

Date of Hearing: April 20, 2016

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Susan Talamantes Eggman, Chair

AB 2320 (Calderon and Low) – As Amended April 4, 2016

SUBJECT: Unmanned aircraft systems.

SUMMARY: Prohibits local governments from regulating unmanned aircraft systems (UAS) and places a number of additional restrictions on the use of UAS. Specifically, **this bill:**

- 1) States that, except as expressly authorized by statute, the authority to regulate the ownership or operation of unmanned aircraft is vested solely in the state.
- 2) Prohibits, except as expressly authorized by statute, a city, a county, a city and county, or another local government entity from doing either of the following:
 - a) Enacting an ordinance or resolution that regulates the ownership or operation of unmanned aircraft; or,
 - b) Otherwise engaging in the regulation of the ownership or operation of unmanned aircraft.
- 3) Defines, for purposes of the above provisions, "unmanned aircraft" to mean an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft.
- 4) Makes it a misdemeanor, punishable by a fine of up to \$1,000 and a year in county jail, as specified, to use a UAS to intentionally and knowingly violate a protective order that prohibits a person from coming within a specified distance of another person, as specified.
- 5) Provides that if the violation of a protective order by a UAS results in physical injury (or is a second violation within a year), the violation is punishable by a fine of up to \$2,000 and not less than 30 days (but no more than one year) in county jail.
- 6) Prohibits a person who is required to register as a sex offender from operating a UAS.
- 7) Makes it a misdemeanor to use a UAS to view the scene of an emergency in a way that impedes police officers, firefighters, emergency medical, or other emergency personnel, or military personnel in the performance of their emergency duties.
- 8) Makes it a misdemeanor to use a UAS to stalk another person by willfully, maliciously, and repeatedly following or willfully and maliciously harassing another person and making a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family, and makes it a felony to use a UAS to stalk someone when there is a temporary restraining order in place.
- 9) Makes it a felony to use a UAS to bring contraband into a jail or state prison.
- 10) Defines "unmanned aircraft" and "unmanned aircraft system" consistent with federal law.

- 11) States that it is the intent of the Legislature that a person be prohibited from using UAS within 250 feet of a critical infrastructure facility for the purpose of conducting surveillance, gathering evidence or collecting information about the facility, or photographically or electronically recording data about critical infrastructure.
- 12) Defines “critical infrastructure” to mean an airport, an electrical power generation system, a petroleum refinery, a manufacturing facility that utilizes any combustible chemicals either in storage or in the process of manufacturing, a chemical or rubber manufacturing facility, or a petroleum or chemical storage facility.
- 13) Makes various legislative findings and declarations regarding the Federal Aviation Administration's (FAA) regulation of UAS, the beneficial uses of UAS, and public concerns about the privacy and public safety impacts of UAS, including this statement:

"The FAA has warned that a 'patchwork quilt' of inconsistent regulation raises substantial safety concerns, impedes innovation, and makes it virtually impossible for end-users to understand the rules for operating unmanned aircraft systems."
- 14) Makes various technical and clarifying changes.

EXISTING LAW:

- 1) Vests the FAA with the authority to regulate airspace use, management and efficiency, air traffic control, safety, navigational facilities, and aircraft noise.
- 2) Requires, pursuant to the Aviation Administration Modernization and Reform Act of 2012 (Act), the Secretary of Transportation to develop a comprehensive plan to safely accelerate the integration of civil UAS into the National Air Space (NAS). The plan is required to provide for the safe integration of civil UAS into the NAS as soon as practicable, but not later than September 30, 2015.
- 3) Requires, under FAA rules, as of February 19, 2016, federal registration of a UAS before first flight outdoors, for any UAS weighing more than 0.55 pounds (250 grams) and less than 55 pounds (approx. 25 kilos), including payloads such as on-board cameras, and requires UAS owners to be at least 13 years old to register and to provide name, home address, and email address. Upon registration, UAS owners receive a Certificate of Aircraft Registration/Proof of Ownership, along with a unique identification number, which must be marked or affixed to the UAS.
- 4) Allows, pursuant to Section 7 of Article XI of the California Constitution, a county or city to make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.
- 5) Makes it a misdemeanor to violate a protective order that prohibits a person from coming within a specified distance of another person. If the violation results in physical injury (or is a second violation within a year), makes the violation punishable with a fine of up to \$2,000 and not less than 30 days (but no more than one year) in county jail.
- 6) Under California’s “Megan’s Law,” requires sex offenders to register their current residence in a statewide public registry of sex offenders.

