

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/CS/HB 119	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Judiciary Committee; Criminal Justice Subcommittee; Workman and others	117 Y's	0 N's
COMPANION BILLS:	(CS/CS/SB 92)	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/CS/HB 119 passed the House on April 17, 2013 as CS/CS/SB 92.

The bill creates the "Freedom from Unwarranted Surveillance Act" (Act), which prohibits a law enforcement agency from using a drone to collect evidence or other information. Evidence gathered in violation of the Act is inadmissible in a criminal prosecution in any state court.

The bill provides the following three exceptions that allow a law enforcement agency to use a drone:

- To counter a high risk of a terrorist attack by a specific individual or organization if the United States Secretary of Homeland Security determines that credible intelligence indicates that there is such a risk;
- If a law enforcement agency obtains a search warrant to use the drone; or
- If the law enforcement agency possesses reasonable suspicion that, under particular circumstances, swift action is needed to prevent imminent danger to life or serious damage to property, to forestall the imminent escape of a suspect or the destruction of evidence, or to achieve other such purposes, including, but not limited to, facilitating the search for a missing person.

The bill allows for a civil action by an aggrieved party to be brought against a law enforcement agency that violates the Act, and therefore may have a negative fiscal impact on state and local agencies that violate the Act.

The bill was approved by the Governor on April 22, 2013, ch. 2013-33, L.O.F., and will become effective on July 1, 2013.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Drones

Drones, also known as Unmanned Aircraft Systems (UAS), are unmanned aircraft that can be flown by remote control or on a predetermined flight path.¹ The size of a drone varies—it can be as small as an insect or as large as a jet.² Drones can be equipped with various devices such as infrared cameras,³ license plate readers,⁴ and “ladar” (laser radar).⁵ It is reported that the U.S. Army contracted with two corporations in 2011 to develop facial recognition and behavioral recognition technologies for drone use.⁶

There are three major markets for drones: military, civil government and commercial.⁷ The majority of drones are operated by the military and have an insignificant impact on U.S. airspace.⁸ However, drone use in this country is increasing because of technological advances.⁹ In 2010, the Federal Aviation Administration (FAA) estimated that there will be 30,000 drones in U.S. airspace within the next 20 years.¹⁰

Non-Military Drone Use

The FAA, which first allowed drones in U.S. airspace in 1990, is in charge of overseeing the integration of drones into U.S. airspace.¹¹ In doing so, it must balance the integration of drones with the safety of the nation’s airspace.¹² To safeguard the U.S. airspace, the FAA limits drone use to public interest missions such as fighting fires, search and rescue, scientific research, and environmental monitoring by the National Aeronautics and Space Administration (NASA) and National Oceanic and Atmospheric Administration (NOAA).¹³ The FAA also has limited the type of airspace where drones may operate. Currently, drones are not allowed to operate in Class B airspace, which is over the major urban areas and where the greatest numbers of manned aircraft are flown.¹⁴

In 2004, the U.S. Customs and Border Patrol (Border Patrol) began utilizing drones to monitor the borders.¹⁵ In 2010, the Border Patrol expanded its use of drones to monitor Florida’s shorelines.¹⁶

¹ *Drones in Domestic Surveillance Operations*, Congressional Research Service, September 6, 2012, www.fas.org/sgp/crs/natsec/R42701.pdf (last visited on March 15, 2013).

² See, CRS Report R42136. *U.S. Unmanned Aerial Systems*, Jeremiah Gertler.

³ *US Army unveils 1.8 gigapixel camera helicopter drone*, BBC NEWS, December 29, 2011, <http://www.bbc.com/news/technology-16358851> (last visited on March 15, 2013).

⁴ See, *Draganflyer X6, Thermal Infrared Camera*, <http://www.draganfly.com/uav-helicopter/draganflyer-x6/features/flir-camera.php> (last visited on March 15, 2013).

⁵ *Unmanned Aerial Vehicles Support Border Security*, Customs and Border Protection Today, July 2004, www.cbp.gov/xp/CustomsToday/2004/Aug/other/aerial_vehicles.xml (last visited on March 15, 2013).

⁶ *Army Developing Drones That Can Recognize Your Face From a Distance And even recognize you intentions*, Clay Dillow, Popular Science, September 28, 2011, <http://www.popsci.com/technology/article/2011-09/army-wants-drones-can-recognize-your-face-and-read-your-mind> (last visited on March 15, 2013).

⁷ Federal Aviation Administration, *FAA Aerospace Forecast: Fiscal Years 2010-2030* at 48 (2010).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Public Law 112-95, February 14, 2012, The FAA Modernization and Reform Act of 2012; FAA Fact Sheet, *Unmanned Aircraft Systems*, December 14, 2012, http://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=14153 (last visited on March 15, 2013).

