

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

SB136 proposes to create new criminal offenses for unlawful use of unmanned aircraft. In the definition of terms in Section 1E(3) in SB136 the term “unmanned aircraft” is defined consistently with the colloquial understanding of a “drone.” Using a drone “with the intent to conduct surveillance on” a person, property, or critical infrastructure facility” is a misdemeanor

“Critical infrastructure facility” is defined in SB136, section E(1) broadly as any physical part of facilities used for utilities, detention centers, defense , and airports. SB136, sections B(1) and B(2) propose that the crime relating to a critical infrastructure facility requires proof that operation of the drone interferes with the operations or causes a “disturbance to” the facility or makes contact with the facility, “including any person or object on the premises of or within” the facility. SB136 proposes to make this crime a fourth-degree felony.

SB136, section D creates numerous exceptions that are non-criminal, such as if the property owner consents, the drone operator is a government entity, the drone operator is a law enforcement agency pursuant to a warrant, scholarly research, and license surveying, engineering, and insurance activities.

SIGNIFICANT ISSUES

The New Mexico Supreme Court has ruled that the “Fourth Amendment affords citizens no reasonable expectation of privacy from aerial surveillance conducted in a disciplined manner—mere observation from navigable airspace of an area left open to public view with minimal impact on the ground. It also seems, however, that warrantless surveillance can go beyond benign observation in a number of different ways, one of those being when surveillance creates a “hazard”—a physical disturbance on the ground or unreasonable interference with a resident’s use of his property. In that case, surveillance more closely resembles a physical invasion of privacy which has always been a violation of the Fourth Amendment.” *State v. Davis*, 2015-NMSC-034, para. 35.

In *Davis*, 2015-NMSC-035, para. 31, the New Mexico Supreme Court referred to the legality of the overflight activities as an important factor, relying on the plurality opinion of the United States Supreme Court in *Florida v. Riley*, 488 U.S. 445, 477 (1989); “Significantly for our case, the plurality[in *Riley*] emphasized that the helicopter was not violating the law, and there was no indication in the record that ‘the helicopter interfered with respondent’s normal use of the greenhouse or of other parts of the curtilage,’ or caused undue noise, wind, dust, or threat of injury. The plurality thus found that the police did no more than any member of the public could do flying in navigable airspace, and the Court held that the surveillance did not violate the Fourth Amendment. Justice White cautioned, however, that not every inspection of the curtilage of a house from an aircraft will ‘pass muster under the Fourth Amendment simply because the plane is within the navigable airspace specified by law’ (citations omitted).” Because HB136 intends to make aerial surveillance of private property and a critical infrastructure facility a

crime, the Supreme Court’s language in *Davis* portends at least a question about warrantless drone surveillance if SB136 becomes law.

In SB136, section D(3), one of the exceptions making use of a drone to capture an image lawful is “for the purpose of, or incidental to, a legitimate commercial purpose.” “Making a profit is a legitimate commercial purpose and is in fact the exclusive purpose of most corporations.” *United States v. Radley, et al.*, 632 F.Supp2d 803, 808 (S.D.Tex. 2009), *affirmed* 632 F.3d177 (5th Cir. 2011). If making a profit is a legitimate business purpose, it could be argued that the exception for a “legitimate business purpose” makes it lawful for any business to engage in any of the activities otherwise prohibited by SB136. This would include using a drone to capture images for the purpose of surveillance of a person or business or using a drone to make contact with or interfere with a critical infrastructure facility, as long as the drone is used by a business to make a profit. If this understanding of the exception is broader than the Legislature actually intends, consideration of a more narrowly worded exception might be considered. One source for alternatives may be found in *Laws by State*, Hannah Hilst (April 25, 2025) found at [Drone Laws by State - FindLaw](#). The website provides links to statutes in each state, with those that appear to most closely resemble the provisions in HB136 found in the links for Delaware, Florida, North Carolina, and Oklahoma, among others.

Although SB136 proposes a new crime, there exists a state regulation on hunting that “It shall be unlawful to use aircraft or drone to spot or locate and relay the location of any protected species to anyone on the ground by any means of communication or signaling device or action. . . . It shall be unlawful to hunt for or to take, or assist in the hunting for or taking of, any protected species with the use of information regarding location of any protected species gained from the use of any drone at any time. . . . The Director may exempt a person from the prohibition of utilizing an aircraft, drone or vehicle for management purposes.” NMAC section 19.31.10.11F, G, and H. These regulations have not been the subject of a published court opinion.

SB136 does not define “surveillance” although the crime is only committed if done “with the intent to conduct surveillance.” SB167, section 2C, introduced during the 2017 legislative session, which also sought to create a new crime for drone surveillance, defined “surveillance” as “the observation of a place, person, group or ongoing activity.” That definition does not seem to clarify the activity it covers. One privacy advocate summarized the capabilities of commercially available drone systems by stating, “Surveillance drones can be equipped with sophisticated imaging technology that provides the ability to obtain detailed photographs of terrain, people, homes, and even small objects. Drones regularly carry high-resolution cameras, infrared cameras, heat sensors, GPS, sensors that detect movement, and automated license plate readers. These cameras may include facial recognition technology that would make it possible to remotely identify individuals from a distance without their knowledge.” Electric Privacy Information Center (epic.org) found at: [Drones and Aerial Surveillance – EPIC – Electronic Privacy Information Center](#). Identifying in some manner the capabilities of drones may advance understanding of what SB136 seeks to cover with the “intent to conduct surveillance” element of the crimes the bill creates..

PERFORMANCE IMPLICATIONS

None noted.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None noted.

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

None noted.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Existing drone activities may or may not be unconstitutional but will not be identified as criminal acts in the manner set forth in SB136.

AMENDMENTS

None noted.