



National Press Photographers Association

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VIA ELECTRONIC MAIL (carol@mcguire4house.com)

January 25, 2017

Hon. Carol McGuire
Chair, House Executive Departments and Administration Committee
700 Suncook Valley Highway
Epsom, NH 03234-4333

Re: HB 97 Relative to the Use of Drones

Dear Chairwoman McGuire:

As general counsel for the National Press Photographers Association (NPPA) and on behalf of the organizations listed below, I write to express our concerns regarding HB 97, “An Act relative to the use of drones.” As drafted the bill imposes criminal penalties upon any person who operates a drone under certain circumstances.

Although Section 422-D:8 “Construction” states “nothing in this chapter shall be construed to impose liability in connection with news gathering activity,” we are greatly concerned that without a more prominent and specific reference to that exception, we believe the public and law enforcement officers may too easily assume such First Amendment protected activity as prohibited. We therefore propose you amend the above-referenced section to read: “I. Except as provided in Sections 422-D:7 and 422-D:8;” renumbering the paragraphs thereafter accordingly.

That is because the proposed language under “non-government use of drones,” makes it an offense to “use a drone to engage in surveillance for commercial purposes without the prior consent of each affected person and each owner or possessor of affecting buildings or structures or parts thereof;” with the term “surveillance” being defined in the broadest of terms to include every act constituting visual newsgathering in “the space above the ground in New Hampshire.”

What is of further concern is the language regarding “critical infrastructure” prohibiting the operation of a drone to no less than “a horizontal distance of 500 feet or a vertical distance of 400 feet from critical infrastructure without the written consent of the owner of the critical infrastructure” or allowing “a drone to come within a distance of a critical infrastructure facility that is close enough to interfere with the operations of or cause a disturbance to the facility or its occupants.”

This language literally flies in the face of Federal Aviation Administration (FAA) “Small Unmanned Aircraft Regulations (Part 107)” specifically restricting drone operations to, among other things, no higher than 400’ above ground level. Taken together, it appears HB 97 makes drone photography of any type a crime in language which is overbroad and vague.

As an organization, we have worked for many years with the FAA along with the National Telecommunication and Information Administration (NTIA) to (respectively) help establish commonsense and least restrictive guidelines regarding the safe integration of small unmanned aircraft systems (sUAS) into the national airspace; as well as best practices addressing privacy, transparency, and accountability issues regarding commercial and private use of unmanned aircraft systems (UAS).

New Hampshire tort laws, which govern civil privacy issues, along with state criminal statutes, which criminally punish invasive physical and electronic intrusions, have evolved over time to encompass and address each new form of technology. Robust, extensive and well-established state law already protects privacy. These laws will apply as equally to drone photography as to other forms of conduct, thus avoiding the need for a new technology-specific statute to address these issues.

We believe the proposed bill poses a serious risk to innovative use of drones to gather and disseminate information and images on matters of public concern as well as the public's right to receive news, as guaranteed by the First Amendment to the U.S. Constitution and Article 22 of the New Hampshire Constitution. The chilling legal repercussions of this bill may tax an overburdened court system and thwart the federal government's efforts, in which we are participating, to bring about a sensible regulatory regime for this new technology.

Therefore, we urge that you reconsider passing this bill to allow time to further evaluate sound drone policy while taking into consideration the full legal and detrimental impact of such restrictive and constitutionally suspect measures. In the alternative, we respectfully request that you amend the language as proposed above, so as to make the newsgathering exception more prominent in its breadth and application.

Thank you for your attention and consideration in this matter.

Very truly yours,

Mickey H. Osterreicher

Mickey H. Osterreicher
NPPA General Counsel

On behalf of:

New England First Amendment Coalition
New England Newspaper and Press Association
Union Leader Corporation

cc (via electronic mail):
Vice Chairman John Sytek
Clerk Jacalyn Cilley
House Executive Departments and Administration Members