

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 Community Affairs

BILL: SB 518

INTRODUCER: Senator Diaz

SUBJECT: Drones

DATE: March 17, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stallard</u>	<u>Caldwell</u>	<u>MS</u>	Favorable
2.	<u>Paglialonga</u>	<u>Ryon</u>	<u>CA</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 518 provides an additional exception to the statutory ban on certain uses of drones by law enforcement agencies, fire departments, state agencies, and political subdivisions of the state.

Currently, s. 934.50, F.S., prohibits a:

- Law enforcement agency from using a drone to gather evidence or other information.
- Person, or state or local entity, from using a drone to capture images of private property in violation of a person's reasonable expectation of privacy.

However, these prohibitions are subject to exceptions, and the bill adds an exception. Specifically, under the bill, s. 943.50, F.S., no longer prohibits a state agency or political subdivision to use a drone for the assessment of damage due to a hurricane, a flood, a wildfire, or any other natural disaster.

The bill takes effect July 1, 2021.

II. Present Situation:

Overview

Section 934.50, F.S., prohibits a law enforcement agency from using a drone to gather information, and prohibits any person or state entity from using a drone to record an image of a person in violation of the person's reasonable expectation of privacy.¹ However, these prohibitions are subject to several exceptions, including use for aerial mapping, to capture

¹ Section 934.50(3), F.S.

images for a utility company or communications services provider, or for specified law enforcement purposes.²

Federal law, unlike Florida law, does not include a statute or regulation expressly targeting governmental drone use that might invade a citizen's privacy. However, federal law does include various restrictions and regulations on drone use, including airspace restrictions and licensing requirements.

Drones

A drone, also called an 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.³

Drones range in size from wingspans of 6 inches to 246 feet and can weigh from approximately 4 ounces to over 25,600 pounds.⁴ They may be controlled manually or through an autopilot that uses a data link to connect the drone's pilot to the drone.⁵

Federal Law and Regulation

Federal law and regulation govern who may fly a drone, as well as when and where the person may do so. The FAA is responsible for regulating aircraft, including drones, that fly in U.S. airspace.⁶ 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 nongovernmental drones by September 2015.⁷

Neither federal law nor regulation categorically prohibit governmental agents to operate a drone over an area damaged by a hurricane, flood, wildfire, or other natural disaster. However, the FAA often implements Temporary Flight Restrictions around wildfires to protect firefighting

² See s. 934.50(4), F.S., for the list of exceptions.

³ Section 934.50(2), F.S.

⁴ 72 FR 6689, Federal Aviation Administration (FAA), *Unmanned Aircraft Operations in the National Airspace System*, February 13, 2007, available at <https://www.federalregister.gov/documents/2007/02/13/E7-2402/unmanned-aircraft-operations-in-the-national-airspace-system>.

⁵ *Id.*

⁶ See 49 U.S.C. s. 40103(b)(1) and (2).

⁷ Public Law 112-95, February 14, 2012, The FAA Modernization and Reform Act of 2012, *Drones in Domestic Surveillance Operations: Fourth Amendment Implications and Legislative Responses*, Congressional Research Service, April 3, 2013, available at www.fas.org/sgp/crs/natsec/R42701.pdf (last viewed February 3, 2021).

aircraft.⁸ Additional FAA airspace restrictions include the area around Washington, D.C., sports stadiums, and airports.⁹

Choice of Regulatory Framework for Governmental Operators

A governmental agent may operate a drone under one of two legal frameworks — that for “public unmanned aircraft systems,” or that for “small unmanned aircraft systems.” The framework for small unmanned aircraft systems is much more extensive, and it is the same framework under which a private citizen would operate a drone.¹⁰

The legal framework for “public unmanned aircraft systems” consists primarily of one statute.¹¹ Under this statute, a governmental operator may seek a certificate of authorization or certificate of waiver from the FAA.¹² If granted, the operator may operate a drone weighing 4.4 pounds or less.¹³ The drone must be kept within the line of sight of the operator and below 400 feet, and may only be operated during the day.¹⁴

