

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 433 Use of Drones by Government Agencies

SPONSOR(S): Judiciary Committee, Andrade and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 518

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Pandemics & Public Emergencies Committee	18 Y, 0 N	Landry	Dearden
2) Judiciary Committee	19 Y, 0 N, As CS	Frost	Kramer

SUMMARY ANALYSIS

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. Florida law generally restricts the use of a drone to conduct surveillance, but makes exceptions for specified activities including aerial mapping, cargo delivery, managing and eradicating invasive exotic plants or animals on public lands, and suppressing and mitigating wildfire threats.

Drones promote efficiency in responding to natural disasters because they can quickly and safely assess damage to buildings, infrastructure, and land. Unsafe conditions caused by natural disasters, such as flood waters or obstructed roadways or access points, often impede efficient assessment of damage. Using drones to complete damage assessments is more efficient and reduces assessment team members' potential exposure to hazardous environments. Damage assessments are often necessary to support the Governor's request for a presidential disaster declaration, which authorizes federal disaster assistance to affected communities.

CS/HB 433 creates an additional exception to the general prohibition on drone surveillance to allow a state agency or political subdivision to use a drone to assess damage during a declared state of emergency resulting from a hurricane, flood, wildfire, or other natural disaster.

The bill requires certain security measures to ensure that the data collected, transferred, and stored by a governmental agency drone is protected from outside interference, including requiring the Department of Management Services (DMS) to publish a list of drone manufacturers approved for governmental agency use and to adopt rules establishing minimum security requirements for governmental agency drone use, consistent with federal guidance on drone security measures. The bill requires a governmental agency using any unapproved drone to: submit to DMS a comprehensive plan to discontinue such use by July 1, 2022; and discontinue such use by January 1, 2023.

The bill may have an initial indeterminate negative fiscal impact on state and local governments by requiring the use of certain drones to be discontinued, but may have an overall positive fiscal impact on state and local governments by increasing efficiency and reducing costs traditionally associated with damage assessments.

The bill provides an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Drones

Florida Law

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.¹

The entire system 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 Drones vary in size and weight and may be controlled manually or by an autopilot system using a data link that connects the drone's pilot to the drone. A drone may be equipped with infrared cameras³ or "LADAR" (laser radar).⁴

Florida law restricts the use of drones by individuals and government entities to conduct surveillance. A real property owner is presumed to have a reasonable expectation of privacy on his or her privately owned real property if he or she cannot be seen by persons at ground level who are in a place they have a legal right to be.⁵ As such, law enforcement is not authorized to use a drone to gather evidence or other information, with certain exceptions. When law enforcement has a 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;
- Forestall the imminent escape of a suspect or the destruction of evidence; or
- Achieve purposes including facilitating the search for a missing person.⁶

Other exceptions authorizing drone use include:

- Countering terrorist attacks;
- Effecting search warrants authorized by a judge;
- Lawful business activities licensed by the state, with certain exceptions;
- Assessing property for ad valorem taxation purposes;
- Capturing images of utilities for specified purposes;
- Aerial mapping;
- Cargo delivery;
- Capturing images necessary for drone navigation;
- Routing, siting, installation, maintenance, or inspection of communications service facilities; and

¹ S. 934.50(2)(a), F.S.

² S. 330.41(2)(c), F.S.

³ Infrared cameras can see objects through walls based on the relative levels of heat produced by the objects. Richard M. Thompson II, *Drones in Domestic Surveillance Operations: Fourth Amendment Implications and Legislative Responses*, Congressional Research Service, (Apr. 3, 2013) www.fas.org/sqp/crs/natsec/R42701.pdf (last visited Apr. 19, 2021).

⁴ The research and development laboratory at the Massachusetts Institute of Technology has developed airborne LADAR systems that generate detailed 3D imagery of terrain and structures, including those beneath dense foliage. The lab reports that a micro-LADAR may be used under both clear and heavy foliage conditions for surveillance and reconnaissance missions as well as for humanitarian assistance and disaster relief operations. Massachusetts Institute of Technology, *Micro-ladar*, <https://www.ll.mit.edu/r-d/projects/micro-ladar> (last visited Apr. 19, 2021).

⁵ S. 934.50(3)(a) and (4), F.S.

⁶ S. 934.50(4)(c), F.S.

