

03/26/13
HCR 6/HJR 12:
Public
Testimony and
Background
Documents

<TARGET><BILL>HCR 6</BILL><SUBJECT>03-26-13 HCR 6-HJR 12
Public Testimony and Background
Documents</SUBJECT><COMM>JUNM28</COMM></TARGET>

My Chairman and Committee members, I am Stuart Thompson of District 10, a private Alaskan citizen and voter. I am here to testify concerning HCR 6 under the dominate authority of Alaska Constitution Article I, Sections 1&2. Start of my prepared 3 Minute testimony.

This resolution needs ~~considerable~~ work before you pass it out. It is typical of district special interest legislation. I've worked seasonally in Fairbanks before to know. The sponsors have not thought it through and it comes off as another parroted propaganda resolution. Please recall the embarrassing example of the one in 2002 that supported President Bush's manufactured justifications to go to war in Iraq.

Now I do whole-heartedly support establishing a task force to recommend state and federal regulation of unmanned aircraft systems. But it is dumb and unethical not to balance all the special interests currently placed on the task force with actual public representation – such as people with constitutionally-driven interests from, for example, the Interior Alaska Conservative Coalition and the ACLU. Get real please. The current task force membership are not ^{fully} competent, by legal definition, to advise on citizen privacy—openly admitted to be an issue.

On that note, I testify that the following section of the resolution is blatantly false:

“WHEREAS unmanned aircraft systems may present a substantial risk to privacy, but neither the Federal Aviation Administration nor any other state or federal agency currently has specific statutory authority to regulate privacy matters relating to unmanned Aircraft systems”

The sponsors overlook that constitutions are supreme statutory authority—clearly demonstrating the legitimacy of Rep. Wes Keller's Constitutional History Curriculum Bill now before the Senate Judiciary. Alaska's Constitution Article I, Section 14 (Searches & Seizures) & 22 (Right of Privacy) already regulate the use of unmanned aircraft in conducting population surveillance – in a word NOT AT ALL WITHOUT A PROPERLY ISSUED WARRANT. The sponsors also appear to ignore the US Constitution's 4th Amendment that covers the same thing.

Next, the US Constitution's Third Amendment, if given the same legal development that the Commerce Clause has enjoyed, would establish that privacy is the protected right—not just mere protection from forced support of military lodging. Americans have been continually forced to support the quartering of soldiers through their taxes—so the issue addressed by the Third Amendment cannot be an economic one. However, unrestricted quartering of soldiers in private homes is the simplest low-tech method of government surveillance of its population possible. This makes unregulated high tech surveillance just as unconstitutional, regardless of occasional benefits obtained.

This resolution as written starts another end run around our constitutions that you swore to uphold and defend. Please direct it back to the sponsors for substantial correction, or *address my concerns in a committee work session.*

Stuart Thompson
PO Box 870702
Wasilla, AK 99687
1-877-950-7980



FISCAL NOTE

STATE OF ALASKA
2013 LEGISLATIVE SESSION

Bill Version HCR6
Fiscal Note Number _____
() Publish Date _____

Identifier (file name) HCR6-LEG-SESS-03-25-13
Title Establishing Legislative Task Force on Dept. Affected Alaska Legislature
 Unmanned Aircraft..... Appropriation Legislative Operating Budget
Sponsor Hughes, Kawasaki, Isaacson, Pruitt Allocation Session Expenses
Requester Representative Hughes OMB Component Number 782

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	FY14 Appropriation Requested	Included in Governor's FY14 Request	Out-Year Cost Estimates					
			FY14	FY15	FY16	FY17	FY18	FY19
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants, Benefits								
Miscellaneous								
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

	FY14	FY15	FY16	FY17	FY18	FY19
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Prgm (DGF)						
1037 GF/MH (UGF)						
1178 temp code (UGF)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS

	FY14	FY15	FY16	FY17	FY18	FY19
Full-time						
Part-time						
Temporary						

CHANGE IN REVENUES

	FY14	FY15	FY16	FY17	FY18	FY19

Estimated **SUPPLEMENTAL (FY13) operating costs** _____ (separate supplemental appropriation required)
(discuss reasons and fund source(s) in analysis section)

Estimated **CAPITAL (FY14) costs** _____ (separate capital appropriation required)
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency?
If yes, by what date are the regulations to be adopted, amended, or repealed? _____ Discuss details in analysis section.

Why this fiscal note differs from previous version (if initial version, please note as such)

Initial Version

Prepared by Jessica Geary, Finance Manager Phone 465-6626
Division Legislative Affairs Agency Date/Time 3/25/13 11:17am
Approved by Pamela Varni, Executive Director Date 3/25/2013
 Legislative Affairs Agency

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. HCR6

Analysis

This Legislation has zero fiscal impact on the Legislative Affairs Agency.

ALASKA STATE LEGISLATURE



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Representative Shelley Hughes
House District 8 ~ Greater Palmer

House Special Committee Economic Development Trade and Tourism
State Capitol, Room 409
Juneau, AK 99801

HCR6 Unmanned Aircraft Task Force

Sponsor Statement

March 19, 2013

HCR6 recognizes the accomplishments of the University of Alaska Fairbanks, Center for Unmanned Aircraft Systems Integration and the research conducted to advance this technology in a safe manner. The research team at the Center has proven that unmanned aircraft can complete tasks more efficiently than traditional means, provide better information, and reduce life safety risks to animals and humans.

HCR6 also recognizes that with new technology comes the need to revisit certain laws to ensure the safety of our citizens and protect their privacy. This resolution forms a task force made up of legislators, government officials, and industry members. The task force will consider recommendations for privacy, appropriate use, and possible remedies for misuse. A preliminary report to the legislature is due in January 2014 and a final report of recommendations due January 2015.

While national news has sparked debate regarding the privacy concerns and the use of "drones" in U.S. National Airspace, Alaska has responsibly used unmanned aircraft for more than ten years. Some privacy concerns are due to limited understanding of this technology and some concerns are justified. The task force will consider regulation already in place by the Federal Aviation Administration and industry codes of conduct while reviewing Alaska state laws to determine the changes that may be necessary to protect the privacy of all Alaskans.

SPECIAL ORDERS: “Sounds like the title for a new movie”

Unmanned Aircraft VS Drones

In recent news, we’ve been saturated with articles about

- drones causing worldwide destruction and killing people,
- we’ve listened to hours of testimony, and
- even local news reported just yesterday on this seemingly hot topic.

The other side of the story may not be as newsworthy as death and filibustering but it’s very exciting for Alaska.

Did you know that unmanned aircraft have been used in Alaska for some years?

This technology is known for taking care of the jobs that are determined “dull, dirty, and dangerous.” Unmanned Aircraft Systems (UA Systems) helped with

- guiding the oil tanker to Nome to restock their tank farm for the winter,
- located a downed airplane near Bethel a few months ago, and
- they’ve even been used for counting sea lions that kept them from being placed on the endangered species list.

The missions UA Systems have successfully completed have protected pilots that would have been flying in inclement weather and have **conducted research in an economical fashion with reduced risk to human and animal lives.**

In the next couple of weeks, we will hear more from the University of Alaska Fairbanks and the ten years of work they’ve done with UA Systems and Alaska’s opportunity to become selected as one of the nation’s six test sites. A recent study indicated that the locations **selected as a NASA test site will bring significant growth in jobs, income, and in technological advancements in which Alaska can lead the nation.**

While “big brother” may be what many of us envision, miniature helicopters will not be recording us while singing in the shower. They may, however, fly over a car crash site to clear a highway in half the time of manual investigative methods.

What is the difference between unmanned aircraft systems and drones?

- UAS are aircraft operated without a pilot in or onboard the aircraft.
- Drones are a ‘nickname’ used by the military where UAS fly on a mission of military intent in a war zone.

I hope that you learn about unmanned aircraft systems with an open mind and an outlook for opportunity for our state. **I’ll stop here before you think I’m “droning on” about this topic.**

AACC

 Search this site

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- About the Council**
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- Sitemap

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[Alaska Aviation Coordination Council >](#)

About the Council

Purpose:

The Alaska Aviation Coordination Council promotes aviation in Alaska. The Council provides a forum for aviation organizations active in the state to interact with each other and with government organizations. The principle goals of the Council are to:

- Share information among aviation organizations active in Alaska
- Exchange information with government organizations that have responsibilities or impact upon aviation
- Study matters that impact the Alaskan aviation community
- Provide accurate information to government agencies, or other entities, including the general public, concerning the nature and needs of the Alaskan aviation community

Membership:

The Council shall be composed of groups, organizations and individuals representing aviation in Alaska. Each organization represented will have one vote, cast by its official member, who may vote on matters considered by the Council. Additional members may be added upon a majority vote of the Council.

Membership in this council is considered as a public service focusing on contributing to the advancement of aviation. For this reason, each member is expected to recuse him or herself when their personal circumstances are in actual or apparent conflict with the issue at hand.

Officers:

The Council will elect a Chair, Vice-Chair and Secretary from the industry members to serve terms of two-years. Current officers are:

New chairman →

Chair	Jim Cieplak	Alaskan Aviation Safety Foundation	(907) 360-5544	jcieplak@gci.net
Vice Chair	Dave Palmer	Arctic ATC & Aviation Technologies	(907) 745-5227	arcticatc@mtaonline.net
Secretary	Jane Dale	Alaska Airports Association		jdale@alaska.com

ALASKA STATE LEGISLATURE



SESSION:
 Alaska State Capitol
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Representative Shelley Hughes
 House District 8 ~ Greater Palmer

SECTION ANALYSIS LS0639 version N

An Act establishing a crime for certain uses of unmanned aircraft; restricting the use of unmanned aircraft for collection of information or investigation by peace officers; establishing a task force to study and provide recommendations on the use of unmanned aircraft systems; and providing for an effective date.

Section	Language	Effects of Language
Section 1	adds a new section of uncodified law	
	LEGISLATIVE FINDINGS:	
(1)	the Alaska Center for Unmanned Aircraft Systems Integration at University of Alaska Fairbanks has been designing and making control systems for unmanned aircraft systems since 1998 and is a leading research institution at the forefront of developing unmanned systems as cost-effective and readily available research tools;	(1) the UAF has been designing payloads and upgrades for unmanned aircraft systems, testing and evaluating their safety and effectiveness, developing new uses, demonstrating these uses for various potential users, working with the FAA for safe use as well as developing technology to improve safety since 2001. The University has become known throughout the country for its leadership in advancing the state of the art and the safe use of UAS. Recently the importance of this work to the State of Alaska was recognized by the Board of Regents who established the Alaska Center for Unmanned Aircraft Systems Integration - Research, Development, Test & Evaluation, hereafter known as ACUASI, to provide this work for the benefit of the entire State of Alaska. Rationale: UAF started its work in 2001, but ACUASI was only established in Dec 2012. Also, UAF has worked on much more than control systems.
(2)	as the Alaska Center for Unmanned Aircraft Systems Integration at the University of Alaska Fairbanks has demonstrated, unmanned aircraft systems can be designed for gathering information necessary to protect human life in	(2) UAF is currently researching other technologies being developed and improved for many users including law enforcement, which could potentially use these technologies for a variety of missions including search and rescue, forensic

	<p>search and rescue operations, aiding in the management of resources, including marine mammal and fisheries research, providing humanitarian assistance, providing a platform for scientific research on the Arctic, and for other private and public sector activities demonstrated by the use of an unmanned aircraft system by the Alaska Center for Unmanned Aircraft Systems Integration to assist the United States Coast Guard Cutter Healy and the Russian tanker Renda in delivering fuel to Nome, Alaska in 2012;</p>	<p>recording of scenes, and surveillance missions similarly to how manned aircraft are used today;</p> <p>Rationale: currently the language suggests only that law enforcement could use UAS for surveillance, yet the majority of potential uses for them are both beneficial and completely consistent with how manned aircraft are currently legally and appropriately used</p>
(3)	<p>while government agencies, including law enforcement agencies and universities, may operate unmanned aircraft systems using the Federal Aviation Administration Certificate of Authorization or Waiver process, a civil operator may only operate an unmanned aircraft system under a Federal Aviation Administration Special Airworthiness Certificate for experimental purposes, which does not provide for commercial operations; therefore, no unmanned aircraft systems are being lawfully deployed for commercial purposes;</p>	<p>FAA: UAS Interim Operational Approval Guidance 08-01 section 4.1 Certificate of Waiver or Authorization (COA).</p> <p>COAs are granted for a period of one year or less (for the length of use for a specific project) and each project is evaluated on its individual merits.</p> <p>GAO (Government Accountability Office) 12-889T Unmanned Aircraft Systems states that Using UAS for commercial purposes is not currently allowed in the national airspace.</p>
(4)	<p>the Federal Aviation Administration currently requires the designation of one pilot to be in command of an unmanned aircraft system at all times, and restricts the use by public agencies of unmanned aircraft systems to conduct routine flights over urban or populated areas, operations over heavily trafficked roads or open-air assemblies of people, discharge or drop objects while in flight, and operate without the capability of pilot intervention;</p>	<p>FAA: UAS Interim Operational Approval Guidance 08-01 section 4.1 Certificate of Waiver or Authorization (COA).</p> <p>Requirements and restrictions for use are expressed in section 8.0 Flight Operations.</p>
(5)	<p>the Alaska Center for Unmanned Aircraft Systems Integration at University of Alaska Fairbanks has demonstrated that the unmanned aircraft systems can be designed and operated for scientific research, saving human lives, and for use as cost-effective tools for both the public and private sector; however, since unmanned aircraft systems present a substantial risk to privacy when used by law enforcement for surveillance, and given that currently neither the Federal Aviation Administration nor any other state or federal agency has specific statutory authority to</p>	<p>Since unmanned aircraft systems may present new risks to privacy when used by law enforcement for surveillance, and given that updated rules have not yet been promulgated by the FAA or other federal agencies, the legislature finds that, until appropriate rulemaking is completed with input from user groups affected by unmanned aircraft systems, a moratorium on certain uses by law enforcement is appropriate while encouraging other uses of unmanned aircraft systems to proceed.</p> <p>Rationale: While the public believes that "UAS present a substantial risk to privacy"</p>

	regulate privacy matters relating to unmanned aircraft systems, the legislature finds that, until a comprehensive statutory structure can be put in place to protect privacy, controls must be established to preclude the use of unmanned aircraft systems by law enforcement while allowing certain uses of unmanned aircraft systems to proceed.	and that there is a "current lack of controls in place to protect privacy", the basis for that belief is likely overstated. Current rules for law enforcement regarding admissibility of evidence in court and protection of privacy cover the vast majority of cases likely to arise. What we know is there may be gaps that need to be covered with statute, regulations, or ultimately, court cases, and this bill intends to protect against those gaps until better understanding is achieved.
Section 2	AS 11.61 is amended by adding a new section	AS 11 is Criminal Law
	Sec. 11.61.260. Unlawful use of unmanned aircraft.	Creates a new crime
(a)	A person commits the crime of unlawful use of an unmanned aircraft if the person knowingly operates an unmanned aircraft in or on the premises of another person or entity for the purposes of acquiring information by the use of a sensing device that is capable of acquiring data from its surroundings, including by a camera, microphone, thermal detector, chemical detector, radiation gauge, and wireless receiver.	
(b)	This section does not apply to the use of an unmanned aircraft to conduct a search	All law enforcement activity is unauthorized except for:
(1)	under the express terms of a search warrant issued under AS 12.35;	Court issued search warrant
(2)	in accordance with a judicially recognized exception to the warrant requirement in AS 12.35;	
(3)	to monitor public land or an international border;	Public land and international borders
(4)	to monitor private land with the consent of the land owner; or	Private land with consent of owner
(5)	if an imminent risk of harm to life or property exists.	Imminent risk to life or property
(c)	In this section, "unmanned aircraft" means an aircraft that is operated without the possibility of direct human intervention from inside or on the aircraft.	This definition is provided in Public Law 112-95 Sec 331.
(d)	Property used to aid a violation of (a) of this section may be forfeited to the state upon conviction of the offender.	Forfeiture of the aircraft and associated equipment
(e)	Unlawful use of an unmanned aircraft is a class A misdemeanor.	Sentence and fine up to one year in jail and up to \$10,000

Section 3	AS 18.65 is amended by adding a new section Article 4A. Unmanned Aircraft	AS 18 is Police Protection
	Sec. 18.65.380. Use of unmanned aircraft in law enforcement.	
(a)	A peace officer or law enforcement agency may not use unmanned aircraft, participate in an investigation in which unmanned aircraft are being used, use information gathered by unmanned aircraft, or otherwise direct the use of unmanned aircraft.	Law enforcement may not use unmanned aircraft
(b)	This section does not apply to the use of an unmanned aircraft for a purpose permitted under AS 11.61.260(b).	Law enforcement can use unmanned aircraft for the exceptions listed above.
(c)	In this section, "unmanned aircraft" means an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft.	This definition is provided in Public Law 112-95 Sec 331.
Section 4	Adds a new section of uncodified law	
	UNMANNED AIRCRAFT SYSTEMS TASK FORCE	
(a)	The Unmanned Aircraft Systems Task Force is created in the legislative branch for the purpose of making recommendations for a statewide comprehensive plan to regulate that use of unmanned aircraft systems for public and private sector purposes.	
(b)	The task force consists of 10 members who, except for those in (1) and (2) of this subsection, shall be appointed jointly by the president of the senate and the speaker of the house of representatives as follows:	
(1)	One senator selected by the president of the senate, who shall serve as co-chair;	
(2)	One representative selected by the speaker of the house of representatives who shall serve as co-chair;	
(3)	The commissioner of transportation	
(4)	The commissioner of public safety	
(5)	The commissioner of natural resources	
(6)	One member representing municipal law enforcement	
(7)	The attorney general or the attorney general's designee	
(8)	The public defender or the public defender's designee	
(9)	The office of public advocacy	

(10)	One member representing the Alaska Center for Unmanned Aircraft Systems Integration at University of Alaska Fairbanks.	
(c)	The task force shall, not later than January 15, 2014, submit an initial report to the legislature, and not later than January 15, 2015, submit a final report to the legislature. The reports must include	
(1)	Policy options and recommendations to provide for the use of unmanned aircraft systems while protecting privacy when used by law enforcement, and allowing the use of unmanned aircraft systems for other public and private applications;	
(2)	Recommendations to the legislature and the governor, including draft legislation required to achieve the policy objectives proposed by the task force.	
(d)	The task force shall meet as frequently as necessary to carry out its responsibilities.	
(e)	The task force may request administrative and technical support from the University of Alaska Fairbanks.	
(f)	Members of the task force shall serve without compensation but are entitled to per diem and travel expenses authorized for boards and commissions under AS 39.20.180.	
(g)	The task force terminates on January 15, 2015.	
Section 5	This act takes effect immediately under AS 01.10.070(c).	

Ginger Blaisdell

From: Ginger Blaisdell
Sent: Friday, March 08, 2013 10:53 AM
To: LAA Legal
Subject: Doug Gardner FW: FW: drone legislation

Re: weapons use

From: Ro Bailey [mailto:rbailey11@alaska.edu]
Sent: Wednesday, March 06, 2013 3:34 PM
To: Ginger Blaisdell
Cc: Matthew Cooper
Subject: Re: FW: drone legislation

We will have to look at the Hawaii bill. We had seen OR a bit ago.

While I'm not sure why they defined drones that way, we would not argue the point. However, the exact same definition works if you replace the word "drone" with "manned aircraft". The term weapon authorization is separate. Any aircraft, manned or unmanned, carries some sort of payload, ranging from passengers and baggage to sensors of various types, to weapons. Weapons on domestic aircraft that are not military are prohibited by the FAA Regulation Part 91.15, which specifically prohibits dropping objects from aircraft, and part 91.13 which prohibits careless and reckless use. As a matter of practice, even the law enforcement types we have talked with, nationwide, dismiss without consideration any weaponizing of UAS, and that includes the National Institute of Justice as well as the International Association of Chiefs of Police. So, it would be both unnecessary and redundant to forbid weapons on drones (or UAS, again, our preferred term).

In the military, weapons authorization is what must happen before an individual operator, pilot in this case, is permitted to engage an enemy with lethal force, whether it is a rifle, a shoulder-fired missile, or a bomb or missile from an aircraft. So, a fighter pilot would be given authorization both before takeoff and in flight, depending on the circumstances, to employ the weapons his or her aircraft carries. I'm not specifically knowledgeable on this for law enforcement, but I know they have rules of engagement which would also dictate when and how they use their personal weapons. Since weapons on UAS are categorically excluded by law, protocol, and practice, weapons authorization would not even come up.

Does that help?

Ro

On Wed, Mar 6, 2013 at 2:47 PM, Ginger Blaisdell <Ginger.Blaisdell@akleg.gov> wrote:

If you are entering into an application with HI and OR have you seen their recent legislation regarding drones?

Hawaii is SB783

What does it mean in the definitions of "drone" that it can carry a lethal or nonlethal payload? Is this the weapon authorization?

Thanks again,

Ginger

From: Ro Bailey [mailto:rbailey11@alaska.edu]

Sent: Wednesday, March 06, 2013 12:17 PM

To: Ginger Blaisdell

Subject: Re: FW: drone legislation

Great, Ginger, we will call you about 1:15 today.

Ro

On Wed, Mar 6, 2013 at 12:02 PM, Ginger Blaisdell <Ginger.Blaisdell@akleg.gov> wrote:

Yes, thank you!

I'm available any time today.

465-5256

ginger

From: Ro Bailey [mailto:rbailey11@alaska.edu]

Sent: Wednesday, March 06, 2013 12:01 PM

To: Ginger Blaisdell

Cc: esther.tempel@alaska.gov

Subject: Re: FW: drone legislation

Hi, Ginger,

Thank you for contacting me. The University of Alaska, primarily Fairbanks, has been working with Unmanned Aircraft Systems for over 10 years. We are currently in the middle of a major proposal to the FAA,

leading the proposal effort for the state as directed by last year's session funding, to become one of six test sites where the FAA will study the safe and proper tools and procedures for integrating these systems into the national airspace. There is a great deal more to this than your questions draw out. Would you be available for a telephone conversation today? I'd like to explain more of the program and also get a more complete understanding of what you need.

Ro

Ro Bailey

Deputy Director

Alaska Center for Unmanned Aircraft Systems Integration - RDT&E

University of Alaska Fairbanks

w: 907-455-2104

f: 907-455-2120

On Wed, Mar 6, 2013 at 11:07 AM, Ginger Blaisdell <Ginger.Blaisdell@akleg.gov> wrote:

With further reading, UAA and DNR may also be currently using drone technology.

I've included both of you to please respond to the following questions that I've asked of other agencies.

Thank you so much,

Ginger

From: Ginger Blaisdell

Sent: Wednesday, March 06, 2013 10:02 AM

To: McKenzie, Constance M (DOT) (connie.mckenzie@alaska.gov); 'mchugh.pierre@alaska.gov'; terry.vrabec@alaska.gov

Subject: drone legislation

Representative Hughes has requested that I prepare “drone” legislation and I need some basic feedback from your agencies.

What existing statutes authorize your respective agency the ability to use drones? (DOTPF might be FAA regulation)

What purposes do you currently use drones and what purposes would you anticipate the need for drone use?

What restrictions do you currently impose on drone use (size, power/speed, functional capacity such as, cameras, infrared, weapons, microphones/announcements, quieting technology, etc.)

I’ve read HB159 but it seems to focus more on admissible evidence where Rep Hughes would like to provide specific provisions for use of drones (and possibly include admissible evidence).

I need any feedback you can give by tomorrow as the bill drafters are beginning right away. We are hoping to introduce legislation next week.

Thank you

Ginger

Office of Representative Shelley Hughes

Room 409 State Capitol

Juneau, AK 99811

907-465-5265

Ginger Blaisdell

From: Pierre, McHugh (MVA) <mchugh.pierre@alaska.gov>
Sent: Wednesday, March 06, 2013 2:40 PM
To: Ginger Blaisdell; McKenzie, Constance M (DOT); Vrabec, Terry E (DPS)
Subject: RE: drone legislation

All aircraft are regulated by the FAA. Remotely Piloted Aircraft, RPAs, are specifically identified by the FAA. There are altitude requirements that must be met. The University of Alaska operates a program dedicated to small RPAs. They fly under 500 feet and must be within sight of the operator, just like a remote controlled air plane operated by a hobbyist. They must also not fly within 3 miles of an active air field.