¹² FAA Fact Sheet, *Unmanned Aircraft Systems*, December 14, 2012, http://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=14153 (last visited on March 15, 2013).

¹³ *Id.*

¹⁴ *Supra* note 7.

¹⁵ *Supra* note 5.

FAA approval is necessary to operate a drone for non-military purposes. There are two ways to obtain this approval:¹⁷ through acquisition of a private sector experimental airworthiness certificate that allows for research, development, training and flight demonstrations,¹⁸ or a Certificate of Waiver of Authorization (COA), which allows public entities, including governmental agencies, to fly drones in civil airspace.¹⁹ An agency seeking a COA must apply online and detail the proposed operation for the drone.²⁰ If the FAA issues a COA, it contains a stated time period (usually two years) a certain block of airspace for the drone, and other special provisions unique to the specific operation.²¹ As of November 2012, there were 345 active COAs.²²

FAA Modernization Reform Act of 2012

In February 2012, Congress passed the FAA Modernization Reform Act (Reform Act), which requires the FAA to safely integrate drones into U.S. airspace by September 2015.²³ The Reform Act authorizes the FAA to allow government public safety agencies to operate drones under certain restrictions and makes the process for approving authorization requests more efficient.²⁴ Drones must be flown within the line of sight of the operator, less than 400 feet above the ground, during daylight conditions, inside Class G (uncontrolled) airspace, and more than five miles from any airport or other location with aviation activities.²⁵ The Reform Act also instructs the FAA to develop operation standards and certification criteria for drones and conduct studies concerning the safe use of drones.²⁶

Implementation of the Reform Act has caused privacy²⁷ issues to be raised. The FAA recently delayed the selection of six drone safety testing sites, mandated by the Reform Act, because of privacy concerns with integrating drones into U.S. airspace.²⁸ In a letter to Congressional Unmanned Systems Caucus, FAA Acting Chief Michael Huerta addressed the delay and said "...[i]ncreasing the use of UAS [drones] in our airspace also raises privacy issues, and these issues will need to be addressed as unmanned aircraft are safely integrated."²⁹ The Reform Act does not address privacy concerns and it is not clear if the FAA will attempt to address this issue through drone operational standards or studies required by Reform Act.³⁰

In response to the Reform Act, U.S. Senator Rand Paul filed legislation entitled "Preserving Freedom from Unwarranted Surveillance Act of 2012."³¹ Senator Paul's legislation, which is essentially identical to this bill, did not become law.³²

¹⁶ *Space Florida Probing Drone's Future Potential*, Howard Altman, Tampa Bay Online, August 5, 2012.

<http://www2.tbo.com/news/breaking-news/2012/aug/05/space-florida-probing-drones-future-potential-ar-453511/> (last visited on March 15, 2013).

¹⁷ *Supra* note 12.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ Public Law 112-95, February 14, 2012, The FAA Modernization and Reform Act of 2012; *Drones in Domestic Surveillance Operations*, Congressional Research Service, September 6, 2012, www.fas.org/sgp/crs/natsec/R42701.pdf (last visited on March 15, 2013).

²⁴ Public Law 112-95, February 14, 2012, The FAA Modernization and Reform Act of 2012; *FAA Makes Progress with UAS Integration*, Federal Aviation Administration, May 14, 2012, www.faa.gov/news/updates/?newsId=68004 (last visited on March 15, 2013).

²⁵ Public Law 112-95, February 14, 2012, The FAA Modernization and Reform Act of 2012.

²⁶ *Id.*

²⁷ *See*, the III. COMMENTS, A. CONSTITUTIONAL ISSUES: 2. Other, section of the analysis for a discussion of this issue.

²⁸ Public Law 112-95, February 14, 2012, The FAA Modernization and Reform Act of 2012; *FAA Going Slow on Drones as Privacy Concerns Studied*, Alan Levine, Bloomberg, November 26, 2012, <http://go.bloomberg.com/political-capital/2012-11-26/faa-going-slow-on-drones-as-privacy-concerns-studied/> (last visited on March 15, 2013).

²⁹ *Id.*

³⁰ *Id.*

³¹ *Preserving Freedom from Unwarranted Surveillance Act of 2012*, S.3287, H.R. 5925.

³² Govtrack.us <http://www.govtrack.us/congress/bills/112/s3287> (last visited on March 15, 2013).

