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HOUSE BILL NO. 1616

Offered January 9, 2013

Prefiled January 6, 2013

A BILL to amend the Code of Virginia by adding a section numbered 19.2-56.3, relating to regulation of public unmanned aircraft.

Patrons—Gilbert, Keam, Landes, Marshall, R.G., Morris, Peace, Rush, Villanueva, Watts and Wilt

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 19.2-56.3 as follows:

§ 19.2-56.3. Application for and issuance of a search warrant for a public unmanned aircraft system; restrictions and limitations of use; weaponization.

A. As used in this section, unless the context requires a different meaning:

"Agency" means any agency, authority, board, department, division, commission, institution, bureau, or like governmental entity of the Commonwealth or of any unit of local government including counties, cities, towns, regional governments, and the departments thereof, and includes constitutional officers, except as otherwise expressly provided by law. "Agency" also means each component part of the legislative, executive, or judicial branches of state and local government, including each office, department, authority, post, commission, committee, and each institution or board created by law to exercise some regulatory or sovereign power or duty as distinguished from purely advisory powers or duties. "Agency" also includes any entity, whether public or private, with which any of the foregoing has entered into a contractual relationship for the operation of a system of personal information to accomplish an agency function.

"Biometric identification system" is a system that collects unique physical and behavioral characteristics including, but not limited to, biographical data, facial photographs, fingerprints, and iris scans to identify individuals.

"Court of competent jurisdiction" includes any district court of the United States or any United States Court of Appeals that has jurisdiction over the offense being investigated; is in a district in which the public unmanned aircraft will conduct a search or a court of general jurisdiction authorized by the Commonwealth of Virginia to issue search warrants.

"Inspection warrant" is an order in writing, made in the name of the Commonwealth, signed by any judge of the circuit court whose territorial jurisdiction encompasses the property or premises to be inspected or entered, and directed to a state or local official, commanding him to enter and to conduct any inspection, testing, or collection of samples for testing required or authorized by state or local law or regulation.

"Judicial officer" means a judge, magistrate, or other person authorized to issue a criminal, inspection, or administrative search warrant.

"Law-enforcement officer" means the same as that term is defined in § 9.1-101.

"Person" includes any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Personal information" means all information that (i) describes, locates, or indexes anything about a person including, but not limited to, his social security number, driver's license number, agency-issued identification number, student identification number, real or personal property holdings derived from tax returns, and his education, financial transactions, medical history, ancestry, religion, political ideology, or criminal or employment record, (ii) affords a basis for inferring personal characteristics, such as finger and voice prints, photographs, or things done by or to such person; and the record of his presence, registration, or membership in an organization or activity, or admission to an institution; or (iii) describes, locates, or indexes anything about a person including, but not limited to, intellectual property, trade secrets, proprietary information, or operational information.

"Public unmanned aircraft system" means an unmanned aircraft and associated elements, including communications links, sensing devices, and the components that control the unmanned aircraft, operated by an agency or at the direction of or under the control of an agency.

"Sensing device" means a device capable of acquiring data or information from its surroundings, including but not limited to cameras using visible, ultraviolet, or infrared frequencies, microphones, thermal detectors, chemical detectors, radiation gauges, and wireless receivers in any frequency.

"Trade secrets" means all forms and types of financial, business, scientific, technical, economic or

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59 engineering information, including patterns, plans, compilations, program devices, formulas, designs,
60 prototypes, methods, techniques, processes, procedures, programs, or codes whether tangible or
61 intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically,
62 photographically, or in writing, which the owner has taken reasonable measures to protect and has an
63 independent economic value.

64 "Unmanned aircraft" means an aircraft that is operated without the possibility of human intervention
65 from within or on the aircraft.

66 "Unmanned aircraft system" means an unmanned aircraft and associated elements, including
67 communication links and components that control the unmanned aircraft that are required for the pilot
68 in command to operate safely and efficiently in the national airspace system.

69 "Weapon" includes lethal and nonlethal weapons.

70 B. Except as otherwise specifically authorized in this section, it shall be unlawful to operate a public
71 unmanned aircraft system or disclose personal information about any person acquired through the
72 operation of a public unmanned aircraft system.

