

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: CS/SB 132

INTRODUCER: Criminal Justice Committee and Senator Rouson

SUBJECT: Drones

DATE: February 12, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Jones	CJ	Fav/CS
2.			IS	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 132 amends s. 934.50(4), F.S., to create an additional exception to the general prohibition against law enforcement agencies using drones to gather evidence or other information.

The bill provides for law enforcement agencies to use drones to prepare for or monitor safety and security at a large-scale event, defined as having more than 100 persons in attendance, if the drone use is limited to legitimate public safety purposes including but not limited to:

- Evaluating crowd size, density, or movement;
- Assessing public safety vulnerabilities or weaknesses;
- Determining appropriate staffing levels for law enforcement or other public safety personnel;
- or
- Identifying possible criminal activity.

The bill prohibits law enforcement from arming the drone or firing a projectile from it.

The bill also creates definitions in s. 934.50(2), F.S.

Section 330.41(4), F.S., is reenacted by the bill.

The bill is effective July 1, 2019.

II. Present Situation:

A drone, also called Unmanned Aerial Vehicle (UAV) and Unmanned Aerial System (UAS), is defined in s. 934.50, F.S., as a powered, aerial vehicle that:

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

Drones range in size from wingspans of 6 inches to 246 feet and can weigh from approximately 4 ounces to over 25,600 pounds.² They may be controlled manually or through an autopilot that uses a data link to connect the drone's pilot to the drone.³ Drones can be equipped with infrared cameras,⁴ and "LADAR" (laser radar).⁵ In 2011, it was reported that the U.S. Army contracted with two corporations to develop facial recognition and behavioral recognition technologies for drone use.⁶

Law Enforcement Use of Drones in Florida – Section 934.50, F.S.

The Florida Sheriff's Association estimates that 12 sheriff's offices currently have drones.⁷ Of the 139 police departments that responded to the question regarding whether their department has at least one drone, 32 said they do have a drone and 10 responded that they soon will have a drone.⁸

¹ Section 934.50(2), F.S.

² 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.

³ *Id.*

⁴ Infrared cameras can see objects through walls based on the relative levels of heat produced by the objects. *Drones in Domestic Surveillance Operations: Fourth Amendment Implications and Congressional Response*, Congressional Research Service, April 3, 2013, available at www.fas.org/sgp/crs/natsec/R42701.pdf (last viewed January 31, 2019); Search and rescue drones equipped with thermal imaging help first responders identify the location of people lost in chaotic scenes, and police departments have started using drones with thermal capabilities to identify the location of suspects while keeping an infrared eye on their officers. *Best Infrared Drones (Buying Guide)*, Spire Drones, available at <https://buythebestdrone.com/best-infrared-drones/> (last viewed January 30, 2019).

⁵ The research and development laboratory at the Massachusetts Institute of Technology has developed airborne lidar systems that generate detailed 3D imagery of terrain and structures, including those beneath dense foliage. The lab reports that the micro-lidar could be used under both clear and heavy foliage conditions for surveillance and reconnaissance missions as well as for humanitarian assistance and disaster relief operations. Lincoln Laboratory, Massachusetts Institute of Technology, R & D Projects, *Micro-lidar*, available at <https://www.ll.mit.edu/r-d/projects/micro-lidar> (last viewed January 31, 2019).

⁶ Clay Dillow, Popular Science, *Army Developing Drones That Can Recognize Your Face From a Distance*, September 28, 2011, available at pops.ci.com/technology/article/2011-09/army-wants-drones-can-recognize-your-face-and-read-your-mind (last viewed January 31, 2019).

⁷ E-mail from Florida Sheriff's Association Deputy Executive Director of Operations dated January 28, 2019 (on file with the Senate Committee on Criminal Justice).

⁸ E-mail from Florida Police Chiefs Association Executive Director dated January 29, 2019 (on file with the Senate Committee on Criminal Justice).

