

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1027 Unmanned Aircraft
SPONSOR(S): Transportation & Infrastructure Subcommittee; Yarborough
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 832

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee	13 Y, 0 N, As CS	Johnson	Vickers
2) Careers & Competition Subcommittee	14 Y, 0 N	Voyles	Anstead
3) Government Accountability Committee			

SUMMARY ANALYSIS

The bill creates the Unmanned Aircraft Systems Act (s. 330.41, F.S.) vesting in the state the authority to regulate the ownership or operation of unmanned aircraft systems, otherwise known as drones.

The bill prohibits political subdivisions from enacting or enforcing ordinances or regulations relating to various aspects of the use of unmanned aircraft systems. However, the bill does not limit a local government's authority regarding illegal acts arising from the use of unmanned aircraft systems if the ordinances do not specifically relate to unmanned aircraft systems. The bill stipulates that the regulation of unmanned aircraft must be construed in accordance with federal statutes and regulations and guidance issued through the Federal Aviation Administration (FAA).

The bill defines the term "critical infrastructure facility", prohibits the operation of an unmanned aircraft over a critical infrastructure facility and provides criminal penalties for a violation. The bill provides exceptions for certain activities around critical infrastructure facilities, including an exception for unmanned aircraft operating in transit for commercial purposes in compliance with FAA regulations.

The bill also amends s. 934.50(4), F.S., to create a new exception to the statutory prohibitions on the use of drones. Specifically, the bill allows a drone to be used by a communications service provider or its contractor for routing, siting, installation, maintenance or inspection of facilities used to provide communications services.

The bill is not expected to have a fiscal impact on state or local government.

The bill provides for an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Federal Regulation

Congress has vested the FAA with the authority to regulate airspace use, management and efficiency, safety, navigational facilities, and aircraft noise. In the FAA Modernization and Reform Act of 2012,¹ Congress directed the Secretary of the United States Department of Transportation (USDOT) to determine whether unmanned aircraft systems (UAS) operations posing the least amount of public risk and no threat to national security should be safely operated in the national airspace system and if so, to establish safety requirements for operating UAS in the national airspace system. The FAA has issued rules regarding small unmanned aircraft, including requirements that such aircraft have a maximum weight of 55 pounds, the operator must be able to see the aircraft, and limiting flying at a maximum height of 400 feet above ground level.²

Consistent with its statutory authority, the FAA requires Federal registration of a UAS in order for it to operate. Additionally, state and local governments may not impose any additional registration requirements for operating a UAS without first obtaining FAA approval.

The FAA has expressed concerns relative to state and local government attempts to regulate the operation of flight or aircraft. According to the FAA, these efforts raise substantial safety issues, potentially fractionalizing control of the navigable airspace.³

State Regulation

Section 330.27, F.S., defines “aircraft” as a powered or unpowered machine or device capable of atmospheric flight, except a parachute or other such device used primarily as safety equipment.

Section 934.50, F.S., is the “Freedom from Unwarranted Surveillance Act.” This law prohibits law enforcement agencies from using a drone⁴ to gather evidence or other information. Additionally, a person, a state agency, or a political subdivision is prohibited from using a drone equipped with an imaging device to record an image of privately owned real property or of the owner, tenant, occupant, invitee, or licensee of such property with the intent to conduct surveillance on the individual or property captured in the image in violation of such person's reasonable expectation of privacy without his or her written consent.

Section 934.50, F.S., **does not prohibit** the use of a drone:

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

¹ Pub. L. 112-95

² FAA Summary of Small Unmanned Aircraft Rule, June 21, 2016. (Copy on File with Transportation & Infrastructure Subcommittee).

³ State and Local Regulation of Unmanned Aircraft Systems Fact Sheet-Federal Aviation Administration, Office of the Chief Counsel, December 17, 2015. (Copy on file with Transportation & Infrastructure Subcommittee.)

⁴ Section 934.50(2)(a), F.S., defines “drone” as a powered, aerial vehicle that:

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

- If the law enforcement agency first obtains a search warrant signed by a judge authorizing the use of a drone.
- If the law enforcement agency possesses reasonable suspicion that, under particular circumstances, swift action is needed to prevent imminent danger to life or serious damage to property, to forestall the imminent escape of a suspect or the destruction of evidence, or to achieve purposes including, but not limited to, facilitating the search for a missing person.
- By a person or an entity engaged in a business or profession licensed by the state, or by an agent, employee, or contractor thereof, if the drone is used only to perform reasonable tasks within the scope of practice or activities permitted under such person's or entity's license. However, this exception does not apply to a profession in which the licensee's authorized scope of practice includes obtaining information about the identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation, or character of any society, person, or group of persons.
- By an employee or a contractor of a property appraiser who uses a drone solely for the purpose of assessing property for ad valorem taxation.
- To capture images by or for an electric, water, or natural gas utility for certain purposes.
- For aerial mapping, if the person or entity using a drone for this purpose is operating in compliance with FAA regulations.
- To deliver cargo, if the person or entity using a drone for this purpose is operating in compliance with FAA regulations.
- To capture images necessary for the safe operation or navigation of a drone that is being used for a purpose allowed under federal or Florida law.

