

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 471 Unmanned Aircraft
SPONSOR(S): Yarborough
TIED BILLS: **IDEN./SIM. BILLS:** SB 624

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 0 N	Bruno	Sumner
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Section 934.50, F.S., defines a 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. The full system comprising of a drone and its associated elements – including communication links and components used to control the drone – is called an unmanned aircraft system (UAS).

As drone use has increased in recent years, people have used drones to smuggle contraband – including cell phones, drugs, weapons, and escape tools – into correctional facilities across the country.

HB 471 prohibits drone operation over, in contact with, or near a “fixed-site facility,” defined as:

- A state correctional institution,
- A secure detention center or facility, a high-risk residential facility, or a maximum-risk residential facility, or
- A county detention facility.

Consistent with current law protecting critical infrastructure facilities such as electrical power generators and chemical manufacturing facilities from drone operation, a first time violation is a second degree misdemeanor, and a second or subsequent violation is a first degree misdemeanor. The bill also prohibits using a drone to introduce contraband into a fixed-site facility, making such an offense a second degree felony.

The bill further amends s. 934.50, F.S., to expand one of the exceptions under which law enforcement officers may use a drone for surveillance to permit its use when law enforcement has reasonable suspicion that swift action is needed to facilitate the collection of evidence at a crime scene or traffic crash scene.

The Criminal Justice Impact Conference (CJIC) has not yet considered the impact of this bill. Because the bill increases criminal liability at the misdemeanor and felony levels, it may have a fiscal impact on state and local governments.

The bill provides an effective date of October 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Under Florida law, a drone is 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.¹ The full system comprising of a drone and its associated elements – including communication links and components used to control the drone – is called an unmanned aircraft system (UAS).²

In recent years, drone use has increased substantially among hobbyists and commercial users. The Federal Aviation Administration (FAA) forecasts up to seven million annual drone sales by 2020.³ The increase in drone operation presents new public safety challenges. For example, drones have interfered with aerial efforts to extinguish wildfires,⁴ and people have crashed drones near crowds⁵ and on the White House lawn.⁶ People have also used drones to smuggle contraband – including cell phones, drugs, weapons, and escape tools – into correctional facilities across the country.⁷ As drones become increasingly prolific and their capabilities advance, this threat will likely continue and grow.

Drones have proven useful to law enforcement, however – particularly in the area of traffic accident reconstruction. Drones can capture images above a crash site and stitch them together to allow for highly accurate reconstructions.⁸

Federal Drone Regulation

The FAA regulates use of navigable airspace under federal law.⁹ The FAA has allowed drone use for essential public operations such as firefighting, disaster relief, search and rescue, law enforcement, border patrol, and scientific research since 1990.¹⁰ In 2012, the United States Congress directed the Secretary of the United States Department of Transportation to determine whether to allow other drone

¹ S. 934.50(2)(a), F.S.

² S. 330.41(2)(c), F.S.

³ Federal Aviation Administration, FAA Aerospace Forecast: Fiscal Years 2016-2036, available at:

https://www.faa.gov/data_research/aviation/aerospace_forecasts/media/FY2016-36_FAA_Aerospace_Forecast.pdf

⁴ Jennifer Medina, *Chasing Video with Drones, Hobbyists Imperil California Firefighting Efforts*, NY TIMES, (July 19, 2015), available at:

<https://www.nytimes.com/2015/07/20/us/hobby-drones-hinder-california-firefighting-efforts.html>

⁵ Associated Press, *Drone hovers over court during match, crashes in Louis Armstrong Stadium*, ESPN, (Sept. 4, 2015), available at:

http://www.espn.com/tennis/usopen15/story/_id/13577411/drone-enters-louis-armstrong-stadium-crashes-empty-seats-match; Jeff

Sanders, *A bird? A plane? No, a drone crash lands at Petco Park*, SAN DIEGO UNION-TRIBUNE, (May 22, 2017), available at:

<http://www.sandiegouniontribune.com/sports/padres/sd-sp-drone-crashes-at-petco-park-20170522-story.html>; Steve Miletich, *Man*

convicted in drone crash that injured woman during Seattle's Pride Parade, SEATTLE TIMES, (Jan. 13, 2017), available at:

<https://www.seattletimes.com/seattle-news/crime/man-convicted-in-drone-crash-that-injured-woman-during-seattles-pride-parade/>

⁶ Bart Jansen, *Small drone crashes near White House despite ban against flights in D.C.*, USA TODAY, (Oct. 9, 2015), available at:

<https://www.usatoday.com/story/news/2015/10/09/drone-crash-white-house-ellipse-us-park-police-federal-aviation-administration/73641812/>

⁷ Terrell Wilkins, *Drone carrying drugs, phones crashes into prison yard*, USA TODAY, (Nov. 17, 2017), available at:

