

# Legislative Analysis



## AMEND UNMANNED AIRCRAFT SYSTEMS ACT

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**House Bill 5494 (reported from committee as H-1)**  
**House Bill 5496 (reported from committee w/o amendment)**  
**Sponsor: Rep. Michele Hoytenga**

Analysis available at  
<http://www.legislature.mi.gov>

**House Bill 5495 (reported from committee as H-1)**  
**Sponsor: Rep. Roger Hauck**

**House Bill 5497 (reported from committee as H-1)**  
**Sponsor: Rep. Tom Barrett**

**House Bill 5498 (reported from committee as H-1)**  
**Sponsor: Rep. James A. Lower**

**Committee: Communications and Technology**  
**Complete to 3-21-18**

### ***BRIEF SUMMARY:***

House Bills 5494, 5496, and 5497 would amend the Unmanned Aircraft Systems Act (Public Act 436 of 2016) to specify that the operator of an unmanned aircraft system is criminally liable for any activity using the system for which he or she would be criminally liable for performing directly, to designate duties of the Michigan Aeronautics Commission, and to expand the prohibition on knowingly and intentionally operating an unmanned aircraft system that interferes with the official duties of certain public employees.

House Bill 5495 would amend the Michigan Penal Code to include penalties for knowingly operating an unmanned aircraft system that interferes with the operations of certain facilities, while House Bill 5498 would codify those penalties in the Code of Criminal Procedure.

Each of the bills would take effect 90 days after being enacted.

### ***FISCAL IMPACT:***

House Bill 5494 would have no fiscal impact on the state or on local units of government.

House Bill 5495 would have an indeterminate fiscal impact on the state's correctional system and on local court systems. The number of persons who might be convicted under provisions of the bill is not known. New felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2017, the average cost of prison incarceration in a state facility was roughly \$37,000 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,600 per supervised offender in the same year. The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

House Bill 5496 would establish new duties for the Michigan Aeronautics Commission with respect to unmanned aircraft systems. As described in detail above, those duties primarily involve advising, educating, and informing state departments and agencies, as well as other political subdivisions and the general public. The Office of Aeronautics within the Michigan Department of Transportation currently provides staff support for the Michigan Aeronautics Commission and functionally carries out the executive duties of the Michigan Aeronautics Commission. House Bill 5496 would effectively increase the workload of the Office of Aeronautics; however, representatives of the department indicate that the additional workload would be nominal and could be accomplished with existing resources.

House Bill 5497 would have no fiscal impact on the state or on local units of government.

House Bill 5498 amends sentencing guidelines and would not have a direct fiscal impact on the state or on local units of government.

### ***THE APPARENT PROBLEM:***

As unmanned aerial vehicles, or drones, drop in price, the proliferation of drones in the sky is increasing, as are the type of user and the purpose for using a drone. For state and local governments, drones are increasingly seen as a safer and more efficient tool for gathering data for public safety, such as at a crime or accident scene, hostage incident, or fire, or even for detecting weak spots in bridges or the potential for potholes to develop in roadways. Commercial plants and utilities also find them useful to inspect buildings and installations for needed repairs. Some retailers are exploring using drones to deliver purchases.

However, as seen with other technologies, new advancements often have the potential for misuse or even criminal activity, and existing laws must be updated to apply to such conduct. Such is the case with drones.

Several states have reported drones being used in attempts to surveil prison yards for vulnerabilities or to drop contraband to prisoners, including three specific instances that occurred in Michigan last year. Utility workers working on towers, wind turbines, or repairing phone or electric lines worry about near encounters with drones endangering their lives or damaging sensitive equipment that could cause power outages. Railyards, chemical facilities, and water treatment facilities, to name a few, are concerned with the potential of accidental acts on the part of a drone enthusiast that could cause an explosion or otherwise harm critical infrastructure, or even deliberate acts by terrorists to gather information for use in planning an attack to cripple a key facility.

However, since the FAA does not regulate the recreational use of drones, some feel it falls to the states to enact and enforce prohibitions in order to maintain the public peace and safety. Legislation has been offered to prohibit certain uses of drones by hobbyists and recreational users and to provide penalties for violations.

### ***THE CONTENT OF THE BILLS:***

House Bill 5494 would add Section 20 to the Unmanned Aircraft Systems Act to specify that a person is guilty of an offense committed with the aid of an unmanned aircraft system if the system was under the person's control and if the activity performed would have given rise to

criminal liability had it been performed directly by the person without the aid of an unmanned aircraft system. However, merely flying an unmanned aircraft system through navigable airspace in accordance with federal law would not give rise to criminal liability under the Act.

Proposed MCL 259.320

**House Bill 5496** would add Section 30 to the Act to designate duties of the Michigan Aeronautics Commission. The Commission is established in the Aeronautics Code (MCL 259.26), but would have the following additional duties under the Unmanned Aircraft Systems Act:

- Provide advice to other departments and agencies of this state about the use of unmanned aircraft systems and related technology.
- Provide advice to the public about all of the following:
  - Regulation of unmanned aircraft systems by the federal government and by this state.
  - Safe operating principles for unmanned aircraft systems.
  - Restrictions on the use of unmanned aircraft systems.
  - Any other matters within the scope of the Commission's authority under the Act.
- Provide education and information to departments and agencies of this state, political subdivisions, and the general public about unmanned aircraft systems.
- Receive and consider comments from persons in this state that are interested in or affected by the use of unmanned aircraft systems.

