

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Transportation

BILL: SB 908

INTRODUCER: Senator Rodriguez

SUBJECT: Unmanned Aircraft Systems Act

DATE: March 13, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Vickers	TR	Pre-meeting
2.			MS	
3.			RC	

I. Summary:

SB 908 revises the definition of “critical infrastructure” for purposes of the operation of unmanned aircraft systems, or “drones,” to include a statutorily listed deepwater port, regardless of whether the port is completely enclosed by a fence or other physical barrier. The bill also includes a railroad switching yard in the definition.

The bill removes from state statute a virtually identical requirement under federal law that a person or governmental entity apply to the Federal Aviation Administration to restrict or limit the operation of drones in close proximity to infrastructure and facilities that the person or governmental entity owns or operates.

The bill appears to present no fiscal impact to state or local expenditures. The fiscal impact on state and local revenues is indeterminate.

The bill takes effect July 1, 2023.

II. Present Situation:

Federal Law

Drones, or unmanned aerial vehicles (UAVs) and unmanned aerial systems (UASs), are considered to be aircraft subject to regulation by the Federal Aviation Administration (FAA).¹ In

¹ FAA, Office of the Chief Counsel, *State and Local Regulation of Unmanned Aircraft Systems (UAS) Fact Sheet*, p. 1, available at [Microsoft Word - UAS Fact Sheet Word Final 12172015.docx \(faa.gov\)](#) (last visited March 2, 2023). Drones can range in size from wingspans of just inches to numerous feet and can vary in weight from ounces to thousands of pounds. They may be controlled manually or through an autopilot that uses a data link to connect the drone’s pilot to the drone. See 72 FR 6689, Federal Aviation Administration (FAA), *Unmanned Aircraft Operations in the National Airspace System*,

February 2012, Congress passed the FAA Modernization and Reform Act of 2012 (Modernization Act), which required the FAA to safely open the nation’s airspace to drones by September 2015.² The Modernization Act vested authority to regulate the use of drones to the FAA, as it does all aircraft in the national airspace, with an emphasis on safety, efficiency, and national security.³

Under the authority granted in the 2012 Act, the FAA issued its regulations on the operation and certification of small (less than 55 pounds at take-off) unmanned aircraft systems in June of 2016. The small drone regulations are still in effect.⁴ Federal law also provides an exception for limited recreational operations of unmanned aircraft under specified conditions and, if the conditions are met, a person may operate a small unmanned aircraft without specific certification or operating authority from the Federal Aviation Administration.⁵

Subsequent to the 2016 FAA regulations, Congress approved a 17-month extension of the authority of the FAA, known as the “Extension, Safety, and Security Act of 2016 (Extension Act).”⁶ In addition to providing the FAA continued authority and funding to operate, the Extension Act required the FAA, by the end of 2016, to establish a process for operators or proprietors of fixed-site facilities to petition the FAA to prohibit or restrict the operation of an unmanned aircraft in close proximity to a fixed-site facility. The law provided that a “fixed-site facility” means only:

- Critical infrastructure, such as energy production, transmission, and distribution facilities and equipment;
- Oil refineries and chemical facilities;
- Amusement parks; and
- Other locations that warrant such restrictions.⁷

By the time of passage of the FAA Reauthorization Act of 2018,⁸ a five-year reauthorization of funding, authorities, and responsibilities through fiscal year 2023 (September 30, 2023), the FAA had not established the petition process required of the 2016 law. The 2018 law revised the first-listed meaning of “fixed site facility” to mean only critical infrastructure, such as energy production, transmission, distribution facilities and equipment, and *railroad facilities*. The 2018 law also revised the requirement for the process of petitioning the FAA to prohibit or restrict operation of an unmanned aircraft in close proximity to a fixed-site facility by requiring, not later

February 13, 2007, available at <https://www.federalregister.gov/documents/2007/02/13/E7-2402/unmanned-aircraft-operations-in-the-national-airspace-system> (last visited March 2, 2023).

