COMMITTEE REPORT

March 27, 2019

**S. 180**

Introduced by Senator McElveen

S. Printed 3/27/19--S.

Read the first time January 8, 2019.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 180) to amend Article 7, Chapter 11, Title 16 of the 1976 Code, relating to trespasses and the unlawful use of the property of others, by adding Section, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, page 1, by striking lines 28-37 and inserting therein:

/ “Section 16-11-605. (A)(1) Except as provided in subsection (D), a person shall not intentionally and willfully operate an unmanned aerial vehicle within a horizontal distance of five hundred feet or a vertical distance of two hundred fifty feet from the flight path of a federal military installation with restricted public access without written consent from the commander of the specific military installation or his designee. If specific approvals have been given, then all flights must meet the requirements set forth by the Federal Aviation Administration for the operation of unmanned aerial vehicles.

(2) Except as provided in subsection (D), a person shall not intentionally and willfully operate an unmanned aerial vehicle within a horizontal distance of five hundred feet of the Savannah River Site without written consent from the manager of the facility or his designee. If specific approvals have been given, then all flights must meet the requirements set forth by the Federal Aviation Administration for the operation of unmanned aerial vehicles. /

Amend the bill further, as and if amended, page 3, by striking line 9 and inserting:

/ vehicle.

(E) For purposes of this section, ‘federal military installation’ includes, but is not limited to, Fort Jackson, Shaw Air Force Base, Marine Corps Air Station Beaufort, Marine Corps Recruit Depot Parris Island, Joint Base Charleston, McEntire Joint National Guard Base, the United States Coast Guard Stations at Charleston and Georgetown, and any facility, range, or military training route located within the State that is subject to the base commanders’ use, oversight, or control, to include locations where the military conducts other testing and training activities such as tactical landing zones, special use airspace, and terrain flight routes.” /

Renumber sections to conform.

Amend title to conform.

LUKE A. RANKIN for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**Introduced on January 8, 2019**

**State Expenditure**

This bill makes it unlawful to intentionally and willfully operate an unmanned aerial vehicle within a horizontal distance of 500 feet or a vertical distance of 250 feet from the flight path of a federal military installation without written consent from the commander of the installation or his designee. The bill provides for exceptions in the case that the operator of the vehicle registers with the Federal Aviation Administration (FAA) as an operator of a commercial unmanned aerial vehicle; the vehicle is operated for the purpose of monitoring, operating, maintaining, or enhancing electric, communications, water conveyance, or transportation infrastructure or determining if repairs to such infrastructure are necessary; and the operator has notified the commander of the specific military installation or his designee no more than five days prior to each operation of the vehicle, provided the notification includes the vehicle’s FAA registration number. The bill creates a misdemeanor offense punishable by a fine of not more than $500 or imprisonment for not more than 30 days, or both.

An unmanned aerial vehicle may be confiscated by the specific military installation where the violation occurred, after which custody of the vehicle will be transferred to a local law enforcement agency. Confiscated vehicles are subject to forfeiture to SLED which may choose to either use or destroy the object. However, SLED may, upon request by a local law enforcement agency, relinquish custody of the vehicle to the local law enforcement agency. A final determination of any associated legal proceeding must be rendered prior to a law enforcement agency disposing of a confiscated vehicle or prior to the object being returned to an innocent owner. An innocent owner must provide proof of ownership of the vehicle, certify that he was neither a consenting party nor had knowledge of the unlawful use of the vehicle, and certify that he will not release the vehicle to the person who was charged with the violation that resulted in the confiscation. It is the responsibility of the law enforcement agency having custody of a vehicle to notify an innocent owner when his vehicle will be available for release and to maintain records related to all confiscated vehicles. Once notified that his confiscated unmanned aerial vehicle is available for release, an innocent owner will have 30 days which to recover the vehicle; otherwise, it will be disposed of in the manner described with the bill.

**Judicial Department.** The department reports that the misdemeanor created by this bill would be triable in magistrate or municipal courts. The bill creates a new offense and there is no data upon which to determine an impact on magistrate or municipal courts caseloads. Since the bill is not tried in General Sessions Court, there will be no expenditure impact to the general fund, other funds, or federal funds of the Judicial Department.

**State Law Enforcement Division.** Any enforcement of this bill by the South Carolina Law Enforcement Division will be handled by the agency’s existing personnel and not result in additional expenditure.

**State Reve**n**ue**

Because the bill creates a new misdemeanor for which there is no historical data, the revenue impact on the General Fund and Other Funds is undetermined. Existing law distributes revenue generated as assessments and surcharges imposed on such convictions among the general fund, specified state agencies and programs, and the local jurisdiction in which judgment is rendered.