In addition to the Michigan Department of Transportation, the following state departments would provide support to the Commission as necessary and as requested for the Commission to perform its duties:

- Michigan State Police
- Department of Natural Resources
- Department of Corrections
- Department of Agriculture and Rural Development
- Department of Licensing and Regulatory Affairs

HB 5496 also would amend Section 3 to add definitions for *commission* and *department* for purposes of the Act. *Commission* would mean the Michigan Aeronautics Commission, described above, while *department*, unless otherwise expressly stated, would refer to the Michigan Department of Transportation.

MCL 259.303 and proposed 259.330

**House Bill 5497** would amend Section 21 of the Act to expand the prohibition on interfering with the official duties of certain public employees. Currently, the section prohibits an individual from knowingly and intentionally operating an unmanned aircraft system in a manner that interferes with the official duties of search and rescue personnel or of a police officer, firefighter, or paramedic.

The bill would replace the term “police officer” with “*law enforcement official*” and use the definition found in the Code of Criminal Procedure (MCL 763.7). “Paramedic” would be

replaced with “*emergency medical services personnel*,” which is defined in the Public Health Code (MCL 333.20904).

The bill would also add two public employees to the above list and prohibit interference with a state correctional employee and a local corrections employee.

MCL 259.321

**House Bill 5495** would add a section to the Michigan Penal Code to prohibit an individual from knowingly and intentionally operating an unmanned aircraft system in a way that interferes with the operations of a key facility, correctional facility, or other law enforcement facility. An individual would also be prohibited from *flying or hovering* over one of those facilities if the facility is included on the Federal Aviation Administration’s registry of fixed site facilities under Section 2209 of the FAA Extension, Safety, and Security Act of 2016 (PL 114-190).<sup>1</sup> A violation would result in a felony punishable by up to 4 years’ imprisonment, up to a \$2,500 fine, or both.

However, these prohibitions would not apply to a commercial operator of an unmanned aircraft system if the aircraft is operated pursuant to and in compliance with FAA regulations, authorizations, and exemptions.

The bill would define *key facility* as that term is defined in the Michigan Penal Code (MCL 750.552c) and would use the definition for *unmanned aircraft* found in the Unmanned Aircraft Systems Act (MCL 259.303).

Proposed MCL 750.45a

**House Bill 5498** would codify the penalties proposed by HB 5495 within the Code of Criminal Procedure and label the offenses as Class F crimes against public safety. This bill is tie-barred to HB 5495, which means that it cannot take effect unless HB 5495 is also enacted.

MCL 777.16b

### ***BACKGROUND INFORMATION:***

The Unmanned Aircraft Systems Act was enacted in 2016 to provide a regulatory framework for the use of unmanned aircraft (drones) in the state. Among other things, the Act created the Unmanned Aircraft Systems Task Force to develop statewide policy recommendations on the operation, use, and regulation of unmanned aircraft systems. The Task Force submitted its final report to the governor and legislature on November 20, 2017.<sup>2</sup> House Bills 5494 through 5498 would implement some of the Task Force's recommendations.

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<sup>1</sup> Section 2209(b)(1)(C) Considerations – only the following may be considered fixed site facilities: (i) Critical infrastructure, such as energy production, transmission, and distribution facilities and equipment. (ii) Oil refineries and chemical facilities. (iii) Amusement parks. (iv) Other locations that warrant such restrictions.

<sup>2</sup> Available at [http://www.michigan.gov/documents/aero/UASTF\\_Final\\_Report\\_v2\\_Full\\_606520\\_7.pdf](http://www.michigan.gov/documents/aero/UASTF_Final_Report_v2_Full_606520_7.pdf)

## ***ARGUMENTS:***

### ***For:***

Supporters of the bills argue that the bills' provisions stem from the task force recommendations. The task force was composed of 27 members from various agencies and interest groups and held meetings that were open to the public. Supporters of the bills believe that we should rely on the task force's expertise to address emerging problem areas regarding drones. For instance, there were three reported instances last year of drones dropping off contraband to prison inmates in Michigan. Extending a person's actions to actions committed by that person's drone while under his or her control would help protect those correctional facilities by adding specific prosecution for those actions.

### ***Against:***

Opponents of the bills argue that more definitions should be included in the bills. For example, "knowingly" and "interfering" are not defined. Opponents believe that the lack of definitions for these terms leaves them open to interpretations that could stray from the intent of the bills.

## ***POSITIONS:***

Representatives from the following organizations support the bills, as indicated:

- Michigan Department of State Police (HBs 5494, 5495, 5497, 5498, 2-13-18)
- Michigan Department of Transportation (HBs 5494-5497, 2-13-18)
- Consumers Energy (2-13-18)
- Michigan Propane Gas Association (2-13-18)
- American Petroleum Institute of Michigan (HB 5495, 2-13-18)
- Michigan Petroleum Association (HB 5495, 2-13-18)
- Michigan Railroads Association (HB 5497, 2-13-18)
- Michigan Chemistry Council (HB 5495, 2-13-18)
- Michigan Palisides Nuclear Plant (3-13-18)
- Michigan Corrections Organization (3-13-18)

A representative from Consumer Technology Association expressed a neutral position regarding the bills. (3-13-18)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.