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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

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**Bill No:** SB 868                      **Hearing Date:** April 19, 2016  
**Author:** Jackson  
**Version:** April 7, 2016  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** MK

**Subject:** *State Remote Piloted Aircraft Act*

### HISTORY

**Source:** Author

**Prior Legislation:** SB 167 (Gaines) not heard 2015  
SB 170 (Gaines) Vetoed 2015  
SB 262 (Galgiani) Failed Senate Judiciary 2015  
SB 263 (Gaines) not heard 2015  
SB 271 (Gaines) Vetoed 2015  
AB 56 (Quirk) inactive Senate Floor  
SB 15 (Padilla) failed Assembly Public Safety 2014  
AB 1327 (Gorell) Vetoed 2014

**Support:** California League of Conservation Voters; City of West Hollywood; League of California Cities; a number of individuals

**Opposition:** Academy of Model Aeronautics; Association for Unmanned Vehicle Systems International; California Chamber of Commerce; California Manufacturers and Technology Association; Consumer Technology Association; CTIO Wireless Association; DJI; GoPro, Inc.; Small UAV Coalition; State Farm Mutual Automobile Insurance Company (unless amended); TechNet; 3D Robotics; Yuneec USA Inc.

### PURPOSE

*The purpose of this bill is to regulate the use of unmanned aircraft and to provide penalties for the violation of those prohibitions.*

*Existing law* authorizes certain persons who are not peace officers to exercise the powers of arrest under certain circumstances, if they have completed a specific training course prescribed by the Commission on Peace Officer Standards and Training. (Penal Code § 830.7).

*This bill* gives officers and employees of the Department of Transportation who are designated by the Director of Transportation the right to exercise the powers of arrest to

enforce the provisions of the State Remote Piloted Aircraft Act, any rule or order issued under that part or any other law applicable to remote piloted aircraft or unmanned aircraft systems.

*Existing federal regulations* require all drone owners to register their drones with the Federal Aviation Administration (FAA). Commercial drone operators, but not recreational drone operators, must also obtain FAA authorization, which is granted on a case-by-case basis.

*Existing law* establishes a Division of Aeronautics within the California Department of Transportation (Caltrans). (Public Utilities Code §§ 21001 et seq)

*This bill* creates the “State Remote Piloted Aircraft Act.”

*This bill* provides that it shall not be construed to either of the following:

- Limit any power of the state or a political subdivision to regulate the operation of remote piloted aircraft if the regulations do not conflict with the provision of this part.
- Preempt any local ordinance that regulates remotely piloted aircraft or unmanned aircraft systems if the ordinance is consistent with this part.

*This bill* prohibits the operation of a drone in the following circumstances without consent of the property owner or manager or Office of Emergency Services (OES), as specified:

- a) Within 500 feet of critical infrastructure designated by the OES, unless the operator is an FAA authorized commercial operator who does not interfere with the operation of the critical infrastructure;
- b) Within 1,000 feet of a heliport;
- c) Within five miles of an airport;
- d) Within any other area where Caltrans or OES determines that drone usage creates an imminent danger to public health and safety;
- e) Within the airspace of the state park system;
- f) Within the airspace of lands or waters managed by the Department of Fish and Wildlife; and
- g) Within 500 feet of the State Capitol or other building housing state legislative offices and chambers, unless the operator is an FAA-authorized commercial operator who does not interfere with the operation of the critical infrastructure.

*This bill* prohibits the operation of a drone in a manner that:

- a) Interferes with manned aircraft;
- b) Is prohibited by federal statute or regulation;
- c) Is careless or reckless and endangers life or property;
- d) Constitutes a nuisance under section 3479 of the Civil Code;
- e) Violates an individual’s right to privacy under the California constitution; and
- f) Constitutes trespass under California law.

*This bill* prohibits the weaponization of drones.

*This bill* authorizes operating a drone:

- a) Above any property to which the drone operator has a right of entry.
- b) Above state property if the operator has received a permit from the California Film Commission.
- c) In any airspace deemed necessary by the operator to avoid imminent danger to the life and safety of another person or the public.