Any RPAs we operate are on federal military installations used for security of the base. Fort Greely is a good example. It is easier to patrol the fence with an RPA, and allows another way to keep eyes in the field without having the presence of a humvee or a sus-v.

We only have RPAs that are military property and operated under military command and control on a base. We do not have the ability to take that federal property outside the wire to use for State of Alaska needs.

I really think the issue is not flying an RPA, but what type of sensors are being used to gather information and where that information is going. I know there is a large remote control group in the Mat-Su that could be impacted by some legislation, so please consider them before you move forward.

Thanks.

McHugh Pierre

Deputy Commissioner
Department of Military and Veterans Affairs
907-428-6003 Anchorage Office

From: Ginger Blaisdell [<mailto:Ginger.Blaisdell@akleg.gov>]
Sent: Wednesday, March 06, 2013 10:02 AM
To: McKenzie, Constance M (DOT); Pierre, McHugh (MVA); Vrabec, Terry E (DPS)
Subject: drone legislation

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Thank you
Ginger

*Office of Representative Shelley Hughes
Room 409 State Capitol
Juneau, AK 99811*

Ginger Blaisdell

From: Maisch, John C (DNR) <chris.maisch@alaska.gov>
Sent: Thursday, March 07, 2013 8:33 AM
To: Tempel, Esther (DNR); Swenson, Robert F (DNR); Combellick, Rod A (DNR); Goodrum, Brent W (DNR); Parsons, Martin W (DNR); Menefee, Wyn (DNR); Brown, Dean N (DNR)
Cc: Ginger Blaisdell; Kurth, J Thomas (DNR); Henderson, Marsha J (DNR)
Subject: RE: drone legislation

Esther,

Please see Tom's comments below and let us know if you need anything more. As you know, Tom is our Chief of Fire and Aviation at DOF, but the context might be helpful to Ginger.

Chris...this is what I wrote up this morning. It is "off the cuff" as I would talk directly with Poker Flat on this for more detail. However, let's see if this will work.

What existing statutes authorize your respective agency the ability to use drones? (DOTPF might be FAA regulation)

The Division of Forestry and the interagency wildland fire community works cooperatively with the University of Alaska at Poker Flats. Poke Flat is the operator of the drone(s) and has the authorization to do so.

What purposes do you currently use drones and what purposes would you anticipate the need for drone use?

The Division of Forestry's Wildland Fire Program has utilized drones on several occasions on an interagency basis on large fires. We also have worked cooperatively with the University of Alaska at Poker Flats to apply and improve drone application in fire management. Their most important and only use has been on large fires when smoke or weather conditions have prohibited more conventional aerial support. Often times weather conditions that prohibit conventional flying and fire monitoring may persist for long periods of time. Using Forward Looking Infrared Technology (FLIR), a drone has allowed an incident management team to utilize data to search for fire perimeter growth and improve mapping capabilities.

Aerial reconnaissance for fire behavior, perimeter growth, and mapping are the current applications. In the future, fire detection, communications (repeater), suppression effectiveness (line construction) and weather monitoring are potential applications.

What restrictions do you currently impose on drone use (size, power/speed, functional capacity such as, cameras, infrared, weapons, microphones/announcements, quieting technology, etc.)

Drones provided to the Division of Forestry and the incident management teams have been small and self contained. The unit is launched and captured on incident. It is controlled by a mobile unit and flown by computer with an operator on incident. Usage has been limited to remote areas where they have not interfered with regular air traffic.

One limitation we operate under:

When flying drones in support of fire reconnaissance, FAA regulations impose the same restrictions on pilots that are flying in conventional aircraft. A typical large fire has a significant "air show" in the form of helicopters,

air tankers, air attack, etc. We would typically limit any drone operation outside of our operational period of sixteen work hours. FAA regulations allow a pilot to fly eight hours within a fourteen hour availability day. Incorporating a drone operation in fire management within the timeframes most valuable for data collection, before the operational period and after the operational period, a drone operation then needs two operators. Two operators are not always available with the operation we use. This regulation limits our data collection opportunities.

Tom Kurth
(907) 590-3184

From: Tempel, Esther (DNR)
Sent: Wednesday, March 06, 2013 11:15 AM
To: Swenson, Robert F (DNR); Combellick, Rod A (DNR); Goodrum, Brent W (DNR); Parsons, Martin W (DNR); Menefee, Wyn (DNR); Maisch, John C (DNR); Brown, Dean N (DNR)
Subject: FW: drone legislation

I may be way off base but I imagine the only divisions within DNR that might possibly even use drones would be DGGs, DMLW and DOF. If you do, can you answer the questions posed below and if you don't, just let me know ☺

Esther

From: Ginger Blaisdell [<mailto:Ginger.Blaisdell@akleg.gov>]
Sent: Wednesday, March 06, 2013 11:07 AM
To: rbailey11@alaska.edu; Tempel, Esther (DNR)
Subject: FW: drone legislation

With further reading, UAA and DNR may also be currently using drone technology.
I've included both of you to please respond to the following questions that I've asked of other agencies.

Thank you so much,
Ginger

From: Ginger Blaisdell
Sent: Wednesday, March 06, 2013 10:02 AM
To: McKenzie, Constance M (DOT) (connie.mckenzie@alaska.gov); 'mchugh.pierre@alaska.gov'; terry.vrabec@alaska.gov
Subject: drone legislation

Representative Hughes has requested that I prepare "drone" legislation and I need some basic feedback from your agencies.

What existing statutes authorize your respective agency the ability to use drones? (DOTPF might be FAA regulation)
What purposes do you currently use drones and what purposes would you anticipate the need for drone use?
What restrictions do you currently impose on drone use (size, power/speed, functional capacity such as, cameras, infrared, weapons, microphones/announcements, quieting technology, etc.)

I've read HB159 but it seems to focus more on admissible evidence where Rep Hughes would like to provide specific provisions for use of drones (and possibly include admissible evidence).

I need any feedback you can give by tomorrow as the bill drafters are beginning right away. We are hoping to introduce legislation next week.

Thank you
Ginger

*Office of Representative Shelley Hughes
Room 409 State Capitol
Juneau, AK 99811
907-465-5265*

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to place a moratorium on the use of unmanned aircraft systems.*

3 [S 1331]
4 Approved

5 **Be it enacted by the General Assembly of Virginia:**

6 1. § 1. *No state or local agency or organization having jurisdiction over criminal law enforcement or*
7 *regulatory violations, including but not limited to the Department of State Police, and no department of*
8 *law enforcement as defined in § 15.2-836 of the Code of Virginia of any county, city, or town shall*
9 *utilize an unmanned aircraft system before July 1, 2015.*

10 *Notwithstanding the prohibition in this section, an unmanned aircraft system may be deployed before*
11 *July 1, 2015, when an Amber Alert is activated pursuant to § 52-34.3 of the Code of Virginia, when a*
12 *Senior Alert is activated pursuant to § 52-34.6 of the Code of Virginia, when a Blue Alert is activated*
13 *pursuant to § 52-34.9 of the Code of Virginia, or for the purpose of a search and rescue operation. In*
14 *no case may a weaponized unmanned aircraft system be deployed or its use facilitated by a state or*
15 *local agency in Virginia.*

16 *The prohibitions in this section shall not apply to the Virginia National Guard while utilizing*
17 *unmanned aircraft systems during training required to maintain readiness for its federal mission, when*
18 *facilitating training for other United States Department of Defense units, or when such systems are*
19 *utilized to support the Commonwealth for purposes other than law enforcement, including damage*
20 *assessment, traffic assessment, flood stages, and wildfire assessment.*

ENROLLED

SBI331ER

Ginger Blaisdell

From: Chuck Burnham
Sent: Wednesday, March 06, 2013 2:36 PM
To: Ginger Blaisdell
Subject: RE: Leg. Research: Drones
Attachments: FAA 91-57.pdf; FAA 4910-13.pdf; FAA Guidance 08-01.pdf

Hi Ginger –The FAA is in the process of developing classifications for drones but have not yet published direction to that end. The agency's current working definitions are below.

The distinguishing characteristics between drones (unmanned aircraft systems to the FAA) and model aircraft is not necessarily the vehicles but rather their intended use, although the FAA Reauthorization of 2012 prohibits the FAA from regulating vehicles flown for hobby or recreational use that are 55 pounds or less (details below). The classes of use are public (law enforcement, etc.), civil/commercial (private businesses), and model/hobby. Each of the three classes has different requirements (see attached FAA clarification document 4910-13), with public and civil/commercial uses strictly regulated and requiring certification by the FAA. By contrast, flight by hobbyists comes with fewer regulations; however, operators are barred from use in certain areas and are not allowed to charge for services.

There is no widely-accepted classification system or series of definitions for drones of which I am aware beyond calling them small, medium, and large. Legislative Legal may be better equipped to recommend definitions for potential legislation. Sorry I can't be more definitive than what the FAA has issued below.

From FAA Interim Operational Approval Guidance 08-01
(http://www.faa.gov/about/initiatives/uas/reg/media/uas_guidance08-01.pdf):

Unmanned Aircraft: A device used or intended to be used for flight in the air that has no onboard pilot. This includes all classes of airplanes, helicopters, airships, and translational lift aircraft that have no onboard pilot. Unmanned aircraft are understood to include only those aircraft controllable in three axes and therefore, exclude traditional balloons.

From FAA website (http://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=14153):

Model Aircraft

Recreational use of airspace by model aircraft is covered by FAA Advisory Circular 91-57, which generally limits operations to below 400 feet above ground level and away from airports and air traffic. In 2007, the FAA clarified that AC 91-57 only applies to modelers, and specifically excludes individuals or companies flying model aircraft for business purposes.

Expanded discussion of model aircraft makes from the FAA's clarification of policy under 14 CFR 91 regarding unmanned aircraft systems:

In 1981, in recognition of the safety issues raised by the operation of model aircraft, the FAA published Advisory Circular (AC) 91-57, Model Aircraft Operating Standards for the purpose of providing guidance to persons interested in flying model aircraft as a hobby or for recreational use. This guidance encourages good judgment on the part of operators so that persons on the ground or other aircraft in flight will not be endangered. The AC contains among other things, guidance for site selection. Users are advised to avoid noise sensitive areas such as parks, schools, hospitals, and churches. Hobbyists are advised not to fly in the vicinity of spectators until they are confident that the model aircraft has been flight tested and proven airworthy. **Model aircraft should be flown below 400 feet** above the surface to avoid other aircraft in flight. **The FAA expects that hobbyists will**

operate these recreational model aircraft within visual line-of-sight. While the AC 91-57 was developed for model aircraft, some operators have used the AC as the basis for commercial flight operations. [emphasis added]

Importantly, according to a report by the Government Accountability Office, the FAA Reauthorization Act of 2012 prohibits the agency from promulgating regulations where the aircraft in question is:

(1) flown strictly for hobby or recreational use, (2) operated in accordance with a community-based set of safety guidelines and within the programming of a nationwide community-based organization, (3) limited to not more than 55 pounds (unless otherwise certified through a design, construction, inspection, flight test, and operational safety program administered by a community-based organization), (4) operated in a manner that does not interfere with and gives way to any manned aircraft, and (5) when flown within 5 miles of an airport, prior notice of the operation is given to the airport operator and the air traffic control tower. (GAO 12-889, <http://homeland.house.gov/sites/homeland.house.gov/files/Testimony-Dillingham.pdf>)

To be clear, however, the FAA currently has no codified regulations regarding model aircraft.

Guidance 08-01, Circular 91-57, and clarification document 4910-13 are attached.

Best,

Chuck Burnham, Legislative Analyst
Legislative Research Services
State Capitol
Juneau, Alaska 99801
907.465.6607
907.465.3908 (fax)
chuck.burnham@legis.state.ak.us

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From: Ginger Blaisdell
Sent: Wednesday, March 06, 2013 1:17 PM
To: Chuck Burnham
Subject: RE: Leg. Research: Drones

Thank you – I'm scanning through this document to find more specifically what my original request was; I'm looking for definitions of use of drones. I think definitions are going to be critical at this point.
Can you help me research definitions?
I'm also looking for the difference between recreational RC aircraft and drones.
ginger

From: Chuck Burnham
Sent: Wednesday, March 06, 2013 12:29 PM
To: Ginger Blaisdell
Subject: Leg. Research: Drones

Hi Ginger – My report on drones is attached. The text of bills and resolutions from other states is Attachment B, which begins on page 34 of the file. Let me know if you need clarification or require additional information.

Best,

Chuck Burnham, Legislative Analyst
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Juneau, Alaska 99801
907.465.6607
907.465.3908 (fax)
chuck.burnham@legis.state.ak.us

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HOUSE BILL NO. 159

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES KAWASAKI, Tuck

Introduced: 3/5/13

Referred: State Affairs, Transportation, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the admissibility of evidence acquired through the use of an**
2 **unmanned aerial vehicle; establishing a crime for certain uses of unmanned aerial**
3 **vehicles; and restricting the use of unmanned aerial vehicles for collection of**
4 **information or investigation by peace officers and other government agents."**

5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 *** Section 1.** AS 09.25 is amended by adding a new section to read:

7 **Sec. 09.25.052. Inadmissibility of information acquired by unmanned**
8 **aerial vehicle.** (a) In a civil action or proceeding, information obtained from the
9 unlawful operation of an unmanned aerial vehicle is not admissible as evidence and
10 may not be used for any purpose except as provided under AS 11.61.260 and
11 AS 18.65.900.

12 (b) In this section, "unmanned aerial vehicle" has the meaning given in
13 AS 11.61.260.

14 *** Sec. 2.** AS 11.61 is amended by adding a new section to read:

1 **Sec. 11.61.260. Unlawful use of unmanned aerial vehicle.** (a) A person
 2 commits the crime of unlawful use of an unmanned aerial vehicle if the person
 3 knowingly operates an unmanned aerial vehicle in or on the premises of another
 4 person or entity for the purpose of acquiring information by the use of a sensing
 5 device that is capable of acquiring data from its surroundings, including by a camera,
 6 microphone, thermal detector, chemical detector, radiation gauge, and wireless
 7 receiver.

8 (b) This section does not apply to the use of an unmanned aerial vehicle to
 9 conduct a search

10 (1) under the express terms of a search warrant issued under AS 12.35;

11 (2) in accordance with a judicially recognized exception to the warrant
 12 requirement in AS 12.35;

13 (3) to monitor public land or an international border; or

14 (4) to monitor private land with the consent of the landowner.

15 (c) In this section, "unmanned aerial vehicle" means an aircraft that is
 16 operated without direct human intervention from inside or on the aircraft.

17 (d) Unlawful use of an unmanned aerial vehicle is a class A misdemeanor.

18 * **Sec. 3.** AS 12.45 is amended by adding a new section to read:

19 **Sec. 12.45.038. Inadmissibility of information acquired by unmanned**
 20 **aerial vehicle.** (a) In a criminal action or proceeding, information obtained from the
 21 unlawful operation of an unmanned aerial vehicle is not admissible as evidence and
 22 may not be used for any purpose except as provided in AS 11.61.260 and
 23 AS 18.65.900.

24 (b) In this section, "unmanned aerial vehicle" has the meaning given in
 25 AS 11.61.260.

26 * **Sec. 4.** AS 18.65 is amended by adding a new section to read:

27 **Article 13. Use of Unmanned Aerial Vehicles.**

28 **Sec. 18.65.900. Use of unmanned aerial vehicles.** (a) Except as provided in
 29 (b) of this section, a government employee or agent, including a peace officer, may not
 30 participate in an investigation in which an unmanned aerial vehicle is being used, or
 31 otherwise direct the use of an unmanned aerial vehicle.

1 (b) This section does not apply to the use of an unmanned aerial vehicle for a
2 purpose permitted under AS 11.61.260(b).

3 (c) In this section, "unmanned aerial vehicle" has the meaning given in
4 AS 11.61.260.

Legislative Research Request Form

After filling out this form, print and send to research@akleg.gov or fax to Research at 465.3908.

Legislator Hughes
Requestor Ginger Blaisdell
Staff Contact Ginger Blaisdell
Telephone 465-5265
Report Topic Use of drones by non-military authorities in the USA

If related to a bill, please provide the bill number:

Please provide a date if the report is needed for a hearing or meeting:

ASAP for bill drafting

Type Your Question or Questions Below

Please provide as much information as possible; use additional sheets if necessary. (See [Tips for Requesting Research](#)).

I would like to know the use of drones by non-military authorities in the USA to use examples or definitions of use in legislation being drafted currently. Expedited research is desirable because Rep Hughes would like the bill drafted and introduced as soon as possible.

Please note that the more we know about the overall purpose behind the request, the better able we are to focus our approach and to judge whether what we're finding is relevant to your needs. We also appreciate your sharing any background information you've already found, such as names and phone numbers of authorities, and citations to, or copies of, pertinent documents.

Additional Information (Overall Objective, Sources contacted, etc.)

(<http://www.usnews.com/news/articles/2013/02/05/city-in-virginia-becomes-first-to-pass-anti-drone-legislation->)

<http://www.washingtonguardian.com/drones-home>

Rutherford Institute: Freedom from drone surveillance

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research@legis.state.ak.us

Research Brief

TO: Representative Shelley Hughes
FROM: Chuck Burnham, Legislative Analyst
DATE: March 6, 2013
RE: Drone Aircraft
LRS Report 13.269

You asked about measures to limit the use of unmanned aerial vehicles commonly known as "drones." Specifically, you wanted to know whether federal, state, and local governments have placed restrictions on the use of drones to collect data on citizens and if they have barred that information from being introduced as evidence in court proceedings. You also asked if states have restricted access to airspace for drones.

Briefly, neither Congress nor any state legislature has yet directly restricted the use of drones, although measures to do so are being considered across the country. At present, drone flight is closely regulated by the Federal Aviation Administration (FAA), which holds primacy over the use of the skies over all U.S. territory. In recent legislation Congress required the FAA to streamline the process by which unmanned aircraft are permitted; however, the Administration, like policymakers and other interested parties, is facing difficulty balancing security and privacy concerns with the practical and economic promise of drones.

As you know, unmanned aircraft systems (UAS), or "drones," have no onboard pilot and are operated remotely. Drones range from palm-size devices with a range of only a few dozen yards that must be flown within sight of the operator, to vehicles with wingspans as great as a Boeing 737 that can fly hundreds of miles at great speeds and at altitudes of greater than 60,000 feet using sophisticated satellite navigation systems monitored by operators on the other side of the globe. The possible applications of UAS include military and covert missions, law enforcement, search and rescue, weather and other scientific research, border surveillance, and others. The FAA expects the use of drones, particularly by law enforcement agencies, to expand rapidly in coming years as the devices become more readily available and their costs decrease.¹ The specter of the proliferation of drones for domestic surveillance has raised concern for advocates of privacy and civil liberties.

Federal Actions

Members of Congress have variously taken positions in favor and opposed to the domestic use of drones. Privacy concerns are represented by Senator Rand Paul's "Preserving Freedom from Unwarranted Surveillance Act" (S. 3287, 112th Congress, Second Session, 2012), which sought to prohibit the use of drones to gather evidence or other information unless pursuant to a legal warrant. The Act provides exceptions for drones used to patrol national borders, where "exigent circumstances" exist involving law enforcement possessing reasonable suspicion that swift action is necessary to protect life from imminent danger, and when high risk of a specific terrorist attack is identified by the Department of Homeland Security. Evidence collected in violation of the Act would be inadmissible as evidence in a criminal proceeding, and parties aggrieved by violations of the Act could bring civil action for relief or remedy.² The bill was referred to the Committee on the Judiciary but received no hearing. A similar bill was recently introduced in the new Congress (H.R. 637).³

Countervailing the privacy concerns of certain members of Congress is the recognition that drones hold great promise in domestic applications where the use of aircraft with onboard pilots is deemed impractical, too dangerous, or cost prohibitive.

¹ The FAA maintains a website on its activities regarding UAS at <http://www.faa.gov/about/initiatives/uas/>.

² More information on S. 3287 and companion legislation in the House of Representative (H.R. 5925), including full text of the measures, is available at <http://thomas.loc.gov/cgi-bin/thomas>.

³ At the time of this writing the full text of H.R. 637, introduced Feb. 13, 2013, was not yet available from the Library of Congress. News media reports indicate that the measure is substantially similar to those that were before the 112th Congress (<http://thehill.com/blogs/transportation-report/aviation/283195-lawmakers-file-bill-to-limit-domestic-drone-flights>). The current resolution can be tracked at <http://thomas.loc.gov/cgi-bin/bdquery/D?d113:28:./temp/~bd9J4B:./home/LegislativeData.php?n=BSS;c=113>).

In an effort to realize this promise, Congress placed directives within the FAA Modernization and Reform Act of 2012 (P.L. 112-95, 49 USCS § 40101, et seq.) to streamline the process of obtaining permits for the use of UAS.⁴

FAA Authority

The FAA has primary authority over regulation of the National Airspace System (NAS), which includes essentially all of the atmosphere above U.S. territory extending 12 nautical miles offshore. Civilian use of UAS is tightly restricted, requiring the issuance of an experimental certificate from the FAA. Regulations for those certificates currently preclude carrying people or property for compensation, but allow research and development operations. Far more common is the use of drones by public agencies, which are required to obtain a Certificate of Waiver or Authorization (COA) from the Administration. Although COAs are typically more permissive than experimental certificates, strict regulation is maintained with flight restricted to a defined section of airspace and under specific circumstances, such as only during daylight hours and in the sight of the operator. The use of drones in densely populated areas is currently prohibited.⁵ The COA process has been deemed by supporters of drone use to be overly restrictive, cumbersome, and time consuming. Congress included provisions to address those criticisms in its 2012 FAA reforms. Table 1 (attached), compiled by the U.S. Government Accountability Office (GAO), summarizes those provisions and the dates by which Congress expects the measures to be in place.⁶

Other Federal Issues: Jurisdiction, Security, and Privacy

The primary function of the FAA is to promote and maintain safety in the nation's skies. The major concerns of critics of drones are security and privacy. Interested observers, including the U.S. Government Accountability Office, believe that Congress' dependence on the FAA to manage these concerns is misplaced, urging that security and privacy are areas more appropriately under the purview of the Departments of Homeland Security and Justice, neither of which have taken significant steps to address the issue.

The legal questions regarding domestic drone use centers on the protections against unreasonable searches and seizures provided in the Fourth Amendment to the U.S. Constitution and related laws.⁷ Although the jurisprudence on the general topic of privacy as relates to the Fourth Amendment is voluminous, the U.S. Supreme Court has not yet dealt specifically with the admissibility of information collected by drones into legal proceedings; however, previous decisions on privacy and related matters provide a framework on the topic. These issues are discussed in by the Congressional Research Services in its January 2013 report "Integration of Drones into Domestic Airspace: Selected Legal Issues," a copy of which we include as Attachment A. The FAA's concern over privacy issues has delayed implementation of a number of the Congressional benchmarks described in Table 1.⁸

State Opposition

Legislative measures opposing and/or restricting the use of drones are currently under consideration in at least 22 states. In two of these states—Montana and Virginia—a bill has been approved by one chamber of the legislature and, as is the case in a number of other states, news media suggests it is likely that the measures will ultimately be enacted. The impact of state actions will, however, be limited in scope by the primacy of the FAA in determining what sorts of vehicles are allowed in the National Airspace System and where they may fly. That is, states do not have the authority to simply prohibit drones in their skies. Instead, most of the measures we reviewed are substantively similar to those before Congress in that complete prohibitions are eschewed in favor of restricting who may use the drones and what can be done with the information gathered.

⁴ Full text of the Act is available at <http://thomas.loc.gov/cgi-bin/query/z?c112:H.R.658>.

⁵ The FAA provides a fact sheet on UAS at http://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=14153#.

⁶ The GAO report on progress toward integrating UAS into the National Airspace System and associated privacy concern is available at <http://www.gao.gov/assets/650/648348.pdf>.

⁷ Specifically, the Amendment reads, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

⁸ For example, the program to establish six test ranges has been delayed (<http://www.businessweek.com/news/2013-02-14/drone-tests-must-adhere-to-privacy-rules-u-dot-s-dot-faa-says>).