- Non-law enforcement use by employees of the Fish and Wildlife Conservation Commission or the Florida Forest Service for managing invasive exotic plants or animals, and suppressing and mitigating wildfires.⁷

Section 934.50, F.S., further provides that evidence obtained or collected by a law enforcement agency using a drone is not admissible in a criminal prosecution in any court of law in the state, unless it is authorized under an exception.⁸

Federal Regulation

The Federal Aviation Administration (FAA) regulates use of navigable airspace.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 February 2012, Congress passed the Federal Aviation Authority Modernizing and Reform Act (Act), which required the FAA to safely open the nation's airspace to drones by September 2015. Based on authority granted by the Act, the FAA issued regulations on the operation and certification of small (less than 55 pounds at take-off) UAS in June 2016. The 2016 small drone regulations are still in effect and include airspace restrictions and a waiver mechanism allowing for deviations from drone operational restrictions upon application and authorization by the FAA.¹¹

In 2017, the FAA launched the UAS Integration Pilot Program.¹² One objective of this pilot program is to test and evaluate various models of state, local, and tribal government involvement to develop and enforce federal regulation of drone operations. Current pilot program participants are exploring package delivery, delivery of life-saving medical equipment, pipeline inspection, airport security, and border protection.¹³ These proposals require the FAA to waive some regulations controlling drone operation.

On January 18, 2019, the FAA announced a new proposed regulation for the use of drones that would allow drone operators to routinely fly over people and fly at night.¹⁴ The final rule was published in the Federal Register on March 10, 2021, and is effective April 21, 2021. In addition to allowing routine flying of small drones over people, over moving vehicles, and at night if the drone and its user meet certain safety and pilot training criteria, the rule also requires certain remote identification information (remote ID) to be publicly broadcast by a drone in real time, including the drone's: identification; location and altitude; velocity; control station location and elevation; time mark; and emergency status. Under the rule, a drone pilot may comply with the remote ID requirements by operating a:

- Standard remote ID Drone (remote ID capability is built into the drone);
- Drone fitted with a remote ID broadcast module (remote ID capability is added to a drone without built-in ability to transmit the required information); or
- Drone without Remote ID, but only in a limited geographical area set aside for community-based organizations and educational facilities approved by the FAA.¹⁵

⁷ S. 934.50(4)(a)-(b), and (d)-(k), F.S.

⁸ S. 934.50(6), F.S.

⁹ 49 U.S.C. § 40103 (2019).

¹⁰ FAA, *Fact Sheet – Unmanned Aircraft Systems*, (Feb. 15, 2015),

https://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=18297 (last visited Apr. 19, 2021).

¹¹ *Operation and Certification of Small Unmanned Aircraft Systems*, 81 FR 42064-01, June 28, 2016. See 14 CFR Parts 21, 43, 61, 91, 101, 107, 119, 133, and 183

¹² Federal Aviation Administration, UAS Integration Program, *Program Overview*, (Oct. 25, 2017)

https://www.faa.gov/uas/programs_partnerships/integration_pilot_program/ (last visited Apr. 19, 2021).

¹³ Federal Aviation Administration, *Integration Pilot Program Lead Participants*,

https://www.faa.gov/uas/programs_partnerships/integration_pilot_program/lead_participants/ (last visited Apr. 19, 2021).

¹⁴ Safe and Secure Operations of Small Unmanned Aircraft Systems, 84 Fed. Reg. 3732, (Feb. 13, 2019) (codified at 14 CFR Part 107) <https://www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-00758.pdf> (last visited Apr. 19, 2021).

¹⁵ Federal Aviation Administration, *UAS Remote Identification Overview*,

https://www.faa.gov/uas/getting_started/remote_id/#:~:text=Final%20Rule%20on%20Remote%20ID,station%20or%20take%20off%20ocation (last visited Apr. 19, 2021).

Public Safety Uses

Drones have proven useful to law enforcement and governmental entities. Similar to helicopters, drones provide a broad vantage point, but are cheaper, can fly lower, and don't require an onboard pilot.¹⁶ A study by the Center for the Study of the Drone at Bard College estimates that at least 910 state and local police, fire, emergency medical services, and other public safety agencies have acquired drones in recent years, and at least two thirds of the public safety agencies using drones are law enforcement agencies.¹⁷ Some available capabilities include searching for missing persons;¹⁸ enhancing situational awareness in active shooter, hostage, or barricaded suspect incidents;¹⁹ and assisting with border patrol operations.²⁰

