

**HB 602-FN - AS INTRODUCED**

2015 SESSION

15-0397

04/01

HOUSE BILL **602-FN**

AN ACT relative to the use of drones.

SPONSORS: Rep. Kurk, Hills 2; Rep. Berch, Ches 1; Sen. Cataldo, Dist 6; Sen. Daniels, Dist 11

COMMITTEE: Executive Departments and Administration

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.

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Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struckthrough.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

15-0397

04/01

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Fifteen*

AN ACT relative to the use of drones.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

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. "Drone" means an 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) Can be expendable or recoverable.

III. "Government" means state and local agencies and departments and any political subdivisions thereof, including employees, agents, and contractors.

IV. "Individual" means a living human being.

V. "Information" means any evidence, images, sounds, or data gathered by a drone.

VI. "Person" means individuals, corporations, organizations, and for-profit and not-for-profit entities, excluding the government.

VII.(a) "Surveillance" means:

(1) The willful act of tracking or following, while photographing, taking images of, listening to, or making a recording of a recognizable individual or a group of individuals, including their movements, activities, or communications; or

(2) Photographing, taking images of, listening in, or making a recording in the interior of a building or structure in which there is a reasonable expectation of privacy.

(b) "Surveillance" shall not apply to a newsworthy event or an event to which the public is invited.

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

I.(a) A government may use a drone for law enforcement purposes only under the following conditions:

(1) If a government first obtains a search warrant signed by a judge and based on probable cause or the use is pursuant to a legally-recognized exception to the warrant requirement.

(2) 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. The use of a drone under this subparagraph shall be limited to a period of 48 hours of its initial use. Within 24 hours of the initiation of the use of a drone under this subparagraph, 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.

(3) If a government obtains the prior consent of the person who is the subject of the surveillance and the owner or lessee of the property which is the subject of the surveillance.

(b) If a government uses a drone under this paragraph, it shall within 24 hours permanently destroy all information gathered by the drone other than that relating directly to the purpose for which the drone was used or any evidence of another crime discovered inadvertently, and only such information may be retained or disclosed to another government.

(c) Evidence obtained by a government through the use of a drone in violation of this paragraph 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.

II. No government shall own, use, or exercise control over a drone that is equipped with any kind of lethal or non-lethal weapon.

III. Except as provided in paragraph I, no government shall use a drone for surveillance.

IV. A government 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 strictly liable for such injury.

V. A government that owns, uses, or exercises control over one or more drones shall annually on July 1 submit a written report to the attorney general containing information on the number of such drones and the number of times each such drone was used during the prior year. 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 conduct surveillance without the prior consent of each affected person and each owner or possessor of affected 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.

II. No person shall own, use, or exercise control over a drone that is equipped with any kind of lethal or non-lethal weapon.

III. Any person that owns, uses, or exercises control over a drone in this state that causes injury to a person or such person's property shall be strictly liable for the injury.

IV. No person shall use a drone to harass or stalk another person.

644-A:4 Airport Prohibition. No government or person shall operate a drone at an altitude below 400 feet within 5 miles of any airport in this state.

644-A:5 Federal Preemption. If federal law preempts any provision of this chapter, that provision shall not apply.

644-A:6 Construction. This chapter, as civilly applied, 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 in matters of legitimate public concern.

#### 644-A:7 Penalties.

I. An individual, including a government employee, agent, and contractor, who violates RSA 644-A:2 shall be guilty of a class A misdemeanor.

II. A government that violates RSA 644-A:2 shall 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 violates RSA 644-A:3 shall be guilty of a class B misdemeanor.

IV. Any person who suffers injury caused by a drone operated in violation of this chapter shall be entitled to damages from the person or government that committed the violation of not less than \$1,000 and an award of reasonable attorney fees.

V. 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 January 1, 2016.

LBAO

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**HB 602-FN FISCAL NOTE**

AN ACT relative to the use of drones.

**FISCAL IMPACT:**

The Judicial Branch and Department of Justice state this bill, as introduced, may increase state expenditures by an indeterminable amount in FY 2016 and each year thereafter. There will be no fiscal impact on local expenditures or state, county, and local revenue.

**METHODOLOGY:**

The Judicial Branch states this bill regulates the use of drones. One of the limited circumstances in which the government may use a drone is if it obtains a search warrant pursuant to RSA 644-A:2, I (a)(1). The penalty section of this bill provides for the potential of class A and class B misdemeanors, civil penalties up to \$10,000 and civil damages of not less than \$1,000 and an award of attorney fees. Additionally if evidence is illegally obtained by a government entity through the use of a drone it is not admissible in a judicial proceeding. The Judicial Branch has no information to determine how many warrants (cost to process is equal to a class A misdemeanor) will be sought, the number of additional class A misdemeanors or class B misdemeanors will be processed, or how many civil penalty actions or civil actions for damages (treated as average complex civil case) will be brought to determine the fiscal impact. The Branch is able to provide the average cost of processing each case type (see table below). The barring of evidence collected illegally by the government does not increase the Branch's caseload it may result in additional trial time where the issue is raised and could potentially lead to an appeal to the Supreme Court.

FY 2016

FY 2017

Judicial Branch\*



Class B Misdemeanor

\$48

\$51

Class A Misdemeanor

\$69

\$71

Complex Civil Case

\$707

\$728

Appeals

Varies

## Varies

\*It should be noted average case cost estimates for FY 2016 and FY 2017 are based on data that is more than nine years old and does not reflect changes to the courts over that same period of time or the impact these changes may have on processing the various case types.

The Department of Justice states this bill requires any governmental entity or law enforcement agency that uses a drone to file an annual report with the Department. The Department would be required to post the report on its website. The Department anticipates it could post the reports with no additional cost. The Department states most of the misdemeanor offenses created by this bill would be prosecuted by local and county prosecutors. The Department does investigate and prosecute criminal conduct by certain government officials. The Department is not able to estimate how many such cases might result because of this bill to determine a fiscal impact. Additionally, the Department assumes it would be the agency responsible for enforcing civil penalties against any governmental unit that violates the law. The Department has no basis to estimate the number of enforcement actions that might result but estimates an enforcement action may consume 70 to 100 hours of an attorney's time.

The Judicial Council states this bill will have no fiscal impact on the indigent defense delivery system.

The New Hampshire Association of Counties states that this bill does not appear to have any fiscal impact on counties.