² Pub. L. No. 112-95 (2012).

³ However, land use, zoning, privacy, trespass, and law enforcement operations generally are not subject to federal regulation. See FAA, State and Local Regulation of Unmanned Aircraft Systems (UAS) Fact Sheet, FAA Office of the Chief Counsel, December 17, 2015, p. 3, available at Microsoft Word - UAS Fact Sheet Word Final 12172015.docx (faa.gov) (last visited March 3, 2023).

⁴ See 14 C.F.R. part 107, Small Unmanned Aircraft Systems, available at STATUTE-130-Pg615.pdf (congress.gov) (last visited March 2, 2023).

⁵ See 49 U.S.C. 44809, available at 49 USC 44809: Exception for limited recreational operations of unmanned aircraft (house.gov) (last visited March 2, 2023). The conditions include, but are not limited to, flying the drone strictly for recreational purposes, from the surface to not more than 400 feet, within the visual line of sight.

⁶ Pub. L. No. 114-190 (2016).

⁷ Pub. L. No. 114-190, s. 2209 (2016).

⁸ Pub. L. No. 115-254 (2018).

than March 31, 2019, publishing of a notice of proposed rulemaking to carry out the petition process requirements and issuance of a final rule not later than 12 months after publishing the notice.

Various types of airspace restrictions applicable to drones and their operation already exist. For example, the FAA lists restrictions that commonly affect drone flights, such as stadiums and sporting events,⁹ near airports,¹⁰ security sensitive airspace restrictions,¹¹ restricted or special use airspace,¹² and Washington D.C. The FAA also prohibits drone flying over an emergency or rescue operations relating to wildfires and hurricanes.¹³

The FAA also has established additional resources for drone operators. For example, the FAA maintains a “No Drone Zone” web page to help people identify areas where they cannot operate a drone.¹⁴ A downloadable sign is available for use by public landowners that prohibits *takeoff and landing* (but not flight over a given area) of drones at a particular public location to inform operators of a local restriction.¹⁵ Recreational users may also download the free-of-charge “B4UFLY” app with interactive maps that help operators identify where they can and cannot fly.¹⁶

What the FAA has not yet accomplished, however, is issuance of a final rule establishing the criteria and procedures for the operator or proprietor of eligible fixed site facilities to apply to the FAA for a drone-specific flight restriction over such facilities. The FAA apparently anticipates publishing the Notice of Proposed Rulemaking on June 30, 2023.¹⁷

State Action in the Absence of the FAA Rule

Apparently, because the federal rule has not been issued providing a process for the granting of a drone-specific flight restriction, states have attempted to protect infrastructure and facilities

⁹ Major League Baseball, National Football League, NCAA Division One Football, and NASCAR Sprint Cup, Indy Car, and Champ Series races. Drone operations are prohibited within a radius of three nautical miles of the stadium or venue. See FAA, *Stadiums and Sporting Events*, available at [Stadiums and Sporting Events | Federal Aviation Administration \(faa.gov\)](#) (last visited March 3, 2023).

¹⁰ For details on flying drones near airports, see FAA, *Flying Near Airports*, available at [Flying Near Airports | Federal Aviation Administration \(faa.gov\)](#) (last visited March 3, 2023).

¹¹ Drones are prohibited from flying over designated national security sensitive facilities from the ground up to 400 feet above ground level. Examples include military bases designated as Department of Defense facilities, national landmarks (e.g., the Statue of Liberty, Hoover Dam, Mt. Rushmore), and certain critical infrastructure such as nuclear power plants. See FAA, *Security Sensitive Airspace Restrictions*, available at [Security Sensitive Airspace Restrictions | Federal Aviation Administration \(faa.gov\)](#) (last visited March 3, 2023).