73 C. No state agency or organization having jurisdiction over criminal law enforcement or regulatory
74 violations, including but not limited to the Department of State Police, shall procure a public unmanned
75 aircraft system pursuant to the Virginia Public Procurement Act (§ 2.2-4300 et seq.) without the
76 approval of the General Assembly. No department of law enforcement of any city, county, or town as
77 defined in § 15.2-836 or any local agency having jurisdiction over criminal law enforcement or
78 regulatory violations shall procure a public unmanned aircraft system pursuant to the Virginia Public
79 Procurement Act without the approval of the governing body of such locality.

80 D. All operations of a public unmanned aircraft system or disclosure of personal information about
81 any person acquired through the operation of a public unmanned aircraft system shall be conducted in
82 such a way as to minimize the collection and disclosure of personal information not authorized under
83 this section.

84 E. A public unmanned aircraft system may be operated and personal information from such
85 operation disclosed in order to collect personal information only pursuant to a criminal warrant issued
86 by a court of competent jurisdiction or as otherwise provided in this section.

87 1. Each petition for a search warrant from a judicial officer to permit the use of a public unmanned
88 aircraft system and personal information collected from such operation shall be made in writing, upon
89 oath or affirmation, to a judicial officer in a court of competent jurisdiction for the circuit in which a
90 public unmanned aircraft system is to be operated or where there is probable cause to believe the
91 offense for which the public unmanned aircraft system is sought has been committed, is being
92 committed, or will be committed.

93 2. The law-enforcement officer shall submit an affidavit that may be filed electronically by (i)
94 facsimile process or (ii) electronic record as defined in § 59.1-480 and shall include:

95 a. The identity of the applicant and the identity of the agency conducting the investigation;

96 b. The identity of the individual and jurisdictional area for which use of the public unmanned
97 aircraft is being sought;

98 c. Specific and articulable facts demonstrating probable cause to believe that there is criminal
99 activity and that the operation of the public unmanned aircraft system will uncover evidence of such
100 activity or facts to support the finding that there is probable cause for issuance of an administrative
101 search warrant pursuant to applicable requirements of the Code; and

102 d. The name of the county or city where there is probable cause to believe the offense for which use
103 of the unmanned public aircraft system is sought has been committed, is being committed, or will be
104 committed;

105 3. If the judicial officer finds, based on the affidavit submitted, that there is probable cause to
106 believe that a crime has been committed, is being committed, or will be committed and that there is
107 probable cause to believe the personal information likely to be obtained from the use of the public
108 unmanned aircraft system will be evidence of the commission of such offense, the judicial officer may
109 issue a search warrant authorizing the use of the public unmanned aircraft system. The search warrant
110 shall authorize the collection of personal information contained in or obtained from the public
111 unmanned aircraft system but shall not authorize the use of a biometric identification system.

112 4. Warrants shall not be issued for a period greater than 48 hours. Extensions may be granted but
113 shall be no longer than the authorizing judicial officer deems necessary to achieve the purposes for
114 which it was granted and in no event for longer than 30 days.

115 5. Within 10 days of the execution of a search warrant, the officer executing the warrant must serve
116 a copy of the warrant upon the person or persons upon whom personal information was collected except
117 notice may be delayed under subsection F.

118 F. A governmental entity acting under this section may, when a warrant is sought, include in the
119 petition a request, which the court shall grant, for an order delaying the notification required under
120 subdivision E 5 for a period not to exceed 90 days if the court determines that there is a reason to

believe that notification of the existence of the warrant may have an adverse result.

1. An adverse result for the purposes of this section is:

- a. Placing the life or physical safety of an individual in danger;
- b. Causing a person to flee from prosecution;
- c. Causing the destruction of or tampering with evidence;
- d. Causing the intimidation of potential witnesses; or
- e. Jeopardizing an investigation or unduly delaying a trial.

2. The governmental entity shall maintain a copy of certification.

3. Extension of the delay of notification of up to 90 days each may be granted by the court upon application or by certification by a governmental entity.

4. Upon expiration of the period of delay of notification under subdivision 1 or 3, the governmental entity shall serve a copy of the warrant upon, or deliver it by registered or first-class mail to, the person or persons upon whom personal information was collected together with notice that:

- a. States with reasonable specificity the nature of the law-enforcement inquiry; and
- b. Informs the person or persons upon whom personal information was collected (i) that notification was delayed; (ii) what governmental entity or court made the certification or determination pursuant to which that delay was made; and (iii) which provision of this section allowed such delay.