- 7) Prohibits a person convicted of a felony from possessing a firearm.
- 8) Makes it a misdemeanor to stop and view the scene of an emergency in a way that impedes police officers, firefighters, emergency medical, or other emergency personnel, or military personnel in the performance of their emergency duties.
- 9) Makes it a misdemeanor to stalk another person by willfully, maliciously, and repeatedly following or willfully and maliciously harassing another person and making a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family, and specifies that stalking someone when there is a temporary restraining order in place carries a felony penalty.
- 10) Makes it a felony to bring contraband into a jail or state prison.

FISCAL EFFECT: This bill is keyed fiscal.

COMMENTS:

- 1) **Bill Summary.** This analysis will focus primarily on Section 7 of this bill, which states that the authority to regulate the ownership or operation of unmanned aircraft is vested solely in the state and prohibits a city, a county, a city and county, or another local government entity from doing either of the following:
 - a) Enacting an ordinance or resolution that regulates the ownership or operation of unmanned aircraft; or,
 - b) Otherwise engaging in the regulation of the ownership or operation of unmanned aircraft.

For a thorough discussion of the other provisions of this bill, please refer to the April 12, 2016, analysis of this bill by the Assembly Privacy and Consumer Protection Committee.

This bill is sponsored by the authors.

- 2) **Author's Statement.** According to the author, "The FAA is in the process of developing rules that are intended to safely integrate small unmanned aircraft systems into the national airspace system and that are expected to be released in 2016 or 2017. While the FAA is developing the small unmanned aircraft system rules, California has a responsibility to ensure the safety of our citizens and at the same time, help foster an industry that can provide a wide range of useful applications."
- 3) **Background.** In 2012, Congress passed the Act, which required the FAA to establish a framework for safely integrating commercial UAS into the NAS no later than September 30, 2015, and authorized the FAA to establish interim requirements for the commercial operation of UAS. The FAA's Notice of Proposed Rulemaking came out on February 15, 2015, with safety rules for small UAS (under 55 pounds) conducting non-recreational or non-hobby operations. The proposed rule defines permissible hours of flight, line-of-sight observation, altitude, operator certification, optional use of visual observers, aircraft registration and marking, and operational limits. However, these rules have not yet been finalized and

several states and local governments have considered and/or enacted their own statutes or ordinances governing the use of UAS in their jurisdictions.

In 2015, 45 states considered 168 bills meant to regulate use of drones, according to the National Conference of State Legislatures. So far, 26 states have moved to limit police use of drones, bar drone surveillance over private property, or impose other restrictions.

Several cities in California have enacted ordinances regulating the operation of UAS in their jurisdictions, including Berkeley, Los Angeles, Poway, San Francisco, Santa Clara, and West Hollywood. The East Bay Regional Park District also has a rule governing drone use, and the cities of Oxnard and Hermosa Beach are developing ordinances.

- 4) **State and Local UAS Laws: Guidance From the FAA.** The FAA released a "State and Local Regulation of Unmanned Aircraft Systems (UAS) Fact Sheet" on December 17, 2015, which states (citations omitted and emphasis added):

"Consistent with its statutory authority, the FAA is requiring Federal registration of UAS in order to operate a UAS...No state or local UAS registration law may relieve a UAS owner or operator from complying with the Federal UAS registration requirements. Because Federal registration is the exclusive means for registering UAS for purposes of operating an aircraft in navigable airspace, no state or local government may impose an additional registration requirement on the operation of UAS in navigable airspace without first obtaining FAA approval.

"Substantial *air safety issues* are raised when state or local governments attempt to regulate the operation or flight of aircraft. If one or two municipalities enacted ordinances regulating UAS in the navigable airspace and a significant number of municipalities followed suit, fractionalized control of the navigable airspace could result. In turn, this 'patchwork quilt' of differing restrictions could severely limit the flexibility of FAA in controlling the airspace and flight patterns, and *ensuring safety and an efficient air traffic flow*. A navigable airspace free from inconsistent state and local restrictions is essential to the maintenance of a safe and sound air transportation system."

