMENT, OFFICER, AGENCY, REGULATORY BODY, LEGISLATIVE COMMITTEE, OR OTHER AUTHORITY OF THE STATE OR A POLITICAL SUBDIVISION THEREOF IF THE DISCLOSURE OF THAT INFORMATION IS IN VIOLATION OF THIS ARTICLE.

S 66-C. ADMINISTRATIVE DISCIPLINE FOR MISUSE OF UNMANNED AERIAL VEHICLES. 1. IF A COURT OR APPROPRIATE DEPARTMENT OR AGENCY DETERMINES THAT AN AGENT OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF HAS VIOLATED ANY PROVISION OF THIS ARTICLE, AND THE COURT OR APPROPRIATE DEPARTMENT OR AGENCY FINDS THAT THE CIRCUMSTANCES SURROUNDING THE VIOLATION RAISE SERIOUS QUESTIONS ABOUT WHETHER OR NOT THE AGENT OF THE STATE OR POLITICAL SUBDIVISION THEREOF ACTED WILLFULLY OR INTENTIONALLY WITH RESPECT TO THE VIOLATION, THE DEPARTMENT OR AGENCY SHALL, UPON RECEIPT OF A TRUE AND CORRECT COPY OF THE DECISION AND FINDINGS OF THE COURT OR APPROPRIATE DEPARTMENT OR AGENCY PROMPTLY INITIATE A PROCEEDING TO DETERMINE WHETHER DISCIPLINARY ACTION AGAINST THE AGENT OF THE STATE OR POLITICAL SUBDIVISION THEREOF IS WARRANTED. IF THE HEAD OF THE DEPARTMENT OR AGENCY INVOLVED DETERMINES THAT DISCIPLINARY ACTION IS NOT WARRANTED, SUCH HEAD SHALL NOTIFY THE STATE INSPECTOR GENERAL WITH JURISDICTION OVER THE DEPARTMENT OR AGENCY CONCERNED AND SHALL PROVIDE THE STATE INSPECTOR GENERAL WITH THE REASONS FOR SUCH DETERMINATION.

2. ANY WILLFUL DISCLOSURE OR USE BY AN AGENT OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF OF INFORMATION BEYOND THE EXTENT PERMITTED BY THIS ARTICLE IS A VIOLATION OF THIS ARTICLE FOR PURPOSES OF THIS SECTION.

S 66-D. REPORTING. ON OR BEFORE JUNE FIRST EACH YEAR, ANY AGENCY OF THE STATE OR POLITICAL SUBDIVISION THEREOF THAT USES UNMANNED AERIAL VEHICLES SHALL REPORT TO THE LEGISLATURE AND MAKE PUBLIC ON ITS WEBSITE:

1. THE NUMBER OF TIMES AN UNMANNED AERIAL VEHICLE WAS USED, ORGANIZED BY THE TYPES OF INCIDENTS AND THE TYPES OF JUSTIFICATION FOR DEPLOYMENT;

2. THE NUMBER OF CRIME INVESTIGATIONS AIDED BY THE USE OF UNMANNED AERIAL VEHICLES, AND A DESCRIPTION OF HOW THE UNMANNED AERIAL VEHICLE WAS HELPFUL TO EACH SUCH INVESTIGATION;

3. THE NUMBER OF USES OF UNMANNED AERIAL VEHICLES FOR REASONS OTHER THAN CRIMINAL INVESTIGATIONS, AND A DESCRIPTION OF HOW THE UNMANNED AERIAL VEHICLE WAS HELPFUL IN EACH SUCH INSTANCE;

4. THE FREQUENCY AND TYPE OF DATA COLLECTED ON INDIVIDUALS OR AREAS OTHER THAN TARGETS; AND

5. THE TOTAL COST OF THEIR UNMANNED AERIAL VEHICLE PROGRAM.

S 3. This act shall take effect immediately.