Many governmental operators choose instead to operate their drones as “small unmanned aircraft systems.” These drones are subject to extensive regulations, codified in the Code of Federal Regulations, and first promulgated in 2016.¹⁵ These regulations were recently substantially amended, and the amendments take effect in March.¹⁶

As of March 16, 2021, operators of small drones (those under 55 pounds) will no longer need to seek special authorization before operating a drone that passes over people, including people in moving vehicles.¹⁷ However, the regulations pertaining to these flights vary somewhat,

⁸ FAA, *FAA Drones and Wildfires Digital Toolkit*, available at https://www.faa.gov/uas/media/FAA_drones_wildfires_toolkit.pdf (last viewed February 3, 2021). Moreover, Congress has authorized the FAA to impose a civil penalty of up to \$20,000 against any drone pilot who interferes with wildfire suppression, law enforcement, or emergency response operations. FAA, *FAA Targets UAS Violators for Enforcement*, available at <https://www.faa.gov/news/updates/?newsId=91706> (last visited Feb. 4, 2021).

⁹ FAA, Unmanned Aircraft Systems, *Airspace Restrictions*, July 16, 2020, available at https://www.faa.gov/uas/where_to_fly/airspace_restrictions/ (last viewed February 7, 2021); see also FAA Drones and Wildfires Digital Toolkit, available at https://www.faa.gov/uas/media/FAA_drones_wildfires_toolkit.pdf (last viewed February 3, 2021).

¹⁰ FAA, *Drones in Public Safety—A Guide to Starting Operations* (Feb. 2019), available at https://www.faa.gov/uas/public_safety_gov/media/Law_Enforcement_Drone_Programs_Brochure.pdf; FAA, *A “UAS Primer for Public Safety”, Public Aircraft OPS VS Part 07*, (Jan. 2020), available at <https://www.faasafety.gov/files/gslac/library/documents/2020/Jan/233377/Public%20Safety%20PAO%20vs%20Part%20107%20Primer%20v2.1.pdf>. See 49 U.S.C. ch. 448 for the federal statutes pertaining to drones. The primary statute relating to public unmanned aircraft systems is 49 U.S.C. s. 44806, and the primary statute relating to small unmanned aircraft systems is 49 U.S.C. s. 44802. The rules authorized by 49 U.S.C. s. 44802 are at 14 C.F.R. 107.

¹¹ 49 U.S.C. s. 44806.

¹² See 49 U.S.C. s. 44806(a)(1).

¹³ 49 U.S.C. s. 44806(b)(2)(C).

¹⁴ *Id.*

¹⁵ See 14 C.F.R. 107.

¹⁶ FAA, *Operation of Small Unmanned Aircraft Systems Over People*, 86 FR 4314, available at <https://www.federalregister.gov/d/2020-28947/p-85>.

¹⁷ *Id.* Prior to this change, a drone operator who did not have special authorization could not fly a drone over people who were not in covered structure, stationary vehicle, or participating in the drone operation.

depending on the size of the craft.¹⁸ Moreover, operating a drone in *sustained* flight over an open-air assembly of people remains subject to restrictions.¹⁹ Under these restrictions, a drone must be equipped with individual identification as specified in rule and must continuously transmit specified information regarding its location.²⁰

However, these restrictions are subject to waiver by the FAA. Thus, if an operator receives a waiver, he or she does not have to meet the normal requirements for operating a drone over people.²¹

Florida Law

Florida's Prohibition on Certain Drone Uses – Section 934.50, F.S.

