

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 1178

INTRODUCER: Senator Richter

SUBJECT: Drone Surveillance

DATE: April 6, 2015

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Cella	Cannon	CJ	Pre-meeting
2. _____	_____	ACJ	_____
3. _____	_____	AP	_____

I. Summary:

SB 1178 creates a new section of law which specifies when it is lawful or unlawful to capture an image using a drone.

The bill provides eighteen specific lawful uses of drones and of the images captured by drones.

The bill defines the term “image” and adopts the definition of “drone” found in s. 943.50(2)(a), F.S.

The bill makes unlawful: capturing images of an individual or of privately owned real property, with the intent to conduct surveillance on the individual or property; and the possession, disclosure, display, distribution, or other use of unlawfully captured images. The bill creates misdemeanor offenses relating to the unlawful capture and use of certain images by a person operating a drone.

The bill provides defenses to the offenses if the person destroys the image or stops disclosing, displaying, distributing, or otherwise using the image as soon as the person has knowledge that that image was unlawfully captured.

Unlawfully captured images or images that are incidental to the lawful capturing of an image may not be used as evidence in criminal, juvenile, civil, or administrative proceedings or actions. Such images are not subject to discovery, subpoena, or other means of legally-compelled release.

Civil and injunctive remedies are provided for certain persons whose image is unlawfully captured while on the property designated in the bill, or if the image of the privately owned property is unlawfully captured by a person using a drone.

Law enforcement agencies located in a county with a population greater than 150,000 that use drones are required to report certain related information to FDLE annually. FDLE is required to summarize the information and report to the Governor, the President of the Senate, and the Speaker of the House of Representatives. FDLE is also required to develop guidelines for the use of drones by law enforcement.

II. Present Situation:

The definition of “drone” provided in s. 934.50(2)(a), F.S., is a powered aerial vehicle that:

- Is unmanned;
- Is capable of flying autonomously or being piloted remotely;
- Uses aerodynamic forces to provide lift;
- Can be expendable or recoverable; and
- Can carry a lethal or nonlethal payload.

Section 934.50, F.S., limits the use of drones by state and local law enforcement. Currently there is not any such limitation of or provisions related to the non-law enforcement use of drones in Florida law.

Drones typically range in size from wingspans of 6 inches to 246 feet and can weigh from approximately 4 ounces to over 25,600 pounds.¹ They may be controlled manually or through an autopilot which uses a data link to connect the drone’s pilot to the drone.² Although “drone” has become almost a household word, the devices are also called Unmanned Aerial Vehicles (UAV) and Unmanned Aerial Systems (UAS).

Drones have been used in a multitude of tasks by U.S. government agencies and other public entities including law enforcement. The U.S. Customs and Border Patrol began using them in 2004.³ In February 2010, the U.S. Customs and Border Patrol began operating a center in Cocoa Beach flying eight drones along Florida’s shorelines and the Gulf Coast.⁴ Other documented non-military tasks include earthquake damage assessment at Japan’s Fukushima power plant, volcano activity assessment of Mount St. Helens in Washington for the U.S. Geological Survey, and surveying wild fires in Texas.⁵ At the University of Florida, the Unmanned Aerial Systems Research Group has been developing an 11 pound drone having a 9 foot wingspan, which is called “Nova 2.1.” According to researchers, it can be used to safely and accurately gather data that will be helpful to wildlife biologists and many others.⁶

¹ 14 CFR Part 91, Docket No. FAA-2006-25714, Department of Transportation, Federal Aviation Administration, Unmanned Aircraft Operations in the National Airspace System, February 6, 2007.

² *Id.*

³ *Unmanned Aerial Vehicles Support Border Security*, Customs and Border Protection Today, July 2004, www.cbp.gov/xp/CustomsToday/2004/Aug/other/aerial_vehicles.xml.

⁴ Howard Altman, *Space Florida Probing Drone’s Future Potential*, Tampa Bay Online, August 5, 2012, www2.tbo.com/news/breaking-news/2012/aug/05/space-florida-probing-drones-future-potential-ar-453511/.

⁵ James Chiles, *Drones for Hire*, Air & Space Smithsonian, January 2013, www.airspacemag.com/flight-today/Drones-for-Hire-179517781.html.

⁶ James Dean, *Florida Hopes to Fill Its Skies with Unmanned Aircraft*, Florida Today, June 23, 2012, <http://usatoday30.usatoday.com/news/nation/story/2012-06-23/increased-drone-use-privacy-concerns/55783066/1>; *UF Team’s Work Pays Off With Unmanned-flight System that Captures Valuable Data*, Phys Org, October 20, 2010, <http://phys.org/news/2010-10-uf-team-unmanned-flight-captures-valuable.html>.

