

SB2160

Measure Title: RELATING TO UNMANNED AERIAL VEHICLES.

Report Title: Hawaii State Association of Counties Package; Unmanned Aerial Vehicles; Violation of Privacy; DCCA

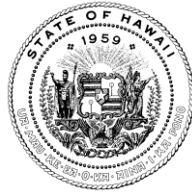
Description: Establishes a new chapter to regulate the use of unmanned aerial vehicles. Requires the director of the Department of Commerce and Consumer Affairs to adopt rules as necessary. Establishes prohibited uses of unmanned aerial vehicles and penalties, and authorizes civil action for violations. Makes certain uses of an unmanned aerial vehicle a misdemeanor. Clarifies that under certain circumstances, the used of an unmanned aerial vehicle may constitute an invasion of privacy.

Companion: [HB1792](#)

Package: Hawaii State Association of Counties

Current Referral: CPH/JDC, WAM

Introducer(s): KOUCHI (Introduced by request of another party)



DAVID Y. IGE
GOVERNOR

DOUGLAS S. CHIN
LIEUTENANT GOVERNOR

**STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

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CATHERINE P. AWAKUNI COLÓN
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

**PRESENTATION OF THE
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

TO THE SENATE COMMITTEES ON
COMMERCE, CONSUMER PROTECTION, AND HEALTH
AND
JUDICIARY

TWENTY-NINTH LEGISLATURE
Regular Session of 2018

Wednesday, February 7, 2018
8:30 a.m.

**TESTIMONY ON SENATE BILL NO. 2160, RELATING TO UNMANNED AERIAL
VEHICLES.**

TO THE HONORABLE ROSALYN H. BAKER, CHAIR, THE HONORABLE BRIAN T.
TANIGUCHI, CHAIR, AND MEMBERS OF THE COMMITTEES:

The Department of Commerce and Consumer Affairs (“DCCA” or “Department”) appreciates the opportunity to testify on S.B. 2160, Relating to Unmanned Aerial Vehicles. My name is Catherine Awakuni Colón, and I am the Director of the Department (“Director”). DCCA opposes this bill, which is a companion to H.B. 1792 and similar to S.B. 454.

S.B. 2160 establishes a new chapter in Hawaii Revised Statutes that regulates the use of unmanned aerial vehicles (“UAVs”). In particular, the bill: sets forth prohibited uses of UAVs and penalties; authorizes civil action for violations; and makes certain UAV uses a misdemeanor or, in some cases, an invasion of privacy. DCCA is charged with investigating UAV violations and fining violators of the proposed chapter.

DCCA takes no position with respect to sections 3 through 6 of this bill that criminalize certain UAV uses under HRS chapter 711 (criminal offenses against public

order). The Department respectfully defers to the Legislature and appropriate law enforcement agencies regarding amendments to the Hawaii Penal Code.

With respect to section 2 of this bill, DCCA is concerned that regulation of UAVs as a general activity is outside the scope of its mission and its jurisdiction as a state agency. The Department's mission is to protect the interests of Hawaii consumers, depositors, and investors. To achieve this mission, the Department is charged specifically with regulating trades, businesses, and professions. S.B. 2160 would make DCCA responsible for overseeing UAV operations in Hawaii for purposes beyond regulating commerce or consumer matters, including prosecuting law enforcement and public safety agencies for violations. For example, the measure defines UAV "operators" as any "person using or operating [a UAV]," regardless of whether that person is engaged in any business or commercial activity or whether his activity is affecting an identified consumer class or transaction type. Prohibited acts of UAV operators subject to DCCA regulation would include:

- Violations of HRS chapter 263, Federal Aviation Administration regulations relating to UAV operation (14 Code of Federal Regulations part 107), and any other applicable federal law;
- Unauthorized use of UAVs to collect, publish, or distribute personal information, regardless of whether the activity is related to consumers or businesses;
- Unauthorized operation of UAVs within unsafe distances to critical public facilities (e.g., water and electric utility infrastructure), airports, and emergency response vehicles;
- Unauthorized operation of UAVs over certain facilities, including schools, hospitals, and places of worship;
- Unauthorized use of UAVs by law enforcement agencies to gather evidence or other information without a warrant.

Of the prohibited acts and various other limitations that DCCA would encounter to regulate, there is no nexus to commercial or consumer activity. Instead, this bill addresses concerns about public safety, appropriate uses of UAVs by law enforcement agencies, and civil and criminal sanctions for privacy violations. As such, the

Department is ill-suited to investigate or enforce the conduct addressed in this bill. In addition, with the exception of receiving civil penalties for violations, no funding mechanism exists for this regulation.

Finally, the Committees may want to consider whether some of the prohibited acts and limitations in this bill are preempted by federal regulation of airspace with respect to flight altitude, flights paths, and other issues over which the federal government has exclusive jurisdiction.¹

Thank you for the opportunity to testify on S.B. 2160. I am happy to answer any questions the Committees may have.

¹ See the new Small UAS Rule (Part 107) effective August 29, 2016, and the Federal Aviation Administration's Summary of Small Unmanned Aircraft Rule (Part 107) dated June 21, 2016, at https://www.faa.gov/uas/media/Part_107_Summary.pdf.



DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

DAVID Y. IGE
GOVERNOR

LUIS P. SALAVERIA
DIRECTOR

MARY ALICE EVANS
DEPUTY DIRECTOR

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Statement of
LUIS P. SALAVERIA
Director
Department of Business, Economic Development and Tourism
before the
SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH
And
SENATE COMMITTEE ON JUDICIARY
Wednesday, February 7, 2018
8:30 am
State Capitol, Conference Room 229

in consideration of
SB2160
RELATING TO UNMANNED AERIAL VEHICLES.

Chairs Baker and Taniguchi, Vice Chairs Tokuda and Rhoads and Members of the Committees.

The Department of Business, Economic Development and Tourism (DBEDT) respectfully **opposes** SB 2160 which establishes a new chapter to regulate the use of unmanned aerial vehicles and requires the Director of the Department of Commerce and Consumer Affairs to adopt rules relating to prohibited uses of UAV's.

In 2014, Hawaii, through a partnership with the University of Alaska, was designated by the FAA as an Unmanned Aerial System Test Range. In response to this Federal authorization, in 2015 the Legislature passed Act 208, which established the Hawaii Unmanned Aerial Test Site Advisory Board under the Office of Aerospace Development in DBEDT and authorized the creation of the Hawaii UAS Test Site Chief Operating Officer.

In 2016, DBEDT partnered with the Applied Research Lab at UH to hire the UAS Test Site COO, Ted Ralston, effective January 2017, to monitor national and global trends in unmanned aerial systems development and testing, and recommend policies and programs to advance UAS in Hawaii. In 2017, the Hawaii UAS Test Range submitted an annual report to the Legislature reporting on its activities with stakeholders from public and private sectors. In 2018, DBEDT in partnership with the UAS Site program responded to an FAA solicitation to pilot the integration of UAS's into the

National Air Space in Hawaii, under a Presidential initiative called “FAA UAS Integration Pilot Program (FAA UAS IPP).”

FAA UAS IPP is intended by US DOT and FAA to promote wide-ranging Local Jurisdictional Coordination, Public Private Partnerships, and Community Involvement with regard to UAS operations in the local Jurisdictional domain. The result of this effort is intended to be a locally-centric system concept for managing UAS in service to the local economy. A Permanent UAS Task Force drawn from Hawaii agencies, business, education, and government to structure an UAS coordination effort such as FAA IPP, and to advise the Legislature on emerging UAS Best Practices from experiences across the nation, has been proposed via another 2018 Hawaii bill (HB 2655.)

DBEDT believes that it is premature to pass legislation affecting UAS activities until the above initiatives have become operational. DBEDT further believes that SB2160 execution would be problematic as it asserts UAS rules for Hawaii which are preempted by Federal law; includes a set of rules which duplicate certain Federal UAS regulations, but does not recognize the numerous FAA interpretations, waivers, amendments, and authorizations that modify such Federal UAS regulations; and overly restricts Hawaii commercial, educational, and government agencies who operate under the FAA ‘rule and waiver’ system today. For example, DBEDT and UH would be prevented from performing the UAS tasks assigned under Act 208 (2015), and from performing UAS Integration under the FAA IPP cited above.

DBEDT is in agreement that nuisance and malicious use of UAS must be prevented, especially where Public Safety is involved; and that citizen expectations of privacy must be protected. However, SB 2160 must be restructured substantially in order to remove the issues outlined above.

Thank you for this opportunity to offer these comments.

DAVID Y. IGE
GOVERNOR OF
HAWAII



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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Testimony of
SUZANNE D. CASE
Chairperson

Before the Senate Committees on
COMMERCE, CONSUMER PROTECTION, AND HEALTH
and
JUDICIARY

Wednesday, February 7, 2018
8:30 AM
State Capitol, Conference Room 229

In consideration of
SENATE BILL 2160
RELATING TO UNMANNED AERIAL VEHICLES

Senate Bill 2160 proposes to regulate the use of unmanned aerial vehicles by prohibiting the use of unmanned aerial vehicles under certain conditions, by establishing penalties, by authorizing civil action for violations, by making certain uses of an unmanned aerial vehicle (UAV) a misdemeanor, and by defining certain UAV uses as an invasion of privacy. **The Department of Land and Natural Resources (Department) provides the following comments.**

The Department is charged with monitoring and managing approximately 1.3 million acres of terrestrial and aquatic areas under the State's jurisdiction, monitoring legally binding commitments of private landowners, as well as enforcing the laws and regulations pertaining to public areas and natural resources. UAVs have proven to be an efficient tool in achieving the Department's various objectives, particularly for undeveloped and geographically remote areas where access is often difficult, if not dangerous.

The use of UAV is currently subject to federal regulation, including the Federal Aviation Administration's Small Unmanned Aircraft Rule (Part 107) for recreational or commercial use and the Special Rule for Model Aircraft of Public Law 112-95 Section 336 for recreational use only. Senate Bill 2160 proposes to charge the Department of Commerce and Consumer Affairs with regulating the use of UAVs; this would impede the Department's ability to adopt regulations that meet our specific land stewardship need, particularly with the rapid development of both UAV technology and corresponding federal UAV regulation. The Department believes it would be more efficient to limit UAV regulation of this bill to privacy protection to the extent

possible, and leave it to state agencies to establish administrative rules under their jurisdiction. This allows the Department to account for health, safety, privacy, and security regulations that are specific to our lands and easier to adapt as technology evolves. Such rules can include, but are not limited to, regulation of use, penalties, fines, and enforcement.

Further, this bill proposes to establish specific restrictions, such as limiting UAV operation to the airspace within line-of-sight of the pilot or prohibiting UAV use above a certain altitude, which is duplicative to current federal regulation. Further as the technology evolves, there is discussion on allowing safe operations of extended scope and scale (i.e., outside line of sight of the operator). This would allow agencies and permitted partner organizations involved in natural and cultural resource management a safer and more cost-effective alternative to aerial survey and monitoring operations involving aircraft. Legislation should be adaptable to both potential future improvements in technology, increasing safety and scope of UAV operations, and to potential changes in federal UAV laws and regulation. Thus, Department suggests avoiding regulation that is redundant to federal regulation and instead facilitate maintaining alignment of state and federal regulations, wherever appropriate.

Federal regulation already prohibits UAV use within airspace class B, C, D, and E without the permission of air traffic control. The Department suggests avoiding this redundancy by limiting paragraph (2) to uncontrolled airports and airstrips that are located in airspace class G. Should it be decided to pass limitations of UAV use within airport airspace that are different from the existing federal regulations an exemption process needs to be defined.

Therefore, the Department suggests the following changes to § -3:

§ -3 Prohibited acts; penalty. (a) No person shall operate an unmanned aerial vehicle:

- (1) In violation of chapter 263, regulations of the Federal Aviation Administration relating to the operation of unmanned aerial vehicles (14 C.F.R. part 107), or any other applicable federal law;
- (2) Within five miles of an uncontrolled airport;
- (3) Within five hundred feet of an emergency response vehicle or first responder during an emergency, except as authorized under section -4 (b);
- (4) To intentionally collect personal information or intentionally publish or distribute personal information acquired through the operation of an unmanned aerial vehicle without the express written consent of the person whose personal information is acquired;
- ~~[(5) At an altitude higher than four hundred feet above ground level;~~
- ~~(6) Outside the visual line of sight of the operator. The operator shall use natural vision to maintain at all times an unobstructed view of the unmanned aerial~~

~~vehicle without the use of vision enhancing devices, including but not limited to binoculars, night vision goggles, powered vision magnifying devices, or similar devices;~~

~~(7) In a manner that interferes with, or fails to give way to, any manned aircraft;~~

~~(8) Whenever weather conditions impair the operator's ability to safely operate the unmanned aerial vehicle;~~

~~(9)]~~ (5) Over any open air assembly unit, school, school yard, hospital, place of worship, prison, or police station without the property owner's written consent and subject to any restrictions that the property owner may impose on the operation of the unmanned aerial vehicle;

[~~(10)]~~ (6) Within:

~~[(A) Five hundred feet of any water intake facility or any electric generating facility, substation, or control center;~~

~~(B) One hundred feet of any electric transmission facility; or~~

~~(C) Twenty five feet of any electric distribution facility or of any overhead cable, wire, conveyor, or similar equipment for the transmission of sounds or signals, or of heat, light, or power, or of data, upon or along any public way,]~~

without the facility or equipment owner's written consent and subject to any restrictions that the facility or equipment owner may impose on the operation of the unmanned aerial vehicle;

Further, it is unclear how the legal distance limits defined in § -3 need to be measured to hold up in potential litigations and how potential additional cost for equipment required for distance mensuration would be funded.