¹² Examples include prohibited areas where aircraft flight, including drones, is prohibited, restricted areas where operations are hazardous to the operator, and temporary flight restrictions due to temporary hazardous conditions such as a wildfire, hurricane, or chemical spill; a security-related event such as the UN General Assembly, and other special situations such as a VIP movement. See FAA, *Restricted or Special Use Airspace*, available at [Restricted or Special Use Airspace | Federal Aviation Administration \(faa.gov\)](#) (last visited March 3, 2023).

¹³ *Id.*

¹⁴ Available at FAA, [No Drone Zone | Federal Aviation Administration \(faa.gov\)](#) (last visited March 3, 2023).

¹⁵ *Id.* Only the FAA can restrict airspace, but the FAA provided the sign that can be used by state, local, territorial, or tribal government agencies to identify areas where local flight restrictions exist.

¹⁶ See FAA, *B4UFLY*, available at [B4UFLY App | Federal Aviation Administration \(faa.gov\)](#) (last visited March 3, 2023).

¹⁷ See the FAA *Significant Rulemaking Report*, September 2022, available at [Rulemaking Management System - Congressional Interest Status Report \(transportation.gov\)](#) (last visited March 3, 2023).

deemed to be critical and in need of such drone-flight restriction. According to the National Conference of State Legislatures, since 2013, at least 44 states have enacted laws addressing drones, commonly defining what a drone is, how they can be used by law enforcement or other state agencies, how they can be used by the general public, and regulations for use of drones in hunting game.¹⁸

Industry stakeholders and the U.S. Chamber of Commerce have reportedly urged the FAA to begin the rulemaking process, expressing the following:

The concern by these and other industry leaders is not simply that the failure to enact Section 2209 leaves ambiguity as to what infrastructure and facilities are considered “fixed site,” but a larger failure by the FAA to firmly establish that they hold sole authority to regulate the national airspace. Without the enactment of Section 2209, states have been enacting their own legislation to protect (and define) critical infrastructure sites, which has led to a patchwork [of] unwieldy and inconsistent laws.¹⁹

Because the FAA has regulatory authority over matters pertaining to aviation safety,²⁰ and because states are unclear as to which facilities are or are not “fixed site” facilities, and further because the FAA has not issued a rule establishing the criteria and procedures for the operator or proprietor of eligible fixed site facilities to apply to the FAA for a drone-specific flight restriction over such facilities, state statutes may be in conflict with the anticipated FAA rule. Any state statute, to the extent of any conflict with the expected FAA rule, will be preempted.

Florida Law

Florida’s Unmanned Aircraft System Act²¹ defines “drone” to mean 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.²²

“Critical infrastructure facility” means any of the following, if completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders, or if clearly marked with a

¹⁸ See NCSL.org, *Current Unmanned Aircraft State Law Landscape*, available at [Current Unmanned Aircraft State Law Landscape \(ncsl.org\)](#) (last visited March 3, 2023).

¹⁹ See National Law Review, *Potential Consequences of the FAA’s Failure to Implement Section 2209*, available at [FAA’s Failure to Implement Section 2209 Brings Consequences \(natlawreview.com\)](#) (last visited March 3, 2023).

²⁰ See FAA, *State and Local Regulation of Unmanned Aircraft Systems (UAS) Fact Sheet*, FAA Office of the Chief Counsel, December 17, 2015, available at [Microsoft Word - UAS Fact Sheet Word Final 12172015.docx \(faa.gov\)](#) (last visited March 3, 2023).

²¹ Section 330.41, F.S.

²² Section 934.50(2), F.S. “Unmanned aircraft system” means a drone and its associated elements, including communication links and the components used to control the drone which are required for the pilot in command to operate the drone safely and efficiently. Section 330.41(2)(b), F.S.

sign or signs which indicate that entry is forbidden and which are posted on the property in a manner reasonably likely to come to the attention of intruders:

- 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.
- 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.
- A wireless communications facility, including tower, antennae, support structures, and all associated ground-based equipment.
- A defined state correctional institution or private correctional facility.
- A defined secure detention center or facility, a high-risk residential facility, or a defined maximum-risk residential facility.
- A defined county detention facility.²³