Section 934.50, F.S., prohibits law enforcement agencies from using a drone to gather evidence or other information, with certain exceptions.⁹ Evidence obtained or collected by a law enforcement agency using a drone is not admissible in a criminal prosecution in any court of law in this state unless it is permitted under one of the statute's exceptions.¹⁰ An aggrieved party may initiate a civil action against a law enforcement agency to obtain all appropriate relief in order to prevent or remedy a violation of s. 934.50, F.S.¹¹

Additionally, a real property owner, tenant, occupant, invitee, or licensee of the property is presumed to have a reasonable expectation of privacy from drone surveillance of the property or the owner, tenant, occupant, invitee, or licensee by another person, state agency, or political subdivision, if he or she cannot be seen by persons at ground level who are in a place they have a legal right to be.¹² Surveillance is defined in s. 934.50(2)(e), F.S.:

- With respect to an owner, tenant, occupant, invitee, or licensee of privately owned real property, the observation of such persons with sufficient visual clarity to be able to obtain information about their identity, habits, conduct, movements, or whereabouts; or
- With respect to privately owned real property, the observation of such property's physical improvements with sufficient visual clarity to be able to determine unique identifying features or its occupancy by one or more persons.

The exceptions for law enforcement agencies using drones to gather evidence and other information are:

- The U.S. Secretary of Homeland Security determines that credible intelligence exists indicating a high risk of a terrorist attack by an individual or organization and the drone is used to counter the risk;
- The law enforcement agency first obtains a search warrant authorizing the use of a drone; or
- The law enforcement agency has reasonable suspicion that swift action is necessary 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.¹³

A law enforcement agency is defined in s. 934.50, F.S., as 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, game, or controlled substance laws.¹⁴

Weaponized Drones Prohibited in Florida

In Florida, s. 330.411, F.S., prohibits a person from possessing or operating an unmanned aircraft or unmanned aircraft system as defined in s. 330.41, F.S., with an attached weapon, firearm,

⁹ Section 934.50(3)(a), F.S.

¹⁰ Section 934.50(6), F.S.

¹¹ Section 934.50(5)(a), F.S.

¹² Section 934.50(3)(b), F.S. See also s. 934.50(5)(b)-(d) F.S., providing for compensatory damages, injunctive relief, attorney fees, and punitive damages for a violation of s. 934.50(3)(b), F.S.

¹³ Section 934.50(4)(a)-(c), F.S. Note that there are additional exceptions to the prohibition on the use of drones that are not law enforcement agency related. These exceptions can be found in s. 934.50(4)(d)-(j), F.S.

¹⁴ Section 934.50(2)(d), F.S.

explosive, destructive device, or ammunition as defined in s. 790.001, F.S.¹⁵ North Dakota is the only state that allows law enforcement agencies to utilize weaponized drones. The weapons are limited to the non-lethal variety such as tear gas, rubber bullets, beanbags, pepper spray, and tasers.¹⁶

Federal Aviation Authority

In February 2012, Congress passed the Federal Aviation Authority (FAA) Modernization and Reform Act of 2012 (Act), which required the FAA to safely open the nation's airspace to drones by September 2015.¹⁷ The FAA regulates the use of drones as it does all aircraft in the national airspace, with an emphasis on safety, efficiency, and national security, but views considerations such as privacy beyond the scope of FAA authority.¹⁸

Under the authority granted in the 2012 Act, the FAA issued its regulations on the operation and certification of small (less than 55 pounds at take-off) unmanned aircraft systems in June 2016.¹⁹ The 2016 small drone regulations are still in effect and include airspace restrictions and a waiver mechanism allowing for deviations from drone operational restrictions upon application and authorization by the FAA.²⁰

FAA Drone Airspace Restrictions

The FAA has designated generally restricted airspace including drone flight around and over sports stadiums and wildfires at specified times or under specified conditions. Drone operators must educate themselves on these restrictions prior to flying.²¹