Drones also promote efficiency in responding to natural disasters because they can quickly assess damage to buildings and infrastructure. During Hurricane Harvey in Houston in 2017, emergency management agencies used drones to monitor levees, predict flooding, estimate how long an area would be underwater, and create detailed maps.²¹ In 2018, following Hurricane Michael, the University of Florida Institute of Food and Agricultural Sciences used drones to determine agricultural crop damage and yield reduction to provide a more accurate account of the damage caused by the storm.²² Drones may also provide vital assistance to fire departments by using thermal cameras to find victims trapped in a fire, assess how a fire is spreading, or to make emergency supply deliveries.²³

In 2020, the legislature authorized non-law enforcement employees of the Fish and Wildlife Conservation Commission or the Florida Forest Service to use drones for managing and eradicating invasive exotic plants or animals on public lands and suppressing and mitigating wildfire threats.²⁴ Other states similarly authorize drone use for emergency management related activities. For example: Idaho authorizes law enforcement, fire departments, or other local or state government entities to use drones for the purpose of assessing damage due to natural disaster or fire²⁵ and in South Dakota, an emergency management worker who, acting within their scope of his or her duties, unintentionally or incidentally photographs, records, or otherwise observes another person in a private place is exempt from laws generally prohibiting such activity.²⁶

Disaster Damage Assessments

The federal Robert T. Stafford Disaster Relief Act and Emergency Assistance Act (Stafford Act) was enacted to help ease the suffering of survivors and damage to communities resulting from a disaster.²⁷ To access federal assistance under the Stafford Act, a state's Governor must request the President of

¹⁶ Aarian Marshall, *Above Devastated Houston, Armies of Drones Prove Their Worth* (Sep. 4, 2017)

<https://www.wired.com/story/houston-recovery-drones/> (last visited Apr. 19, 2021).

¹⁷ Dan Gettinger, *Public Safety Drones: An Update*, Center for the Study of the Drone at Bard College, (May 2018)

<https://dronecenter.bard.edu/files/2018/05/CSD-Public-Safety-Drones-Update-1.pdf> (last visited Apr. 19, 2021).

¹⁸ Associated Press, *Lost horse riders found with drone* (Jan. 26, 2019) <https://www.wctv.tv/content/news/Lost-horse-riders-found-with-drone-504913522.html> (last visited Apr. 19, 2021).

¹⁹ Los Angeles Police Department, *Small Unmanned Aerial System Pilot Program Deployment Guidelines and Procedures* (Oct. 13, 2017) http://www.lapdpolicecom.lacity.org/101717/BPC_17-0410.pdf (last visited Apr. 19, 2021).

²⁰ David Bier and Matthew Feeney, *Drones on the Border: Efficacy and Privacy Implications*, Cato Institute (May 1, 2018), <https://www.cato.org/publications/immigration-research-policy-brief/drones-border-efficacy-privacy-implications> (last visited Apr. 19, 2021).

²¹ Matthew Hutson, *Hurricanes Show Why Drones Are the Future of Disaster Relief*, NBC News, (Sep. 9, 2017) <https://www.nbcnews.com/mach/science/hurricanes-show-why-drones-are-future-disaster-relief-ncna799961> (last visited Apr. 19, 2021).

²² Beverly James, *Florida Panhandle: Drones Used to Assess Hurricane Michael Damage*, AgFax, (Oct. 30, 2018) <https://agfax.com/2018/10/30/florida-panhandle-drones-used-to-assess-hurricane-michael-damage/> (last visited Apr. 19, 2021).

²³ Zacc Dukowitz, *7 ways Fire Departments Use Drones in the Field*, UAV Coach, (Apr. 25, 2018) <https://uavcoach.com/drones-fire-departments/> (last visited Apr. 19, 2021).

²⁴ Ch. 20-131, Laws of Fla.

²⁵ Idaho Code Ann. s. 21-313 (2020)

²⁶ S.D. Codified Laws s. 22-21-1 (2020)

²⁷ 42 U.S.C. § 5121(b).

the United States to issue a presidential disaster declaration.²⁸ There are two types of presidential disaster declarations: an emergency declaration and a major disaster declaration.