However, the fact sheet continues with, "Examples of State and Local Laws for Which Consultation with the FAA is Recommended," which lists the following:

- a) Operational UAS restrictions on *flight altitude, flight paths; operational bans; any regulation of the navigable airspace*. For example – a city ordinance banning anyone from operating UAS within the city limits, within the airspace of the city, or within certain distances of landmarks. *Federal courts strictly scrutinize state and local regulation of overflight*.
- b) Mandating equipment or training for UAS *related to aviation safety*...would likely be preempted. Courts have found that state regulation pertaining to mandatory training and equipment requirements related to *aviation safety* is not consistent with the federal regulatory framework."

In addition, the fact sheet also provides "Examples of State and Local Laws within State and Local Government Police Power," stating 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.*" Examples include:

- a) Requiring police to obtain a warrant before using UAS for surveillance;
- b) Specifying that UAS may not be used for voyeurism;
- c) Prohibiting the use of UAS to hunt or fish or interfere with someone hunting or fishing; and,
- d) Banning the weaponization of UAS."

- 5) **State Preemption of Local Laws.** This bill states that the authority to regulate the ownership or operation of unmanned aircraft is vested solely in the state and prohibits a city, a county, a city and county, or another local government entity from enacting an ordinance or resolution that regulates the ownership or operation of unmanned aircraft or otherwise engaging in the regulation of the ownership or operation of unmanned aircraft.

The California Constitution allows a county or city to make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.

The legal test for determining if state law preempts local regulation consists of deciding whether the regulation in question is of statewide concern or a municipal affair. If a regulation is a matter of statewide concern, then it is not a municipal affair, and therefore the regulation is considered to conflict with state law.

Determining "statewide concern" entails a three-prong test. A local regulation is preempted if the court finds one of the following: the ordinance duplicates state law; the ordinance contradicts a state statute that expressly occupies the field; or, the state occupies the legislative area by implication.

In addition, California courts have developed tests for determining when local regulations are not preempted. One approach is known as the balancing of state and local interests. The balancing test requires the local regulation be shown to reflect a strong local interest that will prevail when balanced against a state regulation that it contradicts.

The FAA's guidance on state and *local* UAS laws explicitly notes 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." It appears that the federal government does not contemplate federal or state preemption of local UAS laws – on the contrary, it lists potential local laws that would require consultation with the FAA and others that would fall within local police powers and, therefore, could be pursued without FAA consultation.

The state of California, while it has considered numerous bills regulating the use of UAS, has enacted only one. Does this mean the state fully occupies the field of UAS regulation, or that it should? It does not appear that any of the few ordinances that California cities have

enacted to regulate UAS duplicate state law or contradict a state statute that expressly occupies the field, or that the state occupies the legislative area by implication.

According to the April 12, 2016, analysis of this bill by the Assembly Privacy and Consumer Protection Committee, "California laws that regulate aircraft establish statewide uniformity, but those laws also leave room for local governments to pass certain local restrictions on airplanes. Courts have affirmed the authority of municipalities to exercise land-use control over the siting and development of airports. In one recent case, *Skyranch Pilots Ass'n v. County of Sacramento* (July 2, 2008), a California appeals court held that a county's decision not to renew a conditional use permit for a privately owned, public-use airport was not preempted by the State Aeronautics Act.

"Likewise, California's Vehicle Code sets a variety of statewide standards, such as highway, residential and school zone vehicle speed limits, but state law allows cities and counties to set local vehicle restrictions, such as prohibiting cars in downtown pedestrian zones, adding speed bumps to bring car speeds below 25 miles per hour on certain residential streets, and establishing park opening and closing hours including parking restrictions in and around parks when closed." (citation omitted)

- 6) **The UAS Market.** The Consumer Technology Association (CTA) estimated about 700,000 drones would be sold in 2015, up from 430,000 drones sold in 2014. The FAA estimates that nearly one million UAS were sold during the December 2015 holiday season. CTA projects sales of consumer drones to grow 57% in 2016.
- 7) **Pending Legislation.** AB 1662 (Chau), pending in the Assembly Appropriations Committee, requires UAS operators to remain at the scene of an accident and provide their name and address along with valid identification to the victim and the police.

AB 1680 (Rodriguez), pending in the Assembly Appropriations Committee, makes it a misdemeanor to operate a UAS in a manner that interferes with first responders.