<https://www.usatoday.com/story/news/nation-now/2017/11/17/drone-carrying-contraband-crashes-prison-yard/873557001/>; Michael

Gerstein, *Drone sneaks package into Michigan Prison*, THE DETROIT NEWS, (Oct. 1, 2017), available at:

<http://www.detroitnews.com/story/news/local/michigan/2017/10/01/report-drone-sneaks-contraband-prison/106224348/>; Randy Ludlow,

Drone drops drugs, tobacco in Mansfield prison yard, spurs fight, THE COLUMBUS DISPATCH, (Aug. 4, 2015), available at:

<http://www.dispatch.com/content/stories/local/2015/08/04/drone-drops-drugs-in-Ohio-prison-yard.html>;

⁸ Bob Susnjara, *How drones help Lake County police investigate crashes, get roads open faster*, DAILY HERALD, (May 7, 2017),

available at: <http://www.dailyherald.com/news/20170506/how-drones-help-lake-county-police-investigate-crashes-get-roads-open-faster>

⁹ 49 U.S.C. § 40103.

¹⁰ Fact Sheet – Unmanned Aircraft Systems, Federal Aviation Administration (Feb. 15, 2015), available at:

https://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=18297

operations in the national airspace system and, if so, to establish safety requirements.¹¹ Consequently, the FAA introduced regulations to facilitate civilian drone use in the navigable airspace.¹²

In 2016, Congress enacted the FAA Extension, Safety, and Security Act (FAAESSA),¹³ which directed the FAA to establish a process for applicants to petition the Administrator of the FAA for a designation to prohibit or restrict the operation of an unmanned aircraft in close proximity to a fixed site facility.

Eligible fixed site facilities are limited to:

- Critical infrastructure, such as energy production, transmission, and distribution facilities and equipment,
- Oil refineries and chemical facilities,
- Amusement parks, or
- Other locations that warrant such restrictions.

The FAA has not established the process by which entities may apply for a designation prohibiting or restricting drone operations in close proximity to fixed site facilities.¹⁴

The FAA has expressed concerns about state and local government attempts to regulate the operation of flight or aircraft.¹⁵ According to the FAA, these efforts raise substantial safety issues by fractionalizing the national airspace and thereby limiting the flexibility of the FAA to control the airspace and flight patterns.¹⁶

Pending legislation and executive action, however, could allow for more state and local involvement in drone regulation. On October 25, 2017, the White House announced the Unmanned Aircraft Systems Integration Pilot Program.¹⁷ One objective of this pilot program is to test and evaluate various models of state, local, and tribal government involvement in the development and enforcement of federal regulations of drone operations. Additionally, the proposed Drone Federalism Act of 2017 would ensure that state, local, or tribal governments' authority to issue reasonable restrictions on the time, manner, and place of drone operation below 200 feet above ground level or within 200 feet of a structure is not preempted.¹⁸

State Drone Regulation

Florida law protects critical infrastructure facilities from dangers associated with drone operation by criminalizing knowingly and willfully:

- Operating a drone over a critical infrastructure facility,
- Allowing a drone to make contact with a critical infrastructure facility, or
- Allowing a drone to come close enough to a critical infrastructure facility as to interfere with the operations of or cause a disturbance to the facility.

A critical infrastructure facility is:

- An electrical power generation or transmission facility, substation, switching station, or electrical control center,
- A chemical or rubber manufacturing or storage facility,
- A mining facility,

¹¹ Pub. L. 112-95.

¹² Federal Aviation Administration, *Press Release – DOT and FAA Propose New Rules for Small Unmanned Aircraft Systems*, (February 15, 2015), available at: https://www.faa.gov/news/press_releases/news_story.cfm?newsId=18295

¹³ Pub. L. 114-190, s. 2209.

¹⁴ Email from Ryan Landers, Office of Chief Counsel, Federal Aviation Administration, RE: UAS Questions (November 22, 2017) (copy on file with Criminal Justice Subcommittee staff).

¹⁵ State and Local Regulation of Unmanned Aircraft Systems Fact Sheet – Federal Aviation Administration, Office of Chief Counsel, December 17, 2015.

¹⁶ *Id.*

¹⁷ The White House, Office of the Press Secretary, *Presidential Memorandum for the Secretary of Transportation*, (Oct. 25, 2017), available at: <https://www.whitehouse.gov/the-press-office/2017/10/25/presidential-memorandum-secretary-transportation>

¹⁸ Drone Federalism Act of 2017, S. 1272, 115th Cong. (2017).