A Governor's request for:

- An emergency declaration must be based on a finding that the situation:
 - Is of such severity and magnitude that effective response is beyond state and affected local government capabilities; and
 - Requires supplementary federal emergency assistance to save lives and to protect property, public health and safety, or to lessen or avert the threat of a disaster.
- A major disaster declaration must be based upon a finding that:
 - The situation is of such severity and magnitude that effective response is beyond state and affected local government capabilities; and
 - Federal assistance is necessary to supplement the efforts and available resources of state, local governments, disaster relief organizations, and insurance compensation for disaster-related losses.²⁹

The Federal Emergency Management Agency (FEMA) obtains and verifies information accompanying a Governor's request for a presidential disaster declaration through a process requiring:³⁰

- *Preassessment* – A local government collects preliminary damage assessment (PDA) information within its jurisdiction and submits the information to the state.³¹
- *State Verification* – PDA provided by the local government is verified by the state to ensure that it is complete and consistent with programmatic assessment criteria.³²
- *Joint PDA* – The Director of the State Emergency Management Agency³³ requests a joint PDA and state officials work jointly with FEMA officials on damage assessment field teams to validate the state's PDA information.³⁴
- *Recommendation to the Governor* – Once the Joint PDA is completed, the state's emergency managers review the validated information and make a recommendation to the Governor on whether a request for a presidential disaster declaration is necessary.³⁵

A Governor must submit a request for a presidential disaster declaration through the FEMA Regional Administrator.³⁶ Once requested, the President may declare that an emergency or major disaster exists in a state or a region of a state.³⁷ When the President signs a disaster declaration, FEMA may begin allocating disaster assistance funds to the state or local government.

Obtaining a presidential disaster declaration may take a few hours to several weeks. The damage assessment required to accompany a presidential disaster declaration request depend on the capability of state and local jurisdictions to evaluate the affected area. Flood waters, obstructed roadways or access points, or generally unsafe conditions caused by the disaster often impede damage assessment teams from efficiently completing assessments. Using drones allows assessment team members to complete damage assessments more quickly while also reducing their potential exposure to hazardous environments.³⁸ Expediting the completion of damage assessments may allow a Governor to more quickly request a presidential disaster declaration, thereby authorizing federal disaster assistance for affected communities. Florida law does not currently authorize a state agency or political subdivision to use a drone for damage assessments.

²⁸ Federal Emergency Management Agency, *How a Disaster Gets Declared*, (Nov. 25, 2020) <https://www.fema.gov/disasters/how-declared> (last visited Apr. 19, 2021)

²⁹ *Id.*

³⁰ 44 C.F.R. §§ 206.31-206.28

³¹ 44 C.F.R. § 206.33(a)

³² Federal Emergency Management Agency, *Preliminary Damage Assessment Guide* (May 1, 2020)

https://www.fema.gov/sites/default/files/2020-07/fema_preliminary-disaster-assessment_guide.pdf (last visited Apr. 19, 2021).

³³ In Florida, this would be the Director of Emergency Management. S. 14.2016(1), F.S.

³⁴ 44 C.F.R. § 206.33(b), F.S.

³⁵ *Supra* note 24.

³⁶ 44 C.F.R. §§ 206.35(a) and 206.36(a)

³⁷ 42 U.S.C. § 5191(a)

³⁸ Matt Parnofiello, *Drones Increasingly Get Ahead of Disaster Damage*, CDW, (Oct. 12, 2018)

<https://statetechmagazine.com/article/2018/10/drones-increasingly-get-ahead-disaster-damage> (last visited Apr. 19, 2021).

Drone Data Security

In 2017, the U.S. Army discontinued the use of drones manufactured by China-based Da Jiang Innovations (DJI), the world's largest supplier of drones, including all DJI drones and systems that use DJI components or software, alleging in a memo that the company shared critical infrastructure and law enforcement data with the Chinese government.³⁹ The U.S. Department of Defense (DOD) released a policy in May 2018, suspending the procurement and use of commercially available drones due to similar security concerns.⁴⁰ In May 2019, the U.S. Department of Homeland Security issued an alert that Chinese-made drones may be sending sensitive flight data to manufacturers in China, where the data may be accessed by the Chinese government because of the Chinese government's unusually harsh obligations on its citizens to support national intelligence activities. The alert warned that such drones may pose a potential risk to an organization's information because the Chinese-produced products contain components that can compromise data and share information on a server accessed beyond the company itself.⁴¹

In October 2019, the United States Department of the Interior (DOI) temporarily grounded all non-emergency drones in its fleet that were manufactured in China or that contained Chinese-made parts to conduct a review of the drone program's cybersecurity. In January 2020, DOI issued a further order grounding its entire fleet of drones due to continuing concerns that certain Chinese-made parts within the drones may be used for spying on sensitive information collected by the drones.⁴² In January 2021, the U.S. General Services Administration announced the removal of all drones from its federal supply schedule, except those drones that are approved by the DOD Defense Innovation Unit⁴³ through its Blue sUAS Program,^{44, 45} which comply with Section 848 of the National Defense Authorization Act for FY 2020 which prohibits operating or procuring unmanned aircraft systems manufactured in China.⁴⁶

Florida does not currently regulate drones used by governmental agencies in any similar manner.

