
Commercial Drone Proposal

Integrating drones into our airspace will provide countless opportunities for innovation in our economy, including applications for retail delivery, telecommunications, energy, healthcare, agriculture, emergency response, disaster relief, and law enforcement. Drone innovators stand ready to unleash unlimited technological possibilities if government institutions can successfully prescribe a regulatory system that champions innovation.

Drone integration is complex and requires both federal and state governments to adapt their regulatory framework. There is no time to waste. In fact, last year, the FAA projected that the number of commercial drones would quadruple over the next five years.¹ This doesn't even account for increases in recreational drones. Unnecessary delays in deployment mean missed opportunities for entrepreneurs and innovators.

As drone technology improves, one unresolved issue that must be addressed is carefully considering the appropriate roles of the federal government and the states to regulate future drone use. The use of drones in low altitude airspace has created a conflict between the responsibility of the Federal government to regulate the navigable airspace² and the inherent sovereign police powers possessed by the States to protect the property rights of their citizens.³

Careful consideration of this fundamental question of federalism is essential for the swift, effective integration of drones. This question is not only a fundamental legal question, but an issue of practicality. We should have a healthy skepticism that regulators in Washington will be able to efficiently regulate hundreds of thousands (even millions) of drones in every locality in all fifty states. Promoting safety and allowing this innovative industry to thrive means ensuring that there is local decision-making to resolve privacy complaints, address local law enforcement concerns, and manage everyday drone operations. The unlimited potential uses of drones highlights the importance of local governance and cooperative federalism between the states and the federal government.

Bill Specifics

- Would require the FAA to conduct a rulemaking to update the definition of “navigable airspace” to (1) designate the area between 200ft and 400ft above ground level for drone use under the FAA’s exclusive authority and (2) ensure that states have the authority to issue time, place, and manner restrictions under 200ft.
- Would protect the local zoning authority of state, local, or tribal governments to designate commercial drone take-off and landing zones. But in order to protect interstate commerce, the proposal would require a zoning authority to: (1) act on a request within 60 days, (2) not discriminate between commercial drone operators, and (3) explain any zoning authorization denials.
- Would prohibit a state’s time, place, and manner regulations from “unreasonably or substantially impeding” a drone’s access to the federal “navigable airspace.” This means that a state could not ban all drone flights or issue a combination of restrictions that would make it nearly impossible for a drone to reach the navigable airspace.

¹ *FAA Projects Fourfold Increase in Commercial Drones by 2022*, Wall Street Journal, March 18, 2018;

<https://www.wsj.com/articles/faa-projects-fourfold-increase-in-commercial-drones-by-2022-1521407110>

² 49 U.S.C. § 40103(b)

³ In *United States v. Causby*, 328 U.S. 256 (1946), the Supreme Court found that the Federal government’s regulatory authority is limited by a landowner’s exclusive property right over the “immediate reaches of the enveloping atmosphere.”