AB 2724 (Gatto), pending in the Assembly Privacy and Consumer Protection Committee, requires UAS makers to include with the UAS a copy of FAA safety regulations, and if the UAS is required to be registered with the FAA, a notice of the registration requirement. The bill also requires UAS with GPS technology to be outfitted with a geo-fencing feature and requires UAS owners to have adequate liability insurance.

SB 807 (Gaines), pending in the Senate Judiciary Committee, grants civil immunity to public entities, public employees, and unpaid volunteers, and private entities acting within the scope of delegated authority, that damage a UAS in the course of providing a variety of emergency services.

SB 808 (Gaines), pending in the Senate Public Safety Committee, clarifies that using a UAS to enter the airspace within which a person is prohibited from entering under a protective order is a violation of the protective order.

SB 810 (Gaines), pending in the Senate Public Safety Committee, establishes fines for UAS interference with firefighting activities.

SB 811 (Gaines), pending in the Senate Public Safety Committee, makes it a felony to use UAS to deliver contraband into a prison or county jail and creates a misdemeanor crime for the use of UAS to fly over a prison or capture images of a prison.

SB 868 (Jackson), pending in the Senate Transportation and Housing Committee, proposes the State Remote Piloted Aircraft Act containing numerous provisions regulating the use of UAS.

- 8) **Previous Legislation.** SB 168 (Gaines) of 2015 would have increased fines for UAS interference with firefighting activities and granted civil immunity to public entities, public employees, and unpaid volunteers, and private entities acting within the scope of delegated authority, that damage a UAS in the course of providing a variety of emergency services. SB 168 was vetoed.

SB 170 (Gaines) of 2015 would have prohibited a person from knowingly and intentionally operating an UAS over a state prison or county jail. SB 170 was vetoed.

SB 263 (Gaines) of 2015 would have clarified that using a UAS to enter the airspace within which a person is prohibited from entering under a given protective order is a violation of the protective order. SB 263 was held in the Senate Public Safety Committee.

SB 271 (Gaines) of 2015 would have prohibited the use of UAS at or less than 350 feet above a public school campus or to use a UAS to capture images of school campus during school hours without the written permission of the school principal. SB 271 was vetoed.

AB 856 (Calderon), Chapter 521, Statutes of 2015, expanded the scope of the cause of action in existing law for physical invasion of privacy by making a person liable for physical invasion of privacy when the person knowingly enters "into the airspace" above the land of another person without permission.

- 9) **Committee Amendment.** The Committee may wish to strike Section 7 of this bill to delete provisions establishing state preemption of local authority to regulate UAS within their jurisdictions.

- 10) **Arguments in Support.** None on file.

- 11) **Arguments in Opposition.** The California Police Chiefs Association and the League of California Cities, in opposition, note, "The painfully slow evolution of federal regulations with respect to unmanned aircraft systems for recreational use, combined with the rise in irresponsible use of this technology posing unreasonable dangers to first responders and commercial aviation, and finally the most recent and rather weak proposed federal rulemaking for recreational drones which have yet to be formally adopted as federal regulations, all argue against federal pre-emption of either state or local regulation in this area..."

"To add explicit pre-emption language at this stage indicates a policy approach that places the interests of the unmanned aircraft system industry above that of aviation safety, first responders, commercial aviation and the public safety needs of the general public. We have noted with alarm that the April 4th amendments contain absolutely no provisions

strengthening the ability of the state's various law enforcement agencies to address the many near mid-air collisions between first responders and drones, or the growing threat to commercial aviation caused by drones repeatedly operating in the federally restricted airspace within 5 miles of airports.

"In the absence of comprehensive state regulation that, at a minimum, seeks to bring state law into conformity with the few federal regulations that apply to recreational drones indicates a premature attempt to shut down local regulation without any meaningful assurance that state regulations will come about...Cities have a compelling interest in preserving their ability under current law, as interpreted by the FAA, to adopt regulations pertaining to the use of unmanned aircraft systems in the areas of allowable land uses, zoning, privacy, trespass and regulation of their own law enforcement operations. We do not intend to cede this authority for convenience of the industry."

12) **Double-Referral.** This bill was heard by the Privacy and Consumer Protection Committee on April 12, 2016, where it passed with a 6-3 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

California Police Chiefs Association
City of Sacramento
City of Thousand Oaks
League of California Cities

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