UAVs can be a safe alternative to conduct potentially dangerous law enforcement activities in undeveloped and geographically remote areas. For example, the Department's Commission on Water Resource Management may in the future desire to use UAVs to aid in the enforcement of instream flow standards or document the condition of water intake facilities in remote areas. Therefore, the Department suggests the following changes to § -(b)(4):

(b) Notwithstanding subsection (a), and in addition to the authorized activities under section -5, a law enforcement or public safety agency may deploy an unmanned aerial vehicle for the following purposes:

- (1) When there is a reasonable belief that an emergency situation exists, whether or not the situation involves criminal activity, and the use of an unmanned aerial vehicle is necessary to prevent immediate danger of death or serious physical injury to any person;
- (2) To conduct a search and rescue operation where the use of an unmanned aerial vehicle is determined to be necessary to alleviate an immediate danger to any person;
- (3) To respond to a hostage situation; [e]
- (4) To conduct monitoring activities for enforcement purposes in undeveloped and geographically remote areas on state land if other means of investigation would pose an unreasonable risk to the safety of law enforcement staff; or
- (5) To conduct training exercises related to any of the purposes in this subsection.

The Department is partnering with and relies on a number of private entities. The Department kindly requests adding language that provides exemptions for state agencies and permitted partner organizations to deploy UAVs for work in natural and cultural resource management, surveying plant and animal populations, for responding to wildland fires that often spread across different land ownerships, and for monitoring infrastructure such as facilities, fences, water reservoirs, etc. The Department suggests the following changes to § -5:

§ -5 Public agency exceptions. Nothing in this chapter shall prohibit the use of unmanned aerial vehicles by a public agency[+] and its permitted partner organizations:

- (1) To conduct environmental or disaster response, including but not limited to disaster relief, victim recovery or search and rescue, and monitoring, inspection, underwater repair, or structural damage assessments[+], and wildfire response;
- (2) To dispose of a suspected or actual explosive device;
- (4) To monitor plant or animal populations[+] and infrastructure;

Thank you for the opportunity to comment on this measure.



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
Senate Committees on Commerce, Consumer Protection and Health and Judiciary
February 7, 2018 at 8:30 a.m.

by

Ted Ralston, Unmanned Systems Program Director, Applied Research Laboratory - UH
on behalf of

Vassilis L. Syrmos, Vice President for Research and Innovation
University of Hawai'i System

SB 2160 – RELATING TO UNMANNED AERIAL VEHICLES

Chairs Baker and Taniguchi, Vice Chairs Tokuda and Rhoads, and Members of the
Committees:

The University of Hawai'i (UH) respectfully opposes SB 2160 which relates to
regulation, permitted uses and enforcement of Unmanned Air Systems (UAS)
operations.

The Applied Research Laboratory at the University of Hawai'i (ARL-UH) has been
building community consensus and educational uses of UAS for Hawai'i in conjunction
with the FAA designation of Hawai'i as a national UAS test range.

Funding from Legislature provided by Hawai'i Act 208 of 2015, and subsequent
guidance from DBEDT, has enabled this new start. University of Hawai'i UAS
operations are covered by at least four federal policies of formal authorization, including
the FAA Educational Interpretation for UAS dated May 4, 2016; the provisions for
including UAS under Public Aircraft Operations in Title 49 of the United States Code (49
U.S.C.) §§ 40102(a)(41) and 40125; the authority granted by FAA for the University of
Alaska-UH to issue Certificates of Authorization under the UA-FAA UAS Test Site
contract; and FAA Remote Pilot Certification FAR 107 as amended by waivers and rule
changes.

All of the airspace-related flight restrictions included in SB 2160 are preempted by
federal law, where control of airspace currently resides. The flight restrictions given in
SB 2160 would prevent much of UH's currently-FAA authorized UAS operations and
interfere with the performance of Act 208. No doubt these effects are unintended
consequences and not a desire of the bill authors. The University of Hawai'i supports
the control of nuisance and malicious use of UAS and the protection of privacy
underlying SB 2160.

The Applied Research Laboratory at UH is charged with assisting Hawai'i to move
forward in best practices with regard to UAS through Act 208 and is ready to assist the
SB 2160 team to address the many issues in the current measure.

Thank you for this opportunity to offer comments.

Hawai'i State Association of Counties (HSAC)

Counties of Kaua'i, Maui, Hawai'i and City & County of Honolulu

74-5044 Aie Kēohokalele Highway, Bldg. A., Kailua-Kona, HI 96740



January 31, 2018

TESTIMONY OF DRU KANUHA
HSAC PRESIDENT
ON SB 2160, RELATING TO UNMANNED AERIAL VEHICLES
Committee on Commerce, Consumer Protection, and Health
Wednesday, February 7, 2018
8:30 a.m.
Conference Room 229

Aloha Chair Baker and Members of the Committee:

I thank you for the opportunity to testify on behalf of the Hawai'i State Association of Counties in **support** of Senate Bill 2160, relating to unmanned aerial vehicles which is included in the 2018 Hawai'i State Association of Counties Legislative Package.

The purpose of this measure is to regulate operators of unmanned aircraft systems, popularly known as drones. Drones can photograph, videotape and audio record activity whether on public or private property. This measure would address the collection and possible misuse of personal information. While the use is widely allowed and is beneficial for certain purposes, the protection of individual privacy and security is a concern. Guidelines and standards may also address safety issues related to drones. If not operated properly, these systems may injure or cause property damage or nuisance to residents and visitors.

HSAC supports this measure for the reasons stated above and we urge the Committee on Commerce, Consumer Protection, and Health to support this measure as well. Should you have any questions, please feel free to contact me at (808) 323-4267.

Mahalo for your consideration.

DRU KANUHA
HSAC PRESIDENT

DEPARTMENT OF EMERGENCY MANAGEMENT
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR



MELVIN N. KAKU
DIRECTOR

HIROKAZU TOIYA
DEPUTY DIRECTOR

February 6, 2018

The Honorable Rosalyn H. Baker, Chair
The Honorable Jill N. Tokuda, Vice-Chair
Committee on Commerce, Consumer Protection, and Health

The Honorable Brian T. Taniguchi, Chair
The Honorable Karl Rhoads, Vice Chair
Committee on Judiciary

State Senate
State Capitol
415 South Beretania Street, Room 229
Honolulu, Hawaii 96813

Dear Chair Baker, Vice-Chair Tokuda, Chair Taniguchi, Vice Chair Rhoads, and members of the Committees:

SUBJECT: Support for SB 2160 Relating to Unmanned Aerial Vehicles (UAVs)

I am Melvin N. Kaku, director of the Department of Emergency Management (DEM), City and County of Honolulu (City). SB 2160 proposes to establish unmanned aerial vehicle laws that complement federal regulation.

DEM wishes to offer comments on this bill because the City plans to use UAVs as well as we will be working closely with other City, State, and Federal responder departments/agencies who also plan to use UAVs in their daily operations as well as in any all-threat scenarios to provide timely, critical, and efficient response and recovery services throughout Oahu and to its communities.

To ensure public safety, we respectfully request the following be added to "Paragraph 5" Public Agency exceptions:

- To conduct security monitoring of large scale crowd events
- To conduct immediate post all-threat scenario surveys/assessments

Our mutual goal between City, State, and Federal agencies is to balance the benefits that UAVs bring to each agency's operational response and recovery capabilities against protecting the public interests. The pathway for the Responders/Emergency Management communities is to work in close coordination and

Chair Baker, Vice-Chair Tokuda, Chair Taniguchi, Vice-Chair Rhoads
February 6, 2018
Page 2

collaboratively to establish a legal framework that would optimize our combined capabilities to service and assist our communities and visitors in a timely and effective manner.

Because of these considerations, it is our hope that through our participation in discussions and close coordination with Federal, State, and County agencies be completed prior to proceeding with designating policy.

Thank you for the opportunity to provide comments for this bill.

Sincerely,

A handwritten signature in blue ink, appearing to read "Melvin N. Kaku", with a long horizontal flourish extending to the right.

Melvin N. Kaku
Director

COUNTY COUNCIL

Mel Rapozo, Chair
Ross Kagawa, Vice Chair
Arthur Brun
Mason K. Chock
Arryl Kaneshiro
Derek S.K. Kawakami
JoAnn A. Yukimura



OFFICE OF THE COUNTY CLERK

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Council Services Division
4396 Rice Street, Suite 209
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January 31, 2018

**TESTIMONY OF DEREK S.K. KAWAKAMI
COUNCILMEMBER, KAUAI COUNTY COUNCIL
ON**

SB 2160, RELATING TO UNMANNED AERIAL VEHICLES
Senate Committee on Commerce, Consumer Protection, and Health
Senate Committee on Judiciary
Wednesday, February 7, 2018
8:30 a.m.
Conference Room 229

Dear Chair Baker, Chair Taniguchi, and Members of the Committees:

Thank you for this opportunity to provide testimony in strong support of SB 2160, Relating to Unmanned Aerial Vehicles. My testimony is submitted as Vice President of the Hawai'i State Association of Counties, and in my individual capacity as a member of the Kaua'i County Council and Chair of the Council's Economic Development & Intergovernmental Relations Committee.

SB 2160, Relating to Unmanned Aerial Vehicles, is included in the 2018 Hawai'i State Association of Counties Legislative Package. This measure establishes regulations for the use and operation of unmanned aerial vehicles, and specifies prohibitions and penalties for violations of such regulations. Use and operation of an unmanned aerial vehicle may constitute an invasion of privacy, which is why it is important that clear regulations are established to ensure the safety of everyone.

For the reasons stated above, I urge the Senate Committee on Commerce, Consumer Protection, and Health and the Senate Committee on Judiciary to support this measure. Should you have any questions, please feel free to contact me or Council Services Staff at (808) 241-4188.

Sincerely,

DEREK S.K. KAWAKAMI
Councilmember, Kaua'i County Council

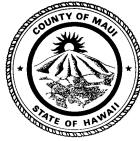
AMK:lc

Council Chair
Mike White

Vice-Chair
Robert Carroll

Presiding Officer Pro Tempore
Stacy Crivello

Councilmembers
Alika Atay
Elle Cochran
Don S. Guzman
Riki Hokama
Kelly T. King
Yuki Lei K. Sugimura



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February 5, 2018

TO: Honorable Rosalyn Baker, Chair
Senate Committee on Commerce, Consumer Protection, and Health

FROM: Stacy Crivello, Secretary
Hawaii State Association of Counties *Crivello*

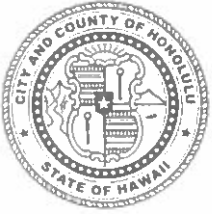
SUBJECT: **HEARING OF FEBRUARY 7, 2018; TESTIMONY IN SUPPORT OF SB2160, RELATING TO UNMANNED AERIAL VEHICLES**

Thank you for the opportunity to testify in **support** of this important measure. The purpose of this measure is to regulate operators of unmanned aircraft systems, popularly known as drones, to address related privacy, security, and safety concerns.

This measure is included in the Hawaii State Association of Counties' ("HSAC") Legislative Package; therefore, I offer this testimony as HSAC's Secretary.

I am aware that the President of HSAC has submitted testimony, on behalf of HSAC, in **support** of this measure. As Secretary, I concur with the testimony submitted by the President, and urge you to **support** this measure.

ocs:proj:legis:18legis:18testimony:sb2160_paf18-028_mcc



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IKAIKA ANDERSON

Council Vice Chair

Councilmember, District 3

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February 5, 2018

TO: The Honorable Rosalyn H. Baker, Chair
House Committee on Commerce, Consumer Protection, and Health

FROM: Councilmember Ikaika Anderson, Vice Chair
Honolulu City Council

SUBJECT: TESTIMONY IN SUPPORT OF SENATE BILL 2160

HEARING: Wednesday, February 7, 2018, 8:30 am
Conference Room 229, Hawaii State Capitol

I am Testifying in **support** of SB 2160, Relating to unmanned aerial vehicles.

This measure seeks to regulate operators of unmanned aircraft systems, otherwise known as drones. Drones have the capability of photographic, video and audio recording, crossing property lines both public and private.

This measure addresses the collection and possible misuse of personal information. The use of these drones are widely allowed and can be beneficial for certain purposes, but the protection of individual privacy and security is of concern. Safety issues related to drones are also of an issue. If drones are not properly operated, they may cause possible injure, create damage to property and/or cause nuisance to residents and visitors.

I **support** the passage of SB 2160 and thank your committee for the opportunity to testify on this important measure.

Testimony of Walea Constantinou,
Film Commissioner, Honolulu Film Office
City and County of Honolulu

COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH
and
COMMITTEE ON JUDICIARY

February 7, 2018
8:30 am
State Capitol, Conference Room 229

RE: SB2160 RELATING TO UNMANNED AERIAL VEHICLES

Dear Chairs Baker and Taniguchi, Vice Chairs Tokuda and Rhoads and members of the committees:

Thank you for the opportunity to provide comments on this measure. The Honolulu Film Office works closely with commercial entities who wish to shoot still photography, video or film on the island of Oahu. Unmanned Aerial Vehicles (UAV), also known as Unmanned Aerial Systems (UAS) and more commonly, 'drones,' have become an important tool in many industries, and in particular to the film industry.