The most common provisions in the state measures we reviewed bar state and local law enforcement from operating drones without a warrant or court order, prohibit information collected by UAS from being introduced in legal proceedings, and provide for civil actions brought by the targets of drones used in violation of the law. Exceptions to these restrictions are typically provided where there is reasonable suspicion that a crime is underway or is about to occur, where imminent danger to life exists, or for specific uses such as patrolling national borders. Certain measures, such as those before the legislatures of Hawaii and Maine, explicitly limit the duration of warrants obtained for drone use. Others, like those being considered in Indiana and Montana, provide for criminal penalties and/or fines for civilian use of UAS to monitor another person. A bill recently approved by the Virginia Assembly would place a moratorium until July 1, 2015, on the use of drones by state and local law enforcement agencies except as related to Amber, Senior, or Blue Alerts or rescue operations. Table 2 (following page) summarizes measures opposing or restricting the use of drones in 12 selected states. We include copies of the bills cited in Table 2 as Attachment B.

We hope this is helpful. If you have questions or need additional information, please let us know.

Table 1: Selected Federal Aviation Administration (FAA) Modernization and Reform Act of 2012 Requirements for Drone Regulation

Approximate Deadline	Requirement
5/14/2012	Enter into agreements with appropriate government agencies to simplify the process for issuing Certificates of Authorization (COA) or waivers for public Unmanned Aircraft Systems (UAS).
8/12/2012	Establish a program to integrate UAS into the national airspace system at six test ranges. This program is to terminate 5 years after date of enactment.
8/12/2012	Develop an Arctic UAS operation plan and initiate a process to work with relevant federal agencies and national and international communities to designate permanent areas in the Arctic where small unmanned aircraft may operate 24 hours per day for research and commercial purposes.
8/12/2012	Determine whether certain UAS can fly safely in the national airspace system before the completion of the Act's requirements for a comprehensive plan and rulemaking to safely accelerate the integration of civil UAS into the national airspace system or the Act's requirement for issuance of guidance regarding the operation of public UAS including operating a UAS with a COA or waiver.
11/10/2012	Expedite the issuance of a COA for public safety entities.
11/10/2012	Develop a comprehensive plan to safely accelerate integration of civil UAS into national airspace system.
11/10/2012	Issue guidance regarding operation of civil UAS to expedite COA process; provide collaborative process with public agencies to allow an incremental expansion of access into the national airspace system as technology matures and the necessary safety analysis and data become available and until standards are completed and technology issues are resolved; facilitate capability of public entities to develop and use test ranges; provide guidance on public entities' responsibility for operation.
2/14/2013	Approve and make publically available a five-year road map for the introduction of civil UAS into national airspace system, to be updated annually.
2/14/2013	Submit to Congress a copy of the comprehensive plan.
2/12/2013	Make operational at least one project at a test range.
8/14/2014	Publish in the Federal Register the Final Rule on small UAS.
8/14/2014	Publish in the Federal Register a Notice of Proposed Rulemaking to implement recommendations of the comprehensive plan.
8/14/2014	Publish in the Federal Register an update to the Administration's policy statement on UAS in Docket No. FAA-2006-25714.
9/30/2015	Achieve safe integration of civil UAS into the national airspace system.
12/14/2015	Publish in the Federal Register a Final Rule to implement the recommendations of the comprehensive plan.
12/31/2015	Develop and implement operational and certification requirements for public UAS in national airspace system.
2/14/2017	Report to Congress on the test ranges.

Notes: The FAA has delayed a number of the deadlines in this table due to privacy concerns.

Source: U.S. Government Accountability Office, "Measuring Progress and Addressing Potential Privacy Concerns Would Facilitate Integration into the National Airspace System," GAO 12-981, updated September 18, 2012, <http://www.gao.gov/assets/650/648348.pdf>

Table 2: Measures Impacting the Use of Unmanned Drones Currently Under Consideration in Selected States

State	Measure	Summary
Arizona	HB 2574	Prohibits agencies of law enforcement, the state, or political subdivisions from using drones to gather evidence of any sort without a search warrant, and makes such evidence inadmissible in state or local legal proceedings. Bars monitoring persons in their homes, places of worship, or other locations where an expectation of privacy exists. Allows civil actions against law enforcement agencies in order to prevent, restrain, or remedy the unlawful use of drones.
Florida	HB 119	Prohibits law enforcement agencies from using drones to gather evidence; provides for civil actions in order to prevent or remedy violations; and makes such evidence inadmissible in state or local legal proceedings. Provides an exception for drones used to counter a terrorist attack deemed a high risk by the secretary of the U.S. Department of Homeland Security.
Florida	SB 92	Bars law enforcement agencies from using drones to gather evidence; provides for civil actions in order to prevent or remedy violations; and makes such evidence inadmissible in state or local legal proceedings. Provides exceptions for drones used to counter a terrorist attack deemed a high risk by the secretary of the U.S. Department of Homeland Security, and a warrant is obtained or reasonable suspicion is present that swift action is needed to prevent danger to life or property, escape of a suspect, or destruction of evidence.
Hawaii	SB 783	Prohibits state agencies from operating drones unless in certain emergency situations, pursuant to a warrant or court order. Any data collected on any person or area other than those legally targeted must remain confidential and be deleted within 24 hours. Limits the duration of warranted use to 48 hours before an extension must be requested. Requires a report to the legislature of any use of drones by state agencies, and related actions by courts.
Idaho	SB 1051	Prohibits any person, entity, or state agency from using drones to gather evidence or any information without a search warrant. Makes unlawful surveillance with drones of any individual, property, farm, or agricultural industry. Allows civil actions against law enforcement agencies in order to prevent, restrain, or remedy the unlawful use of drones. Provides an exception for use of a drone by law enforcement when "exigent circumstances" exist--that is, when there is reasonable suspicion that swift action is needed to prevent imminent danger to life.

Table 2: Measures Impacting the Use of Unmanned Drones Currently Under Consideration in Selected States

(continued)

State	Measure	Summary
Illinois	SR 792	Urges the United States Congress to repeal the provisions of the Federal Aviation Administration Modernization and Reform Act that require the FAA to develop a plan to expand the use of unmanned aircraft in the airspace above the continental United States and any other territory or possession of the United States, and thereby repeal the FAA's rules that have begun to implement the mandated plan.
Indiana	SB 20	Provides that a person who knowingly or intentionally uses an unmanned aerial vehicle to monitor a person, property, or thing without the written consent of the subject of the monitoring commits a Class D felony. Provides that images or communications obtained through the use of an unmanned aerial vehicle are not admissible as evidence. Provides that a person who possesses an image or communications obtained through the use of an unmanned aerial vehicle commits a Class A misdemeanor. Prohibits the use of public money to purchase an unmanned aerial vehicle.
Maryland	HB 1233	Prohibits law enforcement agencies from using drones to gather evidence; provides for civil actions in order to prevent or remedy violations; and makes such evidence inadmissible in state or local legal proceedings. Provides an exception for drones used to counter a terrorist attack deemed a high risk by the secretary of the U.S. Department of Homeland Security.
Maine	SB 72	Prohibits law enforcement agencies from using drones to gather evidence except in emergencies, in the face of threats to national security or imminent criminal activity, or in accordance with a warrant or a court order. Such use is restricted to 48 hours unless an extension not to exceed 30 days is granted. Bans the use of facial recognition or biometric technology and weaponry on drones. Any data collected on any person or area other than those legally targeted must remain confidential and be deleted within 24 hours. Authorizes civil action for violations. Requires reports by law enforcement agencies and the Attorney General of drone use.
Missouri	HB 46	Prohibits unwarranted intrusion through the use of unmanned aerial vehicles commonly known as drones; provides that no person, entity, or state agency shall use a drone or other unmanned aircraft to conduct surveillance of any individual, property owned by an individual, farm, or agricultural industry without the consent of that individual, property owner, farm or agricultural industry. Authorizes civil action for violations. Provides an exception for use of a drone by law enforcement when "exigent circumstances" exist--that is, when there is reasonable suspicion that swift action is needed to prevent imminent danger to life.

Table 2: Measures Impacting the Use of Unmanned Drones Currently Under Consideration in Selected States

(continued)

State	Measure	Summary
Montana	SB 150 (passed Senate 2/6/13)	Disallows introduction of information from drones in criminal proceedings. Prohibits any government agency from owning, using, or contracting an aerial vehicle containing an anti-personnel device. Provides for compensatory and punitive damages for a victim of a drone equipped with an anti-personnel device.
Montana	SB 196	Makes an offense for use of a drone for information collection in or upon the residence of another. Bars such information from being used as evidence in any proceeding, and provides a maximum fine of \$500 for violation. Prohibits government agencies from operating drones except pursuant to a warrant, court order, to monitor public lands or international borders, or with consent of a private landowner.
North Dakota	HB 1373	Bars law enforcement agencies from using drones to gather evidence except pursuant to a warrant and only for investigation of felonies. Establishes conditions for such warrants. Provides exceptions for patrolling national borders, in exigent circumstances involving threats to life, and environmental catastrophes. Prohibits weaponry on drones, private surveillance uses, and law enforcement surveillance of lawfully assembled persons. Provides for civil actions. Prescribes uses of information from drones as evidence and the handling of that information. Requires documentation of drone use.
Virginia	HB 2012 (passed House 2/6/13)	Places a moratorium until July 1, 2015, on the use of drones by law enforcement agencies except in the case of Amber, Senior, or Blue Alerts or for search and rescue operations. In no circumstance may armed drones be deployed.

Notes: This table is not exhaustive of all measures currently under consideration that impact the use of drone aircraft.

Source: National Conference of State Legislature's Bill Information System (<http://www.ncsl.org/legislative-staff.aspx?tabs=856,34,721>).

Attachment A

U.S. Government Accountability Office, "Measuring Progress and Addressing Potential Privacy Concerns Would Facilitate Integration into the National Airspace System," *GAO 12-981*, updated September 18, 2012, <http://www.gao.gov/assets/650/648348.pdf>



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Integration of Drones into Domestic Airspace: Selected Legal Issues

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Summary

Under the FAA Modernization and Reform Act of 2012, P.L. 112-95, Congress has tasked the Federal Aviation Administration (FAA) with integrating unmanned aircraft systems (UASs), sometimes referred to as unmanned aerial vehicles (UAVs) or drones, into the national airspace system by September 2015. Although the text of this act places safety as a predominant concern, it fails to establish how the FAA should resolve significant, and up to this point, largely unanswered legal questions.

For instance, several legal interests are implicated by drone flight over or near private property. Might such a flight constitute a trespass? A nuisance? If conducted by the government, a constitutional taking? In the past, the Latin maxim *cujus est solum ejus est usque ad coelum* (for whoever owns the soil owns to the heavens) was sufficient to resolve many of these types of questions, but the proliferation of air flight in the 20th century has made this proposition untenable. Instead, modern jurisprudence concerning air travel is significantly more nuanced, and often more confusing. Some courts have relied on the federal definition of “navigable airspace” to determine which flights could constitute a trespass. Others employ a nuisance theory to ask whether an overhead flight causes a substantial impairment of the use and enjoyment of one’s property. Additionally, courts have struggled to determine when an overhead flight constitutes a government taking under the Fifth and Fourteenth Amendments.

With the ability to house surveillance sensors such as high-powered cameras and thermal-imaging devices, some argue that drone surveillance poses a significant threat to the privacy of American citizens. Because the Fourth Amendment’s prohibition against unreasonable searches and seizures applies only to acts by government officials, surveillance by private actors such as the paparazzi, a commercial enterprise, or one’s neighbor is instead regulated, if at all, by state and federal statutes and judicial decisions. Yet, however strong this interest in privacy may be, there are instances where the public’s First Amendment rights to *gather* and *receive* news might outweigh an individual’s interest in being let alone.

Additionally, there are a host of related legal issues that may arise with this introduction of drones in U.S. skies. These include whether a property owner may protect his property from a trespassing drone; how stalking, harassment, and other criminal laws should be applied to acts committed with the use of drones; and to what extent federal aviation law could preempt future state law.

Because drone use will occur largely in federal airspace, Congress has the authority or can permit various federal agencies to set federal policy on drone use in American skies. This may include the appropriate level of individual privacy protection, the balancing of property interests with the economic needs of private entities, and the appropriate safety standards required.

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Introduction

The integration of drones into U.S. skies is expected by many to yield significant commercial and societal benefits.¹ Drones could be employed to inspect pipelines, survey crops, and monitor weather.² One newspaper has already used a drone to survey storm damage,³ and real estate agents have used them to survey property.⁴ In short, the extent of their potential domestic application is bound only by human ingenuity.

In an effort to accelerate this introduction, in the FAA Modernization and Reform Act of 2012, Congress tasked the Federal Aviation Administration (FAA) with safely integrating drones into the national airspace system by September 2015.⁵ Likewise, sensing the opportunities that unmanned flight portend, lobbying groups and drone manufacturers have joined the chorus of those seeking a more rapid expansion of drones in the domestic market.⁶

Yet, the full-scale introduction of drones into U.S. skies will inevitably generate a host of legal issues. This report will explore some of those issues. To begin, this report will describe the regulatory framework for permitting the use of unmanned vehicles and the potential rulemaking that will occur over the next few years. Next, it will discuss theories of takings and property torts as they relate to drone flights over or near private property. It will then discuss the privacy interests implicated by drone surveillance conducted by private actors and the potential countervailing First Amendment rights to gather and receive news. Finally, this report will explore possible congressional responses to these privacy concerns and identify additional potential legal issues.

Development of Aviation Law and Regulations

The predominant theory of airspace rights applied before the advent of aviation derived from the Roman Law maxim *cujus est solum ejus est usque ad coelum*, meaning whoever owns the land

¹ A “drone” is simply an aircraft that can fly without a human operator. They are sometimes referred to as unmanned aerial vehicles (UAV), and the whole system—including the aircraft, the operator on the ground, and the digital network required to fly the aircraft—is referred to as an unmanned aircraft system (UAS). See generally CRS Report R42718, *Pilotless Drones: Background and Considerations for Congress Regarding Unmanned Aircraft Operations in the National Airspace System*, by Bart Elias.

² See GOV’T ACCOUNTABILITY OFFICE, UNMANNED AIRCRAFT SYSTEMS: MEASURING PROGRESS AND ADDRESSING POTENTIAL PRIVACY CONCERNS WOULD FACILITATE INTEGRATION INTO THE NATIONAL AIRSPACE SYSTEM (2012).

³ It is reported that News Corp. has used a small drone to monitor storm damage in Alabama and flooding in North Dakota. Kashmir Hill, *FAA Looks Into News Corp’s Daily Drone, Raising Questions About Who Gets to Fly Drones in the U.S.*, FORBES, (Aug. 2, 2011 3:52 P.M.), <http://www.forbes.com/sites/kashmirhill/2011/08/02/faa-looks-into-news-corps-daily-drone-raising-questions-about-who-gets-to-fly-drones-in-the-u-s/>.

⁴ Nick Wingfield & Somini Sengupta, *Drones Set Sights on U.S. Skies*, N.Y. TIMES (Feb. 17, 2012), available at http://www.nytimes.com/2012/02/18/technology/drones-with-an-eye-on-the-public-cleared-to-fly.html?pagewanted=all&_r=0.

⁵ FAA Modernization and Reform Act of 2012, P.L. 112-95, 126 Stat. 11.

⁶ Groups such as the Association for Unmanned Vehicle Systems International, which boasts 7,200 members, including defense contractors, educational institutions, and government agencies, have been formed to advance the interests of the UAV community. Association for Unmanned Vehicle Systems International, <http://www.auvsi.org/Home> (last visited Jan. 7, 2012).

possesses all the space above the land extending upwards into the heavens.⁷ This maxim was adopted into English common law and eventually made its way into American common law.⁸ At the advent of commercial aviation, Congress enacted the Air Commerce Act of 1926⁹ and later the 1938 Civil Aeronautics Act.¹⁰ These laws included provisions stating that “to the exclusion of all foreign nations, [the United States has] complete sovereignty of the airspace” over the country.¹¹ Additionally, Congress declared a “public right of freedom of transit in air commerce through the navigable airspace of the United States.”¹² This right to travel in navigable airspace came into conflict with the common law idea that each landowner also owned the airspace above the surface in perpetuity. If the common law idea was followed faithfully, there could be no right to travel in navigable airspace without constantly trespassing in private property owners’ airspace. This conflict was directly addressed by the Supreme Court in *United States v. Causby*, discussed extensively below.

With the passage of the Federal Aviation Act in 1958,¹³ the administrator of the FAA was given “full responsibility and authority for the advancement and promulgation of civil aeronautics generally....”¹⁴ This centralization of responsibility and creation of a uniform set of rules recognized that “aviation is unique among transportation industries in its relation to the federal government—it is the only one whose operations are conducted almost wholly within federal jurisdiction....”¹⁵ The FAA continues to set uniform rules for the operation of aircraft in the national airspace. In the FAA Modernization and Reform Act of 2012, Congress instructed the FAA to “develop a comprehensive plan to safely accelerate the integration of civil unmanned aircraft systems into the national airspace system.”¹⁶ These regulations must provide for this integration “as soon as practicable, but not later than September 30, 2015.”¹⁷

Current FAA Regulations of Navigable Airspace

Fixed-Wing Aircraft

FAA regulations define the minimum safe operating altitudes for different kinds of aircraft. Generally, outside of takeoff and landing fixed-wing aircraft must be operated at an altitude that allows the aircraft to conduct an emergency landing “without undue hazard to persons or property on the surface.”¹⁸ In a congested area, the aircraft must operate at least “1,000 feet above the highest obstacle within a horizontal radius of 2,000 feet of the aircraft.”¹⁹ The minimum safe

⁷ Colin Cahoon, *Low Altitude Airspace: A Property Rights No-Man’s Land*, 56 J. AIR L. & COM. 157, 161 (1990).

⁸ *Id.*; see also R. WRIGHT, *THE LAW OF AIRSPACE* 11-65 (1968).

⁹ Air Commerce Act of 1926, P.L. 69-254, 44 Stat. 568, 572.

¹⁰ Civil Aeronautics Act of 1938, P.L. 75-706, 52 Stat. 973.

¹¹ Codified as amended at 49 U.S.C. § 40103 (2012).

¹² Codified as amended at 49 U.S.C. § 40101 (2012).

¹³ P.L. 85-726; 72 Stat. 737 (1958).

¹⁴ H.Rept. 2360, 85th Cong., 2d Sess. (1958).

¹⁵ S. Rept. 1811, 85th Cong., 2d Sess. (1958).

¹⁶ P.L. 112-95, § 332(a)(1).

¹⁷ *Id.* at § 332(a)(3).

¹⁸ 14 C.F.R. § 91.119(a).

¹⁹ *Id.* at § 91.119(b).

operating altitude over non-congested areas is “500 feet above the surface.”²⁰ Over open water or sparsely populated areas, aircraft “may not be operated closer than 500 feet to any person, vessel, vehicle, or structure.”²¹ Navigable airspace is defined in statute as the airspace above the minimum safe operating altitudes, including airspace needed for safe takeoff and landing.²²

Helicopters

While fixed-wing aircraft are subject to specific minimum safe operating altitudes based on where it is flying, regulation of helicopter minimum altitudes is less rigid. According to FAA regulations, a helicopter may fly below the minimum safe altitudes prescribed for fixed-wing aircraft if it is operated “without hazard to person or property on the surface.”²³ Therefore, arguably a helicopter may be lawfully operated outside the zone defined in statute as navigable airspace.²⁴

Current FAA Regulation of Drones

Public and Commercial Operators

Drones operated by federal, state, or local agencies must obtain a certificate of authorization or waiver (COA) from the FAA. After receiving COA applications, the FAA conducts a comprehensive operational and technical review of the drone and can place limits on its operation in order to ensure its safe use in airspace.²⁵ In response to a directive in the FAA Modernization and Reform Act of 2012, the FAA recently streamlined the process for obtaining COAs, making it easier to apply on their website.²⁶ It also employs expedited procedures allowing grants for temporary COAs if needed for time-sensitive mission.²⁷

Private commercial operators must receive a special airworthiness certificate in the experimental category in order to operate.²⁸ These certificates have been issued on a limited basis for flight tests, demonstrations, and training. Presently, there is no other method of obtaining FAA approval to fly drones for commercial purposes. It appears these restrictions will be loosened in the coming

²⁰ *Id.* at § 91.119(c).

²¹ *Id.*

²² 49 U.S.C. § 40102(32).

²³ 14 C.F.R. § 91.119(d).

²⁴ *See* *People v. Sabo*, 185 Cal. App. 3d 845, 852 (1986) (“While helicopters may be operated at less than minimum altitudes so long as no hazard results, it does not follow that such operation is conducted within navigable airspace. The plain meaning of the statutes defining navigable airspace as that airspace above specified altitudes compels the conclusion that helicopters operated below the minimum are not in navigable airspace. The helicopter hovering above the surface of the land in such fashion as not to constitute a hazard to persons or property is, however, lawfully operated.”).

²⁵ *See generally* FAA “Unmanned Aircraft Systems,” available at <http://www.faa.gov/about/initiatives/uas/cert/>.

²⁶ *See* P.L. 112-95, § 334(a) (instructing the issuance of “guidance regarding the operation of public unmanned aircraft systems to ... expedite the issuance of a certificate of authorization process ...”); *see also* “Certificates of Authorization or Waiver (COA),” available at http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/aaim/organizations/uas/coa/.

²⁷ “FAA makes progress with UAS integration,” available at <http://www.faa.gov/news/updates/?newsId=68004>.

²⁸ *See* 14 C.F.R. §§ 21.191, 21.193 (experimental certificates generally); 14 C.F.R. § 91.319 (operating limitations on experimental certificate aircraft).

years, since the FAA has been instructed to issue a rulemaking that will lead to the phased-in integration of civilian unmanned aircraft into national airspace.²⁹

Recreational Users

The FAA encourages recreational users of model aircraft, which certain types of drones could fall under, to follow a 1981 advisory circular. Under the circular, users are instructed to fly a sufficient distance from populated areas and away from noise-sensitive areas like parks, schools, hospitals, or churches. Additionally, users should avoid flying in the vicinity of full-scale aircraft and not fly more than 400 feet above the surface. When flying within three miles of an airport, users should notify the air traffic control tower, airport operator, or flight service station. Compliance with these guidelines is voluntary. In the FAA Modernization and Reform Act of 2012, the FAA was prohibited from promulgating rules regarding certain kinds of model aircraft flown for hobby or recreational use. This prohibition applies if the model aircraft is less than 55 pounds, does not interfere with any manned aircraft, and is flown in accordance with a community-based set of safety guidelines. If flown within five miles of an airport, the operator of the model aircraft must notify both the airport operator and air traffic control tower.³⁰

Safe Minimum Flying Altitude

The FAA does not currently regulate safe minimum operating altitudes for drones as it does for other kinds of aircraft. This may be one way that the FAA responds to Congress's instruction to write rules allowing for civil operation of small unmanned aircraft systems in the national airspace.³¹ One possibility is for the FAA to create different classes of drones based on their size and capabilities. Larger drones that physically resemble fixed-wing aircraft could be subject to similar safe minimum operating altitude requirements whereas smaller drones could be regulated similar to helicopters.

Airspace and Property Rights

Since the popularization of aviation, courts have had to balance the need for unobstructed air travel and commerce with the rights of private property owners. The foundational case in explaining airspace ownership rights is *United States v. Causby*.³²

United States v. Causby

In *United States v. Causby*, the Supreme Court directly confronted the question of who owns the airspace above private property.³³ The plaintiffs filed suit against the U.S. government arguing a violation of the Fifth Amendment Takings Clause, which states that private property shall not "be taken for public use, without just compensation." Generally, takings suits can only be filed

²⁹ P.L. 112-95, § 332(2).

³⁰ P.L. 112-95 § 336.

³¹ See *id.* at § 332(b).

³² *United States v. Causby*, 328 U.S. 256 (1946).

³³ *Id.*

against the government when a government actor, as opposed to a private part, causes the alleged harm.³⁴

Causby owned a chicken farm outside of Greensboro, North Carolina that was located near an airport regularly used by the military. The proximity of the airport and the configuration of the farm's structures led the military planes to pass over the property at 83 feet above the surface, which was only 67 feet above the house, 63 feet above the barn, and 18 feet above the tallest tree.³⁵ While this take-off and landing pattern was conducted according to the Civil Aeronautics Authority guidelines, the planes caused "startling" noises and bright glare at night.

As the Court explained, "as a result of the noise, respondents had to give up their chicken business. As many as six to ten of their chickens were killed in one day by flying into the walls from fright. The total chickens lost in this manner was about 150.... The result was the destruction of the use of the property as a commercial chicken farm."³⁶ The Court had to determine whether this loss of property constituted a taking without just compensation.

