

# SB0167S01 compared with SB0167

~~{deleted text}~~ shows text that was in SB0167 but was deleted in SB0167S01.

inserted text shows text that was not in SB0167 but was inserted into SB0167S01.

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Senator Howard A. Stephenson proposes the following substitute bill:

## REGULATION OF DRONES

2014 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Howard A. Stephenson**

House Sponsor: Marc K. Roberts

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### LONG TITLE

#### General Description:

This bill establishes provisions for the appropriate use of an unmanned aerial ~~{vehicles by government entities}~~vehicle.

#### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ enacts the "Government Use of Unmanned Aerial Vehicles Act";
- ▶ prohibits ~~{an agent of the state from operating}~~data obtained through an unmanned aerial vehicle ~~{except in situations where:~~

- ~~• the target of the operation provides written consent;~~
- ~~• an emergency threatens the life or safety of an individual;~~
- ~~• an emergency threatens national security interests;~~

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- ~~• an emergency is created by activities characteristic of organized crime;~~
- ~~• a warrant is issued for the operation of the unmanned aerial vehicle; or~~
- ~~• the unmanned aerial vehicle is used for purposes other than a criminal investigation or intelligence gathering and the information gathered is not used in an adjudicative proceeding by any state authority;~~
- ~~▶ establishes requirements for an agent of the state that operates an unmanned aerial vehicle in emergency situations;~~
- ~~▶ establishes other requirements and guidelines for an agent of the state that operates an unmanned aerial vehicle;}~~ from being admissible as evidence in any court proceeding unless the data was obtained:
  - pursuant to a warrant; or
  - in accordance with judicially recognized exceptions to warrant requirements;
- ~~▶ establishes requirements for the retention and use of data collected by an unmanned aerial vehicle;†~~
- ~~▶ requires that notification be issued to the target of an unmanned aerial vehicle operation and allows an agent of the state to delay the notification in certain circumstances;~~
- ~~▶ establishes a disciplinary process for an agent of the state that violates the provisions of this bill;}~~ and
  - ~~▶ establishes reporting requirements for:~~
    - ~~• {an agent of the state;} a law enforcement agency that operates an unmanned aerial vehicle;†~~
- ~~• a court that issues a warrant for the operation of an unmanned aerial vehicle;~~
- ~~• the attorney general's office;}~~ and
  - ~~• the Utah Department of Public Safety.~~

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

ENACTS:

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63G-18-101, Utah Code Annotated 1953

63G-18-102, Utah Code Annotated 1953

63G-18-103, Utah Code Annotated 1953

63G-18-104, Utah Code Annotated 1953

63G-18-105, Utah Code Annotated 1953

~~{ 63G-18-106, Utah Code Annotated 1953~~

~~63G-18-107, Utah Code Annotated 1953~~

}

*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **63G-18-101** is enacted to read:

### **CHAPTER 18. GOVERNMENT USE OF UNMANNED AERIAL VEHICLES ACT**

#### **63G-18-101. Title.**

This chapter is known as the "Government Use of Unmanned Aerial Vehicles Act."

Section 2. Section **63G-18-102** is enacted to read:

#### **63G-18-102. Definitions.**

As used in this chapter:

(1) "Agent of the state" means:

(a) an agency, department, division, or other entity within ~~{the}~~ state government;

(b) a person employed by or acting in an official capacity on behalf of the state;

(c) a political subdivision of the state; or

(d) a person employed by or acting in an official capacity on behalf of a political subdivision of the state.

(2) ~~{Supervisory official" means a person who has direct authority to authorize the deployment or purchase of an unmanned aerial vehicle for an agent of the state}~~Law enforcement agency" means an entity of the state or an entity of a political subdivision of the state, including an entity of a state institution of higher education, that exists primarily to prevent, detect, or prosecute crime and enforce criminal statutes or ordinances.