Drone Use by Law Enforcement Agencies in Florida

The Miami-Dade Police Department, Orange County Sheriff's Office, and Polk County Sheriff's Office are law enforcement agencies in Florida that have obtained a COA from the FAA and purchased drones:³³

- The Miami-Dade Police Department's COA became effective on July 1, 2011. Its drones have not been flown in an actual operation.³⁴
- The Polk County Sheriff's Office determined that the expense of training pilots to operate the drone was too high and have discontinued use of the drone.³⁵
- The Orange County Sheriff's Office is currently experimenting with its drones.³⁶ The Sheriff's Office needs permission from the Orange County Commission before the drones can be put to use, and hopes to launch the drones by the summer of 2013.³⁷

Several police chiefs who do not have COAs and who have not started drone testing have indicated that drone use would benefit their agencies by reducing the risk to officers and citizens in high risk situations involving hostages, active shooters, or armed and barricaded suspects.³⁸

Effect of the Bill

The bill creates the "Freedom from Unwarranted Surveillance Act," which prohibits a law enforcement agency from using drones to collect evidence or other information. Evidence obtained in violation of the Act is inadmissible in a criminal prosecution in any state court.

The bill provides the following three exceptions that allow a law enforcement agency to use a drone:

- To counter a high risk of a terrorist attack by a specific individual or organization if the U.S. Secretary of Homeland Security determines that credible intelligence indicates that there is such a risk;
- If a law enforcement agency obtains a search warrant to use the drone; or
- If the law enforcement agency possesses reasonable suspicion that, under particular circumstances, swift action is needed to prevent imminent danger to life or serious damage to property, to forestall the imminent escape of a suspect or the destruction of evidence, or to achieve other such purposes, including, but not limited to, facilitating the search for a missing person.

The last exception appears to require a reasonable, articulable suspicion, based on objective facts, that a person has engaged in, is engaging in, or is about to engage in, criminal activity.³⁹ The bill's standard takes the particular circumstances into account, and a precise analysis of each situation will need to be made on a case-by-case basis.

The bill authorizes an aggrieved party to initiate a civil action against a law enforcement agency that violates the Act to obtain all appropriate relief that will prevent or remedy the violation. This language appears to provide for injunctive relief as well as actions for damages against a law enforcement agency.

³³ FAA Drones COA, <https://www.eff.org/file/34697#page/1/mode/1up> (last visited on March 15, 2013).

³⁴ Miami-Dade Police Department Fact Sheet, Special Patrol Bureau/Aviation Unit, Micro Air Vehicle "MAV" Program, provided to Senate Committee Staff, January 8, 2013 (on file with the Criminal Justice Subcommittee).

³⁵ *Central Florida Sheriff Wants to Fly Drones by the Summer*, Aero News Network, January 16, 2013, <http://www.aero-news.net/getmorefromann.cfm?do=main.textpost&id=2ee04d46-6fe7-4f65-bae5-c843dce80ab5> (last visited on March 15, 2013).

³⁶ *Orange sheriff: Drones won't be used for spying*, Dan Tracy, Orlando Sentinel, January 18, 2013, <http://www.orlandosentinel.com/news/local/breakingnews/os-orange-sheriff-drone-flies-20130118.0.6760531.story> (last visited on March 15, 2013).

³⁷ *Id.*

³⁸ Memo provided to Senate Committee Staff on December 12, 2012, by the Florida Police Chiefs Association (on file with the Criminal Justice Subcommittee).

³⁹ *See, Terry v. Ohio*, 392 U.S. 1 (1968).

The bill defines “drone” as a powered, aerial vehicle that:

- Does not carry a human operator;
- Uses aerodynamic forces to provide vehicle lift;
- Can fly autonomously or be piloted remotely;
- Can be expendable or recoverable; and
- Can carry a lethal or nonlethal payload.

“Law enforcement agency” is defined by the bill as a lawfully established state or local public agency that is responsible for the prevention and detention of crime, local government code enforcement, and the enforcement of penal, traffic, regulatory, game, or controlled substance laws.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill authorizes an aggrieved party to initiate a civil action against a state law enforcement agency that violates the Act to obtain all appropriate relief that will prevent or remedy the violation. The remedy could result in monetary damages, which would have a negative fiscal impact on state government.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill authorizes an aggrieved party to initiate a civil action against a local law enforcement agency who violates the Act to obtain all appropriate relief that will prevent or remedy the violation. The remedy could result in monetary damages, which would have a negative fiscal impact on a local government.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not apply to the use of drones for any purposes other than state and local law enforcement. It does not restrict the use of drones for private research and information gathering, and should have no impact on these activities.

D. FISCAL COMMENTS:

None.