FAA Drone Operational Restrictions

The following are among the operational restrictions in the 2016 regulation:

- Small unmanned aircraft may not operate over any persons not directly participating in the operation, not under a covered structure, and not inside a covered stationary vehicle;²²

¹⁵ Section 330.41(2)(c), F.S., defines an unmanned aircraft system as a drone and its associated elements, including communication links and the components used to control the drone which are required for the pilot in command to operate the drone safely and efficiently. Section 330.41(2)(b), F.S., specifies that drone has the same meaning as s. 934.50(2), F.S.

¹⁶ North Dakota House Bill 1328 (2015), available at <https://www.legis.nd.gov/assembly/64-2015/documents/15-0259-05000.pdf?20150501154934> (last viewed February 6, 2019).

¹⁷ Public Law 112-95, February 14, 2012, The FAA Modernization and Reform Act of 2012, *Drones in Domestic Surveillance Operations: Fourth Amendment Implications and Congressional Response*, Congressional Research Service, April 3, 2013, available at www.fas.org/sgp/crs/natsec/R42701.pdf (last viewed January 31, 2019).

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

¹⁹ *Id.*

²⁰ *Id.*

²¹ See FAA, Unmanned Aircraft Systems, *Airspace Restrictions*, available at https://www.faa.gov/uas/where_to_fly/airspace_restrictions/#wildfires (last viewed February 4, 2019).

²² The term "over" refers to the flight of the small unmanned aircraft directly over any part of a person. For example, a small UAS that hovers directly over a person's head, shoulders, or extended arms or legs would be an operation over people. Similarly, if a person is lying down, for example at a beach, an operation over that person's torso or toes would also constitute an operation over people. An operation during which a small UAS flies over any part of any person, regardless of the dwell time, if any, over the person, would be an operation over people. 14 CFR Parts 21, 43, 61, 91, 101, 107, 119, 133, and 183, *Operation and Certification of Small Unmanned Aircraft Systems*, 81 FR 42064-01, June 28, 2016.

- Maximum altitude of 400 feet above ground level (AGL) or, if higher than 400 feet AGL, remain within 400 feet of a structure; and
- Daylight-only operations or civil twilight (30 minutes before official sunrise to 30 minutes after official sunset, local time) with appropriate anti-collision lighting.²³

Both the Lakeland Police Department and the Polk County Sheriff's Office have recently obtained waivers of the daylight-only operational restriction from the FAA.²⁴

Proposed Rule

The FAA announced a new proposed regulation for the use of drones on January 18, 2019.²⁵ The proposal, in its current form, appears to provide avenues that would allow drone operators to routinely fly over people and fly at night.²⁶

The proposed regulation creates a risk-assessment model based upon the weight of the drone, and the design of the drone, with an eye toward any mitigation the drone design presents to prohibit serious injury or property damage should the drone make contact with a person or property on the ground.²⁷ The process of the FAA accepting public comment on the proposal, and then drafting a final rule has not begun at this time.²⁸

III. Effect of Proposed Changes:

The bill amends s. 934.50(4), F.S., to create an additional exception to allow a law enforcement agency to use a drone to prepare for or monitor safety and security at a large-scale event, if the drone use is limited to legitimate public safety purposes, which includes but is not limited to:

- Evaluating crowd size, density, or movement;
- Assessing public safety vulnerabilities or weaknesses;
- Determining appropriate staffing levels for law enforcement or other public safety personnel; or
- Identifying possible criminal activity.

The law enforcement agency using the drone under the new exception may not:

- Fire a projectile from the drone; or
- Equip the drone with tear gas canisters, stun gun technology, or any other dangerous or deadly weapon.