The drone industry is motivated to move into more civilian markets.⁷ It also appears that civilian markets are ready to adopt the drone industry. According to the Consumer Electronics Association, drone shipments will increase from 250,000 units in 2014 to nearly a million in 2018.⁸

In February 2012, Congress passed the FAA Modernization and Reform Act of 2012, which required the FAA to safely open the nation's airspace to drones by September 2015.⁹ The FAA authorized the testing of UAS at six sites around the country as part of its efforts. Amazon Logistics, Inc. was issued an "experimental airworthiness certificate" by the FAA on March 19, 2015, which will enable Amazon to conduct research and development and crew training using its own UAS at one of the FAA testing sites.¹⁰ Amazon is working on a package delivery system called "Prime Air."¹¹

Although it seems to be outside the congressional mandate and beyond the scope of the FAA's airspace-safety responsibilities, the FAA notified Congress in late 2012 that "privacy issues" are a concern as drones are integrated into the airspace.¹² On February 15, 2015, the President of the United States issued a Memorandum entitled Promoting Economic Competitiveness While Safeguarding Privacy, Civil Rights, and Civil Liberties in Domestic Use of Unmanned Aircraft Systems. Among other directives, the Presidential Memorandum requires the Department of Commerce, through the National Telecommunications and Information Administration, and in consultation with other interested agencies, to initiate a multi-stakeholder engagement process within 90 days to develop a framework for privacy, accountability, and transparency issues concerning the commercial and private use of UAS in the National Air Space.¹³

Also on February 15, 2015, the FAA issued its Proposed Rule for Operation and Certification of Small Unmanned Aircraft Systems.¹⁴ The proposed rule, upon implementation, will enable small UAS operation to begin for civil non-hobby or non-recreational use.

⁷ *Drones for Hire*, Air & Space Smithsonian, James Chiles, January 2013, www.airspacemag.com/flight-today/Drones-for-Hire-179517781.html.

⁸ Harvard Business News, March 2, 2015, Larry Downes, "What's Wrong with the FAA's New Drone Rules."

⁹ Public Law 112-95, February 14, 2012, The FAA Modernization and Reform Act of 2012; *Drones in Domestic Surveillance Operations*, Congressional Research Service, September 6, 2012, www.fas.org/sgp/crs/natsec/R42701.pdf.

¹⁰ <http://www.faa.gov/news/updates> (last visited March 19, 2015). Additionally, realtors and real estate-related drone operators in Texas, California, and Pennsylvania have been issued testing certificates by the FAA.

¹¹ <http://www.inman.com/2015/03/09/faa-approves-more-real-estate-drone-flights> (visited March 12, 2015).

¹² <http://www.theatlantic.com/business/archive/2015/02/faa-drone-regulations> (visited March 12, 2015).

¹³ A Bloomberg report quotes the FAA Acting Chief as having written to members of the Congressional Unmanned Systems Caucus: "However, increasing the use of UAS in our airspace also raises privacy issues, and these issues will need to be addressed as unmanned aircraft are safely integrated." Alan Levine, *FAA Going Slow on Drones as Privacy Concerns Studied*, Bloomberg, November 26, 2012, <http://go.bloomberg.com/political-capital/2012-11-26/faa-going-slow->.

¹⁴ President's Memorandum issued February 15, 2015, The White House, Office of the Press Secretary. <https://www.whitehouse.gov/the-press-office/2015/02/15/presidential-memorandum-promoting-economic-competitiveness-while-safegua> (last visited April 1, 2015).

¹⁵ Federal Register, Vol. 80, No. 35.

III. Effect of Proposed Changes:

Lawful Uses of Drones Designated

The bill provides the following eighteen specific lawful uses of drones and of the images which may be captured:

- Professional or scholarly research and development connected with a college or university;
- In airspace designated by the Federal Aviation Administration as a test site or range for drones;
- Military operations, missions, or exercises;
- Images captured by a satellite for mapping purposes;
- Images captured by or for an electric or natural gas utility for limited purposes;
- Images captured with the consent of the owner or lawful occupant of the real property;
- Use by law enforcement in conformity with s. 934.50(4), F.S.;
- Law enforcement use related to disasters, catastrophes, and states of emergency;
- At the scene of potential or actual hazardous material spills;
- Images captured for the purpose of fire suppression;
- Rescuing persons from imminent danger;
- Real estate marketing, sale, or financing;
- Persons and property within 25 miles of the United States border;
- In public places, from a height of no more than 8 feet above ground level, without amplification;
- Public property or persons on public property;
- By owners or operators of oil, gas, water, or other type of pipeline or facility for purposes of inspection, maintenance, or repair;
- For purposes of oil pipeline safety and rig protection; or
- For port authority security and surveillance.