*This bill* requires:

- a) Every commercial operator of a drone to procure adequate protection against liability.
- b) Every drone to give way to manned aircraft.
- c) Every drone operator to comply with all licensing, registration, and marking requirements of the FAA.

*This bill* provides that Caltrans and OES may adopt rules and regulations relating to the provisions in this bill.

*Existing law* provides that a violation of the State Aeronautics Act is punishable as a misdemeanor with a penalty of up to six months in jail and/or a fine of not more than \$1,000 (plus penalty assessments).

*This bill* provides that a violation of any provision, except as otherwise specified, shall be punishable in the same manner as provided in the State Aeronautics Act.

*This bill* provides that operating an unmanned aircraft within the airspace overlaying units of the state park system without a permit or other authorizations is a wobbler with a misdemeanor penalty of imprisonment in the county jail not exceeding 90 days and/or a fine not exceeding \$1,000 (plus penalty assessments) or an infraction punishable by a fine of not more than \$1,000 (plus penalty assessments).

*This bill* provides that operating an unmanned aircraft within airspace overlaying lands or waters managed by the Department of Fish and Wildlife without a permit or other authorization is a wobbler with a misdemeanor penalty of up to six months in jail and/or a fine of \$1,000 (plus penalty assessments) or an infraction with a fine of \$100 to \$1,000 (plus penalty assessments).

*This bill* provides that operating an unmanned aircraft within 500 feet of the State Capitol or other building housing the state legislative offices and chambers without a permit or other authorizations is a misdemeanor punishable by up to six months in jail and/or a fine of \$1,000 plus penalty assessments.

*This bill* provides that the provisions of this bill are severable. If any part of this bill is found to be invalid, the remaining parts of the bill are unaffected.

## RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as "of December 9, 2015, 112,510 inmates were housed in the State's 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015." (Defendants' December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State's 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants' December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

## COMMENTS

### 1. Need for The Bill

According to the author:

The development of small unmanned aircraft systems – known as “unmanned aerial vehicles,” “remote piloted aircraft,” or simply “drones” – promises to revolutionize the way Californians interact with each other and their environment. Drone technology may transform the way California’s farmers and ranchers manage livestock and agricultural resources. Drone technology could also fundamentally alter the way goods move across the state and greatly improve the capacity of emergency personnel to respond to disasters.

However, the lack of clear rules governing the use of this emerging technology threatens to harm California’s natural resources and undermine public safety. To date, the lack of regulation has led to disputes between neighbors concerned about invasions of their privacy, impacts to wildlife, near-collisions with airplanes and helicopters, interference with firefighting efforts, and accidents injuring innocent bystanders. Some individuals are reportedly modifying drones to carry weapons, and, in at least one instance, a drone was used to land radioactive material on the roof of a government building.

Commonsense rules are needed to ensure that drones are used in a safe and responsible manner, consistent with the values of the people of the State of California.

This bill creates a comprehensive set of sensible and intelligent drone regulations that strike an appropriate balance between protecting public safety and privacy, and encouraging innovation and technology.

SB 868 avoids the threat of frivolous litigation by vesting primary enforcement authority with the Division of Aeronautics within the Department of Transportation. The bill also directs the Division of Aeronautics to work cooperatively with local governments, state agencies, and the federal government to enforce this regulatory framework.

### 2. Current Drone Regulation

The FAA does not permit commercial drone operation except on a case-by-case basis. However, in February 2015, the FAA proposed regulations on commercial drone users. Among the proposals was a 55-pound weight limitation, line-of-sight operation, maximum airspeed of 100 mph, a ban on operation over any people, a maximum operating altitude of 500 feet, and training and licensing for the operator. Those rules have not been finalized but are expected by mid-year.

In December 2015, the FAA required commercial and recreational drone users to register their drones. Nearly 300,000 drone users registered within the first 30 days, according to the FAA. This is modest success given the more than 1 million drones in use.

Several California local governments have enacted their own drone regulations. In October 2015, the City of Los Angeles enacted drone regulations similar to the FAA proposal. In

December, the city filed the first criminal charges under the ordinance, citing two individuals for operating a drone which interfered with a Los Angeles Police Department air unit, causing it to change its landing path. In northern California, the Golden Gate Bridge, Highway and Transportation District banned drones near the Golden Gate Bridge after a drone crashed on the roadway.

