

114TH CONGRESS  
1ST SESSION

# H. R. 3962

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.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 5, 2015

Ms. DELBENE (for herself, Mr. POE of Texas, Ms. LOFGREN, Mr. BEYER, and Mr. BLUMENAUER) introduced the following bill; which was referred to the Committee on the Judiciary

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## 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, the following definitions apply:

1           (1) MOBILE AERIAL-VIEW DEVICE, OR MAVD.—  
2           The terms “mobile aerial-view device” and “MAVD”  
3           mean any device that through flight or aerial lift ob-  
4           tains an aerial view of property, persons or their ef-  
5           fects, including an unmanned aircraft (as defined in  
6           section 331 of the FAA Modernization and Reform  
7           Act of 2012 (49 U.S.C. 40101 note)).

8           (2) LAW ENFORCEMENT OFFICIAL OR AGEN-  
9           CY.—The term “law enforcement official or agency”  
10          means a person or entity authorized by law, or fund-  
11          ed by the Government of the United States, to inves-  
12          tigate or prosecute offenses against the United  
13          States.

14          (3) FEDERAL ENTITY.—The term “Federal en-  
15          tity” means any person or entity acting under the  
16          authority of, or funded in whole or in part by, the  
17          Government, including a Federal law enforcement  
18          official or agency, but excluding State, tribal, or  
19          local government agencies or departments.

20          (4) NATIONAL BORDERS.—The term “national  
21          border” means an area that shares not more than  
22          5 miles of an external land boundary of the United  
23          States.

1           (5) NON-FEDERAL ENTITY.—The term “non-  
2 Federal entity” means any person or entity that is  
3 not a Federal entity.

4           (6) SURVEIL.—The term “surveil” means to  
5 photograph, record, or observe using a sensing de-  
6 vice, regardless of whether the photographs, observa-  
7 tions, or recordings are stored, and excludes using a  
8 sensing device for the purposes of testing or training  
9 operations of MAVDs.

10          (7) SENSING DEVICE.—

11                 (A) MEANING.—The term “sensing  
12 device” means a device capable of remotely  
13 acquiring personal information from its  
14 surroundings using any frequency of the  
15 electromagnetic spectrum, or a sound de-  
16 tecting system, or a system that detects  
17 chemicals in the atmosphere.

18                 (B) SPECIFIC EQUIPMENT NOT IN-  
19 CLUDED.—The term “sensing device” does  
20 not include equipment for which the sole  
21 function is to provide information directly  
22 necessary for safe air navigation or oper-  
23 ation of a MAVD.

1           (8) PUBLIC LANDS.—The term “public lands”  
2       means lands owned by the Government of the  
3       United States.

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

5       A Federal entity shall not use a MAVD to surveil  
6       property, persons or their effects, or gather evidence or  
7       other information pertaining to known or suspected crimi-  
8       nal conduct, or conduct that is in violation of a law or  
9       regulation.

10 **SEC. 4. EXCEPTIONS.**

11       This Act shall not prohibit any of the following:

12           (1) PATROL OF BORDERS AND NATIONAL  
13       WATERS.—The use of a MAVD by a Federal entity  
14       to surveil national borders or national waters of the  
15       United States to prevent or deter illegal entry of any  
16       person or illegal substance at the borders or in na-  
17       tional waters of the United States.

18           (2) EXIGENT CIRCUMSTANCES.—

19           (A) ACTION NECESSARY.—The use of a  
20       MAVD by a Federal entity when exigent cir-  
21       cumstances exist. For the purposes of this  
22       paragraph, exigent circumstances exist when  
23       the Federal entity possesses reasonable sus-  
24       picion that under particular circumstances,  
25       swift action is necessary—

1 (i) to prevent imminent danger of  
2 death or serious bodily harm to a specific  
3 individual;

4 (ii) to counter an imminent risk of a  
5 terrorist attack by a specific individual or  
6 organization;

7 (iii) to prevent imminent destruction  
8 of evidence; or

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

11 (B) RECORDS.—A Federal entity using a  
12 MAVD pursuant to subparagraph (A)(i) shall  
13 maintain a retrievable record of the facts giving  
14 rise to the reasonable suspicion that an exigent  
15 circumstance existed.

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

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

20 (B) to monitor environmental, geologic, or  
21 weather-related catastrophe or damage from  
22 such an event;

23 (C) to research or survey for wildlife man-  
24 agement, habitat preservation, or geologic, at-

1           mospheric, or environmental damage or condi-  
2           tions;

3                   (D) to survey for the assessment and eval-  
4           uation of environmental, geologic or weather-re-  
5           lated damage, erosion, flood, or contamination;  
6           and

7                   (E) to survey public lands for illegal vege-  
8           tation.

9           (4) CONSENT.—The use of a MAVD by a Fed-  
10          eral entity for the purpose of acquiring information  
11          about an individual, or about an individual’s prop-  
12          erty or effects, if such individual has given written  
13          consent to the use of a MAVD for such purposes.

14          (5) WARRANT.—Law enforcement using a  
15          MAVD, pursuant to, and in accordance with, a Rule  
16          41 warrant, to surveil specific property, persons, or  
17          their effects.

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

19          (a) CONFIDENTIAL INFORMATION.—No Federal enti-  
20          ty actor may make any intentional effort to identify an  
21          individual from, or associate an individual with, the infor-  
22          mation collected by operations authorized by paragraphs  
23          (1) through (3) of section 4, nor shall the collected infor-  
24          mation be disclosed to any entity except another Federal  
25          entity or State, tribal, or local government agency or de-

1 partment, or political subdivision thereof, that agrees to  
2 be bound by the restrictions in this Act.

3 (b) PROBABLE CAUSE.—The restrictions described in  
4 subsection (a) shall not apply if there is probable cause  
5 that the information collected is evidence of specific crimi-  
6 nal activity and a warrant is obtained.

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

8 No evidence obtained or collected in violation of this  
9 Act may be admissible as evidence against an individual  
10 in any trial, hearing, or other proceeding in or before any  
11 court, grand jury, department, officer, agency, regulatory  
12 body, legislative committee, or other authority of the  
13 United States, a State, or a political subdivision thereof.

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

15 (a) EXISTING AUTHORITY.—A Federal entity shall  
16 not solicit to or award contracts to any entity for such  
17 entity to surveil by MAVD for the Federal entity, unless  
18 the Federal entity has existing authority to surveil the  
19 particular property, persons or their effects, or interest.

20 (b) PERMISSION GRANTED.—A Federal entity shall  
21 not purchase any information obtained from MAVD sur-  
22 veillance by a non-Federal entity if such information con-  
23 tains personal information, except pursuant to the express  
24 consent of all persons whose personal information is to  
25 be sold.

**1 SEC. 8. RULE OF CONSTRUCTION.**

2       Nothing in this Act shall be construed to preempt any  
3 State law regarding the use of MAVDs exclusively within  
4 the borders of that State.

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