**Local Expenditure**

Because the bill creates a new criminal offense, data is not available to project a change in law enforcement activity or detention in local facilities. However, any increase resulting specifically from this bill is expected to be managed within existing resources.

**Local Revenue**

Because the bill creates a new misdemeanor for which there is no historical data, the revenue impact on magistrate or municipal courts is undetermined. Existing law provides for the retention of part or all of the revenue generated from fines, assessments, and surcharges by the local jurisdiction processing the case.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND ARTICLE 7, CHAPTER 11, TITLE 16 OF THE 1976 CODE, RELATING TO TRESPASSES AND THE UNLAWFUL USE OF THE PROPERTY OF OTHERS, BY ADDING SECTION 16-11-605, TO PROVIDE THAT IT IS UNLAWFUL TO OPERATE AN UNMANNED AERIAL VEHICLE WITHIN A CERTAIN DISTANCE OF A FEDERAL MILITARY INSTALLATION; TO PROVIDE FOR DISPOSITION OF A CONFISCATED UNMANNED AERIAL VEHICLE; TO PROVIDE FOR EXCEPTIONS; AND TO PROVIDE PENALTIES FOR THE VIOLATION.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 7, Chapter 11, Title 16 of the 1976 Code is amended by adding:

“Section 16-11-605. (A) Except as provided in subsection (D), a person shall not intentionally and willfully operate an unmanned aerial vehicle within a horizontal distance of five hundred feet or a vertical distance of two hundred fifty feet from the flight path of a federal military installation with restricted public access without written consent from the commander of the specific military installation or his designee. If specific approvals have been given, then all flights must meet the requirements set forth by the Federal Aviation Administration for the operation of unmanned aerial vehicles.

(B) A person who violates this section is guilty of a misdemeanor and, upon conviction, shall be fined not more than five hundred dollars or imprisoned not more than thirty days, or both.

(C)(1)(a) In addition to the penalty provided in this section, an unmanned aerial vehicle involved in the violation of this section may be confiscated by the specific military installation. Upon confiscation, custody of the unmanned aerial vehicle shall be transferred to a local law enforcement agency pending the outcome of any legal proceedings arising from the violation of this section. (b) An unmanned aerial vehicle must not be disposed of in any manner until the final determination of any legal proceeding arising from the violation of this section or as otherwise required pursuant to Article 3, Chapter 28 of Title 17.

(c) Records must be kept of all confiscated unmanned aerial vehicles received by the law enforcement agency with custody of the unmanned aerial vehicle.

(d) Upon conviction for a violation of this section, the confiscated unmanned aerial vehicle shall be transferred to the State Law Enforcement Division for use within the agency or for destruction. The State Law Enforcement Division may allow the local law enforcement agency with custody of the unmanned aerial vehicle to retain custody upon the local law enforcement agency’s request.

(2)(a) Any unmanned aerial vehicle confiscated pursuant to this section shall be released to an innocent owner. The unmanned aerial vehicle must not be released to the innocent owner until the final determination of any legal proceeding arising from the violation of this section or as otherwise required pursuant to Article 3, Chapter 28 of Title 17.

(b) Before the unmanned aerial vehicle may be released, the innocent owner shall provide the local law enforcement agency with custody of the unmanned aerial vehicle with proof of ownership; shall certify that the innocent owner neither was a consenting party to nor had knowledge of the use of the unmanned aerial vehicle that made it subject to confiscation; and shall certify that the innocent owner will not release the unmanned aerial vehicle to the person who was charged with the violation of this section that resulted in the confiscation of the unmanned aerial vehicle. The local law enforcement agency with custody of the unmanned aerial vehicle shall notify the innocent owner when the unmanned aerial vehicle is available for release. If the innocent owner fails to recover the unmanned aerial vehicle within thirty days after notification of the release, then the unmanned aerial vehicle shall be disposed of as provided in item 1(d) of this subsection.

(D) This section does not apply to any person who:

(1) registers with the Federal Aviation Administration as the operator of a commercial unmanned aerial vehicle;

(2) operates the vehicle for the purpose of monitoring, operating, maintaining, or enhancing electric, communications, water conveyance, or transportation infrastructure or determining if repairs to such infrastructure are necessary; and

(3) notifies the commander of the specific military installation or his designee no more than five days prior to each operation of the vehicle, provided that the notification includes the registration number that the Federal Aviation Administration has issued for the vehicle.”

SECTION 2. This act takes effect upon approval by the Governor.

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