### 3. Regulation of Drones

This bill sets up a regulation of remote piloted aircraft prohibiting their use in specified public locations without authorization. Specifically it:

- Limits drone use within 500 feet of critical infrastructure, within 1,000 feet of a heliport, or within 5 miles of an airport, without permission;
- Limits disruptive drone use within the immediate airspace of private property without permission;
- Limits drone use over state parks, wildlife refuges, the State Capitol, or other designated safety areas, without a permit or permission;
- Prohibits the weaponization of drones;
- Prohibits the reckless operation of drones and drone interference with manned aircraft;
- Requires commercial drone operators to obtain liability insurance; and
- Continues to allow local governments to regulate drone use in their communities.

### 4. Criminal Penalties

#### a. Penalties by reference

This bill creates criminal penalties by cross-referencing other code sections. Because when imposing criminal penalties it is important to be clear what they are and because the cross-referenced sections could change or be deleted, it would be more appropriate for the penalties to appear in the actual act this bill creates.

#### b. General penalty

Unless otherwise provided, the penalty for a violation of this section is a misdemeanor with a penalty of up to 6 months in jail and/ or a fine up to \$1,000. Because there are approximately 310% in penalty assessments added to criminal fines, the actual fine will be closer to \$4,100. Is this an appropriate penalty?

#### c. Penalty for unmanned aircraft over land or state parks

This bill provides that it is a wobbler for a person to operate an unmanned aircraft within airspace over the state park system unless the person has a permit or it is authorized by rule or regulation. The misdemeanor penalty is imprisonment in the county jail not exceeding 90 days and/or a fine not exceeding \$1,000 (\$4,100 with penalty assessments) and the infraction penalty is a fine of not more than \$1,000 ( \$4,100 with penalty assessments).

The standard fine for an infraction is not more than \$250 (\$1025 with penalty assessments). A person charged with an infraction has not right to a jury trial or representation. Is a fine that will be \$4,100 with penalty assessments appropriate for an infraction in this case?

The bill creates an exception the prohibition against using an unmanned aircraft over state parks if there are rules or regulations authorizing the operation of the unmanned aircraft. Will these rules and regulations be easily accessible for the general public so as not to create confusion or to make the crime void for vagueness?

d. Penalty for unmanned aircraft over Fish and Wildlife lands and waters

This bill provides that it is a wobbler for a person to operate an unmanned aircraft with in airspace overlaying lands or waters managed by the Department of Fish and Wildlife unless the person has a permit or it is authorized by a rule or regulation. The misdemeanor penalty is up to six months in jail and/or a fine of \$1,000 (\$4,100 with penalty assessments) or an infraction with a fine of \$100 to \$1,000 (\$410-\$4,100).

The standard fine for an infraction is not more than \$250 (\$1025 with penalty assessments). A person charged with an infraction has not right to a jury trial or representation. Is a fine that will be \$4,100 with penalty assessments appropriate for an infraction in this case?

The bill creates an exception the prohibition against using an unmanned aircraft over lands and waters managed by the Department of Fish and Wildlife if there are rules or regulations authorizing the operation of the unmanned aircraft. Will these rules and regulations be easily accessible for the general public so as not to create confusion or to make the crime void for vagueness?

e. Penalty for operating an unmanned aircraft near the State Capitol

This bill makes it a misdemeanor to operate an unmanned aircraft within 500 feet of the State Capitol or other building housing the state legislative offices and chambers situated in the area bounded by 10<sup>th</sup>, L, 15<sup>th</sup> and N Streets without a permit or authorization by rule or regulation. The misdemeanor penalty is up to six months in jail and/or a fine of \$1,000 (\$4,100 with penalty assessments)

The bill creates an exception the prohibition against using an unmanned within 500 feet of the State Capitol if there are rules or regulations authorizing the operation of the unmanned aircraft. Will these rules and regulations be easily accessible for the general public so as not to create confusion or to make the crime void for vagueness?

It is not clear if the bill intends to cover the LOB, it states “other building housing legislative offices and chambers” but puts the boundary at N street which would not seem to cover LOB which extends beyond N street.

