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FISCAL IMPACT REPORT

ORIGINAL DATE 02/22/13
 LAST UPDATED 03/09/13 HB _____

SPONSOR Ortiz y Pino

SHORT TITLE Freedom From Unwarranted Surveillance Act SB 556/aSPAC

ANALYST Chenier

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Minimal	Minimal	Minimal	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Defender Department (PDD)
 Attorney General’s Office (AGO)
 Administrative Office of the District Attorney (AODA)
 Department of Public Safety (DPS)

SUMMARY

Synopsis of SPAC Amendment

The Senate Public Affairs Committee amendment to Senate Bill 556 prohibits information gathered by a drone to be used in a civil proceeding. The amendment also allows evidence collected by a drone to be used only when establishing a violation of the Freedom From Unwarranted Surveillance Act.

Synopsis of Original Bill

Senate Bill 556 (SB 556) requires that a person or state agency shall not use a drone or unmanned aircraft to gather evidence or other information pertaining to criminal conduct in violation of a statute or regulation except to the extent authorized in a warrant. It also requires that a person or state agency shall not use a drone or unmanned aircraft “to conduct surveillance” of an individual or of property owned by an individual, farm or agricultural industry without the consent of that individual, property owner, farm or agricultural industry. It would permit law enforcement to use such when exigent circumstances exist, defining exigency as when the agency possesses reasonable suspicion that swift action is necessary to prevent imminent danger to life. The bill provides that a person violating the law would be guilty of a misdemeanor.

FISCAL IMPLICATIONS

SB 556 sets out a new petty misdemeanor, and requires warrants for the use of a drone or unmanned aircraft to gather evidence. To the extent these provisions result in increased litigation, they will increase costs to the district attorneys.

SIGNIFICANT ISSUES

The Public Defender Department (PDD) stated that “Surveillance” is not defined. Enactment might lead to individual challenges based on the First Amendment right to assemble. This bill would criminalize private citizen use of drones to monitor potentially illegal dumping activities, oil pipelines that might be poisoning the environment, abusive treatment of animals or even the recording of large public events for the purpose of reporting news.

The Administrative Office of the District Attorneys (AODA) stated further that the bill would also prohibit the use of drones in situations that would not be any more invasive than current technology, but where drones could be cheaper and more efficient. For example, SB 556 would prohibit the use of drones to monitor highways for speeding violations, even though it would be lawful to use a manned aircraft for that purpose, or an unmanned “speed SUV” to monitor speeders.

The Attorney General’s Office (AGO) stated that there is a body of law under the Fourth Amendment that pertains to the use of manned aircraft used in civil and criminal matters. This body of law generally allows the use of manned aircraft for these purposes when the aircraft is gathering information or conducting surveillance of a person or place from a plain view. Known as the “plain view doctrine,” this doctrine is an exception to the warrant requirement found in the same amendment. Thus, while the Act bars the use of unmanned aircraft from conducting surveillance or gathering information without a warrant unless there is an exigent circumstance, the Fourth Amendment has been interpreted to allow the use of manned aircraft to do the same under the plain view doctrine.

While courts have not yet substantively addressed the distinction between manned and unmanned aircraft when carrying out identical objectives, a large body of law suggests that the use of unmanned aircraft for purposes of surveillance and information gathering is constitutionally valid under the plain view exception to the warrant requirement under the Fourth Amendment. Thus, the prohibition on unmanned aircraft or drones to conduct surveillance or gather information without a warrant or an exigent circumstance is likely unconstitutional.

TECHNICAL ISSUES

SB 556 states that it applies to tribal law enforcement agencies. It is not clear that the state has the power to legislate on the powers of tribal law enforcement.

OTHER SUBSTANTIVE ISSUES

The Department of Public Safety (DPS) stated that while the DPS does not currently employ drones or unmanned aircraft, they are becoming more commonplace in law enforcement arenas because of cost savings and safety (no pilots in danger). As written, the bill prohibits any evidence gathered by a drone even if employed in a non-criminal matter and in public venues.

For example, if a drone were employed to enhance situational awareness at the New Mexico Bowl, but happened to capture an ‘assault’ between two patrons at the game, the evidence would not be allowed/admissible in court. The same is true if, for example, Game and Fish employed a drone to count an elk herd and happened to catch a poacher in the act.

POSSIBLE QUESTIONS

1. Would the bill allow a person to use a drone to conduct surveillance of public property for some non-law enforcement reason?

EC/svb