

UNMANNED AIRCRAFT SYSTEMS (DRONES)

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House Bills 5494 and 5496 as enacted
Public Acts 444 and 446 of 2018
Sponsor: Rep. Michele Hoytenga

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5495 as enacted
Public Act 445 of 2018
Sponsor: Rep. Roger Hauck

Senate Bill 917 as enacted
Public Act 468 of 2018
Sponsor: Sen. Peter MacGregor

Senate Bill 922 as enacted
Public Act 469 of 2018
Sponsor: Sen. Darwin Booher

House Committee: Communications and Technology
Senate Committee: Transportation
Complete to 5-9-19

BRIEF SUMMARY: Taken together, the bills modify provisions of law regarding unmanned aircraft (drones). Among other things, the bills specify that the operator of a drone is criminally liable for any activity using a drone for which he or she would be liable for performing directly; add penalties for knowingly operating a drone that interferes with the operations of certain facilities; and expand a prohibition on interfering with the official duties of certain public employees. The bills are separately described in detail below.

FISCAL IMPACT: The bills would have an indeterminate fiscal impact on the state's correctional system, on local court systems, and on local units of government. (See *Fiscal Information*, below, for further discussion.)

THE APPARENT PROBLEM:

As unmanned aerial vehicles, or drones, drop in price, their proliferation in the sky is increasing, as are the types of user and their reasons for using a drone. For state and local governments, drones are increasingly seen as a safer and more efficient tool for gathering data for public safety, such as at a crime or accident scene, hostage incident, or fire, or even for detecting weak spots in bridges or the potential for potholes to develop in roadways. Commercial plants and utilities also find them useful to inspect buildings and installations for needed repairs. Some retailers are exploring using drones to deliver purchases.

However, as seen with other technologies, new advancements often have the potential for misuse or even criminal activity, and existing laws must be updated to apply to such conduct. Such is proving to be the case with drones.

Several states have reported the use of drones to surveil prison yards for vulnerabilities or to drop contraband to prisoners, including three instances that occurred in Michigan in 2017. Utility workers working on towers, wind turbines, or repairing phone or electric lines worry about near encounters with drones endangering their lives or damaging sensitive equipment

that could cause power outages. Railyards, chemical facilities, and water treatment facilities, to name a few, are concerned with the potential for accidental acts on the part of a drone enthusiast that could cause an explosion or otherwise harm critical infrastructure—or even deliberate acts by terrorists to gather information for use in planning an attack to cripple a key facility.

However, since the Federal Aviation Administration (FAA) does not regulate the recreational use of drones, some feel it falls to the states to enact and enforce prohibitions in order to maintain the public peace and safety. Legislation has been offered to prohibit certain uses of drones by hobbyists and recreational users and to provide penalties for violations.

THE CONTENT OF THE BILLS:

House Bill 5494 adds section 20 to the Unmanned Aircraft Systems Act to specify that a person is guilty of an offense committed with the aid of a drone if the drone was under the person's control and if the activity performed would have given rise to criminal liability had it been performed directly by the person without the aid of a drone. However, merely flying a drone through navigable airspace in accordance with federal law would not give rise to criminal liability under the act.

The bill (2018 PA 444) took effect March 21, 2019.

MCL 259.320

House Bill 5495 adds section 45a to the Michigan Penal Code to prohibit an individual from knowingly and intentionally operating a drone in a way that interferes with the operations of ***a key facility***, correctional facility, or other law enforcement facility.

Key facility means that term as defined in section 552c of the Michigan Penal Code and generally includes chemical, energy, utility, transportation, telecommunication, and some manufacturing facilities.

An individual is also prohibited from flying or hovering over one of those facilities if the facility is included on the FAA's registry of fixed site facilities under section 2209 of the FAA Extension, Safety, and Security Act of 2016.¹ A violation is a felony punishable by imprisonment for up to four years, a fine of up to \$2,500, or both. (However, these prohibitions do not apply to a commercial operator of a drone that is operated pursuant to and in compliance with FAA regulations, authorizations, and exemptions.)

The bill (2018 PA 445) took effect March 29, 2019.

MCL 750.45a

¹ This section requires the FAA to develop a process by which to restrict the operation of drones above or near fixed site facilities where unauthorized drone use could present a hazard or a threat. The section limits consideration as a fixed site facility to the following: (i) Critical infrastructure, such as energy production, transmission, and distribution facilities and equipment, and railroad facilities. (ii) Oil refineries and chemical facilities. (iii) Amusement parks. (iv) Other locations that warrant such restrictions. The FAA's final rules to carry out the requirements of section 2209 are supposed to be issued by March 31, 2020.

Senate Bill 922 codifies the penalties in House Bill 5495 in the sentencing guidelines provisions of the Code of Criminal Procedure and labels the offenses as Class F crimes against public safety.

The bill (2018 PA 469) took effect March 27, 2019.

