

HOUSE OF REPRESENTATIVES FINAL BILL ANALYSIS

BILL #:	CS/CS/CS/HB 649	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Judiciary Committee; Civil Justice Subcommittee; Criminal Justice Subcommittee; Metz and others	117 Y's	0 N's
COMPANION BILLS:	CS/CS/SB 766	GOVERNOR'S ACTION:	Pending

SUMMARY ANALYSIS

CS/CS/CS/HB 649 passed the House on April 28, 2015, as CS/CS/SB 766.

In 2013, the Legislature enacted the Freedom from Unwarranted Surveillance Act (Act). The Act regulates the use of drones by law enforcement agencies and provides a civil remedy for an aggrieved party to obtain relief in the event the Act is violated.

The bill amends the Freedom from Unwarranted Surveillance Act to prohibit a person, state agency, or political subdivision from using a drone equipped with an imaging device to:

- Record an image of privately owned real property or the owner, tenant, occupant, invitee, or licensee of such property;
- With the intent to conduct surveillance on the individual or property in violation of such person's reasonable expectation of privacy; and
- Without that individual's written consent.

The bill defines the terms "image," "imaging device," and "surveillance."

The bill creates a presumption that a person has a reasonable expectation of privacy on his or her privately owned real property if he or she is not observable by persons located at ground level in a place where they have a legal right to be, regardless of whether he or she is observable from the air with the use of a drone.

The bill creates exceptions to the above-described prohibition for:

- A person or entity engaged in a business or profession licensed by the state, or by an agent, employee, or contractor of the state only if the drone is used to perform reasonable tasks within the scope of practice or activities permitted under such person's or entity's license;
- An employee or contractor of a property appraiser;
- An electric, water, or natural gas utility;
- Aerial mapping;
- Cargo delivery purposes; and
- Capturing images necessary for the safe operation or navigation of a drone that is being used for a purpose allowed under federal or Florida law.

The bill creates a civil remedy authorizing an aggrieved party to seek compensatory damages and injunctive relief against a person, state agency, or political subdivision that violates the above described prohibition. The prevailing party in such civil actions is entitled to recover reasonable attorney fees from the nonprevailing party and may recover punitive damages against a person (not a state agency or political subdivision) who violates the above-described prohibition.

Subject to the Governor's veto powers, the effective date of the bill is July 1, 2015.

I. SUBSTANTIVE INFORMATION

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: May 5, 2015

A. EFFECT OF CHANGES:

Present Situation

Drones

A drone is an unmanned aircraft that can be flown by remote control or on a predetermined flight path.¹ The size of a drone varies—it can be as small as an insect or as large as a commercial airliner.² Drones can be equipped with various devices such as infrared cameras,³ devices used to intercept electronic transmissions,⁴ and devices that can intercept cellular phone message and crack Wi-Fi passwords.⁵ It has been reported that the U.S. Army contracted with two corporations in 2011 to develop facial recognition and behavior recognition technologies for drone use.⁶

There are three major markets for drones: military, civil government, and commercial.⁷ The majority of drones are operated by the military and have an insignificant impact on U.S. airspace.⁸ However, drone use in this country is increasing because of technological advances. In 2011, the Federal Aviation Administration (FAA) estimated that there will be 30,000 drones in U.S. airspace by 2030.⁹

Non-Military Drone Use

The FAA, which first allowed drones in U.S. airspace in 1990, is in charge of overseeing the integration of drones into U.S. airspace.¹⁰ In doing so, it must balance the integration of drones with the safety of the nation's airspace.¹¹ Since 1990, the FAA has allowed limited use of drones for important public missions such as firefighting, disaster relief, search and rescue, law enforcement, border patrol, scientific research, and testing and evaluation.¹² Recently, the FAA limited the type of airspace where drones may operate. For example, the FAA prohibits drone operations over major urban areas.¹³ Flying model aircraft/drones as a hobby or for recreational purpose does not require FAA approval.¹⁴ The FAA authorizes non-recreational drone operations on a case-by-case basis, and there are several ways to gain FAA approval.