Our goal is to pursue a legal pathway forward for commercial operators to be able to conduct business using UAVs. We have an interim process in place now that mirrors what our counterparts are doing in California because, in addition to using some proven processes, we feel an ideal would be to have some consistency across jurisdictions. To this end, we respectfully request:

1. To remove the reiteration of the FAA guidelines from the measure as this language evolves and details in state law may end up being in conflict with updated language from the FAA. Instead we recommend strong referencing to the FAA guidelines.
2. Removing the reiteration of the FAA guidelines would also address a key issue – the detailed language in the measure does not allow for all of the exceptions the FAA does grant, sometimes through a Certificate of Authorization and sometimes on a case-by-case basis.

The Honolulu Film Office recognizes that there are different communities with varying interests with regard to UAVs. We respectfully recommend that your committees separate the commercial operators from the hobbyists as the FAA has also done.

Finally, we look forward to being able to contribute to the upcoming discussions DBEDT and the University of Hawaii will be conducting as part of a federal task force with the FAA to propose Hawaii as one of several pilot states to develop specific drone policies as part of UAV deployment across the US and hope that those discussions can also help to shape policy.

Thank you for the opportunity to provide these comments. Should you have any questions, please do not hesitate to contact me at 808-768-6100.

SB-2160

Submitted on: 2/6/2018 8:20:15 AM

Testimony for CPH on 2/7/2018 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Irish Barber	IATSE Local 665	Support	No

Comments:

The film technicians of IATSE 665 support the State and County amendments to the FAA language for unmanned vehicles.



Hawaii Cattlemen's Council, Inc.

COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH
Senator Rosalyn H. Baker, Chair | Senator Jill N. Tokuda, Vice Chair

COMMITTEE ON JUDICIARY
Senator Brian T. Taniguchi, Chair | Senator Karl Rhoads, Vice Chair

DATE: Wednesday, February 7, 2018
TIME: 8:30 AM
PLACE: Conference Room 229

SB 2160 – RELATING TO UNMANNED AERIAL VEHICLES.

Establishes a new chapter to regulate the use of unmanned aerial vehicles. Requires the director of the Department of Commerce and Consumer Affairs to adopt rules as necessary. Establishes prohibited uses of unmanned aerial vehicles and penalties, and authorizes civil action for violations. Makes certain uses of an unmanned aerial vehicle a misdemeanor. Clarifies that under certain circumstances, the used of an unmanned aerial vehicle may constitute an invasion of privacy.

Chairs, Vice Chairs, and Members of the Respective Committees:

My name is Dale Sandlin, and I am Managing Director of the Hawaii Cattlemen's Council. The Hawaii Cattlemen's Council, Inc. (HCC) is the Statewide umbrella organization comprised of the four county level Cattlemen's Associations. Our 150+ member ranchers represent over 60,000 head of beef cows; more than 75% of all the beef cows in the State. Ranchers are the stewards of approximately 25% of the State's total land mass.

The Hawaii Cattlemen's Council **offers comments and an amendment** to SB 2160 as agriculturists use Unmanned Aerial Vehicles (UAV) as a tool in managing the land and natural resources they steward.

Ranchers often use UAVs to monitor their herds, check pasture conditions or water resources on their ranch. This offers ranchers the ability to reduce the amount of time that these necessary chores take especially on expansive pastures of their ranch. This has proven in recent years to be a great tool for ranchers and agriculturists across the nation.

Performance of these chores with the use of UAVs sometimes require their operation using a video screen, not line of sight, as their property often includes rolling hills, gulleys and steep ridges that prohibit easy access and are at a considerable distance from the operator.

Therefore, we recommend adding a provision to item § -3 Prohibited acts; penalty. (a), item (6), allowing an exemption for use of a UAV in the normal course of agricultural activities.

While we can appreciate the privacy concern issue, we don't believe that the use of UAVs by ranchers would encroach upon the privacy of others during the normal course of these ranch activities. We respectfully ask for this exemption be included in the bill's language and we appreciate the opportunity to testify on this important matter.





February 5, 2018

To: The Honorable Rosalyn H. Baker, Chair
Committee on Commerce, Consumer Protection, and Health

The Honorable Brian T. Taniguchi, Chair
Committee on Judiciary

From: Tim Shestek
American Chemistry Council

Re: **SB 2160 – unmanned aerial vehicles – SUPPORT IF AMENDED**

On behalf of the American Chemistry Council (ACC), I am writing to express our support for the concept behind SB 2160, legislation pertaining to unmanned aerial vehicles (UAVs). ACC represents companies engaged in the business of chemistry—an innovative, \$812 billion enterprise that is helping solve the biggest challenges facing our nation and the world. The business of chemistry drives innovations that enable a more sustainable future, creates nearly 800,000 manufacturing and high-tech jobs—plus nearly seven million related jobs—that support families and communities, and enhances safety through the products of chemistry and investment in research.

ACC and its member companies are dedicated to safeguarding our employees, our contractors and the people who live and work around our operations. This commitment is demonstrated through ACC's Responsible Care® program and our industry's performance to continually enhance safety and security. Over the past decade, ACC members have invested more than \$14 billion to enhance security measures.

The proliferation of UAVs has raised questions about potential security threats to critical infrastructure such as chemical plants, refineries, and electricity generating facilities. For example, unmanned aerial vehicles with mechanical or control problems that may fall into an active chemical process unit could create a safety hazard. Furthermore, video or photos of a chemical plant layout could reveal information that has been removed from public access by government agencies for security reasons. To that end, we have supported legislation recently enacted in Oregon, Nevada, and Arizona that achieves this objective. Those statutes, with relevant sections pertaining to the inclusion of our facilities is highlighted and attached.

PROPOSED AMENDMENT: Section 3 of the bill identifies several types of facilities protected from unauthorized UAV intrusions. ACC requests that you add the following language on page 5, beginning with line 18: *"a chemical or polymer manufacturing or distribution facility."*

Thank you for considering this amendment. Should you have any questions, please do not hesitate to contact me or ACC's Hawaii based representative Ross Yamasaki at 808-531-4551.



State of Arizona
Senate
Fifty-second Legislature
Second Regular Session
2016

SENATE BILL 1449

AN ACT

AMENDING TITLE 13, CHAPTER 37, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-3729; AMENDING SECTIONS 28-8242 AND 28-8280, ARIZONA REVISED STATUTES; RELATING TO UNMANNED AIRCRAFT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 13, chapter 37, Arizona Revised Statutes, is amended
3 by adding section 13-3729, to read:

4 13-3729. Unlawful operation of model or unmanned aircraft;
5 state preemption; classification; definitions

6 A. IT IS UNLAWFUL FOR A PERSON TO OPERATE A MODEL AIRCRAFT OR A CIVIL
7 UNMANNED AIRCRAFT IF THE OPERATION:

8 1. IS PROHIBITED BY A FEDERAL LAW OR REGULATION THAT GOVERNS
9 AERONAUTICS, INCLUDING FEDERAL AVIATION ADMINISTRATION REGULATIONS.

10 2. INTERFERES WITH A LAW ENFORCEMENT, FIREFIGHTER OR EMERGENCY
11 SERVICES OPERATION.

12 B. IT IS UNLAWFUL FOR A PERSON TO OPERATE OR USE AN UNMANNED AIRCRAFT
13 OR UNMANNED AIRCRAFT SYSTEM TO INTENTIONALLY PHOTOGRAPH OR LOITER OVER OR
14 NEAR A CRITICAL FACILITY IN THE FURTHERANCE OF ANY CRIMINAL OFFENSE.

15 C. EXCEPT AS AUTHORIZED BY LAW, A CITY, TOWN OR COUNTY MAY NOT ENACT
16 OR ADOPT ANY ORDINANCE, POLICY OR RULE THAT RELATES TO THE OWNERSHIP OR
17 OPERATION OF AN UNMANNED AIRCRAFT OR UNMANNED AIRCRAFT SYSTEM OR OTHERWISE
18 ENGAGE IN THE REGULATION OF THE OWNERSHIP OR OPERATION OF AN UNMANNED
19 AIRCRAFT OR AN UNMANNED AIRCRAFT SYSTEM. ANY ORDINANCE, POLICY OR RULE THAT
20 VIOLATES THIS SUBSECTION, WHETHER ENACTED OR ADOPTED BY THE CITY, TOWN OR
21 COUNTY BEFORE OR AFTER THE EFFECTIVE DATE OF THIS SECTION, IS VOID.

22 D. THIS SECTION DOES NOT:

23 1. APPLY TO A PERSON OR ENTITY THAT IS AUTHORIZED OR ALLOWED BY THE
24 FEDERAL AVIATION ADMINISTRATION TO OPERATE OR USE AN UNMANNED AIRCRAFT SYSTEM
25 IF THE PERSON'S OR ENTITY'S OPERATION OR USE COMPLIES WITH THE AUTHORIZATION
26 GRANTED TO THE PERSON OR ENTITY OR WITH FEDERAL AVIATION ADMINISTRATION
27 RULES.

28 2. PROHIBIT A CITY, TOWN OR COUNTY FROM ENACTING OR ADOPTING
29 ORDINANCES OR RULES ON THE OPERATION OR USE OF A PUBLIC UNMANNED AIRCRAFT
30 THAT IS OWNED BY THE CITY, TOWN OR COUNTY.

31 3. PROHIBIT A CITY, TOWN OR COUNTY FROM ENACTING OR ADOPTING
32 ORDINANCES OR RULES THAT REGULATE THE TAKEOFF OR LANDING OF A MODEL AIRCRAFT
33 IN A PARK OR PRESERVE OWNED BY THE CITY, TOWN OR COUNTY IF:

34 (a) THERE ARE OTHER PARKS OR PRESERVES THAT ARE WITHIN THE CITY, TOWN
35 OR COUNTY AND THAT ARE AVAILABLE FOR MODEL AIRCRAFT OPERATION.

36 (b) THE CITY, TOWN OR COUNTY ONLY HAS ONE PARK OR PRESERVE THAT IS
37 WITHIN THE CITY, TOWN OR COUNTY.

38 4. APPLY TO THE OPERATION OF AN UNMANNED AIRCRAFT, INCLUDING A PUBLIC
39 UNMANNED AIRCRAFT, BY A FIRST RESPONDER AS DEFINED IN SECTION 36-661 WHILE
40 ACTING IN THE FIRST RESPONDER'S OFFICIAL CAPACITY OR AN EMERGENCY WORKER
41 WHILE ENGAGED IN OR SUPPORTING AUTHORIZED EMERGENCY MANAGEMENT ACTIVITIES OR
42 PERFORMING EMERGENCY FUNCTIONS PURSUANT TO TITLE 26, CHAPTER 2.

43 E. A VIOLATION OF SUBSECTION B OF THIS SECTION IS A CLASS 6 FELONY,
44 EXCEPT THAT A SECOND OR SUBSEQUENT VIOLATION IS A CLASS 5 FELONY. A
45 VIOLATION OF SUBSECTION A OF THIS SECTION IS A CLASS 1 MISDEMEANOR.

- 1 F. FOR THE PURPOSES OF THIS SECTION:
2 1. "CIVIL UNMANNED AIRCRAFT" MEANS AN UNMANNED AIRCRAFT OR UNMANNED
3 AIRCRAFT SYSTEM THAT IS OPERATED BY A PERSON FOR ANY PURPOSE OTHER THAN
4 STRICTLY FOR HOBBY OR RECREATIONAL PURPOSES, INCLUDING COMMERCIAL PURPOSES,
5 OR IN FURTHERANCE OF OR INCIDENTAL TO ANY BUSINESS OR MEDIA SERVICE OR
6 AGENCY.
7 2. "COMMERCIAL PURPOSES" MEANS THE USE OF AN UNMANNED AIRCRAFT IN
8 RETURN FOR FINANCIAL COMPENSATION AND INCLUDES AERIAL PHOTOGRAPHY, AERIAL
9 MAPPING OR GEOSPATIAL IMAGING.
10 3. "CRITICAL FACILITY" MEANS ANY OF THE FOLLOWING:
11 (a) A PETROLEUM OR ALUMINA REFINERY.
12 (b) A PETROLEUM, CHEMICAL OR RUBBER PRODUCTION, TRANSPORTATION,
13 STORAGE OR PROCESSING FACILITY.
14 (c) A CHEMICAL MANUFACTURING FACILITY.
15 (d) A WATER OR WASTEWATER TREATMENT FACILITY AND WATER DEVELOPMENT,
16 DISTRIBUTION OR CONVEYANCE SYSTEM, INCLUDING A DAM.
17 (e) AN ELECTRIC GENERATION FACILITY, AS DEFINED IN SECTION 42-14156,
18 AND ANY ASSOCIATED SUBSTATION OR SWITCHYARD.
19 (f) AN ELECTRICAL TRANSMISSION OR DISTRIBUTION SUBSTATION.
20 (g) AN ELECTRICAL TRANSMISSION LINE OF AT LEAST SIXTY-NINE THOUSAND
21 VOLTS.
22 (h) AN ELECTRONIC COMMUNICATION STATION OR TOWER.
23 (i) AN ENERGY CONTROL CENTER.
24 (j) A DISTRIBUTION OPERATING CENTER.
25 (k) A FACILITY THAT TRANSFERS OR DISTRIBUTES NATURAL GAS, INCLUDING A
26 COMPRESSOR STATION, REGULATOR STATION, CITY GATE STATION OR PRESSURE LIMITING
27 STATION OR A LIQUEFIED NATURAL GAS FACILITY OR SUPPLIER TAP FACILITY.
28 (l) ANY RAILROAD INFRASTRUCTURE OR FACILITY.
29 (m) A FEDERAL, STATE, COUNTY OR MUNICIPAL COURT.
30 (n) A PUBLIC SAFETY OR EMERGENCY OPERATION FACILITY.
31 (o) A FEDERAL, STATE, COUNTY OR MUNICIPAL JAIL OR PRISON OR OTHER
32 FACILITY IN WHICH PERSONS ARE INCARCERATED.
33 (p) A FEDERAL OR STATE MILITARY INSTALLATION OR FACILITY.
34 (q) A HOSPITAL THAT RECEIVES AIR AMBULANCE SERVICES.
35 4. "MODEL AIRCRAFT" HAS THE SAME MEANING PRESCRIBED IN SECTION 336 OF
36 THE FAA MODERNIZATION AND REFORM ACT OF 2012 (P.L. 112-95), AS AMENDED.
37 5. "PERSON" MEANS A CORPORATION, FIRM, PARTNERSHIP, ASSOCIATION,
38 INDIVIDUAL OR ORGANIZATION OR ANY OTHER GROUP ACTING AS A UNIT.
39 6. "PUBLIC UNMANNED AIRCRAFT" MEANS AN UNMANNED AIRCRAFT OR UNMANNED
40 AIRCRAFT SYSTEM THAT IS OPERATED BY A PUBLIC AGENCY FOR A GOVERNMENT-RELATED
41 PURPOSE.
42 7. "UNMANNED AIRCRAFT" MEANS AN AIRCRAFT, INCLUDING AN AIRCRAFT
43 COMMONLY KNOWN AS A DRONE, THAT IS OPERATED WITHOUT THE POSSIBILITY OF DIRECT
44 HUMAN INTERVENTION FROM WITHIN OR ON THE AIRCRAFT.

