

DRONES: PROHIBIT CERTAIN ACTIVITY

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House Bill 4868 (reported from committee as H-2)

Sponsor: Rep. Kurt Heise

Committee: Criminal Justice

Complete to 12-15-15

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

BRIEF SUMMARY: The bill creates a misdemeanor penalty for certain conduct regarding the operation of an unmanned aerial vehicle (AUV, or drone) for hobby or recreation purposes.

FISCAL IMPACT: To the extent that the bill results in a greater number of convictions, it could increase costs on local correctional systems. Information is not available on the number of persons that might be convicted under the provisions of the bill. New misdemeanor convictions could 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 vary by jurisdiction. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

THE APPARENT PROBLEM:

As unmanned aerial vehicles, or drones, drop in price, the proliferation of drones in the sky is increasing, as is the type of user and the purpose 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, fire, even detecting weak spots in bridges or potential for pot holes 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 the case with drones.

Several states have reported drones being used in attempts to surveil prison yards for vulnerabilities or to drop contraband to prisoners. 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, water treatment facilities, to name a few, are concerned with the potential of accidental acts on the part of a drone enthusiast that could cause an explosion or otherwise harm critical infrastructures or even deliberate acts by terrorists to gather information for use in planning an attack to cripple a key facility.

Currently, the only Michigan law concerning drones is a recently enacted ban on using drones to harass hunters or to take game. At least one local government has enacted restrictions on drone use as part of its nuisance ordinances. Nationally, at least 26 states

have also enacted some form of restrictions on drone activity. Federal law does not regulate the use of recreational drones, and circular AC 91-57A - Model Aircraft Operating Standards, dated 9-2-15, merely offers guidelines on the safe operation of drones, for example, that drones fly below 400 feet and remain within sight of the operator. If flying within 5 miles of an airport, the operator is to alert the control tower, though unmanned aircraft must always yield to aircraft carrying people. Beginning December 21, 2015, all drones weighing more than 250 grams but less than 55 pounds used for recreational purposes must be registered with the FAA and marked with the registrant's unique registration number. Those who currently own a drone must register the drone no later than February 19, 2016. Failure to comply with the new registration system could result in stiff civil and/or criminal penalties. Commercial users of any size drone will continue to use the current registration system.

However, since the 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 BILL:

"Unmanned aerial vehicle" (hereinafter, drone) would be defined as an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft. The bill adds a new section to the Aeronautics Code to prohibit and provide penalties for certain conduct with a drone when operated for hobby or recreation purposes.

The bill prohibits a person operating a drone from doing any of the following:

- ❖ Knowingly operate the drone in a manner that obstructs a public safety operation.
- ❖ Knowingly operate the drone in a manner that interferes with the operations of a public utility, key facility, correctional facility, or public transportation service (see Definitions below).
- ❖ Knowingly operate the drone to trespass without lawful authority on or above property owned or under the control of any other person, or to subject another person to eavesdropping or surveillance.
- ❖ Knowingly operate the drone for the purpose of committing an act that is punishable as a felony or misdemeanor under state law.

A violation would be a misdemeanor punishable by imprisonment for not more than one year and/or a fine of not more than \$1,000.

The bill would not affect the ability to investigate or to arrest, prosecute, or convict an individual for any other violation of a law of the state.

Definitions

"Correctional facility," defined to mean the term as defined in the Corrections Code, means a state correctional facility maintained and operated by the Department of Corrections or a jail that is operated by a local unit of government. The term also includes a facility or institution maintained and operated by a private contractor under Section 20 I of the Corrections Code (the former Michigan Youth Correctional Facility in Baldwin).

"Key facility," defined to mean the term as defined in the Michigan Penal Code, means one or more of the following:

- Chemical manufacturing facility.
- Refinery.
- Electric utility facility (includes, but is not limited to, a power plant, power generation facility peaker, electric transmission facility, or electric station or substation).
- Water intake structure or water treatment facility.
- Natural gas utility facility (includes, but is not limited to, an age station, compressor station, mail line valve, natural gas storage facility).
- Gasoline, propane, liquid natural gas, or other fuel terminal or storage facility.
- A pulp or paper manufacturing facility.
- Pharmaceutical manufacturing facility.
- Hazardous waste storage, treatment, or disposal facility.
- A telecommunication facility, including, but not limited to, a central office or cellular telephone tower site.
- A facility substantially similar to a facility, structure, or station listed above or a resource required to submit a risk management plan under a provision of federal law pertaining to prevention of accidental releases of hazardous air pollutants.

"Public transportation service" means that term as defined in the State Trunk Line Highway System Act, PA 51 of 1951, but generally refers to the movement of people and goods by publicly or privately owned water vehicle, bus, railroad car, aircraft, rapid transit vehicle, taxicab, or other conveyance that provides general or special service to the public. The term does not include charter or sightseeing service or transportation which exclusively for school purposes.

"Public utility" means the term as defined in Public Act 299 of 1972, *but including a municipally owned utility*. (PA 299 defines the term to mean a steam, heat, electric, power, gas, water, wastewater, telecommunications, telegraph, communications, pipeline, or gas producing company regulated by the commission, whether private, corporate, or cooperative, except a municipally owned utility.)

"Public safety operation" would mean an operation that involves the actions of any of the following individuals while the individual is performing his or her duties:

- A police officer of the state or of a political subdivision. This includes, but is not limited to, a motor carrier officer or Capitol security officer of the Department of State Police.

