

SB 238 A -A11 STAFF MEASURE SUMMARY

House Committee On Rules

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Meeting Dates: 6/11

WHAT THE MEASURE DOES:

The measure allows a law enforcement agency or officer to acquire and disclose information acquired through the operation of an unmanned aircraft system in connection with specific lawful police activities, with certain exceptions, and combines authorizations from several statutes into one.

Detailed Summary

- Permits law enforcement to operate an unmanned aircraft system (UAS) in connection with lawful police activity, limited to:
 - Responding to any call for service;
 - Responding to a public safety emergency that could result in injury to persons or property;
 - Conducting search and rescue operations;
 - Conducting training on UAS operation;
 - Obtaining information about a property with the owner's consent;
 - Executing a warrant;
 - Operating a UAS as authorized by a warrant issued by a court; or
 - Responding to exigent circumstances making it unreasonable to obtain a warrant authorizing UAS use, if probable cause exists to believe a person has committed, is committing, or is about to commit a crime.
- Prohibits law enforcement UAS operation in the following circumstances:
 - Surveillance activities over commercial property, if the owner has not consented and posted conspicuous notice of possible law enforcement UAS operation over the property.
 - Operation of UAS for purposes of traffic enforcement, unless actively pursuing a fleeing suspect.
 - Collecting or maintaining information in a manner prohibited by ORS 181A.250.
- Requires that UAS cameras be stowed, or positioned and used only for airspace deconfliction, if the law enforcement operation of a UAS is not in connection with police activity.
- Removes the law enforcement exemption from the prohibition on UAS use over private property to intentionally, knowingly, or recklessly harass or annoy the occupant or owner.
- Repeals portions of ORS 837.320, and ORS 837.330, ORS 837.335, and ORS 837.340, including the following requirements:
 - Consent by a property owner must be in writing;
 - UAS may only be authorized only upon issuance of a warrant, exigent circumstances with probable cause, or for search and rescue or training;
 - For law enforcement use of UAS in search and rescue activities, law enforcement must file a sworn statement within 48 hours and document the factual basis for the belief of an imminent threat to an individual's life or safety; and
 - Use of UAS for law enforcement reconstruction or assessment of an accident or crime scene, limited to five days.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-A11 The amendment clarifies provisions of the measure, and adds limitations and requirements for law enforcement use of UAS.

Detailed Summary

Responding to calls for service (p. 2, ln. 8-22)

- Adds specifications for using a UAS in responding to call for law enforcement services, to mean a call that originated from a member of the public via a 9-1-1 call or a dispatch from a law enforcement officer processed by a public safety answering point.
- Requires reasonable suspicion that the criminal conduct will occur imminently, is occurring or has recently occurred and the UAS is necessary to protect public safety or gather evidence of a crime.
- Explicitly limits authorization for this purpose to the specific incident and location relevant to the call for service.
- Requires that data collected through the UAS for this purpose is not used for general surveillance or retained more than 30 days unless directly relevant to an ongoing criminal investigation.

Responding to a public safety emergency (p. 2, ln. 23-26)

- Adds a reasonable suspicion requirement for use of the UAS and clarifies that it pertains to when personal injury or damage to property "has occurred or will occur."
- Makes explicit that a lawful assembly is not itself a public safety emergency, for purposes of UAS authorization.

Reconstruction of a crime scene (p. 2, ln. 28-30)

- Adds language from ORS 837.340 inadvertently omitted from the measure, authorizing UAS use for up to five days in reconstructing a specific crime scene or accident scene.

Permission from an individual or property owner (p. 3, ln. 2-4)

- Removes authorization for UAS use over a commercial property with consent of the property owner and after the owner posts notice on the property to the public.
- Replaces the provision regarding consent by a property owner with the full text of ORS 837.330, requiring written consent by an individual to obtain information about the individual or the individual's property.

Execution of a warrant (p. 3, ln. 5-7; p. 5, ln. 5-7)

- Clarifies permission to use UAS in the execution of an arrest warrant and limits the use to a location where the law enforcement agency has reasonable suspicion to believe the subject of an arrest warrant is present.
- Removes the definition of warrant in ORS 837.300 that refers only to a search warrant.

Travel to and from authorized locations (p. 3, ln. 28-30; p. 4, ln. 1-5)

- Replaces language authorizing a UAS "not in connection with police activity" with authorization to move the UAS to and from the location of police activity where operation of a UAS is authorized by the measure.
- Retains requirement that the UAS cameras be stowed or positioned to provide situational awareness only for airspace deconfliction during such travel.

Documentation and recordkeeping (p. 3, ln. 15-20)

- Requires law enforcement to document the UAS flight and the justification for use, and to retain the documentation in accordance with the law enforcement agency's recordkeeping and retention requirements.

Explicit prohibitions on use (p. 4, ln. 6-19)

- Adds surveillance or monitoring of individuals, property or public areas, if not otherwise authorized by the measure.
- Adds using a UAS to record a lawful assembly.
- Adds using a UAS in violation of the Oregon Constitution or United States Constitution.
- Adds ORS 180.805 and ORS 181A.820, regarding immigration information and enforcement, to the restriction on law enforcement using a UAS to collect or maintain information when prohibited by Oregon law, in

addition to ORS 181A.250.

Recording and sharing limitations (p. 3, ln. 21-27; p. 4, ln. 20-25)

- Limits law enforcement agencies and law enforcement officers from providing images, video or sound collected by a UAS to anyone other than the Oregon Department of Justice, or Oregon's state or local law enforcement agencies or district attorneys, unless a warrant or other judicial order authorizes the release.

BACKGROUND:

In 2013, House Bill 2710 established that law enforcement may only use UAS with a warrant or with probable cause and exigent circumstances, or for search and rescue efforts, training, or crime scene reconstruction. The measure also prohibited public bodies from operating UAS that are capable of firing a bullet or other projectiles. In 2016, House Bill 4066 required public bodies to establish and make publicly available policies and procedures for the use, storage, access, sharing, and retention of data collected through use of UAS. UAS are commonly called drones.

ORS 181A.250 prohibits a law enforcement agency from collecting or maintaining information about the political, religious or social views, associations or activities of any individual, group, association, organization, corporation, business or partnership, unless the information directly relates to an investigation of criminal activities, and there are reasonable grounds to suspect the subject of the information is or may be involved in criminal conduct.