1 8. "UNMANNED AIRCRAFT SYSTEM" MEANS AN UNMANNED AIRCRAFT AND
2 ASSOCIATED ELEMENTS, INCLUDING ANY COMMUNICATION LINKS AND COMPONENTS THAT
3 CONTROL THE UNMANNED AIRCRAFT.

4 Sec. 2. Section 28-8242, Arizona Revised Statutes, is amended to read:
5 28-8242. Powers and duties

6 A. The department:

7 1. Shall cooperate with all state, local and federal organizations to
8 encourage and advance the safe and orderly development of aviation in this
9 state.

10 2. May:

11 (a) Assemble and distribute to the public information relating to
12 aviation, landing fields, navigational aids and other matters pertaining to
13 aviation.

14 (b) Accept, in the name of this state, federal monies made available
15 for the advancement of aviation.

16 (c) Represent this state on issues of routing structures and rate
17 schedules concerning commercial airline traffic.

18 (d) Accept and receive federal and other public or private monies for
19 the acquisition, construction, enlargement, improvement, maintenance,
20 equipment or operation of airports and other air navigation facilities and
21 sites for air navigation facilities or for any other purpose authorized by
22 this section. The department shall deposit, pursuant to sections 35-146 and
23 35-147, these monies in the state aviation fund.

24 (e) Facilitate the development of a regional airport.

25 (f) Loan monies from the state aviation fund to an airport authority
26 that enters into an agreement with the United States for an airport
27 development project if the airport authority designates in its agreement with
28 the United States that payment of federal participating monies shall be made
29 to the department acting as the agent of the airport authority and enters
30 into an agreement with the department appointing the department as agent of
31 the airport authority to receive all federal participating monies. The
32 department shall deposit, pursuant to sections 35-146 and 35-147, all monies
33 received pursuant to this subdivision in the state aviation fund. For the
34 purposes of this subdivision, "airport authority" means the governing body of
35 a public airport operating pursuant to sections 28-8423 and 28-8424 or a
36 joint powers airport authority.

37 B. Notwithstanding section 38-623, the director may authorize
38 personnel of the department to use rental aircraft in the performance of
39 their duties at the prevailing hourly rate. The rental fee is a charge
40 against monies appropriated for in-state and out-of-state travel.

41 C. The director shall adopt rules as necessary to administer this
42 article and articles 1, 3, 4 and 5 of this chapter and to promote public
43 safety and the best interests of aviation in this state. The rules shall not
44 supersede or conflict with rules of the United States government agencies
45 having jurisdiction over aviation activities in this state.

- 1 D. The director shall:
- 2 1. Contract for the operation of state owned airports.
- 3 2. In conjunction with local authorities, plan, build and develop
- 4 airports, airport terminals and other related navigational facilities.
- 5 3. Operate and maintain the Grand Canyon national park airport located
- 6 in the Kaibab national forest, Coconino county.
- 7 4. PROVIDE ON THE DEPARTMENT'S WEBSITE INFORMATION ON RESOURCES FOR
- 8 OPERATING A MODEL AIRCRAFT, INCLUDING SAFETY GUIDELINES ESTABLISHED BY A
- 9 NATIONWIDE AERONAUTICS COMMUNITY-BASED ORGANIZATION.
- 10 5. PROVIDE ON THE DEPARTMENT'S WEBSITE PICTURES THAT SHOW EXAMPLES OF
- 11 CRITICAL FACILITIES, AS DEFINED IN SECTION 13-3729, TO PROVIDE UNMANNED
- 12 AIRCRAFT OPERATORS WITH INFORMATION ON WHAT IS CONSIDERED A CRITICAL
- 13 FACILITY. A PICTURE OR ANY WRITTEN DESCRIPTION ON THE WEBSITE MAY NOT
- 14 IDENTIFY THE OWNER OR OPERATOR OF THE CRITICAL FACILITY OR THE LOCATION OF
- 15 THE CRITICAL FACILITY.
- 16 Sec. 3. Section 28-8280, Arizona Revised Statutes, is amended to read:
- 17 28-8280. Careless or reckless aircraft operation; violation;
- 18 classification; definitions
- 19 A. A person who operates an aircraft in the air, on the ground or on
- 20 the water in a careless or reckless manner that endangers the life or
- 21 property of another is guilty of a class 1 misdemeanor. In determining
- 22 whether the operation was careless or reckless, the court shall consider the
- 23 standards for safe operation of aircraft prescribed by federal statutes or
- 24 regulations governing aeronautics.
- 25 B. FOR THE PURPOSES OF THIS SECTION:
- 26 1. "AIRCRAFT" INCLUDES A MODEL AIRCRAFT AND CIVIL UNMANNED AIRCRAFT.
- 27 2. "CIVIL UNMANNED AIRCRAFT" HAS THE SAME MEANING PRESCRIBED IN
- 28 SECTION 13-3729.
- 29 3. "MODEL AIRCRAFT" HAS THE SAME MEANING PRESCRIBED IN SECTION
- 30 13-3729.

**Enrolled
House Bill 4066**

Sponsored by Representative HUFFMAN; Representative WHISNANT (Presession filed.)

CHAPTER

AN ACT

Relating to unmanned aircraft systems; creating new provisions; amending ORS 163.700, 164.885, 498.128, 837.300, 837.360, 837.365 and 837.380; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

DEFINITION OF UNMANNED AIRCRAFT SYSTEM

SECTION 1. ORS 837.300 is amended to read:

837.300. As used in ORS 837.300 to 837.390 and 837.995:

[(1) "Unmanned aircraft system" means an unmanned flying machine, commonly known as a drone. "Unmanned aircraft system" does not include a model aircraft as defined in section 336 of the FAA Modernization and Reform Act of 2012 (P.L. 112-95) as in effect on July 29, 2013.]

(1) "Aircraft" has the meaning given that term in ORS 836.005.

(2) "Law enforcement agency" means an agency that employs [police] peace officers, as defined in [ORS 133.525] ORS 133.005, or that prosecutes offenses.

(3) "Public body" has the meaning given that term in ORS 174.109.

(4) "Unmanned aircraft system" means an unmanned flying machine, commonly known as a drone, and its associated elements, including communication links and the components that control the machine.

[(4)] (5) "Warrant" means a warrant issued under ORS 133.525 to 133.703.

WEAPONIZED UNMANNED AIRCRAFT SYSTEMS

SECTION 2. ORS 837.365 is amended to read:

837.365. *[A public body may not operate an unmanned aircraft system that is capable of firing a bullet or other projectile, directing a laser or otherwise being used as a weapon.]* **A person commits a Class A misdemeanor if the person intentionally, knowingly or recklessly operates an unmanned aircraft system that is capable of firing a bullet or projectile or otherwise operates an unmanned aircraft system in a manner that causes the system to function as a dangerous weapon as defined in ORS 161.015.**

UNMANNED AIRCRAFT SYSTEMS AND AIRCRAFT

SECTION 3. ORS 164.885 is amended to read:

164.885. (1) A person commits the crime of endangering aircraft in the first degree if the person knowingly:

- (a) Throws an object at, or drops an object upon, an aircraft;
- (b) Discharges a bow and arrow, gun, airgun or firearm at or toward an aircraft;
- (c) Tamper with an aircraft or a part, system, machine or substance used to operate an aircraft in such a manner as to impair the safety, efficiency or operation of an aircraft without the consent of the owner, operator or possessor of the aircraft; or
- (d) Places, sets, arms or causes to be discharged a spring gun, trap, explosive device or explosive material with the intent of damaging, destroying or discouraging the operation of an aircraft.

(2)(a) Except as provided in paragraph (b) of this subsection, a person commits the crime of endangering aircraft in the second degree if the person knowingly possesses a firearm or deadly weapon in a restricted access area of a commercial service airport that has at least 2 million passenger boardings per calendar year.

(b) Paragraph (a) of this subsection does not apply to a person authorized under federal law or an airport security program to possess a firearm or deadly weapon in a restricted access area.

(3)(a) Endangering aircraft in the first degree is a Class C felony.

(b) Endangering aircraft in the second degree is a Class A misdemeanor.

(4) As used in this section[,]:

(a) **"Aircraft" does not include an unmanned aircraft system as defined in ORS 837.300.**

(b) **"Restricted access area" means an area of a commercial service airport that is:**

[(a)] (A) Designated as restricted in the airport security program approved by the federal Transportation Security Administration; and

[(b)] (B) Marked at points of entry with signs giving notice that access to the area is restricted.

SECTION 4. Section 5 of this 2016 Act is added to and made a part of ORS 837.300 to 837.390.

SECTION 5. Reckless interference with aircraft; penalty. A person commits a Class A violation if the person possesses or controls an unmanned aircraft system and recklessly causes the unmanned aircraft system to:

- (1) Direct a laser at an aircraft while the aircraft is in the air;
- (2) Crash into an aircraft while the aircraft is in the air; or
- (3) Prevent the takeoff or landing of an aircraft.

USE OF UNMANNED AIRCRAFT SYSTEMS BY PUBLIC BODIES

SECTION 6. Section 7 of this 2016 Act is added to and made a part of ORS 837.300 to 837.390.

SECTION 7. Policies and procedures for use of data. (1) A public body that operates an unmanned aircraft system shall establish policies and procedures for the use, storage, accessing, sharing and retention of data, including but not limited to video and audio recordings, resulting from the operation of the unmanned aircraft system.

(2) The public body shall post the following information on the public body's website or otherwise make the following information available to the public:

(a) The policies and procedures established under this section.

(b) The text of ORS 192.501.

(3) The policies and procedures established under this section must include:

(a) The length of time data will be retained by the public body.

(b) Specifications for third party storage of data, including handling, security and access to the data by the third party.

(c) A policy on disclosure of data through intergovernmental agreements.

SECTION 8. ORS 837.360 is amended to read:

837.360. (1) A public body may not operate an unmanned aircraft system in the airspace over this state without registering the unmanned aircraft system with the Oregon Department of Aviation.

(2) The Oregon Department of Aviation may impose a civil penalty of up to \$10,000 against a public body that violates subsection (1) of this section.

(3) Evidence obtained by a public body through the use of an unmanned aircraft system in violation of subsection (1) of this section is not admissible in any judicial or administrative proceeding and may not be used to establish reasonable suspicion or probable cause to believe that an offense has been committed.

(4) The Oregon Department of Aviation shall establish a registry of unmanned aircraft systems operated by public bodies and may charge a fee sufficient to reimburse the department for the maintenance of the registry.

(5) The Oregon Department of Aviation shall require the following information for registration of an unmanned aircraft system:

(a) The name of the public body that owns or operates the unmanned aircraft system.

(b) The name and contact information of the individuals who operate the unmanned aircraft system.

(c) Identifying information for the unmanned aircraft system as required by the department by rule.

(6) A public body that registers one or more unmanned aircraft systems under this section shall provide an annual report to the Oregon Department of Aviation that *summarizes*:

(a) **Summarizes** the frequency of use of the unmanned aircraft systems by the public body during the preceding calendar year; *and*

(b) **Summarizes** the purposes for which the unmanned aircraft systems have been used by the public body during the preceding calendar year[.]; **and**

(c) **Indicates how the public can access the policies and procedures established under section 7 of this 2016 Act.**

(7) The State Aviation Board may adopt all rules necessary for the registration of unmanned aircraft systems in Oregon that are consistent with federal laws and regulations.