“Image” is defined by the bill as “any capturing of sound waves; thermal, infrared, ultraviolet, or visible light; or other electromagnetic waves, odor, or other conditions existing on or about real property in this state or an individual located on that property.” “Drone” is defined by reference to the definition in s. 934.50, F.S.

The provisions of the bill do not apply to manufacture, sale, assembly, or distribution of drones.

Prohibited Use of Drones

The bill prohibits a person from capturing images or using images captured by a drone under certain circumstances.

Capturing Certain Images

If a person uses a drone to capture an image of an individual or of privately owned real property, with the intent to conduct surveillance on the individual or property, he or she may be charged with a second degree misdemeanor.

However, it is a defense to the charge if he or she destroys the image upon becoming aware that the image was captured and he or she destroys it without disclosing, displaying, or distributing the image to a third party.

Possessing or Using Images Unlawfully Captured

If the image of an individual or private property captured with the intent to conduct surveillance is possessed by the person who captured the image, it is a second degree misdemeanor under the bill. If that image is disclosed, displayed, distributed, or otherwise used by the person who captured the image, it is a first degree misdemeanor. Each image unlawfully possessed, disclosed, displayed, distributed, or otherwise used by the person constitutes the basis for a separate criminal charge.

It is a defense to the possession, disclosure, display, distribution, or other use of unlawfully captured images if the person destroys the image or stops disclosing, displaying, distributing, or otherwise using the image as soon as the person has knowledge that that image was unlawfully captured.

Protection of Unlawfully or Incidentally Captured Images

The bill provides that unlawfully captured images or images that are incidental to the lawful capturing of an image may not be used as evidence in criminal, juvenile, civil, or administrative proceedings or actions. Such images are not subject to discovery, subpoena, or other means of legally-compelled release.

The images may, however, be released and used as evidence in a prosecution for any violation of the newly-created s. 934.55, F.S. It is unclear whether the term “in a prosecution for any violation” would include pursuit of the civil remedies provided in the bill.

Civil Actions

If the image of an owner or tenant of privately owned real property is unlawfully captured while he or she is on the property, or if an image of the property itself is unlawfully captured, he or she may bring an action against the person who captured the image using a drone. The bill provides actions for injunctions or civil penalties.

Civil penalties provided for in the bill are:

- \$5,000 for all images unlawfully captured in a single episode;
- \$10,000 for unlawful disclosure, display, distribution, or other use of all unlawfully captured images during a single episode; and
- Actual damages if the person who unlawfully captured the image also disclosed, displayed, or distributed the image with malice.

The prevailing party may recover court costs and reasonable attorney fees. There is two year statute of limitation on commencing an action for injunction, civil penalties, or damages.

The newly-created criminal and civil actions apply only to images captured on or after the effective date of the bill which is October 1, 2015.

Law Enforcement Drone Use Reporting Requirements

The bill amends s. 934.50, F.S., to create a law enforcement reporting requirement regarding the use of drones. State, local, and municipal law enforcement agencies are directed to report the information listed below to the Florida Department of Law Enforcement for the preceding year:

- The number of times a drone was used and for what type of incident;
- The number of criminal investigations aided by the drone's use and how the investigation was aided;
- The number of times a drone was used for a law enforcement operation that was not a criminal investigation and how the drone aided the operation;
- The frequency with which information was collected on an individual, residence, property or area when those persons or places were not the subject of a criminal investigation, and what type of information was collected; and
- The total cost of acquiring, maintaining, repairing, and operating or using each drone.

FDLE is directed to summarize and report the information provided by law enforcement agencies to the Governor, the President of the Senate, and the Speaker of the House of Representatives on an annual basis.

FDLE is also directed to adopt guidelines for law enforcement drone use in accordance with s. 934.50, F.S.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Although unquantifiable, the industry and commercial applications deemed “lawful” by the bill should experience a positive fiscal impact.¹⁵

C. Government Sector Impact:

The FDLE will expend resources gathering and summarizing the annual law enforcement drone-use reports required by the bill. The fiscal report filed by FDLE on the bill states: “This bill creates a technology impact for the agency however, until further reporting requirements are gathered within the agency, FDLE Information Technology Section cannot estimate any fiscal impact as it relates to building or buying a system to track and report on the drone requirements in this bill.”

VI. Technical Deficiencies:

On line 204, after the word “juvenile” it is suggested that the word “delinquency” be inserted for clarification.

In order to pursue a civil action the aggrieved party will need the use of evidence obtained from an unlawfully or incidentally captured image, therefore line 209 could be clarified to read “and used as evidence in a *criminal* prosecution *or in a civil action brought* for any violation of this.”

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 934.50 of the Florida Statutes.

This bill creates section 934.55 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

None.

B. Amendments:

None.

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

¹⁵ <http://www.theatlantic.com/business/archive/2015/02/faa-drone-regulations> . (visited March 12, 2015).