Currently, private sector manufacturers and technology developers can obtain a Special Airworthiness Certificate in the experimental category to conduct research and development. Commercial firms that

¹ Richard M. Thompson II, *Drones in Domestic Surveillance Operations: Fourth Amendment Implications and Legislative Responses*, Congressional Research Service, April 3, 2013, www.fas.org/sgp/crs/natsec/R42701.pdf (last visited April 28, 2015).

² Jeremiah Gertler, *U.S. Unmanned Aerial Systems*, Congressional Research Service, January 3, 2012, www.fas.org/sgp/crs/natsec/R42136.pdf (last visited April 28, 2015).

³ See, DSLRPros, Nighthawk Thermal P2 Aerial Kit, <http://www.dslrpros.com/dslrpros-products/thermal-aerial-drone-kit.html> (last visited April 28, 2015).

⁴ Greg Miller, *CIA flew stealth drones into Pakistan to monitor bin Laden house*, THE WASHINGTON POST (May 17, 2011), http://www.washingtonpost.com/world/national-security/cia-flew-stealth-drones-into-pakistan-to-monitor-bin-laden-house/2011/05/13/AF5dW55G_story.html (last visited April 28, 2015).

⁵ Andy Greenberg, *Flying Drone Can Crack Wi-Fi Networks, Snoop on Cell Phones*, FORBES (July 28, 2011), <http://www.forbes.com/sites/andygreenberg/2011/07/28/flying-drone-can-crack-wifi-networks-snoop-on-cell-phones/> (last visited April 28, 2015).

⁶ Clay Dillow, *Army Developing Drones that can Recognize Your Face from a Distance and Even Recognize Your Intentions*, POPULAR SCIENCE (Sept. 28, 2011), <http://www.popsci.com/technology/article/2011-09/army-wants-drones-can-recognize-your-face-and-read-your-mind> (last visited April 28, 2015).

⁷ *FAA Aerospace Forecast: Fiscal Years 2011-2031*, FEDERAL AVIATION ADMINISTRATION 49 (2011).

⁸ *Id.*

⁹ *Id.*

¹⁰ FAA Modernization and Reform Act of 2002, Public Law No. 112-95, 126 Stat. 11 (2012).

¹¹ Fact Sheet—Unmanned Aircraft Systems (UAS), FEDERAL AVIATION ADMINISTRATION (Feb. 15, 2015), http://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=18297 (last visited April 28, 2015).

¹² *Id.*

¹³ Fact Sheet—Unmanned Aircraft Systems (UAS), FEDERAL AVIATION ADMINISTRATION (Jan. 6, 2014), http://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=14153 (last visited April 28, 2015).

¹⁴ All model aircraft/drone operators must fly in accordance with the law. Fact Sheet—Unmanned Aircraft Systems (UAS), FEDERAL AVIATION ADMINISTRATION (Feb. 15, 2015), http://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=18297 (last visited April 28, 2015).

fly drones may also do so under a FAA Restricted Category Type Certificate, which allows limited operations such as wildlife conservation flights, aerial surveying, and oil/gas pipeline patrols.¹⁵ Additionally, commercial entities are able to petition the FAA for exemptions under Section 333 of Public Law 112-95 to permit non-recreational drone operations.¹⁶

The FAA also may issue a Certificate of Waiver of Authorization (COA), which allows public entities, including governmental agencies, to fly drones in civil airspace.¹⁷ An agency seeking a COA must apply online and detail the proposed operation for the drone.¹⁸ If the FAA issues a COA, it contains a stated time period (usually two years), a certain block of airspace for the drone, and other special provisions unique to the specific operation.¹⁹ In 2013, the FAA issued 423 COAs.²⁰

Drone Use in Florida

According to the FAA's Freedom of Information Act responses, the Miami-Dade Police Department, the Orange County Sheriff's Office, the Polk County Sheriff's Office, and the University of Florida each held a COA to operate an unmanned aircraft system between November 2006 and June 30, 2011.²¹ Additionally, it has been reported that the Daytona Beach Police Department was issued a COA.²²