G. It shall be lawful under this section for any law-enforcement officer or other public official to operate a public unmanned aircraft system and disclose personal information from such operation if:

1. Such officer reasonably determines that an emergency situation exists that involves immediate danger of death or serious physical injury to any person and:

- a. Requires operation of a public unmanned aircraft system before a warrant authorizing such interception can, with due diligence, be obtained;
- b. There are grounds upon which such a warrant could be entered to authorize such operation; and
- c. An application for a warrant providing such operation is made within 48 hours after the operation has occurred or begins to occur.

2. In the absence of a warrant, an operation of a public unmanned aircraft system carried out under this subsection shall immediately terminate when the personal information sought is obtained or when the application for the warrant is denied, whichever is earlier.

3. In the event such application for approval is denied, the personal information obtained from the operation of a device shall be treated as having been obtained in violation of this section and an inventory shall be served on the person named in the application.

H. A public unmanned aircraft system may be operated and personal information from such operation disclosed in order to collect information pursuant to administrative search warrant or inspection warrant issued by a court of competent jurisdiction by any judicial officer having authority to issue such warrants whose territorial jurisdiction encompasses the area to be inspected or entered or as otherwise provided in this section.

1. Each petition for a warrant from a judicial officer to permit the use of a public unmanned aircraft system and information collected from such operation shall be made in writing, upon oath or affirmation, to a judicial officer in a court of competent jurisdiction for the circuit in which a public unmanned aircraft system is to be operated or where there is probable cause, supported by affidavit, particularly describing the place, property, things, or persons to be inspected, tested, or information collected and the purpose for which the inspection, testing, or collection of information is to be made.

2. Probable cause shall be deemed to exist if either:

- a. Reasonable legislative or administrative standards for conducting such inspection, testing, or information collected are satisfied with respect to the particular place, property, thing, or person; or
- b. There is cause to believe that there is such a condition, object, activity, or circumstance that legally justifies such inspection, testing, or collection of information.

3. The agency official shall submit an affidavit that may be filed electronically by (i) facsimile process or (ii) electronic record as defined in § 59.1-480 and shall include the identity of the applicant and the identity of the agency conducting the inspection;

4. The supporting affidavit shall contain either a statement that consent to the search and collection of information has been sought and refused or facts or circumstances reasonably justifying the failure to seek such consent in order to enforce effectively the safety and health laws, regulations or standards of the warrant based on legislative or administrative standards for inspection;

5. The affidavit shall contain factual allegations sufficient to justify an independent determination by a judge that the search is based on reasonable standards and the standards are being applied to a particular area in a neutral and fair manner; and

6. The issuing judicial officer may examine the affiant under oath or affirmation to verify the accuracy of any matter in the affidavit.

7. Any warrant issued shall be effective for the time specified therein, but not for a period of more

182 *than 15 days unless extended or renewed by the judicial officer who signed and issued the original*
183 *warrant. The warrant shall be executed and shall be returned to the judicial officer by whom it was*
184 *issued within the time specified in the warrant or within the extended or renewed time. The return shall*
185 *list the information collected pursuant to the warrant. After the expiration of such time, the warrant,*
186 *unless executed, shall be void.*

187 *8. No warrant shall be executed in the absence of the owner, tenant, operator, or custodian of the*
188 *premises unless the issuing judicial official specifically authorizes that such authority is reasonably*
189 *necessary to affect the purposes of the law or regulation. Entry pursuant to such a warrant shall not be*
190 *made forcibly. The issuing officer may authorize a forcible entry where the facts (i) create a reasonable*
191 *suspicion of immediate threat to the health or safety of persons or to the environment or (ii) establish*
192 *that reasonable attempts to serve a previous warrant have been unsuccessful. If forcible entry is*
193 *authorized, the warrant shall be issued jointly to the applicant agency and a law-enforcement officer*
194 *shall accompany the agency official during the execution of the warrant.*

195 *9. No court of the Commonwealth shall have jurisdiction to hear a challenge to the warrant prior to*
196 *its return to the issuing judicial officer, except as a defense in a contempt proceeding or if the owner or*
197 *custodian of the place to be inspected submits a substantial preliminary showing by affidavit and*
198 *accompanied by proof that (i) a statement included by the affiant in his affidavit for the administrative*
199 *search warrant was false and made knowingly and intentionally or with reckless disregard for the truth*
200 *and (ii) the false statement was necessary to the finding of probable cause. The court may conduct in*
201 *camera review as appropriate.*