Effect of Proposed Changes

CS/HB 433 amends s. 934.50, F.S., to create an additional exception to the general prohibition on drone surveillance by authorizing a state agency or political subdivision to use a drone to assess damage during a declared state of emergency resulting from a hurricane, flood, wildfire, or other natural disaster.

The bill protects the confidentiality, integrity, and availability of data collected, transmitted, and stored by governmental agency drones by requiring:

³⁹ Alwyn Scott, *U.S. Army halts use of Chinese-made drones over cyber concerns*, Reuters, (Aug. 4, 2017) <https://www.reuters.com/article/us-usa-army-drones/u-s-army-halts-use-of-chinese-made-drones-over-cyber-concerns-idUSKBN1AK2C0> (last visited Apr. 19, 2021).

⁴⁰ Peter Navarro, *Peter Navarro: US responds to threat from Chinese drones – We're rebuilding American drone industry*, FOX News, (Dec. 28, 2019) <https://www.foxnews.com/opinion/peter-navarro-chinese-drones-american-skies> (last visited Apr. 19, 2021).

⁴¹ David Shortell, *DHS warns of 'strong concerns' that Chinese-made drones are stealing data*, CNN, (May 20, 2019) <https://www.cnn.com/2019/05/20/politics/dhs-chinese-drone-warning> (last visited Apr. 19, 2021).

⁴² Lisa Friedman and David McGabe, *Interior Dept. Grounds Its Drones Over Chinese Spying Fears*, The New York Times (Jan. 29, 2020) <https://www.nytimes.com/2020/01/29/technology/interior-chinese-drones.html> (last visited Apr. 19, 2021).

⁴³ The Defense Innovation Unit (DIU) was started in August 2015 to rebuild the department's relationship with the commercial technology sector. As one of the first "experimental" innovation organizations, DIU connects its DOD partners with leading commercial technology companies. DIU is the only DOD organization focused exclusively on fielding and scaling commercial technology across the U.S. military at commercial speed. Defense Innovation Unit, *About*, <https://www.diu.mil/about> (last visited Apr. 19, 2021).

⁴⁴ U.S. General Services Administration: GSA Interact, *Removal of Drones from GSA Multiple Award Schedule Contracts*, (Jan. 12, 2021) <https://interact.gsa.gov/blog/removal-drones-gsa-multiple-award-schedule-contracts> (last visited Apr. 19, 2021).

⁴⁵ The DIU began testing drones in November 2018, and after 18 months of research, released a list of five drones approved for use by federal agencies. Zacc Dukowitz, *Pentagon Releases List of 5 Government Approved Drones, Culmination of 18 Months of Research and Testing*, UAV Coach, (Aug. 27, 2020) <https://uavcoach.com/diu-approved-drones/> (last visited Apr. 19, 2021).

⁴⁶ Press Release, *DEFENSE INNOVATION UNIT ANNOUNCES sUAS PRODUCT AVAILABILITY TO PROVIDE SECURE, CAPABLE SMALL UNMANNED AERIAL SYSTEMS FOR CRITICAL USES ACROSS THE GOVERNMENT: Culmination of an 18-Month Effort Will Spur Stronger U.S. Drone Industrial Base For Future Innovation* U.S. Department of Defense, (Aug. 20, 2020) <https://www.defense.gov/Newsroom/Releases/Release/Article/2318799/defense-innovation-unit-announces-suas-product-availability-to-provide-secure-c/> (last visited Apr. 19, 2021).

- The Department of Management Services (DMS), in consultation with the State Chief Information Officer, to publish a list of approved drone manufacturers whose drones appropriately safeguard drone data, by January 1, 2022;
- A governmental agency using an unapproved drone to submit to DMS a comprehensive plan to discontinue the use of the drone by July 1, 2022, and to discontinue the use of any such drone, by January 1, 2023; and
- DMS to adopt rules establishing:
 - Requirements for a governmental agency's comprehensive plan to discontinue the use of an unapproved drone; and
 - Minimum security requirements for governmental agency drone use, consistent with federal guidance on drone security measures.