Section 934.50, F.S., is the “Freedom from Unwarranted Surveillance Act.” Subject to exceptions, it prohibits a law enforcement agency²² from using a drone to gather information and prohibits private or governmental entities from using a drone to capture images in violation of a person’s reasonable expectation of privacy. For the purposes of this statute, a real property owner, tenant, occupant, invitee, or licensee is presumed to have a reasonable expectation of privacy from drone surveillance²³ while on the property.²⁴ However, this presumption only applies while the person is “not observable by persons located at ground level in a place where they have a right to be.”²⁵

Section 934.50, F.S., includes a list of ten exceptions to its ban on drone surveillance. These exceptions include specified uses by law enforcement, utilities, firefighters, businesses, and individuals. The statute provides that it does not prohibit drone use for aerial mapping, for specified purposes by a utility company, for the delivery of cargo, or for surveying of wildlife and vegetation by a non-law enforcement employee of the Florida Fish and Wildlife Commission.²⁶ With regard to law enforcement, the statute does not prohibit drone use that is

¹⁸ See 14 C.F.R. 107.110-165 (effective March 16, 2021), available at <https://www.ecfr.gov/cgi-bin/text-idx?SID=a70adf1ff1545784a28e989f2ddeae94&mc=true&node=20210115y1.103>. These provisions set forth Categories 1 through 4, each with its own requirements.

¹⁹ The FAA describes sustained flight to include “hovering above the heads of persons gathered in an open-air assembly, flying back and forth over an open-air assembly, or circling above the assembly in such a way that the small unmanned aircraft remains above some part of the assembly.” FAA, *Operation of Small Unmanned Aircraft Over People*, 86 FR 4314, available at <https://www.federalregister.gov/d/2020-28947/p-208>.

²⁰ See 14 C.F.R. 89.110 and 89.115(a) (effective March 16, 2021) for the details of these requirements, available at <https://www.ecfr.gov/cgi-bin/text-idx?SID=a70adf1ff1545784a28e989f2ddeae94&mc=true&node=pt14.2.89&rgn=div5>.

²¹ 14 C.F.R. 107.205.

²² A law enforcement agency is defined in s. 934.50(2)(d), 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.

²³ 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.

²⁴ Section 934.50(3)(b), F.S.

²⁵ *Id.*

²⁶ See s. 934.50(4), F.S., for a complete list of the exceptions, including the specific circumstances required for each exception.

pursuant to a search warrant or when the agency has a reasonable suspicion that “swift action” is necessary to prevent the imminent loss of life, escape of a prisoner, or other specified circumstance.²⁷

Section 934.50, F.S. provides several remedies for victims of prohibited drone use.²⁸ In order to enforce the prohibition in s. 934.50, F.S., on the wrongful use of a drone by law enforcement, the statute provides that evidence collected in violation of the statute is inadmissible in court. Moreover, 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.²⁹ Additionally, a victim may recover compensatory damages against any person or entity that violates s. 934.50, F.S., and may be entitled to punitive damages.³⁰

Fire Department Use of Drones

According to an October 2018 news article, fire departments use UAVs for reconnaissance of wildfires and motor vehicle accident scenes, hazmat incidents, and hot spot identification at structure fires. In addition to the reconnaissance function and hot spot identification, additional uses for UAVs include:

- Search and rescue, even in urban settings;
- Preplanning with aerial photos and video identifying water supply sources, utility shutoffs, and apparatus location planning;
- Winter and ice rescue; and
- Disaster assessment and post-disaster reconnaissance after weather events such as floods or tornados.³¹

The Mesa Fire and Medical Department in Mesa, Arizona, has also used drones in a variety of capacities, including:

- Gaining a 360-degree perspective on damaged structures;
- Surveying buildings to provide hazard assessments for property owners;
- Water rescue operations and flood damage assessment;
- Assisting with a search for a missing kindergarten teacher; and
- Demonstrating how drones outfitted with special meters and cameras to identify lethal chemicals in hazmat situations can help keep first responders safe.³²

²⁷ Section 934.50(4)(b) and (c), F.S. Section 934.50, F.S., also does not prohibit the use of a drone to counter a high risk of a terrorist attack if the Secretary of the U.S. Department of Homeland Security indicates that such a risk exists. Section 934.50(4)(a), F.S.

²⁸ See s. 934.50(5), F.S.

²⁹ Section 934.50(5)(a), F.S.

³⁰ See s. 934.50(5), F.S., for the complete list of remedies.