SECTION 9. (1) Section 7 of this 2016 Act and the amendments to ORS 837.360 by section 8 of this 2016 Act become operative on January 1, 2017.

(2) A public body may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the public body to exercise, on and after the operative date specified in subsection (1) of this section, all the duties, functions and powers conferred on the public body by section 7 of this 2016 Act and the amendments to ORS 837.360 by section 8 of this 2016 Act.

USE OF UNMANNED AIRCRAFT SYSTEM FOR COMMERCIAL PURPOSES

SECTION 10. ORS 837.380 is amended to read:

837.380. (1) Except as provided in *subsection (2)* **subsections (2) and (3)** of this section, a person who owns or lawfully occupies real property in this state may bring an action against any person or public body that operates an unmanned aircraft system that is flown over the property if:

(a) The operator of the unmanned aircraft system has flown the unmanned aircraft system over the property on at least one previous occasion; and

(b) The person notified the owner or operator of the unmanned aircraft system that the person did not want the unmanned aircraft system flown over the property.

(2) A person may not bring an action under this section if:

(a) The unmanned aircraft system is lawfully in the flight path for landing at an airport, airfield or runway; and

(b) The unmanned aircraft system is in the process of taking off or landing.

(3) A person may not bring an action under this section if the unmanned aircraft system is operated for commercial purposes in compliance with authorization granted by the Federal Aviation Administration. This subsection does not preclude a person from bringing another civil action, including but not limited to an action for invasion of privacy or an action for invasion of personal privacy under ORS 30.865.

[(3)] (4) A prevailing plaintiff may recover treble damages for any injury to the person or the property by reason of a trespass by an unmanned aircraft system as described in this section, and may be awarded injunctive relief in the action.

[(4)] (5) A prevailing plaintiff may recover attorney fees under ORS 20.080 if the amount pleaded in an action under this section is \$10,000 or less.

[(5)] (6) The Attorney General, on behalf of the State of Oregon, may bring an action or claim for relief alleging nuisance or trespass arising from the operation of an unmanned aircraft system in the airspace over this state. A court shall award reasonable attorney fees to the Attorney General if the Attorney General prevails in an action under this section.

SECTION 11. ORS 163.700 is amended to read:

163.700. (1) Except as provided in ORS 163.702, a person commits the crime of invasion of personal privacy in the second degree if:

(a)(A) For the purpose of arousing or gratifying the sexual desire of the person, the person is in a location to observe another person in a state of nudity without the consent of the other person; and

(B) The other person is in a place and circumstances where the person has a reasonable expectation of personal privacy; or

(b)(A) The person knowingly makes or records a photograph, motion picture, videotape or other visual recording of another person's intimate area without the consent of the other person; and

(B) The person being recorded has a reasonable expectation of privacy concerning the intimate area.

(2) As used in this section and ORS 163.701:

(a) "Intimate area" means nudity, or undergarments that are being worn by a person and are covered by clothing.

(b) "Makes or records a photograph, motion picture, videotape or other visual recording" includes, but is not limited to[,]:

(A) Making or recording or employing, authorizing, permitting, compelling or inducing another person to make or record a photograph, motion picture, videotape or other visual recording.

(B) Making or recording a photograph, motion picture, videotape or other visual recording through the use of an unmanned aircraft system as defined in ORS 837.300, even if the unmanned aircraft system is operated for commercial purposes in compliance with authorization granted by the Federal Aviation Administration.

(c) "Nudity" means any part of the uncovered or less than opaquely covered:

(A) Genitals;

(B) Pubic area; or

(C) Female breast below a point immediately above the top of the areola.

(d) "Places and circumstances where the person has a reasonable expectation of personal privacy" includes, but is not limited to, a bathroom, dressing room, locker room that includes an enclosed area for dressing or showering, tanning booth and any area where a person undresses in an enclosed space that is not open to public view.

(e) "Public view" means that an area can be readily seen and that a person within the area can be distinguished by normal unaided vision when viewed from a public place as defined in ORS 161.015.

(f) "Reasonable expectation of privacy concerning the intimate area" means that the person intended to protect the intimate area from being seen and has not exposed the intimate area to public view.

(3) Invasion of personal privacy in the second degree is a Class A misdemeanor.

CRITICAL INFRASTRUCTURE FACILITIES

SECTION 12. Section 13 of this 2016 Act is added to and made a part of ORS 837.300 to 837.390.

SECTION 13. (1) As used in this section, "critical infrastructure facility" means any of the following facilities, if completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders, or if marked with a sign conspicuously posted on the property that indicates that entry is forbidden:

- (a) A petroleum or alumina refinery;
- (b) An electrical power generating facility, substation, switching station or electrical control center;
- (c) A chemical, polymer or rubber manufacturing facility;
- (d) A water intake structure, water treatment facility, wastewater treatment plant or pump station;
- (e) A natural gas compressor station;
- (f) A liquid natural gas terminal or storage facility;
- (g) A telecommunications central switching office;
- (h) A port, railroad switching yard, trucking terminal or other freight transportation facility;
- (i) A gas processing plant, including a plant used in the processing, treatment or fractionation of natural gas;
- (j) A transmission facility used by a federally licensed radio or television station;
- (k) A steelmaking facility that uses an electric arc furnace to make steel;
- (L) A dam that is classified as a high hazard by the Water Resources Department;
- (m) Any portion of an aboveground oil, gas or chemical pipeline that is enclosed by a fence or other physical barrier that is obviously designed to exclude intruders; or
- (n) A correctional facility or law enforcement facility.

(2) Except as provided in subsection (3) of this section, a person commits a Class A violation if the person intentionally or knowingly:

- (a) Operates an unmanned aircraft system over a critical infrastructure facility at an altitude not higher than 400 feet above ground level; or
- (b) Allows an unmanned aircraft system to make contact with a critical infrastructure facility, including any person or object on the premises of or within the facility.

(3) This section does not apply to:

- (a) The federal government.
- (b) A public body.
- (c) A law enforcement agency.
- (d) A person under contract with or otherwise acting under the direction or on behalf of the federal government, a public body or a law enforcement agency.
- (e) An owner or operator of the critical infrastructure facility.
- (f) A person who has the prior written consent of the owner or operator of the critical infrastructure facility.
- (g) The owner or occupant of the property on which the critical infrastructure facility is located.
- (h) A person who has the prior written consent of the owner or occupant of the property on which the critical infrastructure facility is located.
- (i) A person operating an unmanned aircraft system for commercial purposes in compliance with authorization granted by the Federal Aviation Administration.

CONFORMING AMENDMENTS

SECTION 14. ORS 498.128 is amended to read:

498.128. (1) The State Fish and Wildlife Commission shall adopt rules prohibiting the use of drones for the following purposes related to the pursuit of wildlife:

- (a) Angling;
- (b) Hunting;
- (c) Trapping;

(d) Aiding angling, hunting or trapping through the use of drones to harass, track, locate or scout wildlife; and

(e) Interfering in the acts of a person who is lawfully angling, hunting or trapping.

(2) Rules adopted to carry out the prohibitions provided for in this section may include exemptions for:

(a) Subject to ORS 837.360 [and 837.365], the State Department of Fish and Wildlife and the department's agents and contractors for the use of drones in carrying out the duties of the department; or

(b) The use of drones in a manner otherwise prohibited under this section if the purpose of the use is to benefit wildlife management or habitat or for the protection of property.

(3) Nothing in this section is meant to limit the use of drones by a person who is lawfully engaging in activities authorized under the commercial fishing laws.

(4) As used in this section, "drone" means:

- (a) An unmanned flying machine;
- (b) An unmanned water-based vehicle; or

(c) Any other vehicle that is able to operate in the air, in or under the water or on land, either remotely or autonomously, and without a human occupant.

CAPTIONS

SECTION 15. The unit and section captions used in this 2016 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2016 Act.

EMERGENCY CLAUSE

SECTION 16. This 2016 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2016 Act takes effect on its passage.

Passed by House February 17, 2016

Repassed by House March 1, 2016

.....
Timothy G. Sekerak, Chief Clerk of House

.....
Tina Kotek, Speaker of House

Passed by Senate February 29, 2016

.....
Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2016

Approved:

.....M,....., 2016

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2016

.....
Jeanne P. Atkins, Secretary of State

Assembly Bill No. 239—Assemblymen Elliot Anderson, Ohrenschall, Hansen, Spiegel, Wheeler; Araujo, Benitez-Thompson, Bustamante Adams, Carrillo, Diaz, Flores, Joiner, Neal and Sprinkle

Joint Sponsor: Senator Manendo

CHAPTER.....

AN ACT relating to aircraft; regulating operators of unmanned aerial vehicles in this State; revising the definition of “aircraft” to include unmanned aerial vehicles; prohibiting the operation or use of an unmanned aerial vehicle under certain circumstances or for certain purposes; authorizing a law enforcement agency to operate an unmanned aerial vehicle at certain locations without a warrant under certain circumstances and for any other lawful purpose; prohibiting a law enforcement agency from operating an unmanned aerial vehicle without first obtaining a warrant under certain circumstances; authorizing a public agency to operate an unmanned aerial vehicle only under certain circumstances; requiring the Department of Public Safety, to the extent that money is available, to establish and maintain a registry of unmanned aerial vehicles that are operated by public agencies in this State; requiring the Department to report certain information to the Legislature with respect to the operation of unmanned aerial vehicles by public agencies in this State; requiring the Department to adopt regulations prescribing the public purposes for which a public agency may operate an unmanned aerial vehicle in this State; providing certain criminal and civil penalties for the unlawful operation or use of an unmanned aerial vehicle in this State; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law provides for the regulation of aeronautics, including the operation of aircraft, in this State. (Title 44 of NRS) This bill revises the definition of “aircraft” to include unmanned aerial vehicles for the purpose of regulating unmanned aerial vehicles. This bill generally regulates the operators of unmanned aerial vehicles in this State in a manner similar to that of traditional aircraft by: (1) establishing the right to operate an unmanned aerial vehicle in this State, with certain exceptions; (2) clarifying that the provisions of this bill are not to be interpreted in a manner inconsistent with federal law or apply to unmanned aerial vehicles owned or operated by the Federal Government; (3) clarifying the applicability of state law to torts and crimes resulting from the operation of unmanned aerial vehicles; and (4) prohibiting a person from operating or using an unmanned aerial vehicle under certain circumstances or for certain purposes.

Section 18 of this bill prohibits a person from weaponizing an unmanned aerial vehicle. **Section 18.5** of this bill prohibits a person from operating an unmanned



aerial vehicle within a certain distance from critical facilities or an airport except under certain circumstances in which the person obtains the consent of the owner of a critical facility or the airport authority of an airport or authorization from the Federal Aviation Administration. **Section 19** of this bill authorizes a person who owns or lawfully occupies real property to bring an action for trespass against the owner or operator of an unmanned aerial vehicle under certain circumstances and provides certain exceptions to bringing such an action. **Sections 20-22** of this bill prescribe certain restrictions on the operation and use of unmanned aerial vehicles by law enforcement agencies and public agencies. **Section 20** specifically prohibits, with limited exceptions, a law enforcement agency from operating an unmanned aerial vehicle for the purpose of gathering evidence or other information at any location or upon any property in this State at which a person has a reasonable expectation of privacy without first obtaining a warrant. **Section 20** authorizes a law enforcement agency to operate an unmanned aerial vehicle without a warrant: (1) if exigent circumstances exist and there is probable cause to believe that a person has committed, is committing or is about to commit a crime; (2) if a person consents in writing to the activity; (3) for the purpose of conducting search and rescue operations; (4) if the law enforcement agency believes that an imminent threat exists to the life and safety of an individual person or to the public at large, including the threat of an act of terrorism; and (5) upon the declaration of a state of emergency or disaster by the Governor. **Section 21** authorizes a public agency, other than a law enforcement agency, to operate an unmanned aerial vehicle for certain public purposes as prescribed by regulations adopted by the Department of Public Safety if the public agency registers the unmanned aerial vehicle with the Department. **Sections 20 and 21** provide that any photograph, image, recording or other information acquired unlawfully by a law enforcement agency or public agency, or otherwise acquired in a manner inconsistent with **section 20**, and any evidence that is derived therefrom, is inadmissible in any judicial, administrative or other adjudicatory proceeding and may not be used to establish reasonable suspicion or probable cause as the basis for investigating or prosecuting a crime or offense. **Section 22** requires the Department, to the extent that money is available for this purpose, to establish and maintain a registry of unmanned aerial vehicles that are operated by public agencies in this State and requires the Department to adopt regulations prescribing the public purposes for which an agency may operate an unmanned aerial vehicle. **Section 22** further requires the Department to prepare and submit an annual report to the Legislature outlining the activities of public agencies with respect to the operation of unmanned aerial vehicles in this State. **Section 24.4** of this bill revises provisions relating to the liability of the operator of an aircraft, including an unmanned aerial vehicle, with respect to the operation of the aircraft over heavily populated areas or public gatherings. **Section 24.8** of this bill prohibits a person from operating an unmanned aerial vehicle while intoxicated or in a careless or reckless manner so as to endanger the life or property of another person.



EXPLANATION - Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 493 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 22, inclusive, of this act.

Secs. 2-17. (Deleted by amendment.)