The bill authorizes DMS to consult with federal agencies to establish such security requirements.

Under the bill, a “governmental agency” includes any state, county, local, or municipal governmental entity or any unit of government created or established by law that uses a drone for any purpose.

The bill may allow state agencies and political subdivisions to improve efficiency by authorizing drone use to accomplish tasks personnel must currently perform manually or that must be performed by more costly manned aircrafts. By authorizing the state to consult federal guidance on drone cybersecurity, the bill may ensure that the data collected, transmitted, and stored by a governmental agency drone is not intercepted by any unauthorized entity.

As with any surveillance activity, governmental actors are bound by Fourth Amendment protections. Though the bill allows the government to use drones, the manner of use must comport with constitutional privacy protections.

The bill provides an effective date of July 1, 2021.

B. SECTION DIRECTORY:

Section 1: Amends section 934.50, F.S., relating to searches and seizures using a drone.

Section 2: Reenacts section 330.41, F.S., relating to Unmanned Aircraft Systems Act.

Section 3: Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Drones have proven to be more efficient than traditional on-the-ground or manned aircraft efforts in several public safety operations. Authorizing drone use for more purposes may reduce costs for state agencies performing these operations, such as the Florida Division of Emergency Management.

The bill may have an initial indeterminate negative fiscal impact on state government by requiring the use of certain drones to be discontinued, but may have an overall positive fiscal impact by increasing efficiency and reducing costs traditionally associated with damage assessments.

The bill may have an indeterminate negative fiscal impact on DMS by requiring DMS to perform a security analysis of drones to develop the required list of approved manufacturers.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Drones have proven to be more efficient than traditional on-the-ground or manned aircraft efforts in several public safety operations. Authorizing drone use for more purposes may reduce costs for local emergency management departments.

The bill may have an initial indeterminate negative fiscal impact on local government by requiring the use of certain drones to be discontinued, but may have an overall positive fiscal impact by increasing efficiency and reducing costs traditionally associated with damage assessments.

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. This bill does not appear to: require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

3. Other:

Privacy

Governmental action is subject to the requirements of the Fourth Amendment of the U.S. Constitution. Under Fourth Amendment jurisprudence, a search occurs whenever the government intrudes upon an area in which a person has a reasonable expectation of privacy. If there is no reasonable expectation of privacy in the area, Fourth Amendment protections do not apply. The bill authorizes a state agency or political subdivision to use a drone to assess damage from a natural disaster, commonly capturing images in areas accessible by and available to the public, and thus generally will not intrude into areas in which there is a reasonable expectation of privacy. However, if a state agency or political subdivision uses a drone in a manner that qualifies as a search because there is a reasonable expectation of privacy in the area, it must either secure a warrant or an exception to the warrant requirement must apply.

Preemption

The regulation of the national airspace and the aircraft that occupy it is generally a federal matter.⁴⁷ However, courts have recognized that “laws traditionally related to state and local police power – including land use, zoning, privacy, trespass, and law enforcement operations – generally are not subject to federal regulation.” Because the bill relates to these exceptions, it may not regulate an area exclusively regulated by the federal government.⁴⁸

⁴⁷ Congress has vested the FAA with authority to regulate the areas of airspace use, management and efficiency, air traffic control, safety, navigational facilities, and aircraft noise at its source. 49 U.S.C. §§ 40103, 44502, and 44701-44735.

⁴⁸ *Skysign International, Inc. v. City and County of Honolulu*, 276 F.3d 1109, 1115 (9th Cir. 2002).

B. RULE-MAKING AUTHORITY:

The bill provides appropriate rule-making authority to DMS to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 19, 2021, the Judiciary Committee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Limited a state agency's or political subdivision's drone use for assessing natural disaster damage to only during a declared state of emergency for the natural disaster.
- Implemented security measures to ensure that drones used by governmental agencies are protected from outside interference, by requiring:
 - DMS, in consultation with the State Chief Information Officer, to publish a list of approved drone manufacturers for governmental agency use whose drones appropriately safeguard data collected, transmitted, and stored by the drone, by January 1, 2022;
 - A governmental agency using a drone not on the approved manufacturer list to submit to DMS a comprehensive plan to discontinue the use of the drone by July 1, 2022, and to discontinue the use of any such drone, by January 1, 2023; and
 - DMS to adopt rules establishing minimum security requirements for governmental agency drone use, consistent with federal guidance on drone security measures to protect the confidentiality, integrity, and availability of data collected, transmitted, and stored by a drone.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.