- The Miami-Dade Police Department released a COA issued to the department that was effective from July 1, 2011, to June 30, 2012.²³ However, as recently at 2013, the department was using drones in training drills.²⁴
- The Orange County Sheriff's Office COA that was released to the public was effective from January 28, 2011, to January 27, 2012.²⁵ The Sheriff's Office purchased two drones.²⁶
- The Polk County Sheriff's Office purchased a quadcopter in 2010, and as of October 2014, reported using it eight times in SWAT situations.²⁷

Florida Law

In 2013, the Legislature passed the Freedom from Unwarranted Surveillance Act (Act). The Act created s. 934.50, F.S., which limits the use of drones by law enforcement agencies. The Act defines a 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.²⁸

¹⁵ *Id.* As of October 2014, the FAA has only approved operations using two certificated drones.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ FEDERAL AVIATION ADMINISTRATION, *Freedom of Information Act Responses*, https://www.faa.gov/uas/public_operations/foia_responses/ (last visited April 28, 2015). Whether these entities have renewed their COAs or whether other Florida state or local agencies have obtained COAs is unknown at this time.

²² Shawn Musgrave, *Finally, Here's Every Organization Allowed to Fly Drones in the US*, MOTHERBOARD (Oct. 6, 2014), <http://motherboard.vice.com/read/every-organization-flying-drones-in-the-us> (last visited April 28, 2015). In a public records request, the FAA released COA requests submitted between November 2012, and June 2014. *Id.* According to the information released, the Daytona Beach Police Department obtained two COA waivers. *Id.*

²³ ELECTRONIC FRONTIER FOUNDATION, *Miami-Dade PD Drone Certificate of Authorization*, <https://www.eff.org/document/miami-dade-pd-drone-certificate-authorization> (last visited April 28, 2015).

²⁴ David Sutta, *Unmanned Drones Now Patrolling South Florida Skies*, CBS MIAMI (May 9, 2013), <http://miami.cbslocal.com/2013/05/09/unmanned-drones-now-patrolling-south-florida-skies/> (last visited April 28, 2015).

²⁵ ELECTRONIC FRONTIER FOUNDATION, *Orange County Sheriff Drone Records*, <https://www.eff.org/document/orange-county-sheriff-drone-records> (last visited April 28, 2015).

²⁶ *Drone Spotted at Orange County Standoff Scene Raises Questions*, NEWS 96.5.COM (July 24, 2014), <http://www.news965.com/news/news/local/drone-spotted-orange-county-standoff-scene-raises-ngmj/> (last visited April 28, 2015).

²⁷ Howard Altman, *Socom, Polk County Sheriff's Office Among Those with Drone Permits*, THE TAMPA TRIBUNE (Oct. 7, 2014), <http://tbo.com/list/military-news/socom-polk-county-sheriffs-office-among-those-with-drone-permits-20141007/> (last visited April 28, 2015).

²⁸ s. 934.50(2)(a), F.S.

Current law prohibits a law enforcement agency from using a drone to gather evidence or other information. However, the Act 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;
- If the law enforcement agency first obtains a search warrant signed by a judge authorizing the use of a drone; or
- 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.²⁹

Effect of the Bill

The bill amends s. 934.50, F.S., to prohibit a person, state agency,³⁰ or political subdivision³¹ from using a drone equipped with an imaging device³² to:

- Record an image³³ of privately owned real property or the owner, tenant, occupant, invitee, or licensee of such property;
- With the intent to conduct surveillance³⁴ on the individual or property in violation of such person's reasonable expectation of privacy; and
- Without that individual's written consent.

The bill creates a presumption that a person has a reasonable expectation of privacy on his or her privately owned real property if he or she is not observable by persons located at ground level in a place where they have a legal right to be, regardless of whether he or she is observable from the air with the use of a drone.

The bill creates exceptions to the above-described prohibition for:

- A person or entity engaged in a business or profession licensed by the state, or by an agent, employee, or contractor of the state only if the drone is used 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;

²⁹ s. 934.50(3) & (4), F.S.

³⁰ Section 11.45(1)(j), F.S., defines "state agency" as a separate agency or unit of state government created or established by law and includes, but is not limited to, the following and the officers thereof: authority, board, branch, bureau, commission, department, division, institution, office, officer, or public corporation, as the case may be, except any such agency or unit within the legislative branch of state government other than the Florida Public Service Commission.