Sec. 18. 1. *A person shall not weaponize an unmanned aerial vehicle or operate a weaponized unmanned aerial vehicle. A person who violates this section is guilty of a category D felony and shall be punished as provided in NRS 193.130.*

2. A person who weaponizes an unmanned aerial vehicle in violation of subsection 1 and who discharges the weapon is guilty of a category C felony and shall be punished as provided in NRS 193.130.

Sec. 18.5. 1. *A person shall not operate an unmanned aerial vehicle within:*

(a) A horizontal distance of 500 feet or a vertical distance of 250 feet from a critical facility without the written consent of the owner of the critical facility.

(b) Except as otherwise provided in subsection 2, 5 miles of an airport.

2. A person may operate an unmanned aerial vehicle within 5 miles of an airport only if the person obtains the consent of the airport authority or the operator of the airport, or if the person has otherwise obtained a waiver, exemption or other authorization for such operation pursuant to any rule or regulation of the Federal Aviation Administration. A person who is authorized to operate an unmanned aerial vehicle within 5 miles of an airport pursuant to this subsection shall, at all times during such operation, maintain on his or her person documentation of any waiver, exemption, authorization or consent permitting such operation.

3. A person who violates this section is guilty of a misdemeanor.

4. As used in this section, "airport" means any area of land or water owned, operated or maintained by or on behalf of a city, county, town, municipal corporation or airport authority that is designed and set aside for the landing and taking off of aircraft and that is utilized in the interest of the public for such purposes.

Sec. 19. 1. *Except as otherwise provided in subsection 2, a person who owns or lawfully occupies real property in this State*



may bring an action for trespass against the owner or operator of an unmanned aerial vehicle that is flown at a height of less than 250 feet over the property if:

(a) The owner or operator of the unmanned aerial vehicle has flown the unmanned aerial vehicle over the property at a height of less than 250 feet on at least one previous occasion; and

(b) The person who owns or occupies the real property notified the owner or operator of the unmanned aerial vehicle that the person did not authorize the flight of the unmanned aerial vehicle over the property at a height of less than 250 feet. For the purposes of this paragraph, a person may place the owner or operator of an unmanned aerial vehicle on notice in the manner prescribed in subsection 2 of NRS 207.200.

2. A person may not bring an action pursuant to subsection 1 if:

(a) The unmanned aerial vehicle is lawfully in the flight path for landing at an airport, airfield or runway.

(b) The unmanned aerial vehicle is in the process of taking off or landing.

(c) The unmanned aerial vehicle was under the lawful operation of:

(1) A law enforcement agency in accordance with section 20 of this act.

(2) A public agency in accordance with section 21 of this act.

(d) The unmanned aerial vehicle was under the lawful operation of a business licensed in this State or a land surveyor if:

(1) The operator is licensed or otherwise approved to operate the unmanned aerial vehicle by the Federal Aviation Administration;

(2) The unmanned aerial vehicle is being operated within the scope of the lawful activities of the business or surveyor; and

(3) The operation of the unmanned aerial vehicle does not unreasonably interfere with the existing use of the real property.

3. A plaintiff who prevails in an action for trespass brought pursuant to subsection 1 is entitled to recover treble damages for any injury to the person or the real property as the result of the trespass. In addition to the recovery of damages pursuant to this subsection, a plaintiff may be awarded reasonable attorney's fees and costs and injunctive relief.

Sec. 20. 1. Except as otherwise provided in this section, nothing in this section shall be deemed to otherwise prohibit the



operation of an unmanned aerial vehicle by a law enforcement agency for any lawful purpose in this State.

2. Except as otherwise provided in subsection 3, a law enforcement agency shall not operate an unmanned aerial vehicle for the purpose of gathering evidence or other information within the curtilage of a residence or at any other location or upon any property in this State at which a person has a reasonable expectation of privacy, unless the law enforcement agency first obtains a warrant from a court of competent jurisdiction authorizing the use of the unmanned aerial vehicle for that purpose. A warrant authorizing the use of an unmanned aerial vehicle must specify the period for which operation of the unmanned aerial vehicle is authorized. A warrant must not authorize the use of an unmanned aerial vehicle for a period of more than 10 days. Upon motion and a showing of probable cause, a court may renew a warrant after the expiration of the period for which the warrant was initially issued.

3. A law enforcement agency may operate an unmanned aerial vehicle without obtaining a warrant issued pursuant to subsection 2:

(a) If the law enforcement agency has probable cause to believe that a person has committed a crime, is committing a crime or is about to commit a crime, and exigent circumstances exist that make it unreasonable for the law enforcement agency to obtain a warrant authorizing the use of the unmanned aerial vehicle.

(b) If a person provides written consent to the law enforcement agency authorizing the law enforcement agency to acquire information about the person or the real or personal property of the person. The written consent must specify the information to be gathered and the time, place and manner in which the information is to be gathered by the law enforcement agency.

(c) For the purpose of conducting search and rescue operations for persons and property in distress.

(d) Under circumstances in which the law enforcement agency believes that an imminent threat exists to the life and safety of an individual person or to the public at large, including, without limitation, the threat of an act of terrorism. A law enforcement agency that operates an unmanned aerial vehicle pursuant to this paragraph shall document the factual basis for its belief that such an imminent threat exists and shall, not later than 2 business days after initiating operation, file a sworn statement with a court of competent jurisdiction describing the nature of the imminent



threat and the need for the operation of the unmanned aerial vehicle.

(e) Upon the declaration of a state of emergency or disaster by the Governor. A law enforcement agency that operates an unmanned aerial vehicle pursuant to this paragraph shall not use the unmanned aerial vehicle outside of the geographic area specified in the declaration or for any purpose other than the preservation of public safety, the protection of property, or the assessment and evaluation of environmental or weather-related damage, erosion or contamination.

4. Any photograph, image, recording or other information that is acquired by a law enforcement agency through the operation of an unmanned aerial vehicle in violation of this section, or that is acquired from any other person or governmental entity, including, without limitation, a public agency and any department or agency of the Federal Government, that obtained the photograph, image, recording or other information in a manner inconsistent with the requirements of this section, and any evidence that is derived therefrom:

(a) Is not admissible in and must not be disclosed in a judicial, administrative or other adjudicatory proceeding; and

(b) May not be used to establish reasonable suspicion or probable cause as the basis for investigating or prosecuting a crime or offense.

Sec. 21. 1. A public agency:

(a) May operate an unmanned aerial vehicle only if:

(1) Before the operation of the unmanned aerial vehicle, the public agency registers the unmanned aerial vehicle with the Department pursuant to subsection 2 of section 22 of this act.

(2) The public agency operates the unmanned aerial vehicle in accordance with the regulations adopted by the Department pursuant to subsection 4 of section 22 of this act.

(b) Must not operate an unmanned aerial vehicle for the purposes of assisting a law enforcement agency with law enforcement or conducting a criminal prosecution.

2. Any photograph, image, recording or other information that is acquired by a public agency through the operation of an unmanned aerial vehicle in violation of this section, and any evidence that is derived therefrom:

(a) Is not admissible in, and must not be disclosed in, a judicial, administrative or other adjudicatory proceeding; and



(b) May not be used to establish reasonable suspicion or probable cause as the basis for investigating or prosecuting a crime or offense.

Sec. 22. *1. The Department shall, to the extent that money is available for this purpose, establish and maintain a registry of unmanned aerial vehicles that are operated by public agencies in this State. The Department shall include on its Internet website the information that is maintained in the registry.*

2. A public agency shall, for each unmanned aerial vehicle the public agency intends to operate, submit to the Department, on a form provided by the Department, for inclusion in the registry:

(a) The name of the public agency;

(b) The name and contact information of each operator of the unmanned aerial vehicle;

(c) Sufficient information to identify the unmanned aerial vehicle; and

(d) A statement describing the use of the unmanned aerial vehicle by the public agency.

3. The Department shall, on or before February 1 of each year, prepare and submit to the Director of the Legislative Counsel Bureau for submission to the Legislature, or to the Legislative Commission when the Legislature is not in regular session, a report outlining the activities of public agencies with respect to the operation of unmanned aerial vehicles in this State.

4. The Department shall adopt regulations prescribing the public purposes for which a public agency may operate an unmanned aerial vehicle that is registered with the Department pursuant to this section, including, without limitation:

(a) The provision of fire services.

(b) The provision of emergency medical services.

(c) The protection of a critical facility that is public property.

(d) Search and rescue operations conducted for persons and property in distress.

Sec. 22.5. NRS 493.010 is hereby amended to read as follows:

493.010 NRS 493.010 to 493.120, inclusive, *and sections 18 to 22, inclusive, of this act* may be cited as the Uniform State Law for Aeronautics.

Sec. 23. NRS 493.020 is hereby amended to read as follows:

493.020 As used in NRS 493.010 to 493.120, inclusive, *and sections 18 to 22, inclusive, of this act*, unless the context otherwise requires:

1. "Aircraft" includes *a* balloon, airplane, hydroplane, *unmanned aerial vehicle* and any other vehicle used for navigation



through the air. A hydroplane, while at rest on water and while being operated on or immediately above water, is governed by the rules regarding water navigation. A hydroplane while being operated through the air other than immediately above water, is an aircraft.

2. **“Critical facility” means a petroleum refinery, a petroleum or chemical production, transportation, storage or processing facility, a chemical manufacturing facility, a pipeline and any appurtenance thereto, a wastewater treatment facility, a water treatment facility, a mine as that term is defined in NRS 512.006, a power generating station, plant or substation and any appurtenances thereto, any transmission line that is owned in whole or in part by an electric utility as that term is defined in subsection 5 of NRS 704.187, a county, city or town jail or detention facility and any prison, facility or institution under the control of the Department of Corrections. The term does not include any facility or infrastructure of a utility that is located underground.**

3. **“Department” means the Department of Public Safety.**

4. **“Law enforcement agency” means an agency, office, bureau, board, commission, department or division of this State or a political subdivision of this State, the primary duty of which is to enforce the law.**

5. **“Operator” includes aviator, pilot, balloonist and any other person having any part in the operation of aircraft while in flight.**

~~3.~~ 6. **“Passenger” includes any person riding in an aircraft, but having no part in its operation.**

7. **“Public agency” means an agency, office, bureau, board, commission, department or division of this State or a political subdivision of this State other than a law enforcement agency.**

8. **“Unmanned aerial vehicle” means a powered aircraft of any size without a human operator aboard the vehicle and that is operated remotely or autonomously.**

Sec. 24. (Deleted by amendment.)

Sec. 24.2. NRS 493.050 is hereby amended to read as follows:

493.050 1. Flight ~~is~~ **of an** aircraft over the lands and waters of this state is lawful:

(a) Unless at such a low altitude as to interfere with the then existing use to which the land or water, or the space over the land or water, is put by the owner.

(b) Unless so conducted as to be imminently dangerous to persons or property lawfully on the land or water beneath.



(c) Unless specifically prohibited by the provisions of NRS 493.010 to 493.120, inclusive, and sections 18 to 22, inclusive, of this act, or any regulations adopted pursuant thereto.

2. The landing of an aircraft on the lands or waters of another, without his or her consent, is unlawful, except in the case of a forced landing. For damages caused by a forced landing, the owner, lessee or operator of the aircraft is liable as provided in NRS 493.060.

Sec. 24.4. NRS 493.100 is hereby amended to read as follows:

493.100 *1.* Any operator or passenger, while *an aircraft is* in flight over a heavily populated area or over a public gathering within this state, who:

~~1.—Engages~~

(a) Except as otherwise provided in subsection 2, engages in trick or acrobatic flying, or in any acrobatic feat;

~~2.]~~ *(b)* Except while in landing or taking off, flies at such a low level as to endanger the persons on the surface beneath; or

~~3.]~~ *(c)* Drops any object ~~except loose water or loose sand ballast,~~ *with reckless disregard for the safety of other persons and willful indifference to injuries that could reasonably result from dropping the object,*

↪ is guilty of a misdemeanor.

2. The provisions of paragraph (a) of subsection 1 do not apply to the operator of an unmanned aerial vehicle in a park unless the operator is operating the unmanned aerial vehicle with reckless disregard for the safety of other persons and with willful indifference to injuries that could reasonably result from such operation.

Sec. 24.6. NRS 493.120 is hereby amended to read as follows:

493.120 NRS 493.010 to 493.120, inclusive, *and sections 18 to 22, inclusive, of this act* shall be so interpreted and construed as to effectuate their general purpose to make uniform the law of those states which enact them, and to harmonize, as far as possible, with federal laws and regulations on the subject of aeronautics. They shall not be interpreted or construed to apply in any manner to aircraft owned and operated by the Federal Government.

Sec. 24.8. NRS 493.130 is hereby amended to read as follows:

493.130 *1.* Any person operating an aircraft in the air, or on the ground or water:

~~1.]~~ *(a)* While under the influence of intoxicating liquor or a controlled substance, unless in accordance with a lawfully issued prescription; or



~~12.1~~ (b) In a careless or reckless manner so as to endanger the life or property of another,
↳ is guilty of a gross misdemeanor.

2. *As used in this section:*

(a) *“Aircraft” includes an unmanned aerial vehicle as that term is defined in subsection 8 of NRS 493.020.*

(b) *“Controlled substance” has the meaning ascribed to it in 21 U.S.C. § 802(6).*

(c) *“Prescription” has the meaning ascribed to it in NRS 453.128.*

Sec. 25. The provisions of subsection 1 of NRS 218D.380 do not apply to any provision of this act which adds or revises a requirement to submit a report to the Legislature.

