

## New Hampshire House Bill 97 & Talking Points

**Under Definitions-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; Can fly autonomously or be piloted remotely; and (d) May be expendable or recoverable.

**This is a standard drone definition** used in State proposed legislation, City resolutions and ordinances except for the “excluding geosynchronous satellite” which was probably added to indicate that the definition applied to drones with and without GPS receivers onboard.

**Note – AMA member flight operations only allow for semi-autonomous** preprogrammed flying since the remote pilot must have VLOS capability for the entire flight and the ability to deactivate any semi-autonomous flight if a hazardous situation should occur.

Although under this definition even a rubber band powered balsa airplane could be regulated, it is unlikely that it would happen. Even the definition in the special rule for model aircraft in PL-112-95 Sec 336 (c) could be applied to a rubber powered aircraft because it states (c) MODEL AIRCRAFT DEFINED - the term “model aircraft” means an unmanned aircraft that is - (1) capable of sustained flight in the atmosphere; (2) flown within visual line of sight of the person operating the aircraft; and (3) flown for hobby or recreational purposes.

**Under III (2): An individual has a reasonable expectation of privacy on privately owned real property if she or he (2)** 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.

AMA also has concerns regarding the privacy provisions of HB 97-FN. Invasion of privacy on any level is a very real and serious concern. However, this bill appears to only place restrictions on drones, and not on any other vehicle or means. By stating the following, “an individual is presumed to have a reasonable expectation of privacy on privately-owned real property if he or she (2) 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.”, it appears as though HB 97-FN looks to regulate drone operations, and that the invasion of privacy concerns are only a pretense to these regulations.

Regarding “Reasonable Expectation of Privacy”, a person would have a reasonable expectation of privacy in their backyard pool area where they could not be seen by someone from the public street in front of their house and any images or data unintentionally collected by a drone flight over that area could not be published, disseminated or retained.

**Is there a need for drone privacy regulation?** AMA member and well known drone attorney, Brendan Schulman has told us that, “If the concern is physical intrusion or inappropriate photographs, state law governing offenses such as trespass, stalking, peeping or unlawful surveillance ... apply.” That means that what people are most fearful of – being stalked, harassed, or surveilled by a drone, or being victimized by a peeping tom behind a drone – are already acts bound by law. “the privacy laws that are on the books are all technology neutral or agnostic. They apply to computers, they apply to still cameras, they apply to wireless microphones, they apply to video cameras ... and there’s no reason for thinking that they can’t be applied – as already written – to UAVs/drones.” Data collection and retention should only be allowed when it is “relevant to an authorized purpose”.

**Under IV (a):** No person shall: 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 critical infrastructure;

The FAA is currently operating under an extension, H.R.636, the FAA Extension, Safety, and Security Act of 2016.

Not only is HB 97-FN potentially counter to federal authority, it is unnecessary and duplicative. There are already existing federal regulations that are 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 H.R. 636 section 2209. Please refer to attached “H.R.636” and “HR.636 Sec. 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 in flight operations in the National Air Space (NAS).

**Under 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.

Congress has vested the FAA with the authority to regulates the airspace, not cities and states.

In seeking to restrict where and how drones and model aircraft can fly in New Hampshire, proposed HB 97-FN attempts to regulate airspace, which is the sovereign authority of the U.S. government. Indeed, last December 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. Please refer to the attached “State and Local Regulation of Unmanned Aircraft Systems (UAS) Fact Sheet” from FAA Office of the Chief Counsel.

The following statements from the 7-page document clearly indicate FAA’s thoughts about state local UAS regulations:

- A navigable airspace free from inconsistent state and local restrictions is essential to the maintenance of a safe and sound air transportation system.
- Fractionalized control of the navigable airspace could result in a patchwork quilt of differing restrictions that could severely limit the flexibility of FAA in controlling the airspace and flights of unmanned aircraft.
- A consistent regulatory system for aircraft and use of air space has the broader effect of ensuring the highest level of safety for all aviation operations.
- Where Congress occupies an entire field ...even complimentary state regulation is impermissible.

“Congress has provided the FAA with exclusive 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.”

Examples of state and local laws that, according to the FAA, conflict with the FAA's federal legal authority and require consultation with the FAA before being enacted follow:

- Operational UAS restrictions on flight altitude, flight paths; operational bans; any regulation of the navigable airspace. For example—a city ordinance banning anyone from operating UAS within the city limits, within the air space of the city, or within certain distances of landmarks.
- Mandating equipment or training for UAS related to aviation safety such as geo-fencing would likely be preempted. Courts have found that state regulation pertaining to mandatory training and equipment **requirements related to aviation safety is not consistent with the federal regulatory framework.** Med-Trans Corp. v. Benton, 581 F. Supp. 2d 721, 740 (E.D.N.C. 2008); Air Evac EMS, Inc. v. Robinson, 486 F. Supp. 2d 713, 722 (M.D. Tenn. 2007).

**Under 422-D:5:** 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.

The identification requirement in HB 97-FN is unrealistic. Labeling hobby UAS/Drones with the owner's name, address, and telephone number in a picas size of 12, would in itself, be impossible.

Opposition to sUAS/Drone registration stems from FAA document "State and Local Regulation of Unmanned Aircraft Systems" (refer to attached document) wherein the document states that "no State or Local government may impose an additional registration requirement on the operation of Unmanned Aircraft in navigable airspace without first obtaining FAA approval." HB-97 would be adding an additional registration requirement.

Opposition also stems from preemption which prohibits state or local governmental regulation in an area if the federal government's regulatory scheme is sufficiently comprehensive that it evidences the intent for federal law to occupy the entire field.

The bill could simply say that "all UAS must meet FAA requirements in regards to registration." The FAA is working on the remote pilot's registration database so local law enforcement will be able to access identification data of the sUAS/drone owners from the FAA required registration number affixed on all FAA registered UAS/drones operating in the NAS.

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### **General Information Notes:**

The AMA is the official national model aviation association organized for promoting, educating, and safeguarding the sport of model aircraft building and flying. Established in 1936, today the AMA has 200,000 members and 2,450 flying clubs located in both urban and rural areas on public, private and commercial property including schools and airports where safe and responsible flying of model aircraft has been permitted for many decades without incidents.

The FAA considers AMA pilots to have an exemplary safety record and for this reason, Congress in 2012's Federal Modernization & Reform Act (FMRA) passed Public-Law 112-95 Sec. (c) 336 for UAS recreational operations which has been reaffirmed in the reauthorization AIRR of 2016. This law exempts AMA's community based organization (CBO) from further FAA regulations, allowing AMA to continue to create safety programming for AMA member flight operations.

Preemption - If federal law preempts any provision of this bill, that provision shall not apply"  
"Nothing in this bill may be construed to apply to model aircraft as defined in section 336 (c) of the Modernization and Reform Act of 2012".

### **AMA Documents 550 FPV and 560 Semi-Autonomous AMA PRIVACY PROTECTION SAFEGUARDS:**

- a) Laws "Federal, State, & Local" – AMA members must be aware of and observe any laws regulating the ownership and operation of model aircraft or sUAS/Drones.
- b) Cameras/Sensors - the use of imaging technology for aerial surveillance with radio control *model aircraft* having the capability of obtaining high-resolution photographs and/or video, or using any types of sensors, for the collection, retention, or dissemination of surveillance data or information on individuals, homes, businesses, or property at locations where there is a reasonable expectation of privacy is strictly prohibited by the AMA unless written expressed permission is obtained from the individual property owners or managers.

AMA members fly over 40,000,000 flights or 8,000,000 hours with their model aircraft safely and responsibly in the National Air Space each year!