At the outset, the Court directly rejected the common law conception of airspace ownership: "It is ancient doctrine that at common law ownership of the land extended to the periphery of the universe—*Cujus solum ejus est usque ad coelum*. But that doctrine has no place in the modern world."³⁷ The Court noted that Congress had previously declared a public right of transit in air commerce in navigable airspace and national sovereignty in the airspace.³⁸ These statutes could not be reconciled with the common law doctrine without subjecting aircraft operators to countless trespass suits. In the Court's words, "common sense revolts at the idea."³⁹

Even though it rejected the idea that the Causbys held complete ownership of the air up to the heavens, the Court still had to determine if they owned any portion of the space in which the planes flew such that a takings could occur. The government argued that flights within navigable airspace that do not physically invade the surface cannot lead to a taking. It also argued that the landowner does not own any airspace adjacent to the surface "which he has not subjected to possession by the erection of structures or other occupancy."⁴⁰

The Court did not adopt this reasoning, finding instead that "the landowner owns at least as much space above the ground as he can occupy or use in connection with the land. The fact that he does not occupy it in a physical sense—by the erection of building and the like—is not material."⁴¹ Therefore, it found that the landowner owns the airspace in the immediate reaches of the surface necessary to use and enjoy the land and invasions of this space "are in the same category as invasions of the surface."⁴² Above these immediate reaches, the airspace is part of the public

³⁴ Takings claims filed against state government actors would not be filed under the Fifth Amendment. Rather, they would arise as state constitutional claims. For more information on takings, see CRS Report RS20741, *The Constitutional Law of Property Rights "Takings": An Introduction*, by Robert Meltz.

³⁵ *Id.* at 258.

³⁶ *Id.* at 259.

³⁷ *Id.* at 260-61.

³⁸ *Id.* at 260 (citing statutes then codified at 49 U.S.C. §§ 176(a), 403).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at 264 (citing *Hinman v. Pacific Air Transport*, 84 F.2d 755 (1936)).

⁴² *Id.* at 265.

domain, but the Court declined to draw a clear line. The Court also noted that the government's argument regarding the impossibility of a taking based on flights in navigable airspace was inapplicable in this case because the flights over Causby's land were not within navigable airspace.⁴³ At the time, federal law defined navigable airspace as space above the minimum safe flying altitudes for specific areas, but did not include the space needed to take off and land. Even though these flights were not within navigable airspace, the Court seemed to suggest that if they were, the inquiry would not immediately end. Instead, the Court would then have to determine when the regulation itself, defining the navigable airspace, was valid.⁴⁴

Ultimately, in the context of a taking claim, the Court concluded that "flights over private land are not a taking, unless they are so low and so frequent to be a direct and immediate interference with the enjoyment and use of the land."⁴⁵ With regard to the Causbys' chicken farm, the Court concluded that the military flights had imposed a servitude upon the land, similar to an easement, based on the interference with the use and enjoyment of their property. Although the land did not lose all its economic value, the lower court's finding clearly established the flights led directly to a diminution in the value of the property, since it could no longer be used for its primary purpose as a chicken farm.

Post-Causby Theories of Airspace Ownership

Causby clearly abandoned the ancient idea that private landowners each owned their vertical slice of the airspace above the surface in perpetuity as incompatible with modern life. The case set up three factors to examine in a taking claim that courts still utilize today: (1) whether the planes flew directly over the plaintiff's land; (2) the altitude and frequency of the flights; and (3) whether the flights directly and immediately interfered with the plaintiff's use and enjoyment of the surface land.⁴⁶

However, it left many questions unanswered. Where is the dividing line between the "immediate reaches" of the surface and public domain airspace? Can navigable airspace intersect with the "immediate reaches" belonging to the private property? Can aircraft flying wholly within navigable airspace, as defined by federal law, ever lead to a successful takings claim? How does one assess claims based on lawfully operated aircraft, such as helicopters, flying below navigable airspace?

Subsequent cases have been brought using many different legal claims, including trespass and nuisance, as discussed below, and various ways of describing the resulting injury. Claims could include an "inverse condemnation," another way of describing a taking, or the establishment of an avigation, air, or flying easement. While these legal claims may have different names, it appears that courts use *Causby* as the starting point for analyzing all property-based challenges to

⁴³ *Id.* at 264.

⁴⁴ *Id.* at 263.

⁴⁵ *Id.* at 266.

⁴⁶ See e.g., *Andrews v. United States*, 2012 U.S. Claims LEXIS 1644, *10 (explaining that the "The United States Court of Appeals for the Federal Circuit (Federal Circuit) has derived from *Causby* three factors for consideration 'in determining whether noise and other effects from overflights ... constitute a taking....'"). But see *Argent v. United States*, 124 F.3d 1277, 1284 (1997) (finding a taking claim may be based on "a peculiarly burdensome pattern of activity, including both intrusive and non-intrusive flights").

intrusions upon airspace. Several different interpretations of *Causby* have emerged in the attempt to articulate an airspace ownership standard, a few of which are described here.

Following *Causby*, several lower courts employed a fixed-height theory and interpreted the decision as creating two distinct categories of airspace. On the one hand, the stratum of airspace that was defined in federal law as “navigable airspace” was always a part of the public domain. Therefore, flights in this navigable airspace could not lead to a successful property-right based action like a takings or trespass claim because the property owner never owned the airspace in the public domain. On the other hand, the airspace below what is defined as navigable airspace could be “owned” by the surface owner and, therefore, intrusions upon it could lead to a successful takings or property tort claim. Since this fixed-height theory of airspace ownership relies heavily on the definition of navigable airspace, the expansion of the federal definition of “navigable airspace” to include the airspace needed to take-off and land⁴⁷ greatly impacts what airspace a property owner could claim.

This strict separation between navigable airspace and the airspace a landowner can claim seems to have been disavowed by the Supreme Court. First, in dicta in *Braniff Airways v. Nebraska State Bd. of Equalization & Assessment*,⁴⁸ a case primarily dealing with the question of federal preemption of state airline regulations, the Court left open the possibility of a taking based on flights occurring in navigable airspace. It summarized *Causby* as holding “that the owner of land might recover for a taking by national use of navigable air space resulting in destruction in whole or in part of the usefulness of the land property.”⁴⁹ Next, in *Griggs v. Allegheny County* the Supreme Court found that the low flight of planes over the plaintiff’s property, taking off from and landing at a nearby airport’s newly constructed runway, constituted a taking that had to be compensated under the Fifth Amendment.⁵⁰ The noise and fear of a plane crash caused by the low overhead flights made the property “undesirable and unbearable” for residential use, making it impossible for people in the house to converse or sleep.⁵¹ The Court reached this conclusion that a taking occurred based on this injury, despite the fact that the flights were operated properly under federal regulations and never flew outside of navigable airspace.⁵² Despite this holding, some lower courts have continued to lend credence to a fixed-height ownership theory as a reasonable interpretation of *Causby*.⁵³

Another interpretation of *Causby* essentially creates a presumption of a non-taking when overhead flights occur in navigable airspace. This presumption would recognize the importance of unimpeded travel of air commerce and that Congress placed navigable airspace in the public domain. However, the presumption could be rebutted by evidence that the flights, while in navigable airspace, interfered with the owner’s use and enjoyment of the surface enough to justify compensation. As one court reasoned, “as the height of the overflight increases... the Government’s interest in maintaining sovereignty becomes weightier while the landowner’s

⁴⁷ 49 U.S.C. § 40102(32) (2012).

⁴⁸ 347 U.S. 590 (1954).

⁴⁹ *Id.* at 596.

⁵⁰ *Griggs v. Allegheny County*, 369 U.S. 84, 90 (1962).

⁵¹ *Id.* at 87.

⁵² *Id.* at 86-89.

⁵³ *See, e.g., Aaron v. United States*, 311 F.2d 798 (Ct. Cl. 1963); *Powell v. United States*, 1 Cl. Ct. 669 (1983).

interest diminishes, so that the damage showing required increases in a continuum toward showing absolute destruction of all uses of the property.”⁵⁴

Finally, some courts have concluded that the altitude of the overhead flight has no determinative impact on whether a taking has occurred. One federal court noted that the government’s liability for a taking is not impacted “merely because the flights of Government aircraft are in what Congress has declared to be navigable airspace and subject to its regulation.”⁵⁵ Under this approach, “although the navigable airspace has been declared to be in the public domain, ‘regardless of any congressional limitations, the land owner, as an incident to his ownership, has a claim to the superjacent airspace to the extent that a reasonable use of his land involves such space.’”⁵⁶ Under this theory, the court would only need to examine the effect of the overhead flights on the use and enjoyment of the land, and would not need to determine if the flight occurred in navigable airspace.

While the definition of navigable airspace impacts each theory differently, it is clear that under the current interpretation a showing of interference with the use and enjoyment of property is required. Cases have clearly established that overhead flights leading to impairment of the owner’s livelihood or cause physical damage qualify as an interference with use and enjoyment of property.⁵⁷ Additionally, flights that cause the surface to become impractical for its intended use by the current owner also satisfy the use and enjoyment requirement.⁵⁸ For example, in *Griggs*, the noise, vibration, and fear of damage caused by overhead flights made it impossible for the plaintiffs to converse with others or sleep within their house, leading to their retreat from the property, which had become “undesirable and unbearable for their residential use.”⁵⁹ Some courts have recognized a reduction in the potential resale value of the property as an interference with its use and enjoyment, even if the property continues to be suitable for the purposes for which it is currently used.⁶⁰ One court explained: “Enjoyment of property at common law contemplated the entire bundle of rights and privileges that attached to the ownership of land ... Owners of fee simple estates ... clearly enjoy not only the right to put their land to a particular present use, but also to hold the land for investment and appreciation....”⁶¹ However, other courts have rejected the idea that restrictions on uses by future inhabitants, without showing loss of property value, are relevant to a determination of the owner’s own use and enjoyment of the property.⁶²

Trespass and Nuisance Claims Against Private Actors

Although *Causby* arose from a Fifth Amendment takings claim, its articulation of airspace ownership standards is also often used in determining state law tort claims such as trespass and nuisance. These state law tort claims could be used to establish liability for overhead flights

⁵⁴ *Stephens v. United States*, 11 Cl. Ct. 352, 362 (1986).

⁵⁵ *Branning v. United States*, 654 F.2d 88, 99 (1981).

⁵⁶ *Id.* at 98-99 (citing *Palisades Citizens Association, Inc. v. C.A.B.*, 420 F.2d 188, 192 (D.C. Cir. 1969)).

⁵⁷ *See, e.g., Causby*, 328 U.S. 256.

⁵⁸ *See, e.g., Griggs*, 369 U.S. 84; *Pueblo of Sandia v. Smith*, 497 F.2d 1043 (10th Cir. 1974) (“appellant failed to show interference with actual, as distinguished from potential, use of its land.”).

⁵⁹ *Griggs*, 369 U.S. at 87.

⁶⁰ *See, e.g., Brown v. United States*, 73 F.3d 1100 (1996); *Branning*, 654 F.2d 88.

⁶¹ *Brown*, 73 F.3d 1100.

⁶² *Stephens v. United States*, 11 Cl. Ct. 352 (1986).

operated by private actors, where a lack of government involvement precludes a takings claim. Generally, trespass is any physical intrusion upon property owned by another. However, unlike with surface trespass claims, simply proving that an object or person was physically present in the airspace vertically above the landowner's property is generally not enough to establish a trespass in airspace. Since *Causby* struck down the common law idea of *ad coelum*, landowners generally do not have an absolute possessory right to the airspace above the surface into perpetuity. Instead, airspace trespass claims are often assessed using the same requirements laid out in the *Causby* takings claim. Arguably, these standards are used in property tort claims because there can be no trespass in airspace unless the property owner has some possessory right to the airspace, which was the same question at issue in *Causby*.

To allege an actionable trespass to airspace, the property owner must not only prove that the interference occurred within the immediate reaches of the land, or the airspace that the owner can possess under *Causby*, but also that its presence interferes with the actual use of his land. As one court explained, "a property owner owns only as much air space above his property as he can practicable use. And to constitute an actionable trespass, an intrusion has to be such as to subtract from the owner's use of the property."⁶³ This standard for airspace trespass was also adopted by the Restatement (Second) of Torts.⁶⁴

Nuisance is a state law tort claim that is not based on possessory rights to property, like trespass, but is rooted in the right to use and enjoy land.⁶⁵ Trespass and nuisance claims arising from airspace use are quite similar, since trespass to airspace claims generally require a showing that the object in airspace interfered with use and enjoyment of land. However, unlike trespass, nuisance claims do not require a showing that the interference actually occupied the owner's airspace. Instead, a nuisance claim can succeed even if the interference flew over adjoining lands and never directly over the plaintiff's land, as long as the flight constitutes a substantial and unreasonable interference with the use and enjoyment of the land.

Potential Liability Arising from Civilian Drone Use

The integration of drones into domestic airspace will raise novel questions of how to apply existing airspace ownership law to this new technology. How courts may apply the various interpretations of *Causby*, discussed above, to drones will likely be greatly impacted by the FAA's definition of navigable airspace for drones.

The potential for successful takings, trespass, or nuisance claims from drone use will also be impacted by the physical characteristics of the drone, especially given that current case law heavily emphasizes the impact of the flight on use and enjoyment of the surface property. Several characteristics of drones may make their operation in airspace less likely to lead to liability for drone operators than for aircraft operators. First, the noise attributed to drone use may be significantly less than noise created by helicopters or planes powered by jet engines. Second, drones commonly used for civilian purposes could be much smaller than common aircraft used today. This decreased size is likely to lead to fewer physical impacts upon surface land such as

⁶³ *Geller v. Brownstone Condominium*, 82 Ill. App. 3d 334, 336-37 (1980).

⁶⁴ RESTATEMENT (SECOND) OF TORTS § 159(2) (1965) (stating that "Flights by aircraft in the airspace above the land of another is a trespass if, but only if, (a) it enters into the immediate reaches of the airspace next to the land, and (b) it interferes substantially with the other's use and enjoyment of the land.").

⁶⁵ RESTATEMENT (SECOND) OF TORTS § 821D (1979); 2 DAN B DOBBS, ET AL. THE LAW OF TORTS § 398 (2d ed. 2011).

vibration and dust, which are common complaints arising from overhead aircraft and helicopter flights. Finally, it is unknown at this time how most drones will be deployed into flight. Will drone “airports” be used to launch the aircraft or will they take off and land primarily from individual property? If drone use remains decentralized and is not organized around an “airport,” then drones are less likely to repeatedly fly over the same piece of property, creating fewer potential takings, trespass, or nuisance claims. Additionally, the majority of drones are more likely to operate like helicopters, taking off and landing vertically, than like traditional fixed-wing aircraft. This method of takeoff reduces the amount of surface the aircraft would have to fly over before reaching its desired flying altitude, minimizing the potential number of property owners alleging physical invasion of the immediate reaches of their surface property.

Alternatively, the potential ability for drones to fly safely at much lower altitudes than fixed-wing aircraft or helicopters could lead to a larger number of property-based claims. Low-flying drones are more likely to invade the immediate reaches of the surface property, thus satisfying part of the requirement for a takings or trespass claim.

Privacy

Perhaps the most contentious issue concerning the introduction of drones into U.S. airspace is the threat that this technology will be used to spy on American citizens. With the ability to house high-powered cameras, infrared sensors, facial recognition technology, and license plate readers, some argue that drones present a substantial privacy risk.⁶⁶ Undoubtedly, the government’s use of drones for domestic surveillance operations implicates the Fourth Amendment and other applicable laws.⁶⁷ In like manner, privacy advocates have warned that private actors might use drones in a way that could infringe upon fundamental privacy rights.⁶⁸ This section will focus on the privacy issues associated with the use of drones by private, non-governmental actors. It will provide a general history of privacy law in the United States and survey the various privacy torts, including intrusion upon seclusion, the privacy tort most applicable to drone surveillance. It will then explore the First Amendment right to gather news. Application of these theories to drone surveillance will be discussed in the section titled “Congressional Response.”

⁶⁶ See Jennifer Lynch, *Are Drones Watching You?*, ELECTRONIC FRONTIER FOUNDATION (Jan. 10, 2012), <https://www.eff.org/deeplinks/2012/01/drones-are-watching-you>; M. Ryan Calo, *The Drone as Privacy Catalyst*, 64 STAN. L. REV. ONLINE 29 (Dec. 12, 2011), http://www.stanfordlawreview.org/sites/default/files/online/articles/64-SLRO-29_1.pdf.

⁶⁷ For an analysis of the Fourth Amendment implications of government drone surveillance, see CRS Report R42701, *Drones in Domestic Surveillance Operations: Fourth Amendment Implications and Legislative Responses*, by Richard M. Thompson II.

⁶⁸ See Press Release, Rep. Ed Markey, Markey Releases Discussion Draft of Drone Privacy and Transparency Legislation (Aug. 1, 2012), available at <http://markey.house.gov/press-release/markey-releases-discussion-draft-drone-privacy-and-transparency-legislation>.

Drones are already flying in U.S. airspace – with thousands more to come – but with no privacy protections or transparency measures in place. We are entering a brave new world, and just because a company soon will be able to register a drone license shouldn’t mean that company can turn it into a cash register by selling consumer information. Currently, there are no privacy protections or guidelines and no way for the public to know who is flying drones, where, and why. The time to implement privacy protections is now.

Id.

Early Privacy Jurisprudence

Although early Anglo-Saxon law lacked express privacy protections, property law and trespass theories served as proxy for the protection of individual privacy. Lord Coke pronounced in 1605 that “the house of everyone is to him as his castle and fortress, as well for his defence against injury and violence, as for his repose[.]”⁶⁹ This proposition that individuals are entitled to privacy while in their homes crossed the Atlantic with the colonists and appeared prominently in early revolutionary thinking.⁷⁰ In one early American common law decision, the court noted that “[t]he law is clearly settled, that an officer cannot justify the breaking open an outward door or window, in order to execute process in a civil suit; if he doth, he is a trespasser.”⁷¹ In cases lacking physical trespass, prosecutors relied on an eavesdropping theory, which protected the privacy of individuals’ conversations while in their home.⁷²

These century-old theories of trespass and eavesdropping, however, failed to keep up with a rapidly changing society fueled by advancing technologies. As with today’s celebrity-obsessed society, late-19th century society experienced the birth and spread of “yellow journalism,” a new media aimed at emphasizing the “curious, dramatic, and unusual, providing readers a ‘palliative of sin, sex, and violence.’”⁷³ Faster presses and instantaneous photography enabled journalists to exploit and spread gossip.⁷⁴ Louis D. Brandeis (then a private attorney) and Samuel Warren were bothered with the press’s constant intrusions into the private affairs of prominent Bostonians.⁷⁵ In 1890, they published a seminal law review article formulating a new legal theory—the right to be let alone.⁷⁶ Brandeis and Warren understood that existing tort doctrines such as trespass and libel were insufficient to protect privacy rights, as “only a part of the pain, pleasure, and profit of life lay in physical things.”⁷⁷ They noted that this new right to privacy derived not from “the principle of private property, but that of an inviolate personality.”⁷⁸ The authors observed that “instantaneous photographs and newspaper enterprise have invaded the sacred precincts of private and domestic life; and numerous mechanical devices threaten to make good the prediction that ‘what is whispered in the closet shall be proclaimed from the house-tops.’”⁷⁹ Although this new theory had its detractors,⁸⁰ it found its way into the common law of several states.⁸¹

⁶⁹ *Semayne’s Case*, 5 Co. Rep. 91 (K. B. 1604).

⁷⁰ In contesting the use of general warrants by officials of the British Crown, known then as writs of assistance, James Otis argued that “one of the most essential branches of English liberty, is the freedom of one’s house. A man’s house is his castle; and while he is quiet, he is as well guarded as a prince in his castle.” II LEGAL PAPERS OF JOHN ADAMS 142.

⁷¹ *See State v. Armfield*, 9 N.C. 246, 247 (1822).

⁷² Note, *The Right to Privacy in Nineteenth Century America*, 94 HARV. L. REV. 1892, 1896 (1981). In an early case from Pennsylvania, in recognizing eavesdropping as an indictable offense, the court noted: “Every man’s home is his castle, where no man has a right to intrude for any purpose whatever. No man has a right to pry into your secrecy in your own house.” *Commonwealth v. Lovett*, 4 Pa. L.J. Rpts. (Clark) 226, 226 (Pa. 1831); *see also State v. Williams*, 2 Tenn. 108, 108 (1808) (recognizing eavesdropping as an indictable offense).

⁷³ Ken Gromley, *One Hundred Years of Privacy*, 1992 WIS. L. REV. 1335, 1351 (1992) (quoting EDWIN EMERY & MICHAEL C. EMERY, *THE PRESS AND AMERICA: AN INTERPRETATIVE HISTORY OF THE MASS MEDIA* 349-50 (3d ed. 1972)).

⁷⁴ *Id.* at 1350-51.

⁷⁵ William M. Prosser, *Privacy*, 48 Cal. L. Rev. 383, 383 (1960).

⁷⁶ Louis D. Brandeis & Samuel D. Warren, *The Right to Privacy*, 4 HARV. L. REV. 193, 205 (1890).

⁷⁷ *Id.* at 195.

⁷⁸ *Id.* at 205.

⁷⁹ *Id.* at 195.

⁸⁰ Herbert Spencer Hadley, *Right to Privacy*, 3 N.W. L. REV. 1, 3-4 (1894) (“The writer believes that the right to (continued...)”).

Privacy Torts

In 1939, the First Restatement of Torts (a set of model rules intended for adoption by the states) created a general tort for invasion of privacy.⁸² By 1940, a minority of states had adopted some right of privacy either by statute or judicial decision, and six states had expressly refused to adopt such a right.⁸³ Twenty years later, Dean William Prosser surveyed the case law surrounding this right and concluded that the right to privacy entailed four distinct (yet, sometimes overlapping) rights: (1) intrusion upon seclusion; (2) public disclosure of private facts; (3) publicity which puts the target in a false light; and (4) appropriation of one's likeness.⁸⁴ These four categories were incorporated into the Restatement (Second) of Torts.⁸⁵

Section 652B of the Restatement (Second) of Torts creates a cause of action for intrusion upon seclusion,⁸⁶ the privacy tort most likely to apply to drone surveillance.⁸⁷ It has been adopted either by common law or statute in an overwhelming majority of the states.⁸⁸ Section 652B provides: "One who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person."⁸⁹ Courts have developed a set of rules for applying § 652B. First, it requires an objective person standard, testing whether a person of "ordinary sensibilities" would be offended by the alleged invasion.⁹⁰ Thus, someone with an idiosyncratic sensitivity—say, an aversion to cameras—could not satisfy this standard by simply having his photograph taken. Likewise, the intrusion must not only be offensive, but "highly offensive,"⁹¹ or as one court put it, "outrageously unreasonable conduct."⁹² Generally, a single incident will not suffice; instead, the intrusion must be "repeated with such persistence and frequency as to amount to a course of hounding" and "becomes a burden to his existence...."⁹³ However, in a few cases a single intrusion was adequate.⁹⁴ The invasion of

(...continued)

privacy does not exist; that the arguments in its favor are based on a mistaken understanding of the authorities cited in its support[.]").

⁸¹ Compare *Roberson v. Rochester Folding Box Co.*, 171 N.E. 538, 542 (N.Y. 1902) (declining to adopt right of privacy), with *Pavesich v. New England Life Ins. Co.*, 50 S.E. 68 (Ga. 1905) (recognizing a right to privacy).

⁸² RESTATEMENT (FIRST) OF TORTS § 867 (1939).

⁸³ See Louis Nizer, *Right of Privacy – A Half Century's Development*, 39 MICH. L. REV. 526, 529-30 (1940).

⁸⁴ Prosser, *supra* note 75, at 385.

⁸⁵ RESTATEMENT (SECOND) OF TORTS §§ 652B (intrusion upon seclusion), 652C (appropriation of name or likeness), 652D (publicity given to private fact), 652E (publicity placing person in false light).

⁸⁶ *Id.* at § 652B.

⁸⁷ Because the use of drones for surveillance primarily concerns the collection, and not necessarily the dissemination, of information, this section will focus on the tort of intrusion upon seclusion, which has no publication requirement for recovery. *Id.* cmt. a.

⁸⁸ North Dakota and Wyoming are the only states not to adopt the privacy tort of intrusion upon seclusion. See Tigran Palyan, *Common Law Privacy in a Not So Common World: Prospects for the Tort of Intrusion Upon Seclusion in Virtual Worlds*, 38 SW. L. REV. 167, 180 n.106 (2008).

⁸⁹ *Id.*

⁹⁰ *Shorter v. Retail Credit Co.*, 251 F. Supp. 329, 322 (D.S.C. 1966).