- A natural gas or compressed gas compressor station, storage facility, or natural gas or compressed gas pipeline,
- A liquid natural gas or propane gas terminal or storage facility with a capacity of 4,000 gallons or more,
- Any portion of an aboveground oil or gas pipeline, or
- A wireless communications facility, including the tower, antennae, support structures, and all associated ground-based equipment.¹⁹

A first time violation of the prohibition is a second degree misdemeanor;²⁰ a second or subsequent violation is a first degree misdemeanor.²¹

Section 330.41, F.S., also requires anyone seeking to restrict or limit the operation of drones in close proximity to infrastructure or facilities to petition the FAA for the proper designation under the FAAESSA.²² It further provides that the criminalization of drone operation over or near critical infrastructure facilities as provided in s. 330.41(4), F.S., sunsets 60 days after the FAA establishes the designation process directed under the FAAESSA.²³

Section 934.50, F.S., regulates the use of drones to conduct surveillance. Law enforcement may not use a drone to gather evidence or other information, with certain exceptions.²⁴ When law enforcement has reasonable suspicion that swift action is needed for one of the following reasons, drone use is permitted:

- 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 purposes including facilitating the search for a missing person.²⁵

Other Relevant State Law

Florida law prohibits introduction of contraband into state correctional institutions,²⁶ county detention facilities,²⁷ and juvenile detention facilities or commitment programs.²⁸ Contraband includes written or recorded communication, money, food, clothing, tobacco, cigarettes and cigars, intoxicating beverages, controlled substances, firearms, weapons, explosive substances, instrumentalities of escape, cellular telephones, and other portable communication devices.²⁹ Introduction of contraband into a state correctional institution or juvenile detention facility can be either a third- or second-degree felony,³⁰ depending on the type of contraband introduced,³¹ whereas introduction of contraband into a county detention facility is a third degree felony.

Effects of Proposed Changes

HB 471 criminalizes:

- Operating a drone over a fixed-site facility,
- Allowing a drone to contact a fixed-site facility, or

¹⁹ S. 330.41(2)(a), F.S.

²⁰ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

²¹ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,500 fine. Sections 775.082 and 775.083.

²² S. 330.41(3)(d), F.S.

²³ S. 330.41(4)(e), F.S.

²⁴ S. 934.50(3)(a) & (4), F.S.

²⁵ S. 943.50(4)(c), F.S.

²⁶ S. 944.47, F.S.

²⁷ S. 951.22, F.S.

²⁸ S. 985.711, F.S.

²⁹ S. 944.47(1)(a), F.S.; s. 951.22(1), F.S.; s. 985.711(1)(a), F.S.

³⁰ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083.

³¹ S. 944.47(2), F.S.; s. 985.711(2), F.S.

- Allowing a drone to come close enough to a fixed-site facility interfere with the operations of or cause a disturbance to the fixed-site facility.

The bill amends s. 330.41(2), F.S., to define the term “fixed-site facility” as:

- A state correctional institution,
- A secure detention center or facility, a high-risk residential facility, or a maximum-risk residential facility, or
- A county detention facility.

Consistent with the current law protecting critical infrastructure facilities from drone operations, a first time violation is a second degree misdemeanor, and a second or subsequent violation is a first degree misdemeanor. The bill also prohibits using a drone to introduce contraband into a fixed-site facility and classifies that offense as a second degree felony, punishable by up to fifteen years in state prison and a \$10,000 fine.

The bill leaves the sunset provision of s. 330.41, F.S., intact. Once the FAA establishes the designation process directed under the FAAESSA, the criminal provisions of this bill will be repealed after 60 days.

Finally, the bill amends s. 934.50 to expand one of the exceptions under which law enforcement officers may use a drone for surveillance. The bill permits such use when law enforcement has reasonable suspicion that swift action is needed to facilitate the collection of evidence at a crime scene or traffic crash scene.

The bill provides an effective date of October 1, 2018.

B. SECTION DIRECTORY:

Section 1: Amends s. 330.41, relating to Unmanned Aircraft Systems Act.

Section 2: Amends s. 934.50, F.S., relating to searches and seizure using a drone.

Section 3: Provides an effective date of October 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill increases criminal liability for persons who introduce contraband into fixed-site facilities using a drone in some circumstances. Current law provides that introducing contraband into state correctional institutions, county detention facilities, and juvenile detention facilities or commitment programs is a third degree felony in certain circumstances, with a maximum prison sentence of five years. The bill creates the crime of introducing contraband into a fixed-site facility by use of a drone and classifies it as a second degree felony, with a maximum prison sentence of fifteen years. The increased maximum prison sentence could increase the number of people in the Department of Corrections’ custody and supervision.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill creates new criminal liability at the misdemeanor level for operating a drone over, in contact with, or near a fixed-site facility. By creating new misdemeanors, the bill may impact the number of people in jail or supervised at the county level.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill appears to be exempt from the requirements of Article VII, Section 18, of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES