

114TH CONGRESS
1ST SESSION

S. 1595

To describe the authority under which Federal entities may use mobile aerial-view devices to surveil, protect individual and collective privacy against warrantless governmental intrusion through the use of mobile aerial-view devices, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 17, 2015

Mr. WYDEN (for himself and Mr. HELLER) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

A BILL

To describe the authority under which Federal entities may use mobile aerial-view devices to surveil, protect individual and collective privacy against warrantless governmental intrusion through the use of mobile aerial-view devices, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protecting Individuals
5 From Mass Aerial Surveillance Act of 2015”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act—

1 (1) the terms “mobile aerial-view device” and
2 “MAVD” mean any device that through flight or
3 aerial lift obtains a dynamic, aerial view of property,
4 persons or their effects, including an unmanned air-
5 craft (as defined in section 331 of the FAA Mod-
6 ernization and Reform Act of 2012 (49 U.S.C.
7 40101 note));

8 (2) the term “law enforcement party” means a
9 person or entity authorized by law, or funded by the
10 Government of the United States, to investigate or
11 prosecute offenses against the United States;

12 (3) the term “Federal entity” means any per-
13 son or entity acting under the authority of, or fund-
14 ed in whole or in part by, the Government of the
15 United States, including a Federal law enforcement
16 party, but excluding State, tribal, or local govern-
17 ment agencies or departments;

18 (4) the term “non-Federal entity” means any
19 person or entity that is not a Federal entity;

20 (5) the term “surveil” means to photograph,
21 record, or observe using a sensing device, regardless
22 of whether the photographs, observations, or record-
23 ings are stored, and excludes using a sensing device
24 for the purposes of testing or training operations of
25 MAVDs;

1 (6)(A) the term “sensing device” means a de-
2 vice capable of remotely acquiring personal informa-
3 tion from its surroundings using any frequency of
4 the electromagnetic spectrum, or a sound detecting
5 system, or a system that detects chemicals in the at-
6 mosphere; and

7 (B) the term “sensing device” does not include
8 equipment whose sole function is to provide informa-
9 tion directly necessary for safe air navigation or op-
10 eration of a MAVD;

11 (7) the term “public lands” means lands owned
12 by the Government of the United States; and

13 (8) the term “national borders” refers to any
14 region no more than 25 miles of an external land
15 boundary of the United States.

16 **SEC. 3. PROHIBITED USE OF MAVDS.**

17 A Federal entity shall not use a MAVD to surveil
18 property, persons or their effects, or gather evidence or
19 other information pertaining to known or suspected crimi-
20 nal conduct, or conduct that is in violation of a statute
21 or regulation.

22 **SEC. 4. EXCEPTIONS.**

23 (a) This Act does not prohibit any of the following:

24 (1) PATROL OF BORDERS.—The use of a
25 MAVD by a Federal entity to surveil national bor-

1 ders to prevent or deter illegal entry of any persons
2 or illegal substances at the borders.

3 (2) EXIGENT CIRCUMSTANCES.—

4 (A) The use of a MAVD by a Federal enti-
5 ty when exigent circumstances exist. For the
6 purposes of this paragraph, exigent cir-
7 cumstances exist when the Federal entity pos-
8 sesses reasonable suspicion that under par-
9 ticular circumstances, swift action is nec-
10 essary—

11 (i) to prevent imminent danger of
12 death or serious bodily harm to a specific
13 individual;

14 (ii) to counter an imminent risk of a
15 terrorist attack by a specific individual or
16 organization;

17 (iii) to prevent imminent destruction
18 of evidence; or

19 (iv) to counter an imminent or actual
20 escape of a criminal or terrorist suspect.

21 (B) A Federal entity using a MAVD pur-
22 suant to subparagraph (A)(i) must maintain a
23 retrievable record of the facts giving rise to the
24 reasonable suspicion that an exigent cir-
25 cumstance existed.

1 (3) PUBLIC SAFETY AND RESEARCH.—The use
2 of a MAVD by a Federal entity—

3 (A) to discover, locate, observe, gather evi-
4 dence in connection to, or prevent forest fires;

5 (B) to monitor environmental, geologic, or
6 weather-related catastrophe or damage from
7 such an event;

8 (C) to research or survey for wildlife man-
9 agement, habitat preservation, or geologic, at-
10 mospheric, or environmental damage or condi-
11 tions;

12 (D) to survey for the assessment and eval-
13 uation of environmental, geologic or weather-re-
14 lated damage, erosion, flood, or contamination;
15 and

16 (E) to survey public lands for illegal vege-
17 tation.

18 (4) CONSENT.—The use of a MAVD by a Fed-
19 eral entity for the purpose of acquiring information
20 about an individual, or about an individual's prop-
21 erty or effects, if such individual has given written
22 consent to the use of a MAVD for such purposes.

23 (5) WARRANT.—A law enforcement party using
24 a MAVD, pursuant to, and in accordance with, a

1 Rule 41 warrant, to surveil specific property, per-
2 sons or their effects.

3 **SEC. 5. BAN ON IDENTIFYING INDIVIDUALS.**

4 (a) No Federal entity actor may make any intentional
5 effort to identify an individual from, or associate an indi-
6 vidual with, the information collected by operations au-
7 thorized by paragraphs (1) through (3) of subsection (a),
8 nor shall the collected information be disclosed to any enti-
9 ty except another Federal entity or State, tribal, or local
10 government agency or department, or political subdivision
11 thereof, that agrees to be bound by the restrictions in this
12 Act.

13 (b) The restrictions described in subsection (a) shall
14 not apply if there is probable cause that the information
15 collected is evidence of specific criminal activity.

16 **SEC. 6. PROHIBITION ON USE OF EVIDENCE.**

17 No evidence obtained or collected in violation of this
18 Act may be received as evidence against an individual in
19 any trial, hearing, or other proceeding in or before any
20 court, grand jury, department, officer, agency, regulatory
21 body, legislative committee, or other authority of the
22 United States, a State, or a political subdivision thereof.

23 **SEC. 7. PROHIBITION ON SOLICITATION AND PURCHASE.**

24 (a) A Federal entity shall not solicit to or award con-
25 tracts to any entity for such entity to surveil by MAVD

1 for the Federal entity, unless the Federal entity has exist-
2 ing authority to surveil the particular property, persons
3 or their effects, of interest.

4 (b) A Federal entity shall not purchase any informa-
5 tion obtained from MAVD surveillance by a non-Federal
6 entity if such information contains personal information,
7 except pursuant to the express consent of all persons
8 whose personal information is to be sold.

9 **SEC. 8. RULE OF CONSTRUCTION.**

10 Nothing in this Act shall be construed to preempt any
11 State law regarding the use of MAVDs exclusively within
12 the borders of that State.

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