(3) "Target" means a person upon whom, or a structure or area upon which ~~{}~~ an agent of the state:

(a) has intentionally collected or attempted to collect information through the operation of an unmanned aerial vehicle; or

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(b) plans to collect or attempt to collect information through the operation of an unmanned aerial vehicle.

(4) (a) "Unmanned aerial vehicle" means an aircraft that:

(i) is capable of sustaining flight; and

(ii) operates with no possible direct human intervention from on or within the aircraft.

(b) "Unmanned aerial vehicle" does not include an unmanned aircraft that is flown:

(i) within visual line of sight of the individual operating the aircraft; and

(ii) strictly for hobby or recreational purposes.

Section 3. Section 63G-18-103 is enacted to read:

**63G-18-103. ~~Operation of unmanned aerial vehicles.~~**

~~— (1) Except as provided in this section, an agent of the state may not operate;~~ **Warrant required -- Exceptions.**

~~(1) Information obtained through~~ an unmanned aerial vehicle ~~for receive or disclose information acquired through the operation of an unmanned aerial vehicle.~~

~~— (2) An~~ **is not admissible as evidence in any court proceeding or adjudicative proceeding held to resolve an action filed by an** agent of the state ~~may operate an unmanned aerial vehicle or receive or disclose information acquired through~~ **unless the information is obtained:**

**(a) pursuant to a search warrant; or**

**(b) in accordance with judicially recognized exceptions to warrant requirements.**

**(2) Information obtained from** the operation of an unmanned aerial vehicle ~~if:~~

~~— (a) the target, or owner of the target, of the unmanned aerial vehicle gives written consent to the collection or disclosure;~~

~~— (b) (i) the unmanned aerial vehicle is used to assist a person whose life or safety is reasonably believed to be threatened;~~

~~— (ii) the operation of the unmanned aerial vehicle is approved by a supervisory official who documents the factual basis for the emergency; and~~

~~— (iii) no later than 48 hours after the agent of the state begins operation of the unmanned aerial vehicle, the supervisory official files a sworn statement setting forth the grounds for the operation of the unmanned aerial vehicle;~~

~~— (c) (i) the agent of the state reasonably determines that an emergency situation exists~~

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that:

~~—— (A) threatens national security interests; or~~

~~—— (B) is characteristic of organized crime; and~~

~~—— (ii) (A) the emergency situation requires the operation of the unmanned aerial vehicle before a warrant or order can be obtained;~~

~~—— (B) there are grounds upon which a warrant or order could be obtained to authorize the operation;~~

~~—— (C) an application for a warrant or order is filed within 48 hours after the operation commences; and~~

~~—— (D) the operation terminates in accordance with Subsection (3);~~

~~—— (d) the agent of the state operates the unmanned aerial vehicle in order to collect information from a nonpublic area, provided that the agent of the state obtains a lawfully issued warrant; or~~

~~—— (e) (i) the unmanned aerial vehicle is used for a purpose other than law enforcement or intelligence gathering; and~~

~~—— (ii) no information or evidence derived from the operation of the unmanned aerial vehicle is intended for use in a trial, hearing, or other adjudicative proceeding, including before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the state or political subdivision of the state.~~

~~—— (3) (a) The operation of an unmanned aerial vehicle under Subsection (2)(c) shall terminate immediately at the earliest of:~~

~~—— (i) the time } may not be used in an affidavit or other recorded testimony in an effort to obtain a search warrant unless the information {sought by the operation is obtained; or~~

~~—— (ii) the time the application for the warrant or order sought under Subsection (2)(c)(ii)(C) is denied.~~

~~—— (b) If an application for a warrant or order sought under Subsection (2)(c)(ii)(C) is denied, the supervisory official shall ensure that any information obtained, copied, or reproduced from the operation of the unmanned aerial vehicle under Subsection (2) is destroyed in an unrecoverable manner no later than 24 hours after the warrant or order is denied.~~

~~—— (4) When an agent of the state operates an unmanned aerial vehicle under Subsection~~