²³ *Id.*

²⁴ Certificates of Waiver 107W-2018-16741 (dated November 28, 2018) and 107W-2018-16274 (dated November 6, 2018); FAA, Unmanned Aircraft Systems, *Part 107 Waivers Issued*, available at https://www.faa.gov/uas/commercial_operators/part_107_waivers/waivers_issued/ (last viewed January 31, 2019).

²⁵ Department of Transportation, Office of the Secretary, FAA, 14 CFR Part 107, Notice of Proposed Rulemaking, *Operation of Small Unmanned Aircraft Systems over People*, Dates: To Be Announced. The proposed rule has not been published in the Federal Register or opened for public comment as of February 1, 2019 but the draft document is available at https://www.faa.gov/uas/programs_partnerships/DOT_initiatives/media/2120-AK85_NPRM_Operations_of_Small_UAS_Over_People.pdf (last viewed February 3, 2019).

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

The bill defines a “large-scale event” to mean a public or private event attended by more than 100 persons at a:

- Sports or entertainment arena;
- Stadium;
- Convention hall;
- Special event center;
- Amusement facility;
- Outdoor concert venue;
- Special event area licensed or permitted for use under the authority of a unit of local government; or
- Event open to the public that takes place on a public way or on government-owned property.

The bill defines a “dangerous or deadly weapon” to mean a firearm or other weapon, device, instrument, material, or substance, whether animate or inanimate, which is used or intended to be used in a manner capable of causing death or serious bodily injury.

Additionally, the bill reenacts s. 330.41(4), F.S., to incorporate changes made by the bill.

The bill is effective July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Privacy

Although it is generally understood that a person does not currently have a reasonable expectation of privacy under the circumstances set forth in the bill, with the evolution of

technology as it relates to intrusion into a person’s privacy interests, the law, too, may evolve.²⁹

Preemption

The regulation of the national airspace and the aircraft that occupy it is a federal matter.³⁰ The FAA Chief Counsel issued a document in 2015 about state and local regulation of drones in which he said that state and local restrictions affecting UAS operations should be consistent with the extensive federal statutory and regulatory framework in order to “ensure the maintenance of a safe and sound air transportation system and of navigable airspace free from inconsistent restrictions.”³¹ However, given the Chief Counsel’s acknowledgement that “laws traditionally related to state and local police power – including land use, zoning, privacy, trespass, and law enforcement operations – generally are not subject to federal regulation”³² it appears that the bill would not be an encroachment into an area exclusively regulated by the federal government.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Florida Department of Law Enforcement anticipates no fiscal impact to the department resulting from the bill.³³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

²⁹ See *Katz v. United States*, 389 U.S. 347 (1967) finding there is no reasonable expectation of privacy in the public view. See also *Carpenter v. United States*, 138 S.Ct. 2206 (2018) finding a reasonable expectation of privacy in historical cell phone location records.

³⁰Congress has vested the FAA with authority to regulate the areas of airspace use, management and efficiency, air traffic control, safety, navigational facilities, and aircraft noise at its source. 49 U.S.C. ss. 40103, 44502, and 44701-44735.

³¹FAA, Office of the Chief Counsel, *State and Local Regulation of Unmanned Aircraft Systems (UAS) Fact Sheet*, December 17, 2015, available at https://www.faa.gov/uas/resources/policy_library/media/UAS_Fact_Sheet_Final.pdf (last viewed February 4, 2019).

³² *Id.*, citing *Skysign International, Inc. v. City and County of Honolulu*, 276 F.3d 1109, 1115 (9th Cir. 2002).

³³ The Florida Department of Law Enforcement, *2019 Legislative Bill Analysis, SB 132* (December 14, 2018) (on file with the Senate Committee on Criminal Justice).

VIII. Statutes Affected:

This bill substantially amends section 934.50 of the Florida Statutes.

The bill reenacts section 330.41 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on February 11, 2019:

The Committee Substitute:

- Changes the number of persons attending a large-scale event from 10 to 100; and
- Corrects a scrivener's error in the directory clause.

- B. **Amendments:**

None.