

Florida's Drone Law: A Case Study in Unintended Consequences

Nov 3, 2014 Steve Hogan

Last week I served as a panelist at the Pasco Economic Development Council's conference on Commercial Applications for Unmanned Aerial Systems. My role was to discuss the current regulatory environment at the federal and state levels.

The group was highly interested in what Florida can do to help the commercial drone market thrive. The discussion quickly turned to Florida's "Drone Law" passed in 2013 and its impact on our commercial market.

The Florida Drone Law prohibits "law enforcement agencies" from using drones to "gather evidence or other information." § 934.50(3), Fla. Stat. The statute provides exceptions for countering high risk of terrorist activity, prevention of imminent danger to life or serious damage to property, or to aid in the search for a missing person. § 934.50(4)(a), (c), Fla. Stat. The statute also provides that law enforcement agencies may use drones if search warrants are obtained. § 934.50(4)(b), Fla. Stat.

Section 934.50(2)(b) contains a broad definition of the "law enforcement agencies" subject to its restrictions. The statute reads, in pertinent part: "'Law enforcement agency' means a lawfully established state or local public agency that is responsible for the prevention and detection of crime, local government code enforcement, and the enforcement of penal, traffic, regulatory, game, or controlled substance laws." § 934.50(2)(b), Fla. Stat. (emphasis added).

This definition is so broad that it reaches beyond traditional "law enforcement agencies" like police departments and sheriffs' offices. It also includes agencies like the Florida Fish and Wildlife Conservation Commission ("FFWC"). The FFWC is tasked with protecting and managing wildlife, freshwater fish, saltwater fish, and state lands throughout Florida. FFWC is captured in the definition because it has a law enforcement function due to its enforcement of Florida's game and boating laws.

The broad prohibition in section 934.50 effectively blocks the FFWC from using drones in its biological research and wildlife surveys. FFWC does not fit within the "search warrant" exception either, as no judge could conceivably issue a warrant to count manatees or survey coastline. This is an unfortunate result.

Florida's drone law illustrates the unintended consequences that can come from restrictive state regulations. The authors of section 934.50 surely did not intend to prohibit the FFWC from performing wildlife surveys with drones.

States will have a lot to say about what commercial applications are allowed once the FAA sets the safety standards. States that value the development of the commercial drone industry should consider the potential consequences before adopting restrictive regulatory approaches.