Regulation of the operation of drones is vested in the state, except as provided in federal regulations, authorizations, or exemptions.²⁴ However, the statute does not limit the authority of a local government to enact or enforce local ordinances relating to nuisances, voyeurism, harassment, reckless endangerment, property damage, or other illegal acts arising from the use of drones if such laws or ordinances are not specifically related to the use of a drone for those illegal acts.²⁵

Mirroring federal law relating to the petition process discussed above but not yet accomplished, Florida law requires a person or governmental entity seeking to restrict or limit the operation of drones in close proximity to infrastructure or facilities that the person or governmental entity owns or operates to apply to the FAA for such designation pursuant to the Extension Act of 2016.²⁶

A person may not knowingly or willfully:

- Operate a drone over a critical infrastructure facility;
- Allow a drone to make contact with a critical infrastructure facility, including any person or object on the premises of or within the facility; or
- Allow a drone to come within a distance of a critical infrastructure facility that is close enough to interfere with the operations of or cause a disturbance to the facility.²⁷

²³ Section 330.41(2)(a), F.S.

²⁴ “Except as otherwise expressly provided, a political subdivision may not enact or enforce an ordinance or resolution relating to the design, manufacture, testing, maintenance, licensing, registration, certification, or operation of an unmanned aircraft system, including airspace, altitude, flight paths, equipment or technology requirements; the purpose of operations; and pilot, operator, or observer qualifications, training, and certification.” Section 330.41(3)(b), F.S.

²⁵ Section 330.41(3)(c), F.S.

²⁶ Section 330.41(3)(d), F.S.

²⁷ Section 330.41(4)(a), F.S.

A person who violates the above provisions commits a misdemeanor of the second degree, punishable by a definite term of imprisonment not exceeding 60 days,²⁸ plus a possible additional \$500 fine.²⁹

The prohibition does not apply to prohibited actions which are committed by:

- A federal, state, or other governmental entity, or a person under contract or otherwise acting under the direction of a federal, state, or other governmental entity;
- A law enforcement agency that is in compliance with s. 934.50, F.S., or a person under contract with or otherwise acting under the direction of such law enforcement agency; or
- An owner, operator, or occupant of the critical infrastructure facility, or a person who has prior written consent of such owner, operator, or occupant.³⁰

The prohibition against operating a drone over a critical infrastructure facility also does not apply to a drone operating in transit for commercial purposes in compliance with FAA regulations, authorization, or exemptions.³¹

To ensure that Florida is compliant with Federal laws related to the regulation of drones, s. 330.41(4)(e), F.S., requires that the provisions limiting the operation of drones near critical infrastructure facilities sunsets 60 days after the FAA adopts rules to designate critical infrastructure facilities and provides a process for specified entities to apply for exemptions and protection from drone use.³² Section 330.41, F.S., must be construed in accordance with standards imposed by federal statutes, regulations, and FAA guidance.³³

III. Effect of Proposed Changes:

The bill amends s. 330.41, F.S., Florida's Unmanned Aircraft Systems Act. The bill includes a deepwater port listed in s. 311.09(1), F.S.,³⁴ in the definition of "critical infrastructure, regardless of whether the deepwater port is completely enclosed by a fence or other physical barrier. Under the existing definition, any deepwater port not enclosed apparently must be clearly marked with a sign or signs which indicate that entry is forbidden and which are posted on the property in a manner reasonably likely to come to the attention of intruders. The bill also includes a railroad switching yard in the definition, which appears to be consistent with the most recent revision of the definition of "fixed site facility" in the FAA Reauthorization Act of 2018. A railroad switching yard must be completely enclosed by a fence or other physical barrier or be clearly marked with a sign or signs which indicate that entry is forbidden, posted on the property in a manner reasonably likely to come to the attention of intruders.

Any person who knowingly and willfully operates a drone over a specified deepwater port or railroad switching yard; or allows a drone to make contact with a deepwater port or railroad

²⁸ Section 775.082(4)(b), F.S.