Proposed Changes

The bill creates s. 330.41, F.S., creating the Unmanned Aircraft Systems Act.

Definitions

The bill provides the following definitions:

"Critical infrastructure facility" - Any of the following, if completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders, or if clearly marked with a sign or signs which indicate that entry is forbidden and which are posted on the property in a manner reasonably likely to come to the attention of intruders:

- An electrical power generation or transmission facility, substation, switching station, or control center.
- A natural gas compressor station, storage facility, or pipeline.
- A liquid natural gas terminal or storage facility.
- Any portion of an aboveground oil or gas pipeline.
- A wireless communications facility, including towers, antennae, support structures, and all associated ground-based equipment.

"Person" - An individual, partnership, corporation, association, governmental entity, or other legal entity.

"Unmanned aircraft" - A drone as defined in s. 934.50(2), F.S.

"Unmanned aircraft system" - An unmanned aircraft and associated elements, including communication links and the components used to control the unmanned aircraft which are required for the pilot in command to operate the unmanned aircraft safely and efficiently.

Regulation

The bill provides that the authority to regulate the ownership or operation of unmanned aircraft systems is vested in the state.

Except as otherwise expressly provided in s. 330.41, F.S., a political subdivision is prohibited from enacting or enforcing an ordinance or resolution relating to the design, manufacture, testing, maintenance, licensing, registration, certification, or operation of an unmanned aircraft system, including:

- Airspace
- Altitude
- Flight paths
- Equipment or technology requirements
- Purpose of operations
- Pilot, operator, or observer qualifications, training, and certification.

Section 330.41, F.S., does not limit local government authority to enact or enforce local ordinances relating to nuisances, voyeurism, harassment, reckless endangerment, property damage, or other illegal acts arising from the use of unmanned aircraft systems if such ordinances are not specifically related to the use of an unmanned aircraft system for those illegal acts.

The bill provides that s. 330.41 F.S., is to be construed in accordance with standards described by federal statutes and regulations and FAA guidance on unmanned aircraft systems.

Protection of Infrastructure and Facilities

The bill states that a person seeking to restrict or limit the operation of unmanned aircraft in close proximity to infrastructure or facilities the person owns or operates must apply to the FAA for such designation pursuant to section 2209 of the FAA Extension, Safety, and Security Act of 2016.

Notwithstanding the above, a person may not knowingly or willfully:

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

A person who violates the above provisions commits a misdemeanor of the second degree, punishable by up to 60 days imprisonment⁵ or a fine of up to \$500.⁶ A person who commits a second or subsequent violation commits a misdemeanor of the first degree, punishable by up to 1 year imprisonment⁷ or a fine of up to \$1,000.⁸

Section 330.41, F.S., does not apply to actions described above that are committed by:

- A federal, state, or other governmental entity or a person under contract with or otherwise acting under the direction of such entity.
- A law enforcement agency that is in compliance with s. 934.50, F.S.,⁹ or a person under contract with or otherwise acting under the direction of such law enforcement agency.
- An owner, operator, or occupant of the critical infrastructure facility or a person who has prior written consent of such owner, operator, or occupant.

The bill also provides that the prohibition of knowingly or willfully operating an unmanned aircraft over critical infrastructure facilities does not apply to drones operating in transit for commercial purposes in compliance with FAA regulations, authorizations, or exemptions.

⁵ Section 775.082, F.S.

⁶ Section 775.083, F.S.

⁷ Section 775.082, F.S.

⁸ Section 775.083, F.S.

⁹ Section 934.50 relates to searches and seizure using a drone.

Search and Seizure Using a Drone

The bill creates s. 934.50(4)(g), F.S., providing an additional exception regarding the prohibition against using drones for surveillance. The bill allows a communications services provider or its contractor to use drones for routing, siting, installation, maintenance, or inspection of facilities used to provide communications services.

B. SECTION DIRECTORY:

Section 1 creates s. 334.41, F.S., creating the Unmanned Aircraft Systems Act.

Section 2 amends s. 934.30, F.S., relating to searches and seizure using a drone.

Section 3 provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Vesting the regulation of unmanned aircraft in the state will alleviate any patchwork regulation of unmanned aircraft that currently exists and may promote the use of unmanned aircraft. Violating the provision regarding operating unmanned aircraft around critical infrastructure facilities subjects one to possible criminal penalties.

The bill also authorizes communications service providers or its contractors to use unmanned aircraft for routing, siting, installing, maintaining, or inspecting certain facilities.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 21, 2017, the Transportation & Infrastructure Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment provided that the prohibition against unmanned aircraft flying over critical infrastructure facilities does not apply to certain commercial drones operating in compliance with FAA regulations, authorizations, or exemptions.

This analysis is drafted to the Committee Substitute as reported favorably by the Transportation & Infrastructure Subcommittee.