- A police officer of a junior college, college, or university who is authorized by the institution's governing board to enforce state law and the rules and ordinances of the institution.
- A Department of Natural Resources or Department of Environmental Quality conservation officer.
- A conservation officer of the U.S. Department of the Interior.
- A sheriff or deputy sheriff.
- A constable.
- A peace officer of a duly authorized police agency of the U.S., including, but not limited to, an agent of the U.S. Department of Justice.
- An employee of the U.S. Department of Homeland Security, including, but not limited to, customs and border protection and the Secret Service.
- A firefighter.
- A state correctional officer or a local corrections officer (as defined in the Correctional Officers' Training Act and Local corrections Officers Training Act, respectively).
- A railroad police officer (as defined in the Railroad Code).
- A state-licensed medical first responder, emergency medical technician, emergency medical technician specialist, paramedic, or emergency medical services instructor-coordinator.
- An individual engaged in a search and rescue operation as defined in Section 50c of the Michigan Penal Code.
- An individual who is a member of the U.S. military and in active military service or a member of the National Guard or the defense force and in active state service, as that term is defined in Section 105 of the Michigan Military Act.

MCL 259.3 and 259.98, proposed

BACKGROUND INFORMATION:

For more information on current FAA guidelines on the operation of model aircraft and drones, see https://www.faa.gov/uas/model_aircraft/

Information on the upcoming registration for recreational drones can found at: <https://www.faa.gov/uas/registration/faqs/>

See <http://knowbeforeyoufly.org/> for educational guidelines on the safe operation of recreational and commercial unmanned aircraft/drones.

ARGUMENTS:

For:

As technology advances, laws addressing criminal activity often must be updated. For example, when cameras began to be built into cell phones, laws that prohibit taking photos of people in places where they expect privacy had to be updated to include pictures taken by camera phones. The problem? People were taking photos of others in locker rooms

and dressing rooms. Today, the growing proliferation of drones for recreational use requires laws to once again be updated.

Currently, Michigan law only prohibits harassing hunters with drones or using drones to kill game. Federal law sets standards, but the FAA has no real oversight of the recreational use of drones. A new federal registration system for drone hobbyists and drones for recreational use is more of an identification system that will prove useful to return a lost drone or identify the owner of a drone that damaged property or was involved in some kind of incident (whether intentional or accidental); penalties are only for failure to register the drone, not for a specific action on the part of the operator (though other laws may apply).

Though many drone enthusiasts are responsible and operate their drones in a safe manner that does not interfere with the quiet enjoyment by property owners of their homes and yards, drones do carry the potential for misuse that may range from noise annoyance to criminal activity. For example, where businesses and governments are finding drones efficient in doing some tasks that are time intensive or even dangerous for humans (e.g., taking pictures at accident scenes with highway traffic whizzing by or on high towers), the non-commercial use of smaller drones can pose significant safety issues or even be part of a larger terrorist scheme to launch an attack on critical infrastructure.

For drone enthusiasts, the prohibitions and penalties contained in House Bill 4868 will add to efforts educating the public about using unmanned aircraft safely and responsibly by alerting them to actions that carry a risk of trespassing, injuring others, or damaging important infrastructure. The bill also gives law enforcement important tools to prosecute individuals found to be using drones in an unsafe manner around sensitive structures or with a criminal intent in mind, like to gather information that could be used to commit a later crime, such as surveilling a prison to identify security weaknesses for the purpose of staging a prison break or dropping drugs, cell phones, or other contraband to prisoners in a prison yard. Many who operate or work in critical facilities such as chemical manufacturers and rail yards, and even first responders such as fire fighters, are well aware of the nefarious uses drones pose. Last summer, efforts to control wild fires in California had to be called off several times because small drones operated by hobbyists posed a threat to aircraft dropping water and fire retardant, thus putting fire fighters, homes, and residents in harm's way.

The penalty provided for a violation is stiff enough to get the attention of drone operators, but not overly burdensome considering the danger that unsafe operation of a drone presents. In addition, the crime created by the bill does specify a level of *mens rea*, or willfulness, on the part of a drone operator. Therefore, a mistake should not subject a well-meaning drone enthusiast to a criminal penalty.

Against:

Though the bill makes it a misdemeanor to use a drone to commit any other crime, the bill does not prohibit – as a specific act—arming or weaponizing a drone. YouTube already has videos posted of drones equipped with flamethrowers and guns. Given the potential of harm for personal safety and property damage, perhaps it would make sense to clarify that

the bill would also prohibit attaching any device considered to be a weapon (gun, bayonet, etc.) or that could be dangerous (flamethrower), whether it was used in a dangerous manner or not.

Further, it is not clear if a violation of the bill would or could result in forfeiture of the drone.

POSITIONS:

The following positions are on the H-2 Substitute as reported by the Committee:

API of Michigan supports the bill. (12-11-15)

DTE Energy supports the bill. (12-8-15)

Michigan Chemistry Council supports the bill. (12-11-15)

Michigan State Police supports the bill. (12-14-15)

Wayne County Airport Authority supports the bill. (12-14-15)

Michigan Railroads Association supports the bill. (12-14-15)

Michigan Sheriffs Association supports the bill in concept. (12-11-15)

Gallagher Sharp LLP is neutral on the bill. (12-11-15)

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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.