³¹ Fire Apparatus & Emergency Equipment, Alan M. Petrillo, *Fire Department Drones Serve a Variety of Needs on Incident Scenes*, October 1, 2018, available at <https://www.fireapparatusmagazine.com/fire-apparatus/fire-department-drones-serve-a-variety-of-needs-on-incident-scenes/#gref> (last viewed February 3, 2021).

³² Wayne Schutsky, East Valley Tribune, *Ariz. Fire, EMS Leads the Way with Drone Use*, December 20, 2017, available at <https://www.ems1.com/ems-products/technology/articles/370989048-Ariz-fire-EMS-leads-the-way-with-drone-use/> (last viewed February 3, 2021).

In Brevard County, Fire Rescue personnel have been trained to test for the FAA drone pilot certification³³ so they can conduct search-and-rescue operations, ocean rescue, map brush fires, and examine burning buildings to identify safe entry points for firefighters using drones.³⁴

Other Governmental Uses for Drones

Drones are becoming useful for governmental functions outside policing. For example, the Daytona Beach Police Department utilized its drones to document the state of the city's infrastructure immediately before and after Hurricane Irma came through in September 2017 to provide the Federal Emergency Management Agency with the proof necessary to obtain funding for rebuilding. Additionally, the department was able to aid first responders in navigating the fastest and safest routes to those in need of aid by providing a birds-eye view of downed power lines, unstable infrastructure, and blocked roads in the wake of the storm.³⁵

III. Effect of Proposed Changes:

SB 518 provides an additional exception to the statutory ban on certain uses of drones by law enforcement agencies, fire departments, state agencies, and political subdivisions of the state.

Currently, s. 934.50, F.S., prohibits a:

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The bill takes effect July 1, 2021.

³³ Federal Aviation Administration, *Become a Drone Pilot*, available at https://www.faa.gov/uas/commercial_operators/become_a_drone_pilot/ (last viewed February 3, 2021).

³⁴ Rick Neale, Florida Today, *Florida Tech drone training takes flight for Brevard County firefighters, lifeguards*, November 30, 2018, available at <https://www.floridatoday.com/story/news/2018/11/30/florida-tech-drone-training-takes-flight-brevard-firefighters/2140086002/> (last viewed February 3, 2021).

³⁵ Police1.com, Jinnie Chua, *Why drones should be part of every PD's disaster response plan*, February 22, 2018, available at <https://www.policeone.com/2018-guide-drones/articles/471474006-Why-drones-should-be-part-of-every-PDs-disaster-response-plan/> (last viewed February 3, 2021); for additional ways the Daytona Beach Police Department has utilized its drones see Stephen Rice, Forbes.com, *10 Ways That Police Use Drones To Protect And Serve*, October 7, 2019, available at <https://www.forbes.com/sites/stephenrice1/2019/10/07/10-ways-that-police-use-drones-to-protect-and-serve/?sh=5a1b31d96580> (last viewed January 8, 2021); and Ginger Pinholster, Fox News 35, Orlando, *Eyes in the Sky and Embry-Riddle Training Help Police End Hotel Standoff*, September 27, 2019, available at <https://news.erau.edu/headlines/eyes-in-the-sky-and-embry-riddle-training-help-police-end-hotel-standoff> (last viewed February 3, 2021).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill could lead to cost-savings by state and local governments. The bill provides additional exceptions to the statutory ban on drone use by governmental agents. Accordingly, these entities may be able to use drones, for instance, to more efficiently assess an area ravaged by a hurricane or fire.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Florida Supreme Court has recently ruled that a pandemic is a “natural emergency” within the meaning of s. 252.34(8), F.S.³⁶ It is unclear whether a pandemic is within the meaning of “natural disaster” as used by the bill.

VIII. Statutes Affected:

This bill substantially amends section 934.50 and reenacts section 330.41 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.

³⁶ “Natural emergency” means an emergency caused by a natural event, including, but not limited to, a hurricane, a storm, a flood, severe wave action, a drought, or an earthquake. Section 252.34(8), F.S. *See Abramson v. DeSantis*, Case No.: SC20-646, 202 WL 3464376 (Fla. June 25, 2020).