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PERSPECTIVE

Sensible regulations encourage drone use

By Jared Greenberg

California is poised for massive economic and state benefits from a thriving commercial drone industry. Within the next nine years, the industry is expected to produce over 18,000 jobs in California and provide billions of dollars in economic impact. In addition to the economic benefits, drones can support several unique state concerns. For example, The Nature Conservancy recently asked the public to submit drone footage of the California coastline to monitor erosion and flooding from El Niño. Drones can also reduce farmers' water consumption, support firefighting efforts, inspect California's aging infrastructure, conduct search and rescue missions, detect sharks near beaches, monitor endangered species, support earthquake relief efforts, monitor pollution, and ensure California remains on the cutting edge of technology.

The exponential growth of drone technology will produce tremendous benefits for California. However, there are valid concerns about unruly drones. Irresponsible users can threaten aircraft, airport operations, and aerial firefighting efforts. In addition, many citizens are concerned about unwanted surveillance of their family and property.

Reasonable regulations can encourage the benefits of a strong commercial drone industry while deterring irresponsible users. On the other hand, overly restrictive laws may hamper the industry and have no impact on foolhardy operators. Moreover, most of the reckless drone behavior is already illegal. Well-intentioned laws risk impairing the commercial drone industry while having no practical effect on imprudent operators. California lawmakers should bear in mind the vast state benefits of the industry while they consider, amend, and vote on drone laws in 2016.

More Regulations Despite Vetoes

In 2015, Gov. Jerry Brown approved expanding the physical invasion of privacy to include knowingly entering "airspace above the land of another person" to capture private images in an offensive manner. The governor also vetoed several drone bills including bills prohibiting flying drones over wildfires, schools and correctional facilities. In his veto message, Brown emphasized that these bills found "a novel way to characterize and criminalize conduct that is already proscribed. This multiplication and particularization of criminal behavior creates increasing complexity without commensurate benefit."

Brown also vetoed a bill introduced by State Sen. Hannah-Beth Jackson, which would have prohibited flying a drone, with-

out express permission, less than 350 feet above private property. In his veto message, Brown acknowledged that "Drone technology certainly raises novel issues that merit careful examination." He cautioned that the bill could expose commercial drone users and hobbyists to "burdensome litigation and new causes of action." He ended his veto message by stating, "Before we go down that path, let's look at this more carefully."

The governor's messages did not prevent lawmakers from proposing additional bills in 2016. There are currently over a dozen active California bills concerning drones. Sen. Jackson introduced Senate Bill 868, which, like her 2015 bill, has the potential to affect the commercial drone industry. This bill, as currently amended, would in part:

- prohibit drone operations in a manner that constitutes trespass and/or nuisance;
- prohibit non-commercial drone use within 500 feet of critical infrastructure;
- prohibit drone use within 1,000 feet of a heliport and within five miles of an airport without permission;
- prohibit drones within state parks and lands under the Department of Fish and Wildlife without a permit;
- require commercial drone operators to obtain liability insurance;
- prohibit operations within any area the Department of Transportation or Office of Emergency Services determines drone operations to be "an imminent danger to public health and safety"; and
- authorize the Department of Transportation to adopt additional regulations "protecting and ensuring the general public interest and safety and the safety of persons operating remote piloted aircraft."

If enacted, this bill would present ambiguity for corporations trying to operate within the law. First, where navigable airspace ends and property owners' rights begin is far from settled. Accordingly, it is difficult to interpret the altitude at which drone flights could be considered a trespass. Without further clarity, a corporation may not be able to determine if its operations are within the law.

Another area of uncertainty for commercial operators is the bill's authorization for the Department of Transportation to create further drone regulations that promote the "general public interest." This broad grant of authority could cause apprehension regarding significant investment in the industry because the rules could instantly change at the whim of a California regulatory agency. As this bill moves forward, updated language will hopefully provide more clarity for commercial operators.

A second well-intentioned bill with the potential to produce ambiguity for commercial drone operators is Assembly Bill



SUMMARY OF PROPOSED DRONE REGULATIONS

SB 868

- Prohibit drone operations in a manner that constitutes trespass and/or nuisance;
- Prohibit non-commercial drone use near critical infrastructure;
- Prohibit drone use near heliports and airports without permission;
- Prohibit drones within state parks without a permit;
- Require commercial drone operators to obtain liability insurance;
- Prohibit operations within any area where drone operations are "an imminent danger to public health and safety"; and
- Authorize the Department of Transportation to adopt additional regulations "protecting and ensuring the general public interest and safety and the safety of persons operating remote piloted aircraft."

AB 2724

- Require drones sold in California to be equipped with technology preventing flight near airports.

New York Times

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2724, introduced by Assemblymember Mike Gatto. The bill, as amended, requires drones sold in California to be equipped with geofencing technology that prohibits flight within five miles of an airport. This bill does not apply to commercial operators with a Section 333 exemption (the FAA exemption needed for commercial operations); however, once the FAA's proposed rules for drones are finalized later this year, many commercial operators will no longer need a Section 333 exemption. Accordingly, it appears the bill would unintentionally apply to many commercial operators. Further, hobbyists and corporations often use the same drone models; if a commercial user can easily deactivate the geofencing, a foolhardy hobbyist would also likely deactivate the technology.

In addition to the above two bills, California lawmakers will once again attempt to pass bills similar to those Brown vetoed: prohibiting flying drones over wildfires, schools and correctional facilities. Other bills address weaponizing drones, remaining on the scene of an accident, drone use by sex offenders, drone use by law enforcement, and drone use and liability for emergency responders.

Issues of Preemption

The commercial drone industry is regulated by federal, state and sometimes local laws. As drone technology rapidly progresses, more state and municipal lawmakers will continue to propose well-intentioned legislation. All eyes will be watching the enforcement of these laws. In January, a Los Angeles city attorney brought criminal charges against two individuals for alleged-

ly violating a city drone ordinance. One of the defendants already announced plans to challenge the legality of the city ordinance.

Although the federal government has exclusive sovereignty of United States airspace, state and local governments have authority to pass laws traditionally related to state and local police power. However, many of these state and local laws appear to intersect with federal regulations. As municipalities and states begin to enforce local drone laws, courts will eventually address issues of preemption — under the supremacy clause of the U.S. Constitution, federal law prevails when congress has expressed or implied its intent to preempt state law.

Conclusion

Over the next several years, lawmakers will enact multiple federal, state, and municipal drone regulations. As California lawmakers consider multiple drone laws in 2016, it is important to remember the massive amount of benefits the commercial drone industry will generate for California. Sensible regulations can deter irresponsible behavior while supporting the state's burgeoning commercial drone industry.



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