Sec. 26. This act becomes effective:

1. Upon passage and approval for the purpose of adopting regulations and performing any other preparatory administrative tasks necessary to carry out the provisions of this act; and

2. On October 1, 2015, for all other purposes.



**SENATE COMMITTEE
COMMERCE, CONSUMER PROTECTION, AND HEALTH
and
SENATE COMMITTEE ON JUDICIARY**

February 7, 2018

Senate Bill 2160 Relating to Unmanned Aerial Vehicles

Chair Baker, Vice-Chair Tokuda, and Chair Taniguchi and Vice-Chair Rhoads, and Members of the Committees:

I am Rick Tsujimura, representing State Farm Mutual Automobile Insurance Company (State Farm). State Farm offers the following comments about Senate Bill 2160 Relating to Unmanned Aerial Vehicles (UAV):

Although State Farm does not have any strong objections to this bill, recognizing that the Federal Government is actively regulating commercial UAV use, and in light of the information contained below, State Farm recommends the following amendment to the bill:

This Act does not apply to a business entity doing business lawfully in this state, using an unmanned aerial vehicle (UAV) for legitimate business purposes, and operating the UAV in a manner consistent with applicable FAA rules, licenses or exemptions.

In 2012, the Federal Aviation Administration Modernization and Reform Act (FMRA) was enacted, which required the FAA to develop regulations for how UAV will operate in U.S. airspace. The law called for regulations to be developed by 2015, and in February 2015 the FAA issued a Notice of Proposed Rulemaking for the Operation and Certification of Small UAS (NRPM), which lays out the agency's proposed regulatory environment for commercial entities.

On June 21, 2016, the Federal Aviation Administration (FAA) released its highly-anticipated [regulations](#) for the operation and certification of small Unmanned Aerial Vehicles (UAV) (Part 107)—those weighing less than 55 pounds—for non-hobby and non-recreational purposes (commercial purposes, research and development, and educational or academic uses. Although the FMRA and Part 107 do not include an “express” preemption clause, courts have clearly stated that the FAA preempts state and local laws dealing with air safety regulations. In addition, the FAA released a Fact Sheet in late 2015 outlining its position that it preempts state and local laws for operational and safety issues. Accordingly, the final FAA rules should form the basis for how UAV are used for commercial purposes in the United States.

State Farm is the first insurance company to receive FAA approval to use Unmanned Aircraft Systems (UAS) (or Unmanned Aerial Vehicles, UAV). State Farm commented upon the National Telecommunications and Information Administration (NTIA) efforts to establish a multi-stakeholder engagement process to develop and communicate best practices for privacy, accountability, and transparency regarding commercial and private use of UAV, and is the recipient of two grants issued pursuant to Section 333 of the FAA Modernization and Reform Act of 2012 (Exemptions No. 11175 and No. 11188) allowing State Farm to use UAV for insurance purposes. Specifically, State Farm has been granted permission to use UAV for roof

inspections, and research and development purposes, including catastrophe scene surveys. State Farm believes the use of UAV can benefit the lives and safety of its policyholders, employees, and the general public.

State Farm recognizes the importance of addressing privacy and safety as they relate to UAV technology. UAV use for insurance industry purposes are an extension of practices most insurers already employ. For example, underwriting or claims inspections would be with the consent of the customer and, if facilitated by a UAV, functionally no different than a traditional human inspection. In addition, UAV use immediately following catastrophes would likely produce minimal privacy concerns, because it would likely be simultaneous with emergency responder fly overs for similar purposes.

Thank you for the opportunity to present this testimony.

Testimony of The Nature Conservancy of Hawai'i
Commenting on and Requesting Amendments to SB 2160 Relating to Unmanned Aerial Vehicles
Committee on Commerce, Consumer Protection, and Health
Wednesday, February 7, 2018, 8:30AM, Room 229

The Nature Conservancy of Hawai'i is a private non-profit conservation organization dedicated to the preservation of the lands and waters upon which life depends. The Conservancy has helped to protect nearly 200,000 acres of natural lands in Hawai'i. We manage 40,000 acres in 14 preserves and work in 19 coastal communities to help protect the near-shore reefs and waters of the main Hawaiian Islands. We forge partnerships with government, private parties and communities to protect Hawai'i's important watershed forests and coral reefs.

The Nature Conservancy respectfully submits these comments on SB 2160 Relating to Unmanned Aerial Vehicles (UAV). UAV are an extraordinarily valuable tool for image and data collection in conservation activities. They have the potential to dramatically increase information available to conservationists, to significantly improve management of natural resources, and to save lives by substituting for far riskier information collection methods.

The provisions in SB 2160 are generally positive and, if finalized, would permit some use of UAV in conservation activities. However, three of the proposed restrictions are, in part, inconsistent with Federal Aviation Administration (FAA) rules, may be overly restrictive as applied to conservation use of UAV, and would significantly limit the value of the technology.

The requirement that UAV always be kept within the line of sight of the operator would prevent non-government conservation organizations from taking advantage of valuable applications of UAV in remote, unpopulated areas without achieving a safety benefit. The 500-foot standoff from water intake facilities has similar negative implications. And, the prohibition on operating within five miles of an airport may have unintended consequences for both conservation and aviation safety. More details are provided on p.2 of this testimony.

We request the Committee amend SB 2160 as follows to include the opportunity for a waiver of the bill's line of sight and airport limitations if related FAA requirements are met, and to allow a shorter stand-off from water intake facilities:

§ -3 Prohibited acts; penalty. (a) No person shall operate an unmanned aerial vehicle:

...

(2) Within five miles of an airport, unless the Operator is in compliance with Federal Aviation Administration Rules Part 107 §§107.41 and 107.43 or secures a waiver under §§107.200 and 107.205;

...

(6) Outside the visual line of sight of the operator, unless the Operator secures a waiver under Federal Aviation Administration Rules Part 107 §§107.200 and 107.205. The operator shall use natural vision to maintain at all times an unobstructed view of the unmanned aerial vehicle without the use of vision enhancing devices, including but not limited to binoculars, night vision goggles, powered vision magnifying devices, or similar devices;

...

(10) Within:

(A) Five hundred feet of ~~any water intake facility or~~ any electric generating facility, substation, or control center;

(B) One hundred feet of any electric transmission facility; or

(C) Twenty-five feet of any water intake facility or any electric distribution facility or of any overhead cable, wire, conveyor or similar equipment for the transmission of sounds or signals, or of heat, light, or power, or of data, upon or along any public way, without the facility or equipment owner's written consent and subject to any restrictions that the facility or equipment owner may impose on the operation of the unmanned aerial vehicle;

UAV have significant conservation value in remote, unpopulated and often mountainous terrain. Forested watershed management and protection of fresh water and ecological resources for community benefit are amongst The Nature Conservancy's and other government and non-government partners' most important goals. Invasive weeds and animals pose a serious threat to these delicate ecosystems. Such species disrupt the ecological and watershed functions of the forest as well as threaten the health of coral reefs because healthy watersheds reduce runoff that otherwise clogs and kills coral reef systems.

Comprehensive images capturing the location of invasive and native species and the condition of management fences in rugged wilderness are not otherwise obtainable without expensive and sometimes dangerous helicopter flyovers at ~\$1,000/hour or requiring personnel to climb into positions of peril. Using UAV for these operations allows staff to remain in a place of relative safety and still obtain images of cliffs, gulches and ridges.

To adequately conduct the required monitoring of invasive species and fences—and to protect the watershed that is so critical to Hawai'i's people and environment—UAV must navigate cliffs, gulches, and ridges in remote unpopulated areas. Doing so may, at times, take the UAV out of the visual line of sight of the operator. In other words, the same terrain features that make manned helicopter operations so difficult, dangerous, and expensive make an unyielding line of sight requirement for UAV infeasible. Likewise, conservation and land managers caring for important watershed areas may also be monitoring invasive species, possible fence damage, and obstructions near water intakes. A 25-foot stand-off with the owner's written consent will make this activity much more effective than from a 500-foot distance.

In addition, the blanket prohibition on operating within five miles of an airport could prevent non-government and government-contracted entities from monitoring native habitat and species such as birds near airport environs. Some of the airports around the state, including Honolulu and Kahului, have nearby sensitive wetland areas and bird populations that can benefit from monitoring and data collection that inform management for both ecosystem health and aviation safety. Also, much of the important forested watershed areas on Moloka'i are within five miles of that island's airport.

In its UAV rulemaking, the FAA stated, "this rule will generally implement the visual-line-of-sight provision as proposed. However, the FAA will consider waiving that restriction if an applicant seeking extended operational flexibility can demonstrate that his or her operation will have at least the same level of safety as an operation conducted within visual line of site." See, FAA Rules Part 107 §§ 107.31, 107.200 and 107.205. In the case of UAV operation near airports, the FAA included very specific limitations including prior authorization from Air Traffic Control, prohibition on interference with operations and traffic at any airport, and the opportunity for a waiver but only if the operator can demonstrate safety to the FAA's satisfaction. See, FAA Rules Part 107 §§107.41, 107.43, 107.200, and 107.205.

Accordingly, The Conservancy requests that the bill be amended as described above to allow for the operational requirements for line of sight and operations near airports as prescribed by the Federal Aviation Administration, and for a shorter stand-off from water intake facilities. Thank you for the opportunity to comment on this measure.

NetChoice *Promoting Convenience, Choice, and Commerce on The Net*

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February 5, 2018

Sen. Brian T. Taniguchi, Chair
Sen. Rosalyn H. Baker, Chair
Conference Room 229
State Capitol
415 South Beretania Street
Honolulu, HI 96813

RE: **Opposition to SB 2160 – Relating to Unmanned Aerial Vehicles.**

Dear Chairs Taniguchi and Baker and members of the Committee,

We ask you not to advance SB 2160.

We agree with the intent to install reasonable regulations regarding the use of drones. However, SB 2160 creates unintended consequences to legitimate personal and commercial uses of drones.

Drones hold tremendous promise for businesses, professionals, and hobbyists. In areas like real estate, security, agriculture, architecture, engineering, and delivery, drones can provide significant commercial benefits to consumers and businesses in both rural and urban areas.

However, passing SB 2160 would prevent Hawaii residents from exploring many of these opportunities.

For example, SB 2160 would limit the ability of:

- Realtors using a drone to take pictures of a home.
- Farmers using a drone to monitor their crops.
- News media and film makers using a drone to record events.
- Wedding photographers using a drone to capture important family moments.

SB 2160 lacks the appropriate scienter for operation of drones, includes overly broad definitions and limitations, and lacks necessary exceptions for emergency safety situations where a drone must enter private property.

Take, for example, SB 2160's limitation of flight within 25 feet of "any overhead cable." This would ground drone operation in Hawaii citizens' own backyards.

Likewise, we would consider it absurd to outlaw picture taking on a public street. But SB 2160 forbids such practices if that camera is connected to a drone. SB 2160's overly broad definition of personal information and lack of appropriate mens rea essentially makes illegal the flying of a drone with a camera in public unless the operator first obtains express written consent of everyone in view. This limitation is not only unreasonable, but it violates constitutional protections of free speech.

There are concerns about over-penalization as SB 2160 holds operators strictly liable for flying over another's property, even if the operator had no reason to know that the property was private.

Many other concerns about passing SB 2160 exist. Fortunately, Hawaii has existing laws that already protect the privacy and safety of residents.

Hawaii's existing laws addressing invasion of privacy,¹ spying,² trespass,³ and interference with first-responders⁴ are already fully applicable to the use of drones in Hawaii.

Regarding flight restrictions, the US Department of Transportation already provides many limitations on drone operation such as height restrictions.

Instead of passing SB 2160 we suggest amending it to create clear rules for drone operators. We suggest replacing the existing bill text with the "Unmanned Aircraft Systems Act" (UASA) based on existing Michigan Law ([SB 992](#) 2016).

The UASA, available at NetChoice.org/DroneModel, enables the safe and lawful operation of drones by promoting accountability of operators, protecting privacy and property rights, and prescribing penalties for interference with first responders.

The UASA:

- Creates statewide standard allowing clarity for individuals and government.
- Recognizes licensing by FAA.
- Prohibits using a UAS to knowingly and intentionally:
 - Interfere with the official duties of first responders.
 - Harass, stalk, or violate restraining orders.
 - Recording an individual in a manner that invades the individual's reasonable expectation of privacy.
- Creates a process to register locations as critical infrastructure.

While we ask that you not adopt SB 2160, we welcome the opportunity to work with you on reasonable regulations that allow all to prosper.