202 *10. After the warrant has been executed and returned to the issuing judicial officer, the validity of*
203 *the warrant may be reviewed either as a defense to any Notice of Violation or by declaratory judgment*
204 *action brought in a circuit court. The review shall be confined to the face of the warrant, affidavits, and*
205 *supporting materials presented to the issuing judicial officer. If the owner or custodian of the place*
206 *inspected submits a substantial showing by affidavit and accompanied by proof that (i) a statement*
207 *included in the warrant was false and made knowingly and intentionally or with reckless disregard for*
208 *the truth and (ii) the false statement was necessary to the finding of probable cause, the reviewing court*
209 *shall limit its inquiry to whether there is substantial evidence in the record supporting the issuance of*
210 *the warrant and may conduct a de novo determination of probable cause.*

211 *I. It shall be lawful under this section for a public institution of higher education to operate a public*
212 *unmanned aircraft system solely for research or academic purposes provided that no part of any*
213 *personal information and no evidence derived from such operation may be received in evidence in any*
214 *trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency,*
215 *regulatory body, legislative committee, or other authority of the Commonwealth or a political*
216 *subdivision thereof.*

217 *J. Whenever any personal information from a public unmanned aircraft system has been acquired, no*
218 *part of such personal information and no evidence derived therefrom may be received in evidence in*
219 *any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency,*
220 *regulatory body, legislative committee, or other authority of the Commonwealth or a political*
221 *subdivision thereof if the collection or disclosure of that personal information would be in violation of*
222 *this section.*

223 *K. No personal information collected on an individual or area other than the target that justified the*
224 *issuance of a search warrant may be used, copied, or disclosed for any purpose. Such personal*
225 *information shall be deleted as soon as possible, and in no event later than 24 hours after collection.*

226 *L. Personal information collected on any individual or area specified in the warrant shall be deleted*
227 *within 30 days unless there is a reasonable belief that the personal information is evidence of criminal*
228 *activity or civil liability related to the reason that allowed the use of the unmanned public aircraft*
229 *system.*

230 *M. The disclosure or publication, without authorization of a circuit court, by a court officer,*
231 *law-enforcement officer, or other person responsible for the administration of this section of the*
232 *existence of a search warrant issued pursuant to this section, application for such search warrant, any*
233 *affidavit filed in support of such warrant, or any personal information obtained as a result of such*
234 *search warrant is punishable as a Class 1 misdemeanor.*

235 *N. It shall be unlawful to operate an unmanned aircraft for the purpose, in whole or in part, of*
236 *using the unmanned aircraft system as a weapon or to deliver a weapon against a person or property*
237 *or to manufacture, sell, or distribute an unmanned aircraft system as a weapon or to deliver a weapon*
238 *against a person or property and such action is punishable under § 18.2-46.6.*

239 *O. Any use of unmanned aircraft systems shall fully comply with all Federal Aviation Administration*
240 *requirements and guidelines.*

241 *P. By July 1 of each year, any judicial officer who has authorized the issuance of a search warrant*
242 *or extension of a public unmanned aircraft system that expired during the preceding year or who has*
243 *denied approval during that year shall report to the Chief Justice of the Virginia Supreme Court or his*

designee the following information:

1. The fact that a warrant or extension was applied for;
2. The kind of warrant or extension applied for;
3. The fact that the warrant or extension was granted as applied for, was modified, or was denied;
4. The period of interceptions authorized by the order, and the number and duration of any extensions of the order;
5. The offense or purpose specified in the petition and the probable cause giving rise to such warrant or extension of such warrant; and
6. The identity of the applying state agency applicant or law-enforcement officer, the agency making the application, and the judicial officer authorizing the petition.