³¹ Section 11.45(1)(i), F.S., defines "political subdivision" as separate agency or unit of local government created or established by law and includes, but is not limited to, the following and the officers thereof: authority, board, branch, bureau, city, commission, consolidated government, county, department, district, institution, metropolitan government, municipality, office, officer, public corporation, town, or village.

³² The bill defines the term "imaging device" as a mechanical, digital, or electronic viewing device; still camera; camcorder; motion picture camera; or any other instrument, equipment, or format capable of recording, storing, or transmitting an image.

³³ The bill defines the term "image" as a record of thermal, infrared, ultraviolet, visible light, or other electromagnetic waves; sound waves; odors; or other physical phenomena which captures conditions existing on or about real property or an individual located on that property.

³⁴ The bill creates a definition of "surveillance". The bill defines surveillance with respect to an owner, tenant, occupant, invitee, or licensee of privately owned real property as to observe, with visual clarity that is sufficient to be able to obtain information about, the identity, habits, conduct, movements, or whereabouts of such person or persons. The bill defines surveillance with respect to privately owned real property as to observe, with visual clarity that is sufficient to be able to obtain information about, the property's physical improvements, unique identifying features, or occupancy by one or more persons.

- An employee or a contractor of a property appraiser who uses a drone solely for the purposes of assessing property for ad valorem taxes;
- An electric, water, or natural gas utility to capture images for:
 - Operations and maintenance of utility facilities, including facilities used in the generation, transmission, or distribution of electricity, gas, or water, for the purpose of maintaining utility system reliability and integrity;
 - Inspecting utility facilities, including pipelines, to determine construction, repair, maintenance, or replacement needs before, during, and after construction of such facilities;
 - Assessing vegetation growth for the purpose of maintaining clearances on utility rights-of-way;
 - Utility routing, siting, and permitting for the purpose of constructing utility facilities or providing utility services; or
 - Conducting environmental monitoring, as provided by federal, state, or local law, rule, or permit;
- Aerial mapping, if the person or entity using a drone for this purpose is operating in compliance with Federal Aviation Administration regulations;
- Delivery of cargo, if the person or entity using a drone for this purpose is operating in compliance with Federal Aviation Administration regulations; and
- Capturing images necessary for the safe operation or navigation of a drone that is being used for a purpose allowed under federal or Florida law.

The bill creates a civil remedy authorizing an aggrieved party to seek compensatory damages and injunctive relief against a person, state agency, or political subdivision that violates the above-described prohibition. The prevailing party in such civil actions is entitled to recover reasonable attorney fees from the nonprevailing party.³⁵

Additionally, the bill gives an aggrieved party the ability to seek punitive damages against a person (not a state agency or political subdivision) who violates the above-described prohibition.

³⁵ The bill specifies that reasonable attorney fees are based on the actual and reasonable time expended by a plaintiff's attorney billed at an appropriate hourly rate and, in cases in which the payment of such a fee is contingent on the outcome, without a multiplier, unless the action is tried to verdict, in which case a multiplier of up to twice the actual value of the time expended may be awarded in the discretion of the trial court.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill authorizes an aggrieved party to initiate a civil action and to obtain compensatory damages or injunctive relief against a state agency or political subdivision that violates the bill's newly-created prohibitions on using drones. This remedy could result in monetary damages, which would have a negative fiscal impact on state government.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill authorizes an aggrieved party to initiate a civil action and to obtain compensatory damages or injunctive relief against a political subdivision that violates the bill's newly-created prohibitions on using drones. This remedy could result in monetary damages, which would have a negative fiscal impact on local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill authorizes an aggrieved party to initiate a civil action and to obtain compensatory damages or injunctive relief against a person who violates the bill's newly-created prohibitions on using drones. Additionally, the bill authorizes an aggrieved party to seek punitive damages against a person who commits such violation. The remedies could result in monetary damages, which would have a negative fiscal impact on the private sector.

D. FISCAL COMMENTS:

None.