

SESSION OF 2014

SUPPLEMENTAL NOTE ON SENATE BILL NO. 409

As Amended by Senate Committee on Natural
Resources

Brief*

SB 409 would create the Kansas Unmanned Vehicle Act (Act), with the following provisions that would regulate use of unmanned vehicles (UV) and unmanned vehicle systems (UVS) in the state.

Prohibited Use and Exemptions

Unless otherwise provided in the Act, it would be unlawful to operate UVS or collect or disclose personal information acquired through the operation of UVS. Exceptions to the prohibition on UVS would include:

- Public lands and the air space above;
- Land owned by the operator of UVS, including air space above;
- Another person's land and air space above if permission is granted;
- Another person's land and air space above if the operator of UVS has a property interest in the land; and
- Incidental operation, however, if intentional disclosure of data collected through incidental

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

operation occurred causes harm, then the incidental operation would be a violation of the Act.

The bill would prohibit UV from being equipped with any weapon, device, instrument, material, or substance capable of causing death or serious injury. This restriction would not apply to agricultural chemicals, as long as the chemicals are for use on the land and the landowner has given permission.

In addition, nothing in the Act would limit the use of a robot designed to handle suspected explosive devices or other hazardous materials, or use in law enforcement tactical operations where there is a reasonable belief that a human law enforcement response would pose an immediate threat to the safety of any person.

Law Enforcement Agencies

Municipal law enforcement agencies would be required to receive approval of the municipality's government body before procuring UVS. Additionally, certain requirements would be required for municipal law enforcement agencies and municipality governing bodies for keeping records of UVS use, annual auditing of records, and making the written policies and procedures of UVS available to the public.

Law enforcement agencies would be prohibited from using UVS to gather evidence of other information unless the evidence is not otherwise lawfully accessible in plain view, which would constitute a search. Law enforcement agencies would be required to comply with the 4th Amendment to the *U.S. Constitution* and Section 15 of the *Kansas Bill of Rights*. Personal information obtained with UV or UVS would not be subject to the Kansas Open Records Act.

In addition, use of UV or UVS would not be prohibited if the law enforcement agency first obtains a search warrant; if swift action is necessary; to counter a risk of a terrorist attack; to provide continuous coverage while searching for a fugitive

or escapee or monitoring a hostage or barricaded subject situation; to provide more coverage for searching for a missing person or a pattern of criminal activity; or to address other exigent circumstances when probable cause exists that a crime is being, has been, or is about to be committed.

If any personal information acquired by the use of UVS is acquired in violation of the Act, the information and evidence from that information would be inadmissible in any court proceeding, including a trial, and must be deleted as soon as possible and no later than 24 hours after collecting the information.

Reporting Guidelines and Required Reports

The bill would require the following reporting guidelines and reports:

- Any judicial officer who has received an application for a search warrant to operate public UVS during the year would be required to report the application and related information to the Chief Justice of the Supreme Court by November 1 of each year;
- Any law enforcement officer who applied for a search warrant to operate public UVS during the year would be required to report the application and related information to the Kansas Bureau of Investigation (KBI) by November 1 of each year; and
- The Chief Justice and the Director of the KBI would be required to report the collected information to the Legislature by January 1 of each year. The report would include a summary and analysis of all the data required to be submitted with each entity.

Penalties for Violations of the Act

The bill would provide a civil cause of action and recovery for any person who has been aggrieved by a violation of the Act. In addition, violation of the Act or breach of privacy, as defined by the bill, would be punishable by a civil penalty of not more than \$10,000 for each violation, with each day the violation continues as possibly considered to be separate violations.

In addition, new penalty provisions would establish using UVS to collect personal information while a person is in a private place or disseminating, disclosing, or permitting the dissemination or disclosure of personal information about a person collected while the person was in a private place as a severity level 8, nonperson felony.

Background

The bill was introduced by the Senate Committee on Federal and State Affairs.

At the Senate Committee on Natural Resources hearing, representatives of the Kansas Agribusiness Retailers Association, Kansas Cooperative Council, Kansas Grain and Feed Association, and the Kansas Livestock Association provided testimony in favor of the bill. Proponents of the bill stated they were supportive of the bill's intent, but requested clarifying language to exempt legitimate agricultural use of UVS. Proponents also stated the bill protects Kansas landowners and agricultural producers and protects a person's right to privacy.

Neutral testimony was provided by a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and the Kansas Sheriffs Association, which expressed concern with the bill's search warrant requirements. *[The requirements discussed by the testimony were part of the original version of the bill and were later*

replaced with different requirements before the bill passed the Senate Committee.]

A representative of the Kansas Farm Bureau provided testimony against the bill, stating the organization is supportive of the intent of the bill, but believes the issue needs to be better understood before legislative action is taken. In addition, a representative of the Kansas utilities industry providing opposition testimony stated the utilities have begun studying and testing use of UV and UVS technology and the industry would like to preserve the right to use the technology in their operations.

After the Senate Committee heard testimony and had discussion on the bill, the Chairman appointed a subcommittee on the bill, consisting of Senators Tyson, Smith, and Francisco. The Subcommittee met three times to discuss possible amendments that were suggested by both the bill's conferees and Senate Committee members. The Subcommittee approved several amendments, including adding a definition of public land, removing restrictions for state agencies, removing language regarding search warrants and adding language regarding law enforcements searches, and exempting robots designed to handle suspected explosive devices or other hazardous materials.

The Senate Committee adopted the Subcommittee's recommended amendments and also amended the bill to specify that written consent is required with regard to notice.

The fiscal note provided by the Division of the Budget states the KBI indicates that any fiscal effect resulting from enactment of the bill on agency operations would be negligible. The Office of Judicial Administration states that enactment of the bill would increase the number of cases filed in district courts for breaches of privacy and would require search warrants to be considered and issued by the courts. Both the number of warrants that would be requested and the number of cases that might result from the bill's provisions are unknown. Also, the Office states that enactment of SB

409 could result in the collection of additional docket fees, civil penalties, and fines in new criminal cases filed under the bill's provisions. Civil penalties would be deposited into the State General Fund. However, until the courts have had an opportunity to operate under the provisions of SB 409, an accurate estimate of the fiscal effect upon the Judicial Branch cannot be given. The Kansas Sentencing Commission indicates that no data exists for the crime of using UV in the agency's database. In FY 2013, the Commission notes there were two convictions for breach of privacy. Enactment of the bill would have an effect on probation population and potential prison admission and bed space needs when probationers violate their conditions and are revoked to prison. Further, enactment of the bill would have an effect on the journal entry workload of the Commission; however, the effect cannot be quantified because there are no data on which to base an effect. Any fiscal effect associated with SB 409 is not reflected in *The FY 2015 Governor's Budget Report*.