Will it be clear to the general public that flying an unmanned aircraft is inappropriate in Capitol Park? Under this Legislation an unmanned aircraft could be flown in front of the Library and Courts building but not across 10<sup>th</sup> Street in Capitol Park. Since the limitation is within 500 feet of the building, it appears a person could fly an unmanned aircraft near the rose garden on 15<sup>th</sup> Street but would be in violation at some point as the unmanned aircraft neared the Capitol building. The penalty for a violation is a misdemeanor so should some notice be required?

## 5. Enforcement

This bill provides that along with peace officers the Director of the Department of Transportation and its officers and employees may enforce and assist in the enforcement of this bill and any rule or order issued under this bill.

Under this bill, the Director of the Department of Transportation may designate any officer or employee of the department to exercise the powers of arrest pursuant to Penal Code Section 830.7. Penal Code Section 830.7 authorizes certain people to exercise the power to arrest provided they have received the specified POST training.

Instead of giving general power to enforce these laws to anyone in the Department of Transportation, should that power be limited to those who have received the Penal Code 830.7 designation?

## 6. Transportation Committee Amendment

The author will take an amendment in this Committee that she agreed to in the Committee on Transportation and Housing to address the opposition by State Farm regarding financial responsibility.

## 7. Support

The League of California Cities supports this bill stating:

The rapid development and increased use of drone technology in recent years offers a variety of benefits, but also presents a series of challenges for state and local government regulatory authority. Unregulated drone activity has led to a variety of issues, including interference with first responders, firefighting efforts, near-collisions with first responder as well as commercial aircraft and invasions of privacy.

The California League of Conservation Voters supports this bill stating:

Drone Technology promises to transform many aspects of California's economy, and could greatly decrease environmental costs associated with farming and moving goods across our state. However, the lack of clear rules governing the use of this emerging technology threatens to harm California's natural resources and undermine public safety. Recent news articles have described how wildlife are impacted by unregulated drone use, and research from wildlife biologists has shown that drones can cause stress to animals like black bears and raptors even when operated some distance from an animal. Both Department of Fish and Wildlife and the California state Parks are beginning to experience similar issues with drones impacting wildlife in our parks and refuges.

Commonsense rules are needed to ensure that drones are used in a safe and responsible manner. This bill creates a comprehensive set of sensible and intelligent drone regulations that strike an appropriate balance between protecting natural resources and encouraging innovation and technology....



## 8. Opposition

A coalition<sup>1</sup> of companies opposes this bill stating:

The undersigned organizations and companies (hereinafter the “Coalition”), each of which has a significant presence in California, are writing today in strong opposition to enactment of Senate Bill No. 868 (“SB 868”), the “State Remote Piloted Aircraft Act.” Contrary to the legislation’s stated purpose of “[e]ncouraging the development and general use of remote piloted aircraft,” the Bill, if enacted, would deter future innovation and investment in California by the unmanned aircraft systems (“UAS”) industry. *See* SB 868, § 21751(i). SB 868 should be rejected because (1) various provisions needlessly address conduct already prohibited in California, (2) it creates a new insurance requirement devoid of empirical support for the burdens imposed, and (3) various provisions are preempted by federal law. If the legislation is not rejected, it should be modified to eliminate the problems identified above. Such action would be consistent with the legislature’s goal to establish “only those regulations that are essential” and to place “the least possible restriction” on UAS usage.

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For the above reasons, the Coalition opposes enactment of SB 868. To the extent legislation is adopted, it should clarify the scope of existing law and its application to UAS. State statutes that conflict with federal law, redundantly address already-forbidden conduct, or attach burdensome regulation to UAS operations would undermine innovation and provide a strong disincentive to the UAS industry regarding future developmental and educational activities in California. The Coalition stands ready to work with California regarding potential steps that can be taken to address UAS concerns without adopting legislation that is unnecessary or preempted.

-- END --

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<sup>1</sup> The coalition is: Academy of Model Aeronautics; Association for Unmanned Vehicle Systems International; California Chamber of Commerce; CMTA; Consumer Technology Association; CTIA-the Wireless Association; Small UAV Coalition; TechNet; 3D Robotics; DJI; GoPro, Inc.; Yuneec USA Inc.