Q. By July 1 of each year, any law-enforcement agency who applied for a criminal search warrant for the use of a public unmanned aircraft system shall report to the Superintendent of the Virginia State Police or his designee the following information:

1. The information required by subdivisions P 1 through 6 with respect to each application for a search warrant or extension made during the preceding calendar year;
2. The general description of the information gathered under such search warrant or extension including:
 - a. The approximate nature and frequency of incriminating conduct gathered;
 - b. The approximate number of persons upon whom information was gathered; and
 - c. The approximate nature, amount, and cost of the manpower and other resources used in the collection;
3. The number of arrests resulting from information gathered under such search warrant or extension and the offenses for which arrests were made;
4. The number of trials resulting from such information;
5. The number of motions to suppress made with respect to such information and the number granted or denied;
6. The number of convictions resulting from such information and the offenses for which the convictions were obtained and a general assessment of the importance of the information; and
7. The information required by subdivisions P 1 through 6 with respect to search warrants or extensions obtained in the preceding calendar year.

R. By July 1 of each year, each state agency of the Commonwealth who applied for an administrative search warrant or inspection warrant or extension of a public unmanned aircraft system shall report to the Governor or his designee the following information:

1. The fact that such a warrant or extension was applied for;
2. The kind of order or extension applied for;
3. The fact that the order or extension was granted as applied for, was modified, or denied;
4. The period of interceptions authorized by the order and the number and duration of any extensions of the order;
5. The identity of the applicant and state agency making the petition and the judicial officer authorizing the petition;
6. The probable cause giving rise to the issuance of the administrative search warrant or inspection warrant in the petition or extension of such warrant, including the conditions, object, activity, or circumstance that legally justified such inspection, testing, or collection of information;
7. The general description of the information gathered under such warrant or extension, including:
 - a. The approximate nature and frequency of the information gathered, collected, or inspected from such place, property, things, or persons;
 - b. The approximate number of persons upon whom personal information was gathered; and
 - c. The approximate nature, amount, and cost of the manpower and other resources used in the collection or inspection; and
8. If applicable, the identity of the judicial officer authorizing forcible entry, the identity of the law-enforcement officer who assisted the agency official, and information justifying the issuance of the forcible entry order.

S. By December 1 of each year, the Chief Justice of the Virginia Supreme Court or his designee, the Superintendent of the Virginia State Police or his designee, and the Governor or his designee shall transmit to the General Assembly a full and complete report concerning the number of applications for search warrants authorizing or approving operation of a public unmanned aircraft system or disclosure of information or data from the operation of a public unmanned aircraft system pursuant to this section and the number of search warrants and extensions granted or denied pursuant to this section during the preceding calendar year. Such report shall include a summary and analysis of all the data required to be filed with the Virginia Supreme Court, the Virginia State Police, and the Governor.

T. Excluding personally identifiable information, records required by subsections P, Q, and R shall

305 *be open to public disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).*

306 *U. The governing body of any locality permitting the use of public unmanned aircraft systems shall*
307 *publish publicly available written policies and procedures for the use of public unmanned aircraft*
308 *systems by the law-enforcement agencies of such locality.*

309 *V. The governing body of any locality permitting the use of public unmanned aircraft systems shall,*
310 *by ordinance, require the law-enforcement agency of such locality operating a public unmanned aircraft*
311 *system to maintain records of each use of a public unmanned aircraft system, including the date, time,*
312 *location of use, target of data collection, type of data collected; the justification for the use, the*
313 *operator of the public unmanned aircraft system, and the person who authorized the use.*

314 *W. The governing body of any locality permitting the use of a public unmanned aircraft system shall*
315 *conduct an annual comprehensive audit on the operation of all public unmanned aircraft systems,*
316 *including the law-enforcement log book, corresponding emergency telephone calls, warrants, and other*
317 *documentation of the justification for use and data collected. The audit shall be publically available.*
318 *The audit shall include:*

319 *1. The number of uses of a public unmanned aircraft system organized by types of incidents and*
320 *types of justification for use;*

321 *2. The number of crime investigations aided by the use and how the use was helpful to the*
322 *investigation;*

323 *3. The number of uses of a public unmanned aircraft system for reasons other than criminal*
324 *investigations and how the use was helpful;*

325 *4. The frequency and type of data collected for individuals or areas other than targets;*

326 *5. The total cost of the public unmanned aircraft system; and*

327 *6. Additional information and analysis the governing body deems useful.*

328 *X. The governing body of any locality permitting the use of a public unmanned aircraft system shall,*
329 *upon completion of the publicly available annual audit on the use of public unmanned aircraft systems,*
330 *review the use of public unmanned aircraft systems and consider both the benefits and risks to privacy*
331 *before authorizing the continued operation of a public unmanned aircraft system in such locality.*