MCL 777.16b

House Bill 5496 adds section 30 to the Unmanned Aircraft Systems Act to designate duties of the Michigan Aeronautics Commission. The Commission is established in the Aeronautics Code, but is provided with the following additional duties under the Unmanned Aircraft Systems Act:

- Provide advice to other departments and agencies of this state about the use of drones and related technology.
- Provide advice to the public about all of the following:
 - Regulation of drones by the federal government and this state.
 - Safe operating principles for drones.
 - Restrictions on the use of drones.
 - Any other matters within the Commission's authority under the act.
- Provide education and information to departments and agencies of this state, political subdivisions, and the general public about drones.
- Receive and consider comments from persons in this state that are interested in or affected by the use of drones.

State departments and agencies are charged with providing support to the Commission as necessary and as requested for the Commission to perform its duties. In addition to the Michigan Department of Transportation, the following state departments must provide primary support to the Commission:

- Michigan State Police
- Department of Natural Resources (DNR)
- Department of Corrections
- Department of Agriculture and Rural Development
- Department of Licensing and Regulatory Affairs

The bill (2018 PA 446) took effect March 29, 2019.

MCL 259.303 and 259.330

Senate Bill 917 amends section 21 of the Unmanned Aircraft Systems Act, which prohibits an individual from knowingly and intentionally operating a drone in a manner that interferes with the official duties of search and rescue personnel or of a police officer, firefighter, or paramedic.

The bill revises these provisions by replacing “police officer” with “*law enforcement officials*,” which as defined in the Code of Criminal Procedure means state and local police officers, sheriffs and their deputies, prosecuting attorneys, college and university public safety officers, and DNR conservation officers, as well as anyone acting under the direction of those individuals.

“Paramedic” is replaced with “*emergency medical services personnel*,” which as defined in the Public Health Code means a medical first responder, emergency medical technician, emergency medical technician specialist, paramedic, or emergency medical services instructor-coordinator.

The bill further prohibits interference with a *state correctional officer*, or any other individual employed by the Department of Corrections, and with a *local corrections officer*.

The bill (2018 PA 468) took effect March 27, 2019.

MCL 259.321

BACKGROUND INFORMATION:

The Unmanned Aircraft Systems Act was enacted in 2016 to provide a regulatory framework for the use of drones in the state. Among other things, the act created the Unmanned Aircraft Systems Task Force to develop statewide policy recommendations on the operation, use, and regulation of drones. The Task Force submitted its final report to the governor and legislature on November 20, 2017.² This bill package implements some of the Task Force's recommendations.

FISCAL INFORMATION:

House Bill 5494 would have no fiscal impact on the state or on local units of government.

House Bill 5495 would have an indeterminate fiscal impact on the state's correctional system and on local court systems. The number of persons who might be convicted under provisions of the bill is not known. New felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2017, the average cost of prison incarceration in a state facility was roughly \$37,000 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,600 per supervised offender in the same year. The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

Senate Bill 922 amends sentencing guidelines and would not have a direct fiscal impact on the state or on local units of government.

House Bill 5496 would establish new duties for the Michigan Aeronautics Commission with respect to unmanned aircraft systems. As described in detail above, those duties primarily involve advising, educating, and informing state departments and agencies, as well as other political subdivisions and the general public. The Office of Aeronautics within the Michigan Department of Transportation currently provides staff support for the Michigan Aeronautics Commission and functionally carries out the executive duties of the Michigan Aeronautics Commission. House Bill 5496 would effectively increase the workload of the Office of

² Available at http://www.michigan.gov/documents/aero/UASTF_Final_Report_v2_Full_606520_7.pdf

Aeronautics; however, representatives of the department indicate that the additional workload would be nominal and could be accomplished with existing resources.

Under Senate Bill 917, individuals found in violation could be charged with a misdemeanor and/or fined. The bill would have no fiscal impact on the state, but would have an indeterminate fiscal impact on local units of government. The fiscal impact would depend on the number of individuals convicted of a misdemeanor. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in a county jail and local misdemeanor probation supervision, and how the costs are financed, vary by jurisdiction. Any fiscal impact on the judiciary and local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

ARGUMENTS:

For:

Supporters of the bills argued that the bills' provisions stem from recommendations of the Unmanned Aircraft Systems Task Force. The task force was composed of 27 members from various agencies and interest groups and held meetings that were open to the public. Supporters of the bills argued that we should rely on the task force's expertise to address emerging problem areas regarding drones. For instance, there were three reported instances last year of drones dropping off contraband to prison inmates in Michigan. Extending a person's actions to actions committed by that person's drone while under his or her control would help protect those correctional facilities by adding specific prosecution for those actions.

Against:

Some critics of the bills argued that more of their terms should be legislatively defined. For example, "knowingly" and "interfering" are not defined in Senate Bill 917. Critics felt that the lack of definitions for terms such as these leaves them open to interpretations that could stray from the intent of the bills.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.