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- ~~(2), the agent of the state shall operate the unmanned aerial vehicle in a manner that:~~
- ~~— (a) ensures that data collected pertains only to the target, and~~
  - ~~— (b) avoids collecting data on a person, structure, or area other than the target.~~
  - ~~— (5) Facial recognition or other biometric matching technology may not be used by an unmanned aerial vehicle, or used to process data collected by an unmanned aerial vehicle, to identify an individual other than a target.~~
  - ~~— (6) An agent of the state operating an unmanned aerial vehicle shall comply with all Federal Aviation Administration requirements and guidelines that apply to the operation of an unmanned aerial vehicle.~~
  - ~~— (7) An agent of the state wishing to acquire an unmanned aerial vehicle shall obtain approval from a supervisory official.~~
  - ~~— (8) An unmanned aerial vehicle may not be equipped with weapons.~~ was obtained under a circumstance described in Subsection (1).

Section 4. Section **63G-18-104** is enacted to read:

### **63G-18-104. Data retention.**

- (1) Except as provided in ~~{Subsection (2):~~
- ~~(a) }~~ this section, an agent of the state:
    - (a) may not use, copy, or disclose {, for any purpose,} data collected by an unmanned aerial vehicle on a person, structure, or area that is not a target; and
    - (b) {the supervisory official} shall ensure that data described in Subsection (1)(a) is destroyed {in an unrecoverable manner no later than 24 hours after the data is collected} as soon as is reasonably possible after the agent of the state collects the data.
  - (2) An agent of the state is not required to comply with Subsection (1) if:
    - (a) deleting the data would also require the deletion of data that:
      - {a}i) relates to the target of the operation; and
      - {b}ii) is requisite for the success of the operation {,}; or
      - {3} Information obtained by an} b) the agent of the state receives a court order requiring the release of the data or prohibiting the destruction of the data.
    - (3) An agent of the state {through} is not required to destroy, and may disclose, data collected by an unmanned aerial vehicle {may not be received as evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory

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~~body, legislative committee, or other authority of the state or a political subdivision of the state if:~~

~~— (a) the information was obtained in violation of this chapter; or~~

~~— (b) disclosing the information would be in violation of this chapter.~~

~~— (4) An} on a person, structure, or area that is not a target if:~~

~~(a) (i) the data was collected inadvertently;~~

~~(ii) the data appears to pertain to the commission of a crime; and~~

~~(iii) the agent of the state reports the data to an appropriate law enforcement agency, or,~~

~~if the agent of the state is a law enforcement agency, the agent of the state takes appropriate action;~~

~~(b) (i) the agent of the state} that willfully discloses or uses information obtained through an} reasonably determines that the data pertains to an emergency situation;~~

~~(ii) disclosing the data would assist in remedying the emergency; and~~

~~(iii) the agent of the state reports the data to an appropriate law enforcement agency, or,~~

~~if the agent of the state is a law enforcement agency, the agent of the state takes appropriate action; or~~

~~(c) the data was collected by the agent of the state while the agent of the state was operating the unmanned aerial vehicle }beyond the extent permitted by this chapter is in violation} over public lands outside of }this chapter} municipal boundaries.~~

Section 5. Section **63G-18-105** is enacted to read:

~~{ **63G-18-105. Notification required -- Delayed notification.**~~

~~— (1) Except as provided in Subsection (2), an agent of the state that executes a warrant or order to operate an unmanned aerial vehicle shall, within 30 days after the day on which the operation of the unmanned aerial vehicle commences, issue a notification to the target, or owner of the target, specified in the warrant or order that states:~~

~~— (a) that a warrant or order was applied for and granted;~~

~~— (b) the kind of warrant or order issued;~~

~~— (c) the period of time the warrant or order authorized the operation of an unmanned aerial vehicle;~~

~~— (d) the offense specified in the application for the warrant or order;~~

~~— (e) the identity of the agent of the state or supervisory official that filed the application;~~