Sincerely,



Carl Szabo

Vice President and General Counsel, NetChoice

NetChoice is a trade association of e-Commerce and online businesses. www.netchoice.org

¹ HI Rev. Stat. § 711-1110.9

² *Id.* § 711-1111

³ *Id.*

⁴ *Id.* § 710-1026

January 26, 2018

Chairwoman Rosalyn H. Baker
Hawaii State Capitol
415 S Beretania St, Room 230
Honolulu, HI 96813

Chairman Brian T. Taniguchi
Hawaii State Capitol
415 S Beretania St, Room 219
Honolulu, HI 96813

Re: **Senate Bill 2160 – Proposed Drone Legislation**

Dear Chairwoman Baker, Chairman Taniguchi and members of the Committee on Commerce, Consumer Protection, and Health, and the Committee on Judiciary:

The Consumer Technology Association™ (“CTA”) urges the Hawaii legislature to reject proposed Senate Bill No. 2160 (“SB 2160”). Although well-intentioned, CTA cautions against adoption of laws that are preempted and would inhibit growth of the unmanned aircraft systems (“UAS” or drones) industry in Hawaii. CTA is the trade association representing the \$351 billion U.S. consumer technology industry, which supports more than 15 million U.S. jobs. More than 2,200 companies – 80 percent are small businesses and startups; others are among the world’s best known brands – enjoy the benefits of CTA membership including policy advocacy, market research, technical education, industry promotion, standards development and the fostering of business and strategic relationships. CTA also owns and produces CES® – the world’s gathering place for all who thrive on the business of consumer technologies. Profits from CES are reinvested into CTA’s industry services.

As a champion of innovation, CTA is a long-time advocate of clear rules authorizing UAS in a safe manner within the national airspace. CTA has been continually involved in Federal Aviation Administration (“FAA”) rulemaking activities concerning the operation and certification of small UAS. We also are a partner with several other organizations and the FAA in the *Know Before You Fly* campaign, which educates prospective drone users about the safe and responsible operation of UAS.

The explosive growth of the UAS industry has prompted legislators in many states and localities to propose legislation regulating the industry or otherwise trying to address potential concerns related to UAS. Before considering new legislation, however, lawmakers should evaluate whether (i) proposed regulations are preempted, (ii) the conduct at issue may already be addressed by existing state laws, and (iii) UAS-specific legislation is warranted. SB 2160 should not be adopted because it would be preempted, is duplicative, and is unnecessary due to federal activity.

SB 2160 Unlawfully Attempts To Establish No-Fly Zones

The proposed legislation would establish a patchwork of *de facto* no-fly zones in the airspace above Hawaii. Specifically, Section -3(2)¹ prohibits UAS operations within five miles of an airport; Section -3(9) prohibits UAS operations over any open air assembly unit, school, school yard, hospital, place of worship, prison, or police station; and Section 3-10 prohibits UAS operations near any electric distribution facility or any overhead cable. As discussed below, however, no-fly zones may be established only by the federal government. State and local laws purporting to establish such zones are preempted.

The Supremacy Clause of the U.S. Constitution states that “the Constitution and the laws of the United States which shall be made in pursuance thereof . . . shall be the supreme law of the land.”² As noted by the Supreme Court, this gives Congress the power to preempt state law.³ There are three types of preemption: express preemption (when Congress specifically preempts a state law);⁴ field preemption (when a federal framework of regulation is “so pervasive . . . that Congress left no room for the States to supplement it” or where a “federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject”);⁵ and conflict preemption (when state laws “conflict with federal law, including when they stand ‘as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress’”).⁶ Congress has occupied the field with regard to air navigation.⁷

The FAA has issued numerous letters to localities cautioning against the adoption of no-fly zones.⁸ In addition, the FAA has released a UAS Fact Sheet reminding state and local jurisdictions that they lack authority to regulate airspace.⁹ Through these letters and the UAS Fact Sheet, the FAA has made clear that regulations imposing operational bans or otherwise regulating navigable airspace are problematic.¹⁰ As described in the UAS Fact Sheet,

¹ We use “Section -[#]” to refer to the section of the proposed new, unnumbered chapter of the Hawaii Revised Statutes in Section 2 of the Bill.

² U.S. Const., Art. VI, Cl 2.

³ See, e.g., *Arizona v. United States*, 132 S. Ct. 2492 (2012).

⁴ *Id.*

⁵ *Id.* (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)).

⁶ *Id.* (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)).

⁷ See *Burbank v. Lockheed Air Terminal*, 411 U.S. 624, 633-34 (1973).

⁸ See, e.g., Letter from Christopher R. Stevenson, FAA Office of the Chief Counsel, Enforcement Division, to Mark A. Winn, Assistant City Attorney, City of Petersburg (Sept. 16, 2016); Letter from Brandon C. Goldberg, FAA Office of the Regional Counsel, Southern Region to Alexander Karden, City Prosecutor, City of Orlando, Florida (Jan. 21, 2016); Brandon C. Goldberg, FAA Office of the Regional Counsel, Southern Region to Austin D. Roberson, Cobb County Attorney’s Office (Jun. 9, 2016); Brandon C. Goldberg, FAA Office of the Regional Counsel, Southern Region to David Wolpin, Esq., Counsel for the City of Aventura, Florida (May 26, 2016) (“FAA Aventura Letter”).

⁹ State and Local Regulation of Unmanned Aircraft Systems (UAS) Fact Sheet, Federal Aviation Administration Office of the Chief Counsel (Dec. 17, 2015) (“UAS Fact Sheet”) https://www.faa.gov/uas/resources/uas_regulations_policy/media/UAS_Fact_Sheet_Final.pdf.

¹⁰ *Id.* at 3.

“[s]ubstantial air safety issues are raised when state and local governments attempt to regulate the operation or flight of aircraft” and “[a] navigable airspace free from inconsistent state and local restrictions is essential to the maintenance of a safe and sound air transportation system.”¹¹ The Bill would intrude into this purely federal regulatory system by establishing Hawaii-specific UAS no-fly zones – and therefore is preempted by federal law.

The Bill’s Restrictions Are Overbroad

Certain provisions of SB 2160 appear modeled after general FAA limitations on UAS operations (*e.g.*, UAS operations must be below 400 feet, within the visual line of sight of the operator, etc.) and would prohibit operations that exceed those limitations. The proposal, however, does not account for specific UAS operations that may be authorized by the FAA subject to conditions different from those generally applicable to the industry. For example, during recent hurricanes, FAA-authorized drones proved huge assets to the relief and recovery efforts.¹² Similarly, many commercial operators have earned FAA waivers to fly within five miles of an airport, higher than four hundred feet above ground level, and beyond the visual line of sight.¹³ Thus, a party may operate a UAS consistent with its FAA authorization, but face civil penalties due to the proposed code modifications.

Drone-Specific Regulations Directed at Privacy Are Preempted and Unnecessary

SB 2160 also proposes drone-specific prohibitions on privacy that are preempted and unnecessary. Specifically, the Bill would create new statutory provisions criminalizing the use of drones to (i) “intentionally collect personal information,” which includes photographs, and/or (ii) “record a person in a private place” without consent. The FAA has previously noted that similar prohibitions directly “solely at UAS” constitute operational restrictions which are preempted.¹⁴

Although drone privacy regulations are preempted, states remain “free to apply any generally applicable voyeurism laws” to drone operations.¹⁵ As SB 2160 implicitly recognizes, existing Sections 711-1110.9 and 711-1111 of the Hawaii Revised Statutes establish a right to privacy and preclude the use of “any device” to invade a person’s privacy without their consent. There is no reason to single out drone operations. Simply put, a person’s rights to privacy place should not hinge on the technology used to conduct surveillance or engage in harassment. Moreover, amending existing laws and adopting new statutes targeting specific technologies may

¹¹ *Id.* at 2; *accord* Letter from Reginald C. Govan, Chief Counsel, FAA, to Victoria Mendez, Esq., City Attorney, City of Miami (Dec. 9, 2015).

¹² Matthew Hutson, *Hurricanes Show Why Drones Are the Future of Disaster Relief*, NBC News: MACH, Sept. 9, 2017, <https://www.nbcnews.com/mach/science/hurricanes-show-why-drones-are-future-disaster-relief-ncna799961>.

¹³ *See generally* Federal Aviation Administration, Part 107 Waivers Granted https://www.faa.gov/uas/request_waiver/waivers_granted/ (last modified Jan. 26, 2018).

¹⁴ FAA Aventura Letter at 1.

¹⁵ *See, e.g., id.*

cause confusion and the need to amend laws as new technologies are developed that potentially could be used to invade a person's privacy.

SB 2160 Is Unnecessary

Even if SB 2160 were not preempted, it should not be adopted because of the substantial work being undertaken at the federal level to address and safely integrate drone operations. In the first instance, and as recognized in Section -3 of SB 2160, drones must already adhere to Federal law, such as the FAA's rules for small UAS.¹⁶ Further, pursuant to Section 2209 of the FAA Extension, Safety, and Security Act of 2016,¹⁷ the FAA is currently establishing procedures for protecting critical infrastructure from UAS operations. These federal procedures may obviate the need for similar state-level regulations. Adoption of state legislation in this area might unintentionally create conflicts with these federal efforts in the near future. Accordingly, at a minimum, consideration of SB 2160 should be postponed until the Legislature has had an opportunity to consider the impact of new regulations that will be established by the FAA at the direction of Congress.

Moreover, at the direction of the President,¹⁸ the Department of Transportation established a UAS Integration Pilot Program to enable state, local, and tribal entities to work with the FAA to establish best practices and procedures governing operations within their respective jurisdictions.¹⁹ The proposed bill would be inconsistent with this initiative.

For the above reasons, CTA opposes enactment of SB 2160.

Sincerely,



Douglas K. Johnson
Vice President, Technology Policy
djohnson@cta.tech

¹⁶ 14 C.F.R. part 107.

¹⁷ Public Law 114-190 (July 15, 2016).

¹⁸ See Presidential Memorandum for the Secretary of Transportation (Oct. 31, 2017), <https://www.transportation.gov/briefing-room/presidential-memorandum-secretary-transportation>.

¹⁹ See Unmanned Aircraft Systems Integration Pilot Program 82 FR 51903 (Nov. 8, 2017), *see also* UAS Integration Pilot Program, https://www.faa.gov/uas/programs_partnerships/uas_integration_pilot_program/splash.



January 29, 2018

Dear Senator,

The Academy of Model Aeronautics (AMA) is writing in opposition to proposed Senate Bill 2160 relating to the operation of unmanned aircraft systems (UAS).

AMA is a nationwide, community-based organization of nearly 200,000 model aviation enthusiasts, with many members living in Hawaii. For more than eight decades, AMA has successfully managed the recreational UAS community by providing robust safety guidelines and training programs. All AMA members follow this strict safety program and have the benefit of a \$2.5 million dollar liability insurance policy that comes with membership. AMA members know where and how to fly responsibly and have a strong safety record.

In seeking to restrict where UAS can fly in Hawaii, proposed SB 2160 attempts to regulate airspace, which is the sovereign authority of the U.S. government. Indeed, in December of 2015, the Federal Aviation Administration (FAA) released a fact sheet for state and local governments that asserts the FAA's authority over the airspace and underscores the importance of consistent federal regulations.

"Congress has vested the FAA with authority to regulate the areas of airspace use, management and efficiency, air traffic control, safety, navigational facilities, and aircraft noise at its source," the FAA's office of chief counsel wrote. "Substantial air safety issues are raised when state or local governments attempt to regulate the operation or flight of aircraft."

In regards to operations within 5 miles of airport locations outlined in SB 2160, there are already existing federal regulations in place which require airport notification or airspace authorization when flying within 5 miles of an airport. Both airspace authorization and airport notification requirements are clearly outlined in 14 CFR Part 107, 14 CFR Part 101.41, Public Law 112-95 Section 336, and FAA Joint Order 7200.23. These notification and authorization requirements are not a federal prohibition on operating a UAS within 5 miles of an airport, but a safety measure in place to responsibly integrate UAS into the National Airspace System.

Senate Bill 2160 would restrict UAS operations at altitudes higher than 400 feet above ground level. Currently federal law permits UAS operations above 400' when flying within 400 feet of a structure, through an FAA waiver under 14 CFR Part 107 (107.51B), and through the programming of a community-based organization (outlined in Public Law 112-95 Section 336). Differing city and state airspace restrictions could severely limit the flexibility of the FAA in controlling the airspace and flight patterns, and ensuring safety and an efficient air traffic flow (FAA 2015 Fact Sheet).

Lastly, it is important to note that existing federal regulations are being put in place to protect against flying near critical infrastructures. States looking to label specific locations as “critical infrastructure” should do so through the proper channel laid out in Public Law 114-190 section 2209. In this section, Congress requires the FAA to establish procedures for designation of critical infrastructures. The AMA agrees that there are specific areas which could pose extraordinary security risks or concerns, but these areas should be designated at the federal level to ensure uniformity.

We share Hawaii’s goal to keep our skies safe, yet we believe Senate Bill 2160 runs afoul of federal authority and creates unnecessary laws for hobbyists who already follow community-based safety guidelines. While perhaps well-intended, this bill could be a hindrance for business, education, and the existing community of responsible UAS enthusiasts.

Respectfully,

Tyler Dobbs
Government Affairs and Public Relations Representative
Academy of Model Aeronautics
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SB-2160

Submitted on: 2/6/2018 8:23:45 AM

Testimony for CPH on 2/7/2018 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
ted ralston	self	Oppose	Yes

Comments:

SB-2160

Submitted on: 2/6/2018 2:01:12 PM

Testimony for CPH on 2/7/2018 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Robert Carroll	County of Maui	Support	No

Comments:

I support the testimony submitted by HSAC Secretary & Maui County Councilmember Stacy Crivello.

SB-2160

Submitted on: 2/6/2018 5:13:48 PM

Testimony for CPH on 2/7/2018 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Randall Francisco	County of Kauai	Support	No

Comments:

SB-2160

Submitted on: 2/7/2018 11:50:48 AM

Testimony for CPH on 2/7/2018 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Kaipu Seales		Support	No

Comments: