

Amendment to HB 602-FN

Amend the bill by replacing all after the enacting clause with the following:

- 1 New Chapter; Drones. Amend RSA by inserting after chapter 644 the following new chapter:

CHAPTER 644-A  
DRONES

644-A:1 Definitions. In this chapter:

- I. "Airspace" means the space above the ground in New Hampshire.
- II. "Automated surveillance" means surveillance employing a mechanical or electronic device, computer or software, including but not limited to facial recognition technology, that functions continuously without continuous input from a human operator.
- III. "Commercial purpose" means to exchange for money, goods or services or to exchange with the intention of directly or indirectly benefiting any business or other undertaking intended for profit.
- IV. "Critical infrastructure" means 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 power generating station, plant or substation and any appurtenance thereto; any transmission line that is owned in whole or in part by a utility regulated under state law; a telecommunications central switching office; a flood control, hydroelectric power generation or water supply dam or reservoir; a county, city, or town jail or detention facility, police station or fire station; and any prison, facility, or institution under the control of the department of corrections. The term shall not include any facility or infrastructure of a utility that is located underground.
- V. "Drone" means a powered, aerial vehicle, excluding a geosynchronous satellite, that:
  - (a) Does not carry a human operator;
  - (b) Uses aerodynamic forces to provide vehicle lift;
  - (c) Can fly autonomously or be piloted remotely; and
  - (d) May be expendable or recoverable.
- VI. "Government" means the federal government, the state government and any political subdivisions thereof, and state and municipal agencies and departments, including employees and agents.
- VII. "Image" means a record, including a photograph, of thermal, infrared, ultraviolet, visible light, or other electromagnetic waves; sound waves; odors; or other physical phenomena which captures conditions existing on or about real property or an individual located on that property.
- VIII. "Imaging device" means a mechanical, digital, or electronic viewing device; still camera; camcorder; motion picture camera; or any other instrument, equipment, or format capable of recording, storing, or transmitting an image.
- IX. "Individual" means a living human being.
- X. "Information" means any evidence, images, sounds, or data gathered by a drone.
- XI. "Law enforcement agency" means a lawfully established state, county, or municipal agency that is responsible for the prevention and detection of crime, local government code enforcement, and the enforcement of the criminal laws.
- XII. "Law enforcement officer" means a duly sworn employee of a law enforcement agency who is invested with the power of arrest or the detection of crime.
- XIII. "Person" means individuals, partnerships, limited liability companies, corporations and any other organizations, including for-profit and not-for-profit entities, but excluding government.
- XIV. "Surveillance" means the willful act of tracking or following, while photographing, taking images of, listening to, or making a recording of: (a) a recognizable individual or a group of individuals, including their movements, activities or communications, or (b) motor vehicles identifiable by their license plates. The term does not include such activities on real estate in which a person has a legal interest.

644-A:2 Government Use of Drones Limited; Exceptions.

I. Except as provided in paragraph II:

- (a) No government shall use a drone, or obtain, receive, use, or retain information acquired by or through a drone, to engage in surveillance, to acquire evidence, or to enforce laws;
- (b) No government shall use a drone equipped with an imaging device to record an image of an identifiable individual on privately-owned real property in violation of such individual's reasonable expectation of privacy without his or her consent. For purposes of this subparagraph, an individual is presumed to have a reasonable expectation of privacy on privately-owned real property if he or she (i) is within an enclosed structure or (ii) is not observable by individuals located at ground level in a public place where they have a legal right to be, regardless of whether he or she is observable from the air; and
- (c) No government shall operate a drone at a height of less than 250 feet over privately-owned real property unless it has the consent of its owner.

II. (a) Notwithstanding the provisions of paragraph I, a government may use a drone, or obtain, receive, use or retain information acquired by or through a drone, for law enforcement purposes under the following conditions only:

- (1) If surveillance is undertaken, with the prior consent of the person who is the subject of surveillance and the owner or lessee of the property which is the subject of the surveillance.
  - (2) If a government first obtains a search warrant signed by a judge and based on probable cause or the use of a drone is pursuant to a legally-recognized exception to the warrant requirement. A search warrant authorizing the use of a drone shall specify the period for which operation of the drone is authorized, which period shall not exceed 10 days unless subsequently renewed by a judge.
  - (3) If a government possesses reasonable suspicion that, under particular circumstances, swift action is needed to prevent imminent harm to life or serious damage to property, or to forestall the imminent escape of a suspect, or the destruction of evidence, or to assist in locating missing, abducted or lost individuals, hunters or hikers, or to rescue persons in natural disasters, injured persons or persons in need of medical assistance.
  - (4) To counter a high risk of a terrorist attack or incident by a specific individual or organization which the United States Department of Homeland Security determines that credible intelligence indicates that there is such a risk.
  - (5) To increase situational awareness in understanding the nature, scale, and scope of an incident which has occurred and for planning and coordinating an effective and legal response, provided the incident is limited geographically and in time.
  - (6) To support the tactical deployment of law enforcement personnel and equipment in emergency situations.
  - (7) To document a specific crime scene, traffic crash scene or other major incident scene, such as a disaster caused by natural or human activity, provided such documentation is conducted in a geographically confined and time-limited manner.
  - (8) For purposes of training law enforcement officers or others in the proper, safe, and legal use of drones.
- (b) A government which uses a drone, or obtains, receives, uses or retains information acquired by or through a drone, pursuant to paragraph II may do so only if (i) specifically authorized by the chief law enforcement officer of a law enforcement agency, or a supervisor designated by the chief law enforcement officer, (ii) is not operated in an unsafe manner and (iii) is not operated in violation of United States Federal Aviation Administration regulations.
- (d) The use of a drone by a government under subparagraphs II(a)(4) shall be limited to a period of 48 hours of its initial use after which a search warrant or other court order signed by a judge shall be required. The use of a drone by a government under subparagraphs II(a)(5)-(8) shall be limited to a period of 48 hours of its initial use after which reauthorization shall be required (d) Within 5 business days of the initiation of the use of a drone under paragraph II(a), the government shall report in writing the use of a drone to the attorney general who shall annually post such reports on the department of justice website in a searchable format.

III. Unless the fact of a violation is being disputed, information obtained by a government in violation of paragraphs I and II shall, within 12 hours after the discovery of the violation, be permanently and irretrievably destroyed, shall not be transferred to another government or person, shall not be admissible in any judicial or administrative proceeding and shall not be used to establish reasonable suspicion or probable cause to believe that an offense has been committed.

IV. Images of identifiable individuals obtained by a government pursuant to paragraphs I or II shall be blurred, deleted or otherwise de-identified as soon as practicable but in any case within 30 days after being obtained unless such images may be evidence in a criminal investigation.

- V. No government shall own, use, or exercise control over a drone that is equipped with any kind of lethal or non-lethal weapon.
  - VI. Notwithstanding paragraph V, a law enforcement agency may use a drone to disperse lachrymatory agents to quell a violent mass civil disorder or riot as defined in RSA 644:1 where:
    - (a) The purpose of the use of the chemical agent is to disperse the crowd and the use of other lesser forms of force have been exhausted, are unavailable, or would be clearly ineffective;
    - (b) The agency has obtained a court order authorizing its use or there is such an imminent or ongoing threat to life, serious bodily injury, arson, ongoing looting, or substantial damage to property that exigent circumstances require immediate action to prevent further serious harm that would be reasonably likely to occur in the time that it would take to obtain a court order;
    - (c) The crowd has ignored, failed, or refused to disperse after being given a lawful order to disperse or withdraw given immediately prior to the use of the chemical agent;
    - (d) The wind speed and direction and other climatic conditions are such that it is likely the dispersion of the chemical agent will be confined to the immediate area of the riot or illegal gathering, time has been provided for the crowd to disperse, and the effect of chemical agent on uninvolved persons who might experience an abnormally adverse reaction to the agent is taken into consideration; and
    - (e) The dispersal method used by a drone is restricted to powder or aerosol form and shall not include tear gas projectiles, canisters, or barricade piercing projectiles fired into rioters from the air.
  - VII. A government that owns, uses, or exercises control over a drone that causes injury to a person or a person's property shall be liable for such injury.
  - VIII. A government that owns, uses, or exercises control over one or more drones shall annually on July 1 submit a written or electronic report to the attorney general containing information on the number of such drones, the number of times each such drone was used during the prior year and, in general terms, the purpose of each such use. The attorney general shall annually post such reports on the department of justice website in a searchable format.
- 644-A:3 Non-government Use of Drones Limited; Exceptions.
- I. No person shall use a drone to engage in automated surveillance.
  - II. No person shall use a drone to engage in surveillance for commercial purposes without the prior consent of each affected person and each owner or possessor of affecting buildings or structures or parts thereof. It shall not be a defense to a charge of violating this chapter that the buildings or structures were not marked with a no-trespassing sign or similar notice.
  - III. No person shall use a drone equipped with an imaging device to record an image of an identifiable individual on privately-owned real property in which the person does not have a legally-recognized interest in violation of such individual's reasonable expectation of privacy without his or her consent. For purposes of this subparagraph, an individual is presumed to have a reasonable expectation of privacy on privately-owned real property if he or she (i) is within an enclosed structure or (ii) is not observable by individuals located at ground level in a public place where they have a legal right to be, regardless of whether he or she is observable from the air.
  - IV. No person shall:
    - (a) Operate a drone within a horizontal distance of 500 feet or a vertical distance of 400 feet from critical infrastructure without the written consent of the owner of the critical infrastructure;
    - (b) Allow a drone to make contact with critical infrastructure facility, including any individual or object on the premises of or within the critical infrastructure; or
    - (c) Allow a drone to come within a distance of a critical infrastructure facility that is close enough to interfere with the operations of or cause a disturbance to the facility or its occupants.
  - V. No person shall own, use, or exercise control over a drone that is equipped with any kind of lethal or non-lethal weapon. This prohibition shall not apply to a person who is a federal government military contractor using or exercising control over a drone which is equipped with a non-lethal weapon and which is flying over real property in which the person has a legal interest.
  - VI. Any person that owns, uses, or exercises control over a drone in this state that causes injury to a person or a person's property shall be liable for the injury.
  - VII. No person shall use a drone to harass or stalk another person.
  - VIII. No person shall operate a drone at a height of less than 250 feet over privately-owned real property unless the person has the consent of its owner.
- 644-A:4 Airport Prohibition. No government or person shall operate a drone within 5 miles of any airport in this state in a manner that does not comply with relevant federal law and Federal Aviation Administration regulations and guidelines in effect at the time.
- 644-A:5 Identification. Each owner of a drone shall identify the drone with the owner's name, address and telephone number in permanent ink in a font size not less than 12 picas.

- 644-A:6 General Prohibition. Except as otherwise provided in this chapter, no government shall use an imaging device to record an image of an identifiable individual on privately-owned real property in violation of such individual's reasonable expectation of privacy without his or her consent, nor shall any person use an imaging device to record an image of an identifiable individual on privately-owned real property in which the person does not have a legally-recognized interest in violation of such individual's reasonable expectation of privacy without his or her consent. For purposes of this subparagraph, an individual is presumed to have a reasonable expectation of privacy on privately-owned real property if he or she (i) is within an enclosed structure or (ii) is not observable by individuals located at ground level in a public place where they have a legal right to be, regardless of whether he or she is observable from the air.
- 644-A:7 Federal Preemption. If federal law preempts any provision of this chapter, that provision shall not apply.
- 644-A:8 Construction. This chapter shall be construed to provide the greatest possible protection of the privacy of the people of this state. Nothing in this chapter shall be construed to impose liability in connection with newsgathering activity.
- 644-A:9 Penalties.
- I. A government employee or agent who violates RSA 644-A:2, other than the reporting requirements in 644-A:2, II(c) and 644-A:2, VIII, shall be guilty of a class A misdemeanor. A government employee or agent who violates the reporting requirements in RSA 644-A:2, II(c) or 644-A:2, VIII shall be guilty of a violation for a first offense and a misdemeanor for any subsequent offense.
  - II. A government which violates RSA 644-A:2 may be subject to a civil penalty of up to \$10,000 which shall be deposited in the general fund of the state.
  - III. A person who suffers damages or injury caused by a government's use of a drone pursuant to this chapter may bring a civil action to recover actual damages which shall be limited to medical expenses, treatment, and rehabilitation, property damage, permanent physical impairment, court costs, and reasonable attorney's fees from the government. No claim for pain and suffering, emotional distress, mental anguish, disfigurement, loss of enjoyment, loss of companionship, services, or consortium, or other non-pecuniary losses shall be compensable under this chapter. This paragraph shall not be construed as a waiver of the sovereign immunity of the state.
  - IV. A person who violates RSA 644-A:3, I-VII shall be guilty of a class A misdemeanor.
  - V. Any person who suffers injury caused by a drone operated in violation of this chapter shall be entitled to damages from the person who committed the violation of not less than \$1,000 and an award of reasonable attorney fees.
  - VI. In addition to any other remedies allowed by law, a person who willfully gains unauthorized control over a drone shall be liable to the owner of the drone in an amount of not less than \$1,000 and an award of reasonable attorney fees.
- 2 Effective Date. This act shall take effect July 1, 2016.

2015-2493h

#### AMENDED ANALYSIS

This bill regulates the use of drones by government agencies and individuals. It establishes criminal penalties and civil remedies for violations of the law.