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and

~~—— (f) the identity of the judge who issued the warrant or order;~~

~~—— (2) An agent of the state seeking a warrant or order for the operation of an unmanned aerial vehicle may submit a request, and the court may grant permission, to delay the notification required by Subsection (1) for a period not to exceed 90 days, if the court determines that there is reason to believe that the notification may:~~

~~—— (a) endanger the life or physical safety of an individual;~~

~~—— (b) cause a person to flee from prosecution;~~

~~—— (c) lead to the destruction of or tampering with evidence;~~

~~—— (d) intimidate a potential witness; or~~

~~—— (e) otherwise seriously jeopardize an investigation or unduly delay a trial;~~

~~—— (3) When a delay of notification is granted under Subsection (1) and upon application by the agent of the state, the court may grant additional extensions of up to 90 days each;~~

~~—— (4) Upon expiration of the period of delayed notification granted under Subsection (2) or (3), the agent of the state operating the unmanned aerial vehicle or a supervisory official shall serve or deliver by first-class mail a copy of the warrant or order upon the target together with notice that:~~

~~—— (a) states with reasonable specificity the nature of the law enforcement inquiry; and~~

~~—— (b) contains:~~

~~—— (i) the information described in Subsections (1)(a) through (f);~~

~~—— (ii) a statement that notification of the search was delayed;~~

~~—— (iii) the name of the court that authorized the delay of notification; and~~

~~—— (iv) a reference to the provision of this chapter that allowed the delay of notification;~~

~~—— Section 6. Section **63G-18-106** is enacted to read:~~

~~—— **63G-18-106. Administrative discipline:**~~

~~—— (1) When a supervisory official or other administrator becomes aware that an agent of the state over which the supervisory official or the administrator has jurisdiction may have violated any part of this chapter, the supervisory official or administrator shall initiate an investigative process to determine:~~

~~—— (a) whether the agent of the state violated this chapter;~~

~~—— (b) if the agent of the state violated this chapter, whether the violation was intentional;~~

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~~\_\_\_\_\_ (c) if the violation was intentional, whether disciplinary action against the agent of the state is warranted; and~~

~~\_\_\_\_\_ (d) if disciplinary action against the agent of the state is warranted, what disciplinary action is appropriate.~~

~~\_\_\_\_\_ (2) A supervisory official with jurisdiction over an agent of the state who is found to warrant disciplinary action under Subsection (1) shall discipline the agent of the state in accordance with the recommendation of the investigative process described in Subsection (1)(d).~~

~~\_\_\_\_\_ Section 7. Section 63G-18-107 is enacted to read:~~

~~†~~ ~~63G-18-107~~63G-18-105. Reporting.

(1) (a) Except as provided by Subsection (1)(b), before March 31 of each year, ~~an agent of the state~~a law enforcement agency that operated an unmanned aerial vehicle in the previous calendar year shall submit to the Utah Department of Public Safety, and make public on the law enforcement agency's website ~~of the government entity for which the agent operated the unmanned aerial vehicle~~, a written report containing:

(i) the number of times the ~~agent of the state~~law enforcement agency operated an unmanned aerial vehicle in the previous calendar year;

(ii) the number of criminal investigations aided by the use of an unmanned aerial vehicle operated by the ~~agent of the state~~law enforcement agency in the previous calendar year;

(iii) a description of how the unmanned aerial vehicle was helpful to each investigation described ~~under~~in Subsection (1)(a)(ii);

(iv) the frequency with which data was collected, and the type of data collected, by an unmanned aerial vehicle operated by the ~~agent of the state~~law enforcement agency on any ~~persons~~person, ~~structures~~structure, or ~~areas~~area other than ~~targets~~a target in the previous calendar year; ~~and~~

~~\_\_\_\_\_ (v)~~

(v) the number of times an agent of the state other than a law enforcement agency reported data to the law enforcement agency under Subsection 63G-18-104(3).

(vi) the total cost of the unmanned aerial vehicle program operated by the ~~agent of the state~~law enforcement agency in the previous calendar year.