²⁹ Section 775.083(1)(e), F.S.

³⁰ Section 330.41(4)(c), F.S.

³¹ Section 330.41(4)(d), F.S.

³² Section 330.41(4)(e), F.S.

³³ Section 330.41(5), F.S.

³⁴ Jacksonville, Port Canaveral, Port Citrus, Fort Pierce, Palm Beach, Port Everglades, Miami, Port Manatee, St. Petersburg, Putnam County, Tampa, Port St. Joe, Panama City, Pensacola, Key West, and Fernandina.

switching yard, including any person or object on the premises of or within the facility; or allows a drone to come within a distance of a deepwater port or a railroad switching yard that is close enough to interfere with the operations of or cause a disturbance to a deepwater port or railroad switching yard is subject to a definite term of imprisonment not exceeding 60 days,³⁵ plus a possible additional \$500 fine,³⁶ except for those actions committed by the identified entities, agencies, or persons to which these provisions do not apply as described above.

In addition, the bill strikes the current provision mirroring federal law, requiring a person or governmental entity seeking to restrict or limit the operation of drones in close proximity to infrastructure or facilities that the person or governmental entity owns or operates to apply to the FAA for such designation pursuant to s. 2209 of the FAA Extension, Safety, and Security Act of 2016. (See the “Related Issues” heading below.)

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

³⁵ Section 775.082(4)(b), F.S.

³⁶ Section 775.083(1)(e), F.S.

B. Private Sector Impact:

A person who violates the provisions relating to protection of critical infrastructure facilities in s. 330.41(4), F.S., commits a second-degree misdemeanor, punishable by a definite term of imprisonment not exceeding 60 days,³⁷ plus a possible additional \$500 fine.³⁸

C. Government Sector Impact:

The bill's impact on state and local revenues is indeterminate, as it is unknown how many violations will occur.

VI. Technical Deficiencies:

None.

VII. Related Issues:

As noted, the bill strikes from Florida law the current provision mirroring federal law, requiring a person or governmental entity seeking to restrict or limit the operation of drones in close proximity to infrastructure or facilities that the person or governmental entity owns or operates to apply to the FAA for such designation pursuant to s. 2209 of the FAA Extension, Safety, and Security Act of 2016. Mirroring federal law is not necessary,³⁹ as once the FAA issues a rule, the state will be bound by its terms to the extent that any state statute conflicts with that rule. Moreover, the reference to the Extension Act of 2016 is outdated, as it is in the sunset provision set out in s. 330.41(4)(e), F.S. Either reference in Florida Statutes, if retained, should reference the FAA Reauthorization Act of 2018 or its successor.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 330.41.

³⁷ Section 775.082(4)(b), F.S.

³⁸ Section 775.083(1)(e), F.S.

³⁹ The FAA Office of the Chief Counsel previously opined: "Substantial air safety issues are raised when state or local governments attempt to regulate the operation or flight of aircraft. If one or two municipalities enacted ordinances regulating UAS in the navigable airspace and a significant number of municipalities followed suit, fractionalized control of the navigable airspace could result. In turn, this 'patchwork quilt' of differing restrictions could severely limit the flexibility of FAA in controlling the airspace and flight patterns, and ensuring safety and an efficient air traffic flow. A navigable airspace free from inconsistent state and local restrictions is essential to the maintenance of a safe and sound air transportation system. See *Montalvo v. Spirit Airlines*, 508 F.3d 464 (9th Cir. 2007), and *French v. Pan Am Express, Inc.*, 869 F.2d 1 (1st Cir. 1989); see also *Arizona v. U.S.*, 567 U.S. ___, 132 S.Ct. 2492, 2502 (2012) ("Where Congress occupies an entire field . . . even complimentary state regulation is impermissible. Field preemption reflects a congressional decision to foreclose any state regulation in the area, even if it is parallel to federal standards."), and *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 386-87 (1992)." *Supra* note 1 at p. 2.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