⁹¹ RESTATEMENT (SECOND) OF TORTS § 652B (emphasis added).

⁹² *N.O.C., Inc. v. Schaefer*, 484 A.2d 729, 733 (N.J. Super. Ct. Law Div. 1984).

⁹³ RESTATEMENT (SECOND) OF TORTS § 652B cmt. d.

⁹⁴ See, e.g., *Miller v. National Broadcasting Co.*, 187 Cal. App. 3d 1463 (Cal. Ct. App. 1986) (videotaping man in his (continued...))

privacy must be intentional, meaning the defendant must desire that the intrusion would occur, or as with other torts,⁹⁵ knew with a substantial certainty that such an invasion would result from his actions.⁹⁶ An accidental intrusion is not actionable. Finally, in some states, the intrusion must cause mental suffering, shame, or humiliation to permit recovery.⁹⁷

A review of the case law demonstrates that the location of the target of the surveillance is, in many cases, determinative of whether someone has a viable claim for intrusion upon seclusion. For the most part, conducting surveillance of a person while within the confines of his home will constitute an intrusion upon seclusion.⁹⁸ The illustrations to § 652B offer an example of a private detective who photographs an individual while in his home with a telescopic camera as a viable claim.⁹⁹ Likewise, as one court observed, “when a picture is taken of a plaintiff while he is in the privacy of his home, ... the taking of the picture may be considered an intrusion into the plaintiff’s privacy just as eavesdropping or looking into his upstairs windows with binoculars are considered an invasion of his privacy.”¹⁰⁰

The likelihood of a successful claim is diminished if the surveillance is conducted in a public place. The comments to § 652B explain that there is generally no liability for photographing or observing a person while in public “since he is not then in seclusion, and his appearance is public and open to the public eye.”¹⁰¹ Likewise, Prosser observed:

On the public street, or in any other public place, the plaintiff has no right to be alone, and it is no invasion of his privacy to do no more than follow him about. Neither is it such an invasion to take a photograph in such a place, since this amounts to nothing more than making a record, not differing essentially from a full written description, of a public sight which anyone present would be free to see.¹⁰²

The case law also supports this proposition. The Alabama Supreme Court dismissed a claim of wrongful intrusion against operators of a race track who photographed the plaintiffs while they were in the “winner’s circle” at the track.¹⁰³ Similarly, a federal district court dismissed a claim by a husband and wife who had been photographed by Forbes Magazine while waiting in line at the Miami International Airport as it was taken in “a place open to the general public.”¹⁰⁴ Likewise, a Vietnam veteran lost a claim for invasion of privacy based on photographs that depicted him and

(...continued)

home while being resuscitated after having suffered a heart seizure); *Nader v. General Motors Corp.*, 25 N.Y.2d 560, 570 (1970) (surveilling plaintiff in bank in an “overzealous” manner).

⁹⁵ RESTATEMENT (SECOND) OF TORTS § 652B.

⁹⁶ See *DOBBS ET AL.*, *supra* note 65, at § 29.

⁹⁷ *DeAngelo v. Fortney*, 515 A.2d 594, 596 (Pa. Sup. 1986); *Burns v. Masterbrand Cabinets, Inc.*, 369 Ill. App. 3d 1006, 1012 (Ill. App. Ct. 2007).

⁹⁸ See, e.g., *Wolfson v. Lewis*, 924 F. Supp. 1413 (E.D. Penn. 1996).

⁹⁹ RESTATEMENT (SECOND) OF TORTS § 652B cmt. b, illus. 2.

¹⁰⁰ *Lovgren v. Citizens First Nat. Bank of Princeton*, 534 N.E.2d 987 (Ill. 1989); see also *Souder v. Pendleton Detectives*, 88 So.2d 716, 718 (La. Ct. App. 1956) (peeping into plaintiff’s widows); *Egan v. Schmock*, 93 F. Supp. 2d 1090, 1094-95 (N.D. Cal. 2000) (filming plaintiff and family while in their home).

¹⁰¹ RESTATEMENT (SECOND) OF TORTS § 652B cmt. c.

¹⁰² Prosser, *supra* note 75, at 392.

¹⁰³ *Schifano v. Green County*, 624 So. 2d 178 (Ala. 1993).

¹⁰⁴ *Fogel v. Forbes*, 500 F. Supp. 1081, 1084, 1087 (E.D. Pa. 1980).

other soldiers during a combat mission in Vietnam—again, a public setting.¹⁰⁵ Other examples include the recording of license plate numbers of cars parked in a public parking lot¹⁰⁶ and photographing a person while walking on a public sidewalk.¹⁰⁷

Indeed, even plaintiffs who were videotaped or photographed while on their own property have generally been unsuccessful in their privacy claims so long as they could be viewed from a public vantage point. Rejecting one plaintiff's claim for intrusion upon seclusion, the Supreme Court of Oregon held that even though the investigators trespassed on the plaintiff's property to film him, the investigation did not "constitute an unreasonable surveillance 'highly offensive to a reasonable man[,]'"¹⁰⁸ as the plaintiff could have been viewed from the road by his neighbors or passersby.¹⁰⁹ In another case, the wife of a prominent Puerto Rican politician sought damages from a newspaper for invasion of privacy allegedly committed when an agent of the newspaper photographed her house as part of a news story about her husband.¹¹⁰ The court dismissed her claim as the photographers were not "unreasonably intrusive," and the photographs depicted only the outside of the home and no persons were photographed.¹¹¹ Similarly, in one case a couple sued a cell phone company for intrusion upon seclusion when the company's workers looked onto their property each time they serviced a nearby cell tower.¹¹² The court rejected their claim, holding that "[t]he mere fact that maintenance workers come to an adjoining property as part of their work and look over into the adjoining yard is legally insufficient evidence of highly offensive conduct."¹¹³ There are many other examples.¹¹⁴

However, there have been some successful claims for intrusion upon seclusion involving surveillance conducted in public.¹¹⁵ The comments to § 652B explain: "Even in a public place, however, there may be some matters about the plaintiff, such as his underwear or lack of it, that are not exhibited to the public gaze, and there may still be invasion of privacy when there is intrusion upon these matters."¹¹⁶ One of the most famous cases concerning this "public gaze" theory involved a suit for invasion of privacy against a newspaper when it published a picture of

¹⁰⁵ *Tellado v. Time-Life*, 643 F. Supp. 904, 907 (D.N.J. 1986).

¹⁰⁶ *See International Union v. Garner*, 601 F. Supp. 187, 191-92 (M.D. 1985); *Tedeschi v. Reardon v.* 5 F. Supp. 2d 40, 46 (D. Mass. 1998).

¹⁰⁷ *Jackson v. Playboy Enterprises, Inc.*, 574 F. Supp. 10, 13 (S.D. Ohio 1983).

¹⁰⁸ *McClain v. Boise Cascade Corp.*, 271 OR 549, 556 (1975). It should be noted that the court also relied on previous case law which held that one who seeks damages for alleged injuries "waives his right to privacy to the extent of a reasonable investigation." *Id.* at 554-555.

¹⁰⁹ *Id.* at 556.

¹¹⁰ *Mojica Escobar v. Roca*, 926 F. Supp. 30, 32-33 (D.P.R. 1996).

¹¹¹ *Id.* at 35 (citing *Dopp v. Fairfax Consultants, Ltd.*, 771 F. Supp. 494, 497 (D.P.R. 1990)).

¹¹² *GTE Mobilnet of South Texas, LTD. Partnership v. Pascouet*, 61 S.W. 3d 599, 605 (Tex. App. 2001).

¹¹³ *Id.* at 618.

¹¹⁴ *See, e.g., Aisenon v. American Broadcasting Co.*, 220 Cal. App. 3d 146, 162-63 (1990) (holding that broadcast of plaintiff while in his driveway and car was not an intrusion upon seclusion); *Wehling v. Columbia Broadcasting System*, 721 F.2d 506, 509 (5th Cir. 1983) (holding that broadcast of the outside of plaintiff's home taken from public street was not an invasion of privacy); *Munson v. Milwaukee Bd. of School Directors*, 969 F.2d 266, 271 (7th Cir. 1992) (same).

¹¹⁵ *See Kramer v. Downey*, 684 S.W. 2d 524, 525 (Tex. Ct. App. 1984) ("[W]e now hold that the right to privacy is broad enough to include the right to be free of those willful intrusions into one's personal life at home and at work which occurred in this case.").

¹¹⁶ RESTATEMENT (SECOND) OF TORTS § 652B cmt. c.

the plaintiff with her dress blown up as she was leaving a fun house at a county fair.¹¹⁷ In upholding the plaintiff's claim, the court observed: "To hold that one who is involuntarily and instantaneously enmeshed in an embarrassing pose forfeits her right of privacy merely because she happened at the moment to be part of a public scene would be illogical, wrong, and unjust."¹¹⁸ In *Huskey v. National Broadcasting Co. Inc.*, a prisoner sued NBC, a television broadcasting company, alleging that by filming him without consent while he was working out in the exercise yard at the prison, NBC invaded his privacy.¹¹⁹ NBC countered that depictions of persons in a "publicly visible area" could not support the claim for invasion of seclusion.¹²⁰ Ultimately, the court permitted the prisoner's claim to go forward, observing that "[o]f course [the prisoner] could be seen by guards, prison personnel and inmates, and obviously he was in fact seen by NBC's camera operator. But the mere fact a person can be seen by others does not mean that person cannot legally be 'secluded.'"¹²¹ Although relief is available for certain cases of public surveillance, recovery seems to be the exception rather than the norm.¹²²

First Amendment and Newsgathering Activities

Based on the foregoing discussion, safeguarding privacy from intrusive drone surveillance is clearly an important societal interest. However, this interest must be weighed against the public's countervailing concern in securing the free flow of information that inevitably feeds the "free trade of ideas."¹²³ Unmanned aircraft can improve the press and the public's ability to gather news: they can operate in dangerous areas without putting a human operator at risk of danger; can carry sophisticated surveillance technology; can fly in areas not currently accessible by traditional aircraft; and can stay in flight for long durations. However, challenges arise in attempting to find an appropriate balance between this interest in newsgathering and the competing privacy interests at stake.

The First Amendment to the United States Constitution provides that "Congress shall make no law ... abridging the freedom of speech, or of the press...."¹²⁴ The Court has construed this phrase to cover not only traditional forms of speech, such as political speeches or polemical articles, but also conduct that is "necessary for, or integrally tied to, acts of expression,"¹²⁵ such as distribution of political literature¹²⁶ or door-to-door solicitation.¹²⁷ Additionally, the Court has pulled within

¹¹⁷ *Daily Times Democrat v. Graham*, 276 Ala. 380, 381 (1964).

¹¹⁸ *Id.* at 383.

¹¹⁹ *Huskey v. National Broadcasting Co., Inc.*, 632 F. Supp. 1282, 1285 (1986).

¹²⁰ *Id.* at 1286.

¹²¹ *Id.* at 1287-88 (emphasis in original).

¹²² Jennifer R. Scharf, *Shooting for the Stars: A Call for Federal Legislation to Protect Celebrities' Privacy Rights*, 3 BUFF. INTELL. PROP. L.J. 164, 183 (2006) ("Modifying intrusion to apply in public places would be necessary in order to provide any relief.").

¹²³ *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting). Justice Stevens described this as a "conflict between interests of the highest order—on the one hand, the interest in the full and free dissemination of information concerning public issues, and, on the other hand, the interest in individual privacy and, more specifically, in fostering private speech." *Bartnicki v. Vopper*, 532 U.S. 514, 518 (2001).

¹²⁴ U.S. CONST. amend. I.

¹²⁵ Barry P. McDonald, *The First Amendment and the Free Flow of Information: Towards a Realistic Right to Gather Information in the Information Age*, 65 OHIO ST. L. J. 249, 260 (2004).

¹²⁶ *Lovell v. City of Griffin*, 3030 U.S. 444, 452 (1938).

¹²⁷ *Watchtower Bible and Tract Soc'y of New York, Inc. v. Vill. of Stratton* 536 U.S. 150, 168-69 (2002).

the First Amendment's protection other conduct that is not expressive in itself, but is "necessary to accord full meaning and substance to those guarantees."¹²⁸ For example, the Court has said that the public is entitled to a "right to receive news" as a correlative of the right to free expression.¹²⁹

Like this right to receive news, the Court has intimated in a series of cases beginning in the 1960s that the public and the press may be entitled to a *right to gather news* under the First Amendment. Initially, in *Zemel v. Rusk*, the Court observed that the right "to speak and publish does not carry with it the unrestrained right to gather information."¹³⁰ The Court's reluctance to extend this right may have signaled its concern that an unconditional newsgathering right could subsume almost any government regulation that places a slight restriction on the ability to gather news.¹³¹ However, several years later the Court indicated in *Branzburg v. Hayes* that although laws of general applicability apply equally to the press as to the general public, that "[n]ews gathering is not without its First Amendment protections,"¹³² and that "without some protection for seeking out the news, freedom of the press could be eviscerated."¹³³ The Court, however, failed to clearly delineate the parameters of such a protection. In the Court's most recent case, *Cohen v. Cowles Media Co.*, the Court adhered to the "well-established line of decisions holding that generally applicable laws do not offend the First Amendment simply because their enforcement against the press has incidental effects on its ability to gather and report the news."¹³⁴ The Court noted that it is "beyond dispute 'that the publisher of a newspaper has no special immunity from the application of general laws. He has no special privilege to invade the rights of others.'"¹³⁵

The lower federal courts have explored this right to gather news in the context of photographing or video recording. In *Dietemann v. Time, Inc.* the Ninth Circuit Court of Appeals explored the extent to which reporters could use surreptitious means to carry out their newsgathering.¹³⁶ There, defendants Time Life sent undercover reporters to a man's house where he claimed to use minerals and other materials to heal the sick. The reporters used a hidden camera to take pictures of the man, and a hidden microphone to transmit the conversation to other operatives. The defendants claimed that the First Amendment's right to freedom of the press shielded its newsgathering activities. In rejecting this claim, the court observed that although an individual accepts the risk when inviting a person into his home that the visitor may repeat the conversation to a third party, "he does not and should not be required to take the risk that what is heard and seen will be transmitted by photograph or recording, or in our modern world, in full living color and hi-fi to the public at large or to any segment of it that the visitor may select."¹³⁷ The court held that "hidden mechanical contrivances" are not indispensable tools of investigative reporting, and that the "First Amendment has never been construed to accord newsman immunity from torts

¹²⁸ McDonald, *supra* note 68, at 260.

¹²⁹ Kleindienst v. Mandel, 408 U.S. 753, 762–63 (1972).

¹³⁰ Zemel v. Rusk, 381 U.S. 1, 17 (1965).

¹³¹ *Id.* at 16–17 ("There are few restrictions on action which could not be clothed by ingenious argument in the garb of decreased data flow. For example, the prohibition of unauthorized entry into the White House diminishes the citizen's opportunities to gather information he might find relevant to his opinion of the way the country is being run, but that does not make entry into the White House a First Amendment right.").

¹³² Branzburg v. Hayes, 408 U.S. 665, 707 (1972).

¹³³ *Id.* at 681.

¹³⁴ *Id.* at 669.

¹³⁵ Cohen v. Cowles Media Co., 501 U.S. 663, 666 (1991).

¹³⁶ Dietemann v. Time, Inc., 449 F.2d 245 (9th Cir. 1971).

¹³⁷ *Id.* at 249.

or crimes committed during the course of newsgathering.”¹³⁸ In *Galella v. Onassis*, Galella, a self-proclaimed “paparazzo,” constantly followed around, harassed, and photographed Jacqueline Kennedy Onassis and her children.¹³⁹ As part of an ongoing lawsuit, Onassis sued Galella for, *inter alia*, invasion of her and her family’s privacy. Galella argued that he was entitled to the absolute “wall of immunity” that protects newsmen under the First Amendment. The Second Circuit Court of Appeals quickly rejected this absolutist position: “There is no such scope to the First Amendment right. Crimes and torts committed in news gathering are not protected. There is no threat to a free press in requiring its agents to act within the law.”¹⁴⁰ By contrast, the Seventh Circuit in *Desnick v. American Broadcast Companies, Inc.* held that surreptitious recording was not a privacy invasion because the target of the surveillance was a party to the conversation, thereby vitiating any claim to privacy in those conversations.¹⁴¹

Congressional Response

If Congress chooses to act, it could create privacy protections to protect individuals from intrusive drone surveillance conducted by private actors. Such proposals would be considered in the context of the First Amendment rights to gather and receive news. Several bills were introduced in the 112th Congress that would regulate the private use of drones. Additionally, there are other measures Congress could adopt.

In the 112th Congress, Representative Ed Markey introduced the Drone Aircraft Privacy and Transparency Act of 2012 (H.R. 6676).¹⁴² This bill would amend the FAA Modernization and Reform Act of 2012 to create a comprehensive scheme to regulate the private use of drones, including data collection requirements and enforcement mechanisms. First, this bill would require the Secretary of Transportation, with input from the Secretary of Commerce, the Chairman of the Federal Trade Commission, and the Chief Privacy Officer of the Department of Homeland Security, to study any potential threats to privacy protections posed by the introduction of drones in the national airspace. Next, the bill would prohibit the FAA from issuing a license to operate a drone unless the application for such use included a “data collection statement.” This statement would require the following items: a list of individuals who would have the authority to operate the drone; the location in which the drone will be used; the maximum period it will be used; and whether the drone would be collecting information about individuals. If the drone will be used to collect personal information, the statement must include the circumstances in which such information will be used; the kinds of information collected and the conclusions drawn from it; the type of data minimization procedures to be employed; whether the information will be sold, and if so, under what circumstances; how long the information would be stored; and procedures for destroying irrelevant data. The statement must also include information about the possible impact on privacy protections posed by the operation under that license and steps to be taken to mitigate this impact. Additionally, the statement must include the contact information of the drone operator; a process for determining what information has been collected about an individual; and a process for challenging the accuracy of such data. Finally, the FAA would be required to post the data collection statement on the Internet.

¹³⁸ *Id.*

¹³⁹ *Galella v. Onassis*, 487 F.2d 986, 991-92 (2d Cir. 1973).

¹⁴⁰ *Id.* at 996-97 (internal citations omitted).

¹⁴¹ *Desnick v. American Broadcast Corporation*, 44 F.3d 1345, 1353 (7th Cir. 1995).

¹⁴² H.R. 6676, 112th Cong. 2d Sess. (2012).

H.R. 6676 includes several enforcement mechanisms. First, the FAA may revoke any license of a user that does not comply with these requirements. The Federal Trade Commission would have the primary authority to enforce the data collection requirements just stated. Additionally, the Attorney General of each state, or an official or agency of a state, is empowered to file a civil suit if there is reason to believe that the privacy interests of residents of that state have been threatened or adversely affected. H.R. 6676 would also create a private right of action for a person injured by a violation of this legislation.

Representative Ted Poe introduced the Preserving American Privacy Act of 2012 (H.R. 6199).¹⁴³ This bill would prevent any private actor from using a drone to conduct surveillance on any other private person without the consent of that other person. This ban on the private use of drones to record other private persons could present First Amendment concerns. First, a reviewing court would, in all likelihood, test whether this ban constituted a rule of general applicability under the *Cohen* and *Branzburg* line of cases.¹⁴⁴ In *Bartnicki v. Vopper*, the Supreme Court held that the wiretapping laws in question were of general applicability.¹⁴⁵ The Court observed that the statutes were designed to protect privacy and did not distinguish based on the content of the intercepted conversation. Instead, the communications were “singled out by virtue of the fact that they were illegally intercepted—by virtue of the source, rather than the subject matter.”¹⁴⁶ This same argument could shield H.R. 6199 from a First Amendment challenge. Its purpose is to protect privacy,¹⁴⁷ and it does not distinguish between the subject matter of the drone surveillance, but instead bans any instance of private surveillance when the target has not consented to such monitoring. Additionally, this bill does not curtail the freedom to *publish* information,¹⁴⁸ but instead restricts the methods of collection. The public or media would have other avenues for obtaining the information sought. On the other hand, this measure could hinder the free flow of information, including coverage of newsworthy events, in contradiction to public’s right to receive news and the Supreme Court’s dicta in *Branzburg* that “[n]ews gathering is not without its First Amendment protections,”¹⁴⁹ and that “without some protection for seeking out the news, freedom of the press could be eviscerated.”¹⁵⁰

Additionally, Congress could create a cause of action for surveillance conducted by drones similar to the intrusion upon seclusion tort provided under Restatement § 652B.¹⁵¹ How would a

¹⁴³ H.R. 6199, 112th Cong. 2d Sess. (2012).

¹⁴⁴ See “First Amendment and Newsgathering Activities,” *supra*.

¹⁴⁵ *Bartnicki v. Hopper*, 532 U.S. 514, 526 (2001).

¹⁴⁶ *Id.*

¹⁴⁷ See Poe: Congress must Preserve American Privacy, http://poe.house.gov/index.php?option=com_content&view=article&id=8758:poe-congress-must-preserve-american-privacy-&catid=104:press-releases (“The bill seeks to ensure the privacy of American citizens by establishing specific guidelines about when and for what purposes law enforcement agencies and private individuals can use drones.”)

¹⁴⁸ See *Associated Press v. National Labor Relations Board*, 301 U.S. 103, 133 (1937) (applying the National Labor Relations Act to the Associated press, the Court noted that the regulation in no way “circumscribes the full freedom and liberty of the [A.P.] to publish the news as it desires it published”).

¹⁴⁹ *Branzburg v. Hayes*, 408 U.S. 665, 707 (1972).

¹⁵⁰ See *id.* at 707.

¹⁵¹ As with the enactment of any federal statute, Congress must act within one of its constitutionally delegated powers when creating a federal privacy tort or a crime based on intrusion of privacy. It would appear that Congress could regulate this area under its Commerce Clause power, U.S. Const. art. I, § 8, cl. 3, which it acts under when regulating similar federal airspace issues. See *Braniff Airways v. Nebraska Bd. of Equalization and Assessment*, 347 U.S. 590 (1954); *United States v. Helsley*, 615 F.2d 784 (9th Cir. 1979).

court assess whether drone surveillance violated this type of tort? First, generally speaking, the location of the search would be determinative of whether a person is entitled to an expectation of privacy. Although courts have posited that the common law, like the Fourth Amendment, is intended to “protect people, not places[.]”¹⁵² the *location* of an alleged intrusion factors heavily in a privacy analysis. The greatest chance for liability occurs when a person photographs or videotapes another while in the seclusion of his home. While technology has increasingly shrunk other spheres of privacy in the digital age, the home is still accorded significant legal protection. Using a drone to peer inside the home of another—whether looking through a window or utilizing extra-sensory technology such as thermal imaging—would likely constitute an intrusion upon seclusion. Moving from the home to a public space, or even a space on private property where one can be seen from a public vantage point, significantly reduces the chance of tort liability. However, certain instances of highly offensive surveillance in public may be actionable.

This leads to the second factor that will inform a reviewing court’s analysis: the degree of offensiveness of the surveillance. The Ninth Circuit Court of Appeals, applying California law, observed that, in determining offensiveness, “common law courts consider, among other things: ‘the degree of intrusion, the context, conduct and circumstances surrounding the intrusion as well as the intruder’s motives and objectives, the setting into which he intrudes, and the expectations of those whose privacy is invaded.’” Several of these factors—especially, the context of the intrusion and the motive of the intruder—are fact intensive and require application in a particular case to fully understand. However, some generalizations can be made. The cases discussed above that did find an intrusion upon seclusion in a public place required highly offensive activity, such as closely following another person for an extended period or photographing another in a highly embarrassing shot. Likewise, a court might recognize liability if one were to use a drone to follow another for an extended period of time, particularly at a close distance. It is not clear, however, whether knowledge of being surveilled makes the monitoring more or less offensive. For example, one court seemed to rely on the fact that the defendant was unaware that her house was being photographed to hold that she did not have a viable privacy claim.¹⁵³ A drone flying at several thousand feet may not significantly disturb the target of the surveillance and could fall within this rationale. Nevertheless, filming someone in a compromising or embarrassing situation without his knowledge can be equally offensive. Here, the facts of the particular case would determine liability.

Congress could also create a privacy statute tailored to drone use similar to the anti-voyeurism statutes, or “Peeping Tom” laws, enacted in many states.¹⁵⁴ These laws prohibit persons from surreptitiously filming others in various circumstances and places.¹⁵⁵ Some states prohibit surreptitious surveillance of a person while on private property, usually a private residence.¹⁵⁶

¹⁵² Pearson v. Dodd, 410 F.2d 701, 704 (D.C. Cir. 1969) (quoting Katz v. United States, 389 U.S. 347, 351 (1967)).

¹⁵³ Mojica Escobar v. Roca, 926 F. Supp. 30, 35 (D.P.R. 1996).

¹⁵⁴ Federal law does prohibit certain acts of voyeurism on federal property. Section 1801, Title 18 provides: “Whoever, in the special maritime and territorial jurisdiction of the United States, has the intent to capture an image of a private area of an individual without their consent, and knowingly does so under circumstances in which the individual has a reasonable expectation of privacy, shall be fined under this title or imprisoned not more than one year, or both.” 18 U.S.C. § 1801(a). As discussed in note 151, *supra*, it appears Congress would have the authority to extend this section to voyeurism committed not only on federal property but that committed from federal airspace.

¹⁵⁵ Timothy J. Hortstmann, *Protecting Traditional Privacy Rights in Brave New Digital World: The Threat Posed by Cellular Phone-Cameras and What States Should Do to Stop It*, 111 PENN. ST. L. REV. 739, 742 (2007).

¹⁵⁶ See, e.g., GA. CODE ANN. § 16-11-61; MONT. CODE ANN. § 45-5-223.

Nevada employs this model, prohibiting a person from entering the property of another with the intent to peep through a window of the building.¹⁵⁷ Likewise, New Jersey prohibits a person from peering into the window of the dwelling of another “under circumstances in which a reasonable person in the dwelling would not expect to be observed.”¹⁵⁸ Other states require a prurient intent when conducting the surveillance. Under Washington State’s statute, a person commits the crime of voyeurism if, for the purpose of arousing or gratifying his sexual desire, he films or photographs (1) a person in a place where he or she would expect privacy; or (2) the intimate areas of another person, whether he or she is in a public or private place.¹⁵⁹

Similarly, Congress could adopt an “anti-paparazzi” statute, like that enacted in California, to prevent intrusive drone surveillance.¹⁶⁰ In fact, Congress considered a similar measure in the 105th Congress. The Privacy Protection Act of 1998 and the Personal Intrusion Act of 1998 would have made it unlawful to persistently follow or chase another person for the purpose of obtaining a visual image of that person if the plaintiff met the following elements: (1) the image was transferred in interstate commerce or the person taking the photograph traveled in interstate commerce; (2) the person had a reasonable expectation of privacy from such intrusion; (3) the person feared death or bodily injury from being chased; and (4) the taking of the image was for commercial purposes.¹⁶¹ Also, these bills would have created a civil remedy for an individual whose privacy was intruded upon. Congress could use this model to make it unlawful to persistently monitor another person using drone surveillance.

Related Legal Issues

In addition to the legal issues described above, there are a host of other issues that may arise when introducing drones into United States national airspace system.

Right to Protect Property from Trespassing Drones. There may be instances where a landowner is entitled to protect his property from intrusion by a drone. Under Restatement (Second) of Torts § 260, “one is privileged to commit an act which would otherwise be a trespass to a chattel or a conversion if the act is, or is reasonably believed to be, necessary to protect the actor’s land or chattels or his possession of them, and the harm inflicted is not unreasonable as compared with the harm threatened.”¹⁶² What this means is, in certain instances, a landowner would not be liable to the owner of a drone for damage necessarily or accidentally resulting from removing it from his property. However, there appear to be no cases where a landowner was

¹⁵⁷ NEV. REV. STAT. § 200.603.

¹⁵⁸ N.J. STAT. ANN. § 2C:18-3c.

¹⁵⁹ WASH. REV. CODE § 9A.44.115; *see also* CAL. PENAL CODE § 647; R.I. GEN. LAWS § 11-64-2.

¹⁶⁰ California Civil Code § 1708.8 provides:

A person is liable for constructive invasion of privacy when the defendant attempts to capture, in a manner that is offensive to a reasonable person, any type of visual image, sound recording, or other physical impression of the plaintiff engaging in a personal or familial activity under circumstances in which the plaintiff had a reasonable expectation of privacy, through the use of a visual or auditory enhancing device, regardless of whether there is a physical trespass, if this image, sound recording, or other physical impression could not have been achieved without a trespass unless the visual or auditory enhancing device was used.

¹⁶¹ H.R. 3224, H.R. 2448, 105th Cong., 2d sess. (1998).

¹⁶² RESTATEMENT (SECOND) OF TORTS § 260.

permitted to use force to prevent or remove an aircraft from his property. Additionally, as discussed above, determining whether a drone in flight is trespassing upon one's property may be unusually challenging.

Stalking, Harassment, and Other Crimes. Traditional crimes such as stalking, harassment, voyeurism, and wiretapping may all be committed through the operation of a drone. As drones are further introduced into the national airspace, courts will have to work this new form of technology into their jurisprudence, and legislatures might amend these various statutes to expressly include crimes committed with a drone.

Wiretap Laws. Under the federal wiretap statute, it is unlawful to intentionally intercept an "oral communication"¹⁶³ by a person "exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation...."¹⁶⁴ Currently, commercial microphones can record sounds upwards of 300 feet.¹⁶⁵ Use of such a microphone on a drone to record private conversations could implicate the federal wiretap statute.

Preemption of State Aviation Regulations. The increased presence of drones in domestic airspace raises the question of which aspects of drone use states may be able to individually regulate. The Supreme Court has stated that federal preemption of state laws and regulations occurs where "the pervasiveness of the federal regulation precludes supplementation by the States, where the federal interest in the field is sufficiently dominant, or where the object sought to be obtained by the federal law and the character of obligations imposed by it reveal the same purpose."¹⁶⁶ Congress vested sole responsibility for the aviation industry and domestic airspace with the federal government in the Federal Aviation Act of 1958.¹⁶⁷ According to the legislative history, the FAA was to have "full responsibility and authority for the advancement and promulgation of civil aeronautics generally, including promulgation and enforcement of safety regulations."¹⁶⁸

Generally, state regulations of aviation safety, airspace management, and aviation noise are preempted by federal laws and regulations.¹⁶⁹ In *City of Burbank v. Lockheed Air Terminal, Inc.*, the Supreme Court struck down a local city ordinance that prohibited planes from taking off during certain hours of the day as preempted by the federal regulatory scheme.¹⁷⁰ Expressing its fear regarding local control of airspace, the Court stated, "If we were to uphold the Burbank ordinance and a significant number of municipalities followed suit, it is obvious that fractionalized control of the timing of takeoffs and landings would severely limit the flexibility of

¹⁶³ 18 U.S.C. § 2511(1)(a).

¹⁶⁴ 18 U.S.C. § 2510(2).

¹⁶⁵ See, e.g., Electromax International, Inc., <http://www.electromax.com/penmics.html> (last visited Jan. 22, 2013).

¹⁶⁶ *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 300 (1988).

¹⁶⁷ P.L. 85-726; 72 Stat. 737 (1958).

¹⁶⁸ H.R. Rept. No. 2360, 85th Cong. (1958).

¹⁶⁹ See, e.g., *City of Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624 (1973); *Abdullah v. American Airlines, Inc.*, 181 F.3d 363 (3d Cir. 1999); *San Diego Unified Port Dist. v. Gianturco*, 651 F.2d 1306, 1316 (9th Cir. 1981); *Price v. Charter Township*, 909 F. Supp. 498 (E.D. Mich. 1995).

¹⁷⁰ *City of Burbank*, 411 U.S. at 639.

the FAA in controlling air traffic flow.”¹⁷¹ The Supreme Court has, however, upheld state regulations imposing taxes on aircraft equipment located within the state.¹⁷²

Conclusion

The legal issues discussed in this report will likely remain unresolved until the civilian use of drones becomes more widespread. To that end, the FAA has been tasked with developing “a comprehensive plan to safely accelerate the integration” of drones into the national airspace, which focuses on the safety of the drone technology and operator certification. While the deadline for development of the plan has already elapsed, the FAA has until the end of FY2015 to implement such a plan.¹⁷³ Additionally, the FAA must identify six test ranges where it will integrate drones into the national airspace. This deadline, 180 days after enactment of the act, has also elapsed without FAA compliance. Once these regulations are tested and promulgated, the unique legal challenges that could arise based on the operational differences between drones and already ubiquitous fixed-wing aircraft and helicopters may come into sharper focus.

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¹⁷¹ *Id.*

¹⁷² *Braniff Airways v. Nebraska Board*, 347 U.S. 590 (1954). Additionally, several courts have determined that state law tort claims based on injuries caused by aircraft are not federally preempted. *See, e.g.,* *Bieneman v. City of Chicago*, 864 F.2d 463 (7th Cir. 1988) (overturning *Luedtke v. County of Milwaukee*, 521 F.2d 387 (7th Cir. 1975), which ruled that *City of Burbank* preempted application of state tort laws, such as negligence and nuisance, to flights that complied with federal laws and regulations); *Greater Westchester Homeowners Association v. City of Los Angeles*, 603 P.2d 1329 (Sup. Ct. Cali. 1979).

¹⁷³ *See* P.L. 112-95, § 332(a) (requiring development of a plan within 270 days of enactment of the act, falling in November 2012).

Attachment B

Arizona	HB 2574
Florida	HB 119
Florida	SB 92
Hawaii	SB 783
Idaho	SB 1051
Illinois	SR 792
Indiana	SB 20
Maryland	HB 1233
Maine	SB 72
Missouri	HB 46
Montana	SB 150
Montana	SB 196
North Dakota	HB 1373
Virginia	HB 2012

REFERENCE TITLE: drone surveillance; prohibition; exceptions

State of Arizona
House of Representatives
Fifty-first Legislature
First Regular Session
2013

HB 2574

Introduced by
Representatives Dial, Seel, Stevens, Senator Burges: Representatives
Barton, Borrelli, Lovas, Petersen, Thorpe

AN ACT

AMENDING TITLE 13, CHAPTER 30, ARIZONA REVISED STATUTES, BY ADDING SECTION
13-3007; RELATING TO DRONE SURVEILLANCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 13, chapter 30, Arizona Revised Statutes, is amended
3 by adding section 13-3007, to read:

4 13-3007. Unlawful use of drones: admissibility of evidence;
5 civil action: classification: definitions

6 A. IT IS UNLAWFUL FOR A LAW ENFORCEMENT AGENCY OR A STATE, COUNTY OR
7 MUNICIPAL AGENCY TO USE A DRONE TO GATHER, STORE OR COLLECT EVIDENCE OF ANY
8 TYPE, INCLUDING AUDIO OR VIDEO RECORDINGS, OR BOTH, OR OTHER INFORMATION THAT
9 IS NOT SPECIFICALLY OUTLINED IN A SEARCH WARRANT. A LAW ENFORCEMENT AGENCY
10 MAY NOT USE DRONES FOR SURVEILLANCE OF CITIZENS UNLESS THE CITIZEN IS
11 SPECIFICALLY NAMED ON A VALID SEARCH WARRANT.

12 B. IT IS UNLAWFUL FOR A PERSON TO USE DRONES TO MONITOR OTHER PERSONS
13 INSIDE THEIR HOMES OR PLACES OF WORSHIP OR WITHIN THE CLOSED CONFINES OF
14 THEIR PROPERTY OR OTHER LOCATIONS WHERE A PERSON WOULD HAVE AN EXPECTATION OF
15 PRIVACY.

16 C. EVIDENCE THAT IS OBTAINED OR COLLECTED IN VIOLATION OF THIS SECTION
17 IS NOT ADMISSIBLE IN ANY CIVIL OR CRIMINAL PROCEEDING AND MAY NOT BE USED
18 AGAINST A CITIZEN, CORPORATION OR ORGANIZATION IN ANY FORMAL PROCEEDING
19 WITHIN THIS STATE FOR THE PURPOSE OF ENFORCING STATE OR LOCAL LAW.

20 D. THIS SECTION DOES NOT PROHIBIT EITHER:

21 1. THE USE OF A DRONE BY A LAW ENFORCEMENT AGENCY IF THE LAW
22 ENFORCEMENT AGENCY FIRST OBTAINS A SEARCH WARRANT THAT AUTHORIZES THE USE OF
23 A DRONE AND THE USE OF THE DRONE IS USED ONLY TO OBTAIN EVIDENCE ON THE
24 PERSON NAMED IN THE WARRANT.

25 2. THE USE OF A DRONE BY A LAW ENFORCEMENT AGENCY THAT IS ACTIVELY
26 ENGAGED IN THE ENFORCEMENT OF CHAPTER 34 OF THIS TITLE OR SECTION 13-2319 ON
27 PUBLIC LANDS AS DEFINED IN SECTION 37-901 OR ON PRIVATE LAND WITH THE WRITTEN
28 PERMISSION FROM THE LANDOWNER.

29 3. A CITIZEN FROM OWNING OR OPERATING A DRONE FOR LAWFUL PURPOSES.

30 E. AN AGGRIEVED PARTY MAY INITIATE A CIVIL ACTION AGAINST A LAW
31 ENFORCEMENT AGENCY TO OBTAIN ALL APPROPRIATE RELIEF IN ORDER TO PREVENT,
32 RESTRAIN OR REMEDY A VIOLATION OF THIS SECTION.

33 F. A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A CLASS 6 FELONY.

34 G. FOR THE PURPOSES OF THIS SECTION:

35 1. "DRONE" MEANS A POWERED OR AN UNPOWERED AERIAL VEHICLE OR A BALLOON
36 FLOAT OR OTHER DEVICE THAT:

37 (a) DOES NOT CARRY A HUMAN OPERATOR.

38 (b) USES AERODYNAMIC FORCES OR GASES TO PROVIDE LIFT.

39 (c) CAN FLY AUTONOMOUSLY OR BE PILOTED REMOTELY.

40 (d) CAN BE EXPENDABLE OR RECOVERABLE.

41 (e) CAN CARRY A LETHAL OR NONLETHAL PAYLOAD.

42 2. "LAW ENFORCEMENT AGENCY" MEANS A LAWFULLY ESTABLISHED STATE OR
43 LOCAL PUBLIC AGENCY THAT IS RESPONSIBLE FOR THE PREVENTION AND DETECTION OF
44 CRIME, THE ENFORCEMENT OF LOCAL GOVERNMENT CODES AND THE ENFORCEMENT OF

1 PENAL, TRAFFIC, REGULATORY, GAME OR CONTROLLED SUBSTANCE LAWS AND INCLUDES AN
2 AGENT OF THE LAW ENFORCEMENT AGENCY.

3 Sec. 2. Severability

4 If a provision of this act or its application to any person or
5 circumstance is held invalid, the invalidity does not affect other provisions
6 or applications of the act that can be given effect without the invalid
7 provision or application, and to this end the provisions of this act are
8 severable.

9 Sec. 3. Short title

10 Section 13-3007, Arizona Revised Statutes, as added by this act, may be
11 cited as the "Citizens Protection From Unwarranted Surveillance Act".

HB 119

2013

1 A bill to be entitled
 2 An act relating to searches and seizures; creating the
 3 "Freedom from Unwarranted Surveillance Act"; defining
 4 the terms "drone" and "law enforcement agency";
 5 prohibiting a law enforcement agency from using a
 6 drone to gather evidence or other information;
 7 providing an exception; authorizing an aggrieved party
 8 to initiate a civil action in order to prevent or
 9 remedy a violation of the act; prohibiting use of
 10 evidence obtained or collected in violation of the act
 11 in any criminal prosecution in any court of law in
 12 this state; providing an effective date.

13
 14 Be It Enacted by the Legislature of the State of Florida:

15
 16 Section 1. Searches and seizure using a drone.

17 (1) SHORT TITLE.—This act may be cited as the "Freedom
 18 from Unwarranted Surveillance Act."

19 (2) DEFINITIONS.—As used in this act, the term:

20 (a) "Drone" means a powered, aerial vehicle that:

- 21 1. Does not carry a human operator;
- 22 2. Uses aerodynamic forces to provide vehicle lift;
- 23 3. Can fly autonomously or be piloted remotely;
- 24 4. Can be expendable or recoverable; and
- 25 5. Can carry a lethal or nonlethal payload.

26 (b) "Law enforcement agency" means a lawfully established
 27 state or local public agency that is responsible for the
 28 prevention and detection of crime and the enforcement of penal,

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2013

29 traffic, regulatory, game, or controlled substance laws.

30 (3) PROHIBITED USE OF DRONES.—A law enforcement agency may
31 not use a drone to gather evidence or other information.

32 (4) EXCEPTIONS.—This act does not prohibit the use of a
33 drone to counter a high risk of a terrorist attack by a specific
34 individual or organization if the United States Secretary of
35 Homeland Security determines that credible intelligence
36 indicates that there is such a risk.

37 (5) REMEDIES FOR VIOLATION.—An aggrieved party may
38 initiate a civil action against a law enforcement agency to
39 obtain all appropriate relief in order to prevent or remedy a
40 violation of this act.

41 (6) PROHIBITION ON USE OF EVIDENCE.—Evidence obtained or
42 collected in violation of this act is not admissible as evidence
43 in a criminal prosecution in any court of law in this state.

44 Section 2. This act shall take effect July 1, 2013.

By the Committee on Criminal Justice; and Senators Negron, Brandes, and Evers

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A bill to be entitled
An act relating to searches and seizures; creating the
"Freedom from Unwarranted Surveillance Act"; defining
the terms "drone" and "law enforcement agency";
prohibiting a law enforcement agency from using a
drone to gather evidence or other information;
providing exceptions; authorizing an aggrieved party
to initiate a civil action in order to prevent or
remedy a violation of the act; prohibiting a law
enforcement agency from using in any court of law in
this state evidence obtained or collected in violation
of the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Searches and seizure using a drone.-

(1) SHORT TITLE.-This act may be cited as the "Freedom from Unwarranted Surveillance Act."

(2) DEFINITIONS.-As used in this act, the term:

(a) "Drone" means a powered, aerial vehicle that:

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

(b) "Law enforcement agency" means a lawfully established state or local public agency that is responsible for the prevention and detection of crime, local government code enforcement, and the enforcement of penal, traffic, regulatory,

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30 game, or controlled substance laws.

31 (3) PROHIBITED USE OF DRONES.—A law enforcement agency may
32 not use a drone to gather evidence or other information.

33 (4) EXCEPTIONS.—This act does not prohibit the use of a
34 drone:

35 (a) To counter a high risk of a terrorist attack by a
36 specific individual or organization if the United States
37 Secretary of Homeland Security determines that credible
38 intelligence indicates that there is such a risk.

39 (b) If the law enforcement agency first obtains a search
40 warrant signed by a judge authorizing the use of a drone.

41 (c) If the law enforcement agency possesses reasonable
42 suspicion that, under particular circumstances, swift action is
43 needed to prevent imminent danger to life or serious damage to
44 property, or to forestall the imminent escape of a suspect or
45 the destruction of evidence.

46 (5) REMEDIES FOR VIOLATION.—An aggrieved party may initiate
47 a civil action against a law enforcement agency to obtain all
48 appropriate relief in order to prevent or remedy a violation of
49 this act.

50 (6) PROHIBITION ON USE OF EVIDENCE.—Evidence obtained or
51 collected in violation of this act is not admissible as evidence
52 in a criminal prosecution in any court of law in this state.

53 Section 2. This act shall take effect July 1, 2013.

1 information acquired through the operation of an unmanned aerial
2 vehicle.

3 (c) Exceptions.

4 (1) Consent. It shall not be unlawful under this
5 chapter to disclose or receive information about
6 any person acquired through the operation of an
7 unmanned aerial vehicle if such person has given
8 written consent to such disclosure.

9 (2) Emergency Situations. It shall not be unlawful
10 under this chapter for an agent of the state or any
11 political subdivision thereof to operate an
12 unmanned aerial vehicle, and for information from
13 such operation to be disclosed or received if the
14 unmanned aerial vehicle is used in circumstances in
15 which it is reasonable to believe that there is an
16 imminent threat to the life or safety of a person,
17 to assist the person, provided that within 48 hours
18 of the commencement of such operation, a
19 supervisory official of the agent of the state or
20 any political subdivision thereof, shall file a
21 sworn statement with the circuit court of that



1 jurisdiction setting forth the grounds for the
2 emergency access.

3 (3) Warrant or Order.

4 (A) Warrant. An unmanned aerial vehicle may be
5 operated and information from such operation
6 disclosed in order to collect information from a
7 non-public area only pursuant to a warrant
8 issued under chapter 803.

9 (B) Order. An unmanned aerial vehicle may be
10 operated and information from such operation
11 disclosed in order to collect information from a
12 public area pursuant to a warrant authorized
13 under subsection (3) (A) or pursuant to an order
14 issued by any court that is a court of competent
15 jurisdiction if the agent of the state or any
16 political subdivision thereof offers specific
17 facts demonstrating reasonable suspicion of
18 criminal activity, that the operation of the
19 public unmanned aircraft system is expected to
20 uncover such activity, and that alternative
21 methods of data collection are either cost-
22 prohibitive or present a significant risk to any



1 person's bodily safety. Such an order shall not
2 be issued for a period greater than 48 hours.
3 Extensions of an order may be granted but shall
4 be no longer than the authorizing judge deems
5 necessary to achieve the purposes for which it
6 was granted and in no event for longer than
7 thirty days.

8 (d) When unmanned aerial vehicles are used pursuant to
9 subsection (c), they shall be operated in a manner to
10 collect data only on the target and to avoid data
11 collection on individuals, homes, or areas other than the
12 target. Neither facial recognition nor other biometric
13 matching technology may be used on non-target data
14 collected by an unmanned aerial vehicle.

15 (e) Unmanned aerial vehicles may not be equipped with
16 weapons.

17 **263B-3 Data retention and use.** (a) No data collected on
18 an individual, home, or area other than the target that
19 justified deployment may be used, copied, or disclosed for any
20 purpose. Such data must be deleted within twenty-four hours
21 after collection.



1 (b) Whenever an agent of the state or any political
2 subdivision thereof uses an unmanned aerial vehicle, no part of
3 information acquired and no evidence derived therefrom may be
4 received in evidence in any trial, hearing, or other proceeding
5 in or before any court, grand jury, department, officer, agency,
6 regulatory body, legislative committee, or other authority of
7 the state or a political subdivision thereof if the disclosure
8 of that information would be in violation of this chapter.

9 (c) Any willful disclosure or use by an agent of the state
10 or any political subdivision thereof of information beyond the
11 extent permitted by this chapter is a violation of this chapter,
12 and is subject to administrative discipline as described in
13 subsection 263B-6 below.

14 **263B-4 Emergency situations exception.** (a) Notwithstanding
15 any other provision of this chapter, an agent of the state or
16 any political subdivision thereof may operate an unmanned aerial
17 vehicle and disclose information from such operation if

18 (1) Such agent of the state or any political
19 subdivision thereof reasonably determines that an
20 emergency situation exists that involves:



1 (A) Immediate danger of death or serious physical
2 injury to any person;

3 (B) Conspiratorial activities threatening the
4 national security interest; or

5 (C) Conspiratorial activities characteristic of
6 organized crime;

7 (2) The operation of an unmanned aerial vehicle is
8 required before a warrant or order authorizing
9 such interception can, with due diligence, be
10 obtained;

11 (3) There are grounds upon which such a warrant or
12 order could be entered to authorize such
13 operation; and

14 (4) An application for a warrant or order approving
15 such operation is made within 48 hours after the
16 operation has occurred or begins to occur.

17 (b) An operation of an unmanned aerial vehicle carried out
18 under subsection (a) shall immediately terminate when
19 the information sought is obtained or when the
20 application for the warrant or order is denied,
21 whichever is earlier.



1 (c) In the event an application for a warrant or order is
2 denied, the information obtained from the operation of
3 an unmanned aerial vehicle shall be treated as having
4 been obtained in violation of this chapter and the
5 evidence shall not be used.

6 **263B-5 Delayed Notice.** (a) An agent of the state or any
7 political subdivision thereof, in seeking a court order or
8 warrant, may request a delay on the notification required under
9 section 803 for a period not to exceed ninety days, if there is
10 reason to believe that notification of the existence of the
11 court order may have an adverse result. For the purposes of
12 this subsection, an "adverse result" is one that poses a risk
13 of:

- 14 (1) Endangering the life or physical safety of an
15 individual;
- 16 (2) Flight from prosecution;
- 17 (3) Destruction of or tampering with evidence;
- 18 (4) Intimidation of potential witnesses; or
- 19 (5) Otherwise seriously jeopardizing an investigation
20 or unduly delaying a trial.

21 Extensions of the delay of notification of up to ninety days
22 each may be granted by the court upon application, or by



1 certification by the agent of the state or any political
2 subdivision thereof.

3 (b) Upon expiration of the period of delay of
4 notification, the agent of the state or any political
5 subdivision thereof shall serve upon or deliver by registered or
6 first-class mail to, a copy of the warrant or order upon the
7 person or persons upon whom information was collected together
8 with a notice that

9 (1) States with reasonable specificity the nature of
10 the law enforcement inquiry; and

11 (2) Informs the person or persons upon whom
12 information was collected that notification of such
13 customer or subscriber was delayed and which provision of
14 this chapter allowed such delay; and

15 (3) The governmental entity or court which made the
16 certification or determination of delay.

17 **263B-6 Administrative discipline.** If a court or
18 appropriate department or agency determines that an agent of the
19 state or any political subdivision thereof has violated any
20 provision of this chapter, and that the circumstances
21 surrounding the violation raise serious questions about whether
22 or not the agent of the state or any political subdivision



1 thereof acted willfully or intentionally with respect to the
2 violation, the department or agency shall, upon receipt of a
3 true and correct copy of the decision and findings of the court
4 or appropriate department or agency, promptly initiate a
5 proceeding to determine whether disciplinary action against the
6 agent of the state or any political subdivision thereof is
7 warranted. If the head of the department or agency involved
8 determines that disciplinary action is not warranted, such head
9 shall notify the Attorney General with jurisdiction over the
10 department or agency concerned and shall provide the Attorney
11 General with the reasons for such determination.

12 **263B-7 Reporting.** (a) In January of each year, any agent
13 of the state or political subdivision thereof that uses unmanned
14 aerial vehicles shall report to the legislature on activity
15 during the prior year, and shall provide a copy of the report to
16 the office of the administrative director of the courts,
17 information to include:

18 (1) The number of times an unmanned aerial vehicle was
19 used, organized by the types of incidents and the
20 types of justification for deployment;

21 (2) The number of crime investigations aided by the
22 use of unmanned aerial vehicles, along with a



1 description of how the unmanned aerial vehicle was
2 helpful to each investigation;

3 (3) The number of uses of unmanned aerial vehicles for
4 reasons other than criminal investigations, along
5 with a description of how the unmanned aerial
6 vehicle was helpful in each instance;

7 (4) The frequency and type of data collected on
8 individuals or areas other than targets; and

9 (5) The total cost of their unmanned aerial vehicle
10 program.

11 (b) In January of each year, any judge who has in the
12 prior year issued a warrant or order or an extension thereof, or
13 denied approval of an application for a warrant or order, under
14 this section, shall report to the office of the administrative
15 director of the courts:

16 (1) The number and kind of orders or extensions
17 applied for, granted, modified, or denied;

18 (2) The period of unmanned aerial vehicle use
19 authorized by the orders, and the number and
20 duration of any extensions of the orders;

21 (3) The offense specified in the order or application,
22 or extension of an order; and



1 (4) The identity of the applying agent of the state or
2 political subdivision thereof making the
3 application and the person authorizing the
4 application.

5 (c) In April of each year the office of the administrative
6 director of the courts shall report to the legislature
7 information for the prior year, including:

8 (1) A general description of the information gathered
9 in orders or extensions under this section;

10 (2) The nature and frequency of incriminating conduct
11 gathered;

12 (3) The number of persons upon whom information was
13 gathered, and

14 (4) The nature, amount, and cost of the manpower and
15 other resources used in the collection;

16 (5) The number of arrests resulting from information
17 gathered and the offenses for which arrests were
18 made;

19 (6) The number of trials resulting from such
20 information;



- 1 (7) The number of motions to suppress made with
- 2 respect to such information, and the number
- 3 granted or denied; and
- 4 (8) The number of convictions resulting from such
- 5 information and the offenses for which the
- 6 convictions were obtained and a general assessment
- 7 of the importance of the information.

8 SECTION 2. This Act shall take effect upon its approval.

9
10

INTRODUCED BY: *Samuel M. Slan*
Melvin Jan
Paul P.

Report Title:

Unmanned Aerial Vehicles; Ban on Surveillance by Drones

Description:

Creates new section relating to unmanned aerial vehicles.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



IN THE SENATE

SENATE BILL NO. 1051

BY TRANSPORTATION COMMITTEE

AN ACT

RELATING TO AERONAUTICS; TO PROVIDE A SHORT TITLE; AMENDING CHAPTER 2, TITLE 21, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 21-213, IDAHO CODE, TO PROVIDE DEFINITIONS; AMENDING CHAPTER 2, TITLE 21, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 21-214, IDAHO CODE, TO ESTABLISH PROVISIONS RELATING TO RESTRICTIONS ON GATHERING EVIDENCE OR OTHER INFORMATION THROUGH THE USE OF A DRONE OR OTHER UNMANNED AIRCRAFT AND TO PROVIDE FOR CONSENT; AMENDING CHAPTER 2, TITLE 21, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 21-215, IDAHO CODE, TO ESTABLISH PROVISIONS RELATING TO THE USE OF A DRONE BY A LAW ENFORCEMENT AGENCY WHEN EXIGENT CIRCUMSTANCES EXIST; AND AMENDING CHAPTER 2, TITLE 21, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 21-216, IDAHO CODE, TO ESTABLISH PROVISIONS RELATING TO A CIVIL ACTION AND TO PROVIDE THAT NO INFORMATION OBTAINED IN VIOLATION OF THE PROVISIONS OF THIS ACT MAY BE ADMISSIBLE AS EVIDENCE IN CERTAIN PROCEEDINGS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. SHORT TITLE. This act may be cited as the "Preserving Freedom from Unwarranted Surveillance Act."

SECTION 2. That Chapter 2, Title 21, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 21-213, Idaho Code, and to read as follows:

21-213. FREEDOM FROM UNWARRANTED SURVEILLANCE -- DEFINITIONS. For the purposes of sections 21-214, 21-215 and 21-216, Idaho Code, the following terms have the following meanings:

(1) "Drone" means any 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.

(2) "Law enforcement agency" shall have the same meaning as provided for in section 18-4508, Idaho Code.

(3) "Unmanned aircraft" means an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft.

SECTION 3. That Chapter 2, Title 21, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 21-214, Idaho Code, and to read as follows:

21-214. RESTRICTIONS ON GATHERING OF EVIDENCE. (1) No person, entity or state agency shall use a drone or other unmanned aircraft to gather evidence or other information pertaining to criminal conduct or conduct in violation of a statute, ordinance, regulation or rule, except to the extent authorized in a warrant.

1 (2) No person, entity or state agency shall use a drone or other un-
2 manned aircraft to conduct surveillance of any individual, property owned by
3 an individual, farm or agricultural industry without the consent of that in-
4 dividual, property owner, farm or agricultural industry.

5 SECTION 4. That Chapter 2, Title 21, Idaho Code, be, and the same is
6 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
7 ignated as Section 21-215, Idaho Code, and to read as follows:

8 21-215. USE OF UNMANNED AIRCRAFT -- EXIGENT CIRCUMSTANCES. The pro-
9 visions of this act do not prohibit the use of a drone by a law enforcement
10 agency when exigent circumstances exist. For the purposes of this section,
11 exigent circumstances exist if a law enforcement agency possesses reason-
12 able suspicion that, under particular circumstances, swift action to pre-
13 vent imminent danger to life is necessary.

14 SECTION 5. That Chapter 2, Title 21, Idaho Code, be, and the same is
15 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
16 ignated as Section 21-216, Idaho Code, and to read as follows:

17 21-216. REMEDIES FOR VIOLATION OF THE PROVISIONS OF THIS ACT -- USE OF
18 INFORMATION OBTAINED. (1) In a civil action any aggrieved party may obtain
19 all appropriate relief to prevent or remedy a violation of the provisions of
20 this act.

21 (2) No information obtained or collected in violation of the provisions
22 of this act may be admissible as evidence in a criminal proceeding in any
23 court of law in the state or in an administrative hearing.



SR0792

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SENATE RESOLUTION

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WHEREAS, Unmanned aircraft are aircraft that are operated without the possibility of direct human intervention or control from within or on the aircraft; and

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WHEREAS, These unmanned aircraft are most commonly referred to as drones; and

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WHEREAS, New developments in technology allow the creation of increasingly smaller unmanned aircraft that are undetectable by the naked eye; and

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WHEREAS, The United States Congress enacted the Federal Aviation Administration Modernization and Reform Act ("the Act") which requires the Federal Aviation Administration to develop a plan to accelerate the integration of civil unmanned aircraft into the national airspace system by 2015; and

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WHEREAS, Following the passage of the Act, the Federal Aviation Administration (FAA) began to issue rules to implement the Act's mandated plan, including rules that allow law enforcement agencies to operate small unmanned aerial vehicles; and

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WHEREAS, Allowing an increased amount of small unmanned

1 aircraft to fly in the national airspace expands the
2 government's aerial surveillance capability and threatens the
3 protected privacy rights of Illinois citizens; therefore, be it

4 RESOLVED, BY THE SENATE OF THE NINETY-SEVENTH GENERAL
5 ASSEMBLY OF THE STATE OF ILLINOIS, that we strongly urge the
6 United States Congress to repeal the provisions of the Act that
7 require the FAA to develop a plan to expand the use of unmanned
8 aircraft in the airspace above the continental United States
9 and any other territory or possession of the United States, and
10 thereby repeal the FAA's rules that have begun to implement the
11 mandated plan; and be it further

12 RESOLVED, That suitable copies of this resolution be
13 delivered to the Speaker and Minority Leader of the United
14 States House of Representatives, the Majority and Minority
15 Leaders of the United States Senate, and the members of the
16 Illinois congressional delegation.

SENATE BILL No. 20

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-46-10.

Synopsis: Use of unmanned aerial vehicles. Provides that a person who knowingly or intentionally uses an unmanned aerial vehicle to monitor a person, property, or thing without the written consent of the subject of the monitoring commits a Class D felony. Provides that images or communications obtained through the use of an unmanned aerial vehicle are not admissible as evidence. Provides that a person who possesses an image or communications obtained through the use of an unmanned aerial vehicle commits a Class A misdemeanor. Prohibits the use of public money to purchase an unmanned aerial vehicle.

Effective: July 1, 2013.

Tomes

January 7, 2013, read first time and referred to Committee on Rules and Legislative Procedure.

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Introduced

First Regular Session 118th General Assembly (2013)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~:

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2012 Regular Session of the General Assembly.

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SENATE BILL No. 20

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 35-46-10 IS ADDED TO THE INDIANA CODE
2 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2013]:
4 **Chapter 10. Use of Unmanned Aerial Vehicles**
5 **Sec. 1. As used in this chapter, "person" includes a law**
6 **enforcement officer.**
7 **Sec. 2. As used in this chapter, "unmanned aerial vehicle"**
8 **means an aircraft that:**
9 (1) **does not carry a human operator; and**
10 (2) **is capable of flight under remote control or autonomous**
11 **programming.**
12 **Sec. 3. As used in this chapter, "use of an unmanned aerial**
13 **vehicle" means the use of an unmanned aerial vehicle to monitor**
14 **or otherwise observe a person, property, or thing. The term**
15 **includes:**
16 (1) **the interception of wire, electronic, or oral**
17 **communications; or**



1 **(2) the capture, collection, monitoring, or viewing of images.**
2 **The term does not include the use of an unmanned aerial vehicle**
3 **solely for recreational or hobby purposes.**
4 **Sec. 4. (a) A person may not make use of an unmanned aerial**
5 **vehicle without the written consent of:**
6 **(1) the person; or**
7 **(2) the owner of the property or thing;**
8 **that is the subject of the use.**
9 **(b) A person who knowingly or intentionally makes use of an**
10 **unmanned aerial vehicle in violation of subsection (a) commits a**
11 **Class D felony.**
12 **Sec. 5. (a) The following are not admissible as evidence in an**
13 **administrative or judicial proceeding:**
14 **(1) A communication or an image that is obtained through the**
15 **use of an unmanned aerial vehicle in violation of section 4 of**
16 **this chapter.**
17 **(2) Evidence derived from a communication or an image**
18 **described in subdivision (1).**
19 **(b) A person who possesses a communication or an image**
20 **described in subsection (a) commits a Class A misdemeanor.**
21 **Sec. 6. After June 30, 2013, a person may not use public money**
22 **from any source to purchase or otherwise acquire an unmanned**
23 **aerial vehicle.**

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126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 236

S.P. 72

In Senate, February 5, 2013

An Act To Protect the Privacy of Citizens from Domestic Unmanned Aerial Vehicle Use

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator PATRICK of Oxford.
Cosponsored by Representative PETERSON of Rumford and
Senators: DUTREMBLE of York, LACHOWICZ of Kennebec, VALENTINO of York,
Representatives: BRIGGS of Mexico, CHIPMAN of Portland, DION of Portland, GILBERT of
Jay, MASTRACCIO of Sanford.

1 Be it enacted by the People of the State of Maine as follows:

2 Sec. 1. 25 MRSA Pt. 12 is enacted to read:

3 PART 12

4 UNMANNED AERIAL VEHICLES

5 CHAPTER 551

6 REGULATION OF UNMANNED AERIAL VEHICLES

7 §4501. Definitions

8 As used in this chapter, unless the context otherwise indicates, the following terms
9 have the following meanings.

10 1. Law enforcement agency. "Law enforcement agency" has the same meaning as
11 in section 3701, subsection 1.

12 2. Unmanned aerial vehicle. "Unmanned aerial vehicle" means an aircraft that is
13 operated without a physical human presence within or on the aircraft and guided by
14 remote control.

15 §4502. Operation of unmanned aerial vehicles

16 1. Acquisition of unmanned aerial vehicles. The acquisition of an unmanned aerial
17 vehicle must be approved by the governing body of the governmental unit overseeing the
18 law enforcement agency seeking to make such an acquisition.

19 2. Operation of unmanned aerial vehicles. Operation of an unmanned aerial
20 vehicle must fully comply with all Federal Aviation Administration requirements and
21 guidelines. A law enforcement agency may not operate an unmanned aerial vehicle or
22 collect, disclose or receive information acquired through the operation of an unmanned
23 aerial vehicle except:

24 A. Pursuant to an emergency enforcement exception under section 4504;

25 B. To collect, disclose or receive information about a person or the person's
26 residence, property or area if that person has given written consent;

27 C. To assist a person in an emergency circumstance in which it is reasonable to
28 believe that there is an imminent threat to the life or safety of the person, subject to
29 the following limitations:

30 (1) The law enforcement agency documents the factual basis for the emergency;
31 and

32 (2) Not later than 48 hours after the emergency operation begins, a supervisory
33 official for the law enforcement agency files a sworn statement setting forth the
34 grounds for the emergency operation;

35 D. Pursuant to a warrant issued under Title 15, section 55; or

1 E. Pursuant to an order issued by a court of competent jurisdiction if a law
2 enforcement agency offers specific and articulable facts demonstrating that there is a
3 reasonable suspicion of criminal activity, that the operation of the unmanned aerial
4 vehicle will uncover such activity and that alternative methods of collecting
5 information either are cost-prohibitive or present a significant risk to a person's
6 bodily safety. An order issued under this paragraph may not allow operation for a
7 period greater than 48 hours. An extension of an order issued under this paragraph
8 may be granted for a period no longer than the court determines necessary to achieve
9 the purposes for which it was granted but not to exceed 30 days.

10 **3. Restrictions on operation.** The operation of an unmanned aerial vehicle may
11 not:

12 A. Be conducted for a purpose other than a specific purpose allowed under
13 subsection 2 or section 4504;

14 B. Be conducted by a person other than a law enforcement agency pursuant to this
15 chapter or a person otherwise authorized by law;

16 C. Employ the use of facial recognition technology or other biometric technology; or

17 D. Collect information on a person, residence, property or area not related to a
18 permitted purpose of operation under subsection 2.

19 An unmanned aerial vehicle may not be equipped with a weapon.

20 **§4503. Retention of information**

21 Information collected by an unmanned aerial vehicle may not be used, copied or
22 disclosed for any purpose other than for a lawful purpose under section 4502, subsection
23 2. Information collected by an unmanned aerial vehicle for any purpose other than for a
24 lawful purpose under section 4502, subsection 2 must be deleted as soon as possible and
25 no later than 24 hours after collection. Information collected by an unmanned aerial
26 vehicle under section 4502, subsection 2 may be received in evidence in a trial, hearing or
27 other proceeding in or before a court, grand jury, department, officer, agency, regulatory
28 body, legislative committee or other authority of the State or a municipality only if the
29 use of that information as evidence was part of the lawful purpose allowing the unmanned
30 aerial vehicle operation under section 4502, subsection 2.

31 **§4504. Emergency enforcement exception**

32 **1. Emergency enforcement exception.** A law enforcement agency may operate an
33 unmanned aerial vehicle and collect, disclose or receive information from the operation if
34 the law enforcement agency reasonably determines that an emergency enforcement
35 exception is required because a situation exists:

36 A. That involves a conspiratorial activity that threatens the national security interest
37 or that is characteristic of organized crime;

38 B. That requires the operation of an unmanned aerial vehicle before a warrant under
39 section 4502, subsection 2, paragraph D or court order under section 4502, subsection
40 2, paragraph E with due diligence can be obtained;

1 C. In which there are grounds upon which a warrant under section 4502, subsection
2 2, paragraph D or court order under section 4502, subsection 2, paragraph E could be
3 entered to authorize the operation of an unmanned aerial vehicle; and

4 D. For which an application for a warrant under section 4502, subsection 2,
5 paragraph D or court order under section 4502, subsection 2, paragraph E approving
6 the operation is made within 48 hours after the operation of an unmanned aerial
7 vehicle has occurred.

8 **2. Absence of a warrant or court order.** If the information sought by the operation
9 of an unmanned aerial vehicle is obtained prior to the issuance of a warrant or court order
10 under subsection 1, the law enforcement agency shall immediately terminate the
11 operation of the unmanned aerial vehicle.

12 **3. Denial of warrant or court order.** If the application for a warrant or court order
13 under subsection 1 is denied, the operation of the unmanned aerial vehicle underlying the
14 application must be immediately terminated and any information obtained from the
15 operation of the unmanned aerial vehicle must be treated as having been obtained in
16 violation of this chapter.

17 **§4505. Delayed notice**

18 **1. Delayed notice.** When a warrant or court order is sought under section 4502,
19 subsection 2, paragraph D or E or section 4504, a law enforcement agency may request
20 an order delaying the notice required under the Maine Rules of Criminal Procedure, Rule
21 41B(b)(4) for a period not to exceed 10 days. The court may grant the request if the court
22 determines that the notification of the warrant or court order may have an adverse result
23 under subsection 2.

24 **2. Adverse result.** An adverse result for the purposes of a delayed notice under
25 subsection 1 includes the subject of the warrant or court order or other person of interest:

26 A. Endangering the life or physical safety of a person;

27 B. Fleeing from prosecution;

28 C. Destroying or tampering with evidence;

29 D. Intimidating potential witnesses; and

30 E. Otherwise seriously jeopardizing an investigation or unduly delaying a trial.

31 **3. Extension.** The court may grant an extension of the delayed notice under
32 subsection 1 for up to 10 days for each extension upon application by the law
33 enforcement agency.

34 **4. Expiration of delayed notice.** Upon expiration of the period of delayed notice
35 under subsection 1, the law enforcement agency shall serve upon, or deliver by registered
36 or first-class mail to, the person about whom information was collected a copy of the
37 warrant or court order together with notice that:

38 A. States with reasonable specificity the nature of the law enforcement inquiry; and

1 B. Informs the person about whom information was collected:

2 (1) That notification of the warrant or court order was delayed;

3 (2) What law enforcement agency made the request for delayed notice;

4 (3) What court made the determination to delay notice; and

5 (4) Which provision of subsection 2 supported the court's determination.

6 **§4506. Violations**

7 1. Private right of action. If a law enforcement agency violates any provision of
8 this chapter, the person about whom information was collected personally or as owner of
9 a residence, property or area in violation of this chapter may institute and prosecute in
10 that person's own name and on that person's behalf a civil action for legal or equitable
11 relief. In addition to compensatory damages, a person whose rights have been violated by
12 a violation of this chapter may recover no more than \$5,000 plus reasonable attorney's
13 fees and court costs.

14 2. Attorney General. The Attorney General may bring a civil action to enforce the
15 provisions of this chapter.

16 3. Motion to suppress. A court may not allow to be received into evidence any
17 information collected, disclosed or received in violation of this chapter and shall grant a
18 motion to suppress as evidence any information collected, disclosed or received in
19 violation of this chapter.

20 **§4507. Reporting**

21 1. Reporting by law enforcement agency. In June of each year, a law enforcement
22 agency that uses an unmanned aerial vehicle shall report to the Legislature, retain for
23 public viewing and post on its publicly accessible website, if one exists:

24 A. The number of times an unmanned aerial vehicle was operated, organized by the
25 types of incidents and the types of justification for operation;

26 B. The number of criminal investigations aided by the operation of an unmanned
27 aerial vehicle and a description of how the unmanned aerial vehicle aided each
28 investigation;

29 C. The number of times an unmanned aerial vehicle was operated for reasons other
30 than a criminal investigation and a description of how the unmanned aerial vehicle
31 aided each operation;

32 D. The frequency and type of information collected on an individual, residence,
33 property or area that was not the subject of an operation; and

34 E. The total cost of operating the unmanned aerial vehicle for the preceding 12
35 months.

36 2. Reporting by Attorney General to the court. In March of each year the
37 Attorney General or the Attorney General's designee shall report to the Administrative
38 Office of the Courts the number of applications for a warrant under section 4502,

1 subsection 2, paragraph D; court order under section 4502, subsection 2, paragraph E;
2 order for delayed notice under section 4505, subsection 1; and extension of delayed
3 notice under section 4505, subsection 3 made during the preceding calendar year. For
4 each warrant, court order, order for delayed notice and extension of delayed notice
5 reported pursuant to this subsection, the report must include:

6 A. A general description of the information collected under the warrant, court order,
7 order for delayed notice or extension of delayed notice, including:

8 (1) The approximate nature and frequency of incriminating conduct;

9 (2) The approximate number of persons about whom information was collected;
10 and

11 (3) The approximate nature, amount and cost of the personnel and other
12 resources used in the collection;

13 B. The number of arrests resulting from the information collected and the offenses
14 for which arrests were made;

15 C. The number of trials resulting from the information collected;

16 D. The number of motions to suppress made with respect to the information
17 collected and the number of those motions granted or denied; and

18 E. The number of convictions resulting from the information collected and the
19 offenses for which the convictions were obtained and a general assessment of the
20 importance of the information.

21 **3. Reporting by Attorney General to the Legislature and public.** The Attorney
22 General shall post in June of each year on the Attorney General's publicly accessible
23 website and transmit to the Legislature a full and complete report listing the number of
24 applications for warrants and court orders authorizing and approving operation of
25 unmanned aerial vehicles and disclosure of information collected from the operation of
26 unmanned aerial vehicles pursuant to this chapter and the number of warrants, court
27 orders, orders for delayed notice and extensions of delayed notice granted and denied
28 pursuant to this chapter during the preceding calendar year.

29 **4. Record keeping.** A law enforcement agency shall keep a detailed record about
30 each operation of an unmanned aerial vehicle including all information required to be
31 reported in this section and make this record available to the Attorney General.

32 SUMMARY

33 This bill regulates unmanned aerial vehicles, including their acquisition and lawful
34 operation by law enforcement agencies in collecting, disclosing and receiving
35 information and the retention of information collected. For the permitted operation of an
36 unmanned aerial vehicle, the bill requires the consent of the subject person, a warrant or
37 court order, an emergency situation that threatens life or serious bodily injury or an
38 emergency enforcement situation that threatens national security or evinces conspiratorial
39 criminal conduct requiring immediate operation of the vehicle before a warrant can be
40 obtained. The bill also allows delayed service of a warrant or court order informing the

1 subject person until after the warrant's or order's issuance if necessary for avoiding certain
2 adverse results. The bill provides for a private right of action or enforcement by the
3 Attorney General for a violation and disallows the use of any information collected in
4 violation as evidence in a hearing or court of law. The bill requires the Attorney General
5 to report certain information concerning the use of unmanned aerial vehicles to the
6 Legislature and the Administrative Office of the Courts and for law enforcement agencies
7 and the Attorney General to post certain information on their publicly accessible
8 websites.

HOUSE BILL 1233

E2, E4

3lr2070

By: **Delegates George, Dwyer, and W. Miller**
Introduced and read first time: February 8, 2013
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Law Enforcement Agencies – Use of Drones**

3 FOR the purpose of prohibiting a law enforcement agency from using a drone to gather
4 evidence or other information without a warrant, except under certain
5 circumstances; authorizing an aggrieved party to initiate a certain civil action
6 against a law enforcement agency; establishing that evidence obtained or
7 collected in violation of this Act is not admissible as evidence in a criminal
8 prosecution in a court of law in this State; defining certain terms; and generally
9 relating to the use of drones by law enforcement.

10 BY adding to

11 Article – Criminal Procedure

12 Section 1–203.1

13 Annotated Code of Maryland

14 (2008 Replacement Volume and 2012 Supplement)

15 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
16 MARYLAND, That the Laws of Maryland read as follows:

17 **Article – Criminal Procedure**

18 **1–203.1.**

19 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
20 MEANINGS INDICATED.

21 (2) “DRONE” MEANS A POWERED AERIAL VEHICLE THAT:

22 (I) DOES NOT CARRY A HUMAN OPERATOR;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (II) USES AERODYNAMIC FORCES TO PROVIDE VEHICLE
2 LIFT;

3 (III) CAN FLY AUTONOMOUSLY OR BE PILOTED REMOTELY;
4 AND

5 (IV) IS EXPENDABLE OR RECOVERABLE.

6 (3) "EMERGENCY" HAS THE MEANING STATED IN § 2-412 OF THE
7 PUBLIC SAFETY ARTICLE.

8 (4) "LAW ENFORCEMENT AGENCY" HAS THE MEANING STATED IN
9 § 3-201 OF THE PUBLIC SAFETY ARTICLE.

10 (B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
11 SUBSECTION, A LAW ENFORCEMENT AGENCY MAY NOT USE A DRONE TO GATHER
12 EVIDENCE OR OTHER INFORMATION WITHOUT A WARRANT ISSUED IN
13 ACCORDANCE WITH § 1-203 OF THIS SUBTITLE.

14 (2) THE WARRANT REQUIREMENT CONTAINED IN PARAGRAPH (1)
15 OF THIS SUBSECTION DOES NOT APPLY TO THE USE OF A DRONE TO:

16 (I) COUNTER A HIGH RISK OF A TERRORIST ATTACK BY A
17 SPECIFIC INDIVIDUAL OR ORGANIZATION, IF THE UNITED STATES SECRETARY
18 OF HOMELAND SECURITY DETERMINES THAT CREDIBLE INTELLIGENCE
19 INDICATES THERE IS THAT RISK; OR

20 (II) RESPOND TO AN EMERGENCY.

21 (C) AN AGGRIEVED PARTY MAY INITIATE A CIVIL ACTION AGAINST A
22 LAW ENFORCEMENT AGENCY TO OBTAIN ALL APPROPRIATE RELIEF TO
23 PREVENT OR REMEDY A VIOLATION OF THIS SECTION.

24 (D) EVIDENCE OBTAINED OR COLLECTED IN VIOLATION OF THIS
25 SECTION IS NOT ADMISSIBLE AS EVIDENCE IN A CRIMINAL PROSECUTION IN A
26 COURT OF LAW IN THIS STATE.

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 October 1, 2013.

FIRST REGULAR SESSION

HOUSE BILL NO. 46

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE GUERNSEY.

0371H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 305, RSMo, by adding thereto four new sections relating to unmanned aerial surveillance.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 305, RSMo, is amended by adding thereto four new sections, to be
2 known as sections 305.635, 305.637, 305.639, and 305.641, to read as follows:

305.635. 1. Sections 305.635 to 305.641 shall be known and may be cited as the
2 “Preserving Freedom from Unwarranted Surveillance Act”.

3 2. As used in sections 305.635 to 305.641, the following terms shall mean:

4 (1) “Drone”, any powered, aerial vehicle that:

5 (a) Does not carry a human operator;

6 (b) Uses aerodynamic forces to provide vehicle lift;

7 (c) Can fly autonomously or be piloted remotely;

8 (d) Can be expendable or recoverable; and

9 (e) Can carry a lethal or non-lethal payload.

10 (2) “Unmanned aircraft”, an aircraft that is operated without the possibility of
11 direct human intervention from within or on the aircraft.

12 (3) “Law enforcement agency”, any state, county, or municipal law enforcement
13 agency in the state. The term law enforcement agency shall not include the Missouri
14 department of corrections, or any state, county, or municipal fire department.

305.637. 1. No person, entity, or state agency shall use a drone or other unmanned
2 aircraft to gather evidence or other information pertaining to criminal conduct or conduct
3 in violation of a statute or regulation except to the extent authorized in a warrant.

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

4 **2. No person, entity, or state agency shall use a drone or other unmanned aircraft**
5 **to conduct surveillance of any individual, property owned by an individual, farm, or**
6 **agricultural industry without the consent of that individual, property owner, farm or**
7 **agricultural industry.**

305.639. This act does not prohibit the use of a drone by a law enforcement agency
2 **when exigent circumstances exist. For the purposes of this section, exigent circumstances**
3 **exist if a law enforcement agency possesses reasonable suspicion that, under particular**
4 **circumstances, swift action to prevent imminent danger to life is necessary.**

305.641. 1. Any aggrieved party may in a civil action obtain all appropriate relief
2 **to prevent or remedy a violation of this act.**

3 **2. No information obtained or collected in violation of this act may be admissible**
4 **as evidence in a criminal proceeding in any court of law in the state or in an administrative**
5 **hearing.**

✓

SENATE BILL NO. 196

INTRODUCED BY ROSENDALE, AUGARE, DICK BARRETT, BLEWETT, BOULANGER, BRENDEN, D. BROWN, FACEY, L. JONES, F. MOORE, OSMUNDSON, REICHNER, SALES, TAYLOR, THOMAS, VAN DYK, WALKER, WANZENRIED, WARBURTON, WINDY BOY, WITTICH

A BILL FOR AN ACT ENTITLED: "AN ACT LIMITING THE USE OF UNMANNED AERIAL VEHICLES BY LAW ENFORCEMENT AND PRIVATE USERS; PROHIBITING THE USE OF UNLAWFULLY OBTAINED INFORMATION AS EVIDENCE IN COURT; AND AMENDING SECTION 46-1-202, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Prohibition on use of unmanned aerial vehicles -- penalty.

(1) (a) A person commits the offense of unmanned aerial vehicle data collection if a person purposely or knowingly operates an unmanned aerial vehicle in or upon the premises of another for the purpose of acquiring information through the use of a sensing device that is capable of acquiring data from its surroundings, including but not limited to a camera, microphone, thermal detector, chemical detector, radiation gauge, and wireless receiver.

(b) Information obtained from the unlawful operation of an unmanned aerial vehicle is not admissible as evidence in any proceeding and may not be used for any purpose.

(c) A person convicted of the offense of unmanned aerial vehicle data collection shall be fined an amount not to exceed \$500 or be incarcerated in the county jail for a term not to exceed 6 months, or both.

(2) For the purposes of this section, "unmanned aerial vehicle" means an aircraft that is operated without direct human intervention from on or within the aircraft.

NEW SECTION. Section 2. Prohibition on use of unmanned aerial vehicles and use of evidence

acquired -- exceptions. (1) Except as provided in ~~subsections~~ SUBSECTION (2) and (4), it is unlawful for a ~~peace officer or law enforcement~~ GOVERNMENT agency to operate an unmanned aerial vehicle for the purpose of data collection.

(2) An unmanned aerial vehicle may be used: ~~only~~

(A) to conduct a search that is made:

~~(a)~~ (i) pursuant to the authority of a search warrant; or

1 ~~(b)(II)~~ in accordance with judicially recognized exceptions to the warrant requirement;

2 (B) TO MONITOR PUBLIC LANDS OR INTERNATIONAL BORDERS; OR

3 (C) TO MONITOR PRIVATE LANDS WITH THE CONSENT OF THE LANDOWNER.

4 (3) Information obtained from the ~~unlawful~~ operation of an unmanned aerial vehicle is not admissible as
5 evidence in any prosecution or proceeding and may not be used in an affidavit of probable cause in an effort to
6 obtain a search warrant UNLESS THE INFORMATION WAS OBTAINED UNDER THE CIRCUMSTANCES DESCRIBED IN
7 SUBSECTION (2)(A) OR (2)(C).

8 ~~———— (4) It is lawful under this section for a state or federal agency to operate an unmanned aerial vehicle for~~
9 ~~the sole purpose of monitoring public lands and international borders, provided that no part of any personal~~
10 ~~information and no evidence derived from the operation may be received in evidence in any prosecution or~~
11 ~~proceeding unless the state or federal agency complies with the provisions of subsection (2).~~

12

13 **Section 3.** Section 46-1-202, MCA, is amended to read:

14 **"46-1-202. Definitions.** As used in this title, unless the context requires otherwise, the following
15 definitions apply:

16 (1) "Advanced practice registered nurse" means an individual certified as an advanced practice
17 registered nurse provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing.

18 (2) "Arraignment" means the formal act of calling the defendant into open court to enter a plea answering
19 a charge.

20 (3) "Arrest" means taking a person into custody in the manner authorized by law.

21 (4) "Arrest warrant" means a written order from a court directed to a peace officer or to some other
22 person specifically named commanding that officer or person to arrest another. The term includes the original
23 warrant of arrest and a copy certified by the issuing court.

24 (5) "Bail" means the security given for the primary purpose of ensuring the presence of the defendant
25 in a pending criminal proceeding.

26 (6) "Charge" means a written statement that accuses a person of the commission of an offense, that is
27 presented to a court, and that is contained in a complaint, information, or indictment.

28 (7) "Conviction" means a judgment or sentence entered upon a guilty or nolo contendere plea or upon
29 a verdict or finding of guilty rendered by a legally constituted jury or by a court of competent jurisdiction authorized
30 to try the case without a jury.

1 (8) "Court" means a place where justice is judicially administered and includes the judge of the court.

2 (9) "Data collection" means acquiring information through the use of a sensing device that is capable
3 of acquiring data from its surroundings, including but not limited to a camera, microphone, thermal detector,
4 chemical detector, radiation gauge, and wireless receiver.

5 ~~(9)~~(10) "Included offense" means an offense that:

6 (a) is established by proof of the same or less than all the facts required to establish the commission of
7 the offense charged;

8 (b) consists of an attempt to commit the offense charged or to commit an offense otherwise included in
9 the offense charged; or

10 (c) differs from the offense charged only in the respect that a less serious injury or risk to the same
11 person, property, or public interest or a lesser kind of culpability suffices to establish its commission.

12 ~~(10)~~(11) "Judge" means a person who is vested by law with the power to perform judicial functions.

13 ~~(11)~~(12) "Judgment" means an adjudication by a court that the defendant is guilty or not guilty, and if the
14 adjudication is that the defendant is guilty, it includes the sentence pronounced by the court.

15 ~~(12)~~(13) "Make available for examination and reproduction" means to make material and information that
16 is subject to disclosure available upon request at a designated place during specified reasonable times and to
17 provide suitable facilities or arrangements for reproducing it. The term does not mean that the disclosing party
18 is required to make copies at its expense, to deliver the materials or information to the other party, or to supply
19 the facilities or materials required to carry out tests on disclosed items. The parties may by mutual consent make
20 other or additional arrangements.

21 ~~(13)~~(14) "New trial" means a reexamination of the issue in the same court before another jury after a
22 verdict or finding has been rendered.

23 ~~(14)~~(15) "Notice to appear" means a written direction that is issued by a peace officer and that requests
24 a person to appear before a court at a stated time and place to answer a charge for the alleged commission of
25 an offense.

26 ~~(15)~~(16) "Offense" means a violation of any penal statute of this state or any ordinance of its political
27 subdivisions.

28 ~~(16)~~(17) "Parole" means the release to the community of a prisoner by a decision of the board of pardons
29 and parole prior to the expiration of the prisoner's term subject to conditions imposed by the board of pardons
30 and parole and the supervision of the department of corrections.

1 ~~(17)~~(18) "Peace officer" means any person who by virtue of the person's office or public employment is
2 vested by law with a duty to maintain public order and make arrests for offenses while acting within the scope
3 of the person's authority.

4 ~~(18)~~(19) "Persistent felony offender" means an offender who has previously been convicted of a felony
5 and who is presently being sentenced for a second felony committed on a different occasion than the first. An
6 offender is considered to have been previously convicted of a felony if:

7 (a) the previous felony conviction was for an offense committed in this state or any other jurisdiction for
8 which a sentence of imprisonment in excess of 1 year could have been imposed;

9 (b) less than 5 years have elapsed between the commission of the present offense and either:

10 (i) the previous felony conviction; or

11 (ii) the offender's release on parole or otherwise from prison or other commitment imposed as a result
12 of a previous felony conviction; and

13 (c) the offender has not been pardoned on the ground of innocence and the conviction has not been set
14 aside at the postconviction hearing.

15 ~~(19)~~(20) "Place of trial" means the geographical location and political subdivision in which the court that
16 will hear the cause is situated.

17 ~~(20)~~(21) "Preliminary examination" means a hearing before a judge for the purpose of determining if there
18 is probable cause to believe a felony has been committed by the defendant.

19 ~~(21)~~(22) "Probation" means release by the court without imprisonment of a defendant found guilty of a
20 crime. The release is subject to the supervision of the department of corrections upon direction of the court.

21 ~~(22)~~(23) "Prosecutor" means an elected or appointed attorney who is vested by law with the power to
22 initiate and carry out criminal proceedings on behalf of the state or a political subdivision.

23 ~~(23)~~(24) "Same transaction" means conduct consisting of a series of acts or omissions that are motivated
24 by:

25 (a) a purpose to accomplish a criminal objective and that are necessary or incidental to the
26 accomplishment of that objective; or

27 (b) a common purpose or plan that results in the repeated commission of the same offense or effect upon
28 the same person or the property of the same person.

29 ~~(24)~~(25) "Search warrant" means an order that is:

30 (a) in writing;

1 (b) in the name of the state;

2 (c) signed by a judge;

3 (d) a particular description of the place, object, or person to be searched and the evidence, contraband,
4 or person to be seized; and

5 (e) directed to a peace officer and commands the peace officer to search for evidence, contraband, or
6 persons.

7 ~~(25)~~(26) "Sentence" means the judicial disposition of a criminal proceeding upon a plea of guilty or nolo
8 contendere or upon a verdict or finding of guilty.

9 ~~(26)~~(27) "Statement" means:

10 (a) a writing signed or otherwise adopted or approved by a person;

11 (b) a video or audio recording of a person's communications or a transcript of the communications; and

12 (c) a writing containing a summary of a person's oral communications or admissions.

13 ~~(27)~~(28) "Summons" means a written order issued by the court that commands a person to appear before
14 a court at a stated time and place to answer a charge for the offense set forth in the order.

15 ~~(28)~~(29) "Superseded notes" means handwritten notes, including field notes, that have been substantially
16 incorporated into a statement. The notes may not be considered a statement and are not subject to disclosure
17 except as provided in 46-15-324.

18 ~~(29)~~(30) "Temporary road block" means any structure, device, or means used by a peace officer for the
19 purpose of controlling all traffic through a point on the highway where all vehicles may be slowed or stopped.

20 (31) "Unmanned aerial vehicle" means an aircraft that is operated without direct human intervention from
21 on or within the aircraft.

22 ~~(30)~~(32) "Witness" means a person whose testimony is desired in a proceeding or investigation by a
23 grand jury or in a criminal action, prosecution, or proceeding.

24 ~~(31)~~(33) "Work product" means legal research, records, correspondence, reports, and memoranda, both
25 written and oral, to the extent that they contain the opinions, theories, and conclusions of the prosecutor, defense
26 counsel, or their staff or investigators."
27

28 **NEW SECTION. Section 4. Codification instruction.** (1) [Section 1] is intended to be codified as an
29 integral part of Title 45, chapter 5, part 2, and the provisions of Title 45, chapter 5, part 2, apply to [section 1].

30 (2) [Section 2] is intended to be codified as an integral part of Title 46, chapter 5, and the provisions of

1 Title 46, chapter 5, apply to [section 2].

2

- END -

Introduced by

Representatives Becker, Anderson, Beadle, Heilman, Hofstad, Monson, Rohr, Toman,
Hanson

Senator Sitte

1 A BILL for an Act to provide for limitations on the use of unmanned aircraft for surveillance.

2 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

3 **SECTION 1.**

4 **Definitions.**

5 As used in this Act:

- 6 1. "Law enforcement agency" means a person authorized by law, or funded by the state,
7 to investigate or prosecute offenses against the state.
- 8 2. "Unmanned aircraft" means any aircraft that is operated without the possibility of direct
9 human intervention within or on the aircraft.
- 10 3. "Unmanned aircraft system" means an unmanned aircraft and associated elements,
11 including communication links and the components that control the unmanned aircraft,
12 which are required for the pilot in command to operate safely and efficiently in state
13 airspace.

14 **SECTION 2.**

15 **Prohibited use of unmanned aircraft system.**

- 16 1. Except as provided in section 4 of this Act, a law enforcement agency may not use an
17 unmanned aircraft for surveillance of a person within the state or for the surveillance of
18 personal or business property located within the borders of the state to gather
19 evidence or other information pertaining to criminal conduct, or conduct in violation of
20 a statute or regulation except to the extent authorized in a warrant that satisfies the
21 requirements of the Constitution of North Dakota.

- 1 2. Warrants to conduct surveillance with an unmanned aircraft may only be issued in the
2 investigation of a felony. Unmanned aircraft may not be used to conduct investigations
3 of misdemeanors, traffic infractions, or other violations of law.

4 **SECTION 3.**

5 **Warrant requirement.**

6 A warrant for the use of unmanned aircraft must satisfy the requirements of the Constitution
7 of North Dakota. In addition, the warrant must contain a data collection statement that includes:

- 8 1. The persons that will have the power to authorize the use of the unmanned aircraft:
9 2. The locations in which the unmanned aircraft system will operate:
10 3. The maximum period for which the unmanned aircraft system will operate in each
11 flight: and
12 4. Whether the unmanned aircraft system will collect information or data about
13 individuals or groups of individuals, and if so:
14 a. The circumstances under which the unmanned aircraft system will be used: and
15 b. The specific kinds of information or data the unmanned aircraft system will collect
16 about individuals and how that information or data, as well as conclusions drawn
17 from that information or data, will be used, disclosed, and otherwise handled.
18 including:
19 (1) The period for which the information or data will be retained: and
20 (2) Whether the information or data will be destroyed, and if so, when and how
21 the information or data will be destroyed.

22 **SECTION 4.**

23 **Exceptions.**

24 This Act does not prohibit any use of an unmanned aircraft for surveillance during the
25 course of:

- 26 1. Patrol of national borders. The use of an unmanned aircraft to patrol within twenty-five
27 miles [40.23 kilometers] of a national border, for purposes of policing that border to
28 prevent or deter the illegal entry of any person, illegal substance, or contraband.
29 2. Exigent circumstances. The use of an unmanned aircraft by a law enforcement agency
30 is permitted when exigent circumstances exist. For the purposes of this subsection,
31 exigent circumstances exist when a law enforcement agency possesses reasonable

1 suspicion that absent swift preventative action, there is an imminent danger to life or
2 bodily harm.

3 3. An environmental or weather-related catastrophe. The use of an unmanned aircraft by
4 state authorities to preserve public safety, protect property, or conduct surveillance for
5 the assessment and evaluation of environmental or weather-related damage, erosion,
6 flood, or contamination during a lawfully declared state of emergency.

7 **SECTION 5.**

8 **Prohibited surveillance.**

9 This Act prohibits any use of an unmanned aircraft for:

10 1. Use of force. A state agency may not authorize the use, including grant a permit to
11 use, of an unmanned aircraft while armed with any lethal or nonlethal weapons,

12 including firearms, pepper spray, bean bag guns, mace, and sound-based weapons.

13 2. Domestic use in private surveillance. A state agency may not authorize the use,
14 including granting a permit to use, of an unmanned aircraft to permit any private

15 person to conduct surveillance on any other private person without the express,

16 informed consent of that other person or the owner of any real property on which that
17 other private person is present.

18 3. Surveillance of the exercise of constitutional rights. A state agency may not authorize
19 the use, including granting a permit to use, of an unmanned aircraft for the purpose of

20 the surveillance of persons engaged in the lawful exercise of the constitutional right of
21 freedom of speech and freedom of assembly.

22 **SECTION 6.**

23 **Remedies for violation.**

24 Any aggrieved party may obtain in a civil action all appropriate relief to prevent or remedy a
25 violation of this Act.

26 **SECTION 7.**

27 **Prohibitions on the conduct of unmanned aircraft surveillance and the use of**
28 **acquired surveillance as evidence.**

29 1. Evidence obtained or collected in violation of this Act is not admissible as evidence in
30 a criminal prosecution, including use during trial, at sentencing, before a grand jury, as

31 rebuttal evidence, or during administrative hearings in any court of law in the state.

- 1 2. Any imaging or other forms of observational data gathered by unmanned aircraft
2 surveillance from or concerning the parties or places subjected to surveillance in
3 violation of this Act may not be preserved by law enforcement or government agencies
4 for any purpose unless required by a court of law.
- 5 3. Any imaging or any other forms of data lawfully obtained under this Act for which there
6 is not a reasonable and articulable suspicion that those images or data contain
7 evidence of a crime, or are relevant to an ongoing investigation or trial, may not be
8 retained for more than ninety days, unless the retention is attendant to general agency
9 guidelines regarding the retention of evidence in criminal cases. In those cases, the
10 imaging or other data may not be distributed to agencies, entities, or individuals if the
11 distribution is not necessary to meet general agency guidelines regarding the retention
12 of evidence in criminal cases.
- 13 4. An unmanned aircraft may not conduct any type of surveillance that would violate
14 state laws regarding the interception of aural communications, electronic messaging,
15 personal location data, or acquire video or still images of a person within a home or
16 place without first obtaining all required warrants in compliance with state statutes
17 relevant to the interception of such voice communications, digital communications,
18 physical surveillance data, or to capture the still or video images of a person or interior
19 or a place for which a search warrant is prerequisite to its lawful search.

20 **SECTION 8.**

21 **Documentation of unmanned aircraft surveillance.**

- 22 1. The person authorized to conduct the surveillance under this Act shall document all
23 use of unmanned aircraft for surveillance. The person shall document all surveillance
24 flights as to duration, flight path, and mission objectives, including the names of place
25 or persons authorized to be subject to surveillance.
- 26 2. The flight information must be certified as accurate and complete by the supervising
27 person authorized by a court to conduct the surveillance.
- 28 3. The flight information required under this section must be retained for five years.
- 29 4. Except for the operational capabilities of the unmanned aircraft system and other
30 operational information strictly related to the technical conduct and physical security of
31 the surveillance operation, a person before a court of law who has been a target of

- 1 unmanned aircraft surveillance must be permitted to obtain by proper motion to the
- 2 court all information relating to the person acquired in the course of the surveillance.
- 3 5. Other persons who have an interest in obtaining the documentation required by this
- 4 section may obtain that documentation pursuant to chapter 44-04.

13104704D

1 **HOUSE BILL NO. 2012**
 2 **AMENDMENT IN THE NATURE OF A SUBSTITUTE**
 3 (Proposed by the House Committee for Courts of Justice)
 4 (Patron Prior to Substitute—Delegate Cline [HB 1616])
 5 House Amendments in [] — February 4, 2013

6 *A BILL to place a moratorium on the use of unmanned aircraft systems.*

7 **Be it enacted by the General Assembly of Virginia:**

8 *1. § 1. No state or local agency or organization having jurisdiction over criminal law enforcement or*
 9 *regulatory violations, including but not limited to the Department of State Police, and no department of*
 10 *law enforcement as defined in § 15.2-836 of any county, city, or town shall utilize an unmanned aircraft*
 11 *system before July 1, 2015.*

12 **[2. Notwithstanding the prohibition in paragraph A of this section, an unmanned aircraft system**
 13 **may be deployed before July 1, 2015 when an Amber Alert is activated pursuant to § 52-34.3,**
 14 **when a Senior Alert is activated pursuant to § 52-34.6, when a Blue Alert is activated pursuant to**
 15 **§ 52-34.9, or for the purpose of a search and rescue operation. In no case may a weaponized**
unmanned aircraft system be deployed or its use facilitated by a state or local agency in Virginia.]

ENGROSSED

HB2012EH1