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(b) (i) ~~{An agent of the state submitting}~~ A law enforcement agency that submits a report ~~{under}~~ described in Subsection (1)(a) may exclude from the report information pertaining to an ongoing investigation ~~{ under Subsection 63G-18-103(2)(c) or (d)}~~.

(ii) ~~{An agent of the state}~~ A law enforcement agency that excludes information under Subsection (1)(b)(i) from the report shall report the excluded information to the Utah Department of Public Safety on the annual report in the year following the year in which information was excluded.

(2) Before ~~{March}~~ May 31 of each year, ~~{a judge who issued, extended, or denied approval for an order or warrant under Subsection 63G-18-103(2)(c) or (d) that expired during the previous calendar year shall, for each warrant, order, or extension applied for or granted, submit a report to the Utah Department of Public Safety stating:~~

~~—— (a) that the warrant, order, or extension was applied for;~~

~~—— (b) the kind of warrant, order, or extension applied for;~~

~~—— (c) whether the warrant, order, or extension was granted as applied for, modified, or denied;~~

~~—— (d) the period of time the warrant, order, or extension authorized the operation of an unmanned aerial vehicle;~~

~~—— (e) the offense specified in the application for the warrant, order, or extension;~~

~~—— (f) the identity of the agent of the state who filed the application; and~~

~~—— (g) the identity of the supervisory official who authorized the application.~~

~~(3) Before March 31 of each year, the attorney general or the attorney general's designee shall, for each warrant, order, or extension applied for by the attorney general's office in the previous calendar year under Subsection 63G-18-103(2)(c) or (d), submit a report to the Utah Department of Public Safety containing:~~

~~—— (a) the information described in Subsections (2)(a) through (g), with respect to the applications submitted by the attorney general's office;~~

~~—— (b) a general description of the information gathered under the warrant, order, or extension, including:~~

~~—— (i) the nature and frequency of the observed incriminating conduct;~~

~~—— (ii) the approximate number of targets upon which information was gathered; and~~

~~—— (iii) the approximate nature, amount, and cost of the resources used in the data~~

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collection:

~~\_\_\_\_\_ (c) the number of arrests resulting from information gathered by an unmanned aerial vehicle;~~

~~\_\_\_\_\_ (d) the offenses for which the arrests were made;~~

~~\_\_\_\_\_ (e) the number of trials resulting from the information gathered;~~

~~\_\_\_\_\_ (f) the number of motions to suppress filed in regards to the information gathered;~~

~~\_\_\_\_\_ (g) the number of motions to suppress that were granted or denied;~~

~~\_\_\_\_\_ (h) the number of convictions resulting from the information gathered;~~

~~\_\_\_\_\_ (i) the offenses for which the convictions were obtained; and~~

~~\_\_\_\_\_ (j) a general assessment of the importance of the information gathered;~~

~~\_\_\_\_\_ (4) Before May 31 of each year } the Utah Department of Public Safety shall, for all reports received under Subsection (1) during the previous calendar year:~~

~~\_\_\_\_\_ (a) transmit to the Government Operations Interim Committee and post on the department's website a report containing:~~

~~\_\_\_\_\_ (i) a summary of the information reported to the department ~~{ under Subsections (1) through (3) }~~;~~

~~\_\_\_\_\_ (ii) the total number of issued warrants ~~{, orders, or extensions}~~ authorizing the operation of an unmanned aerial vehicle; and~~

~~\_\_\_\_\_ (iii) the number of denied warrants ~~{, orders, and extensions}~~ for the operation of an unmanned aerial vehicle; and~~

~~\_\_\_\_\_ (b) post on the department's website ~~{ any }~~ each report the department received ~~{ under Subsections (1) through (3) }~~;~~

~~{~~

### **Legislative Review Note**

~~\_\_\_\_\_ as of 1-28-14 10:37 AM~~

~~\_\_\_\_\_ Office of Legislative Research and General Counsel }~~