



UAS Law Alert – FAA Reauthorization Could Preempt Regulation of Drones

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Senate Version of FAA Reauthorization Would Preempt All Local Regulation of Drones

Federal law has generally left to local governments the responsibility for regulating matters that may interfere with air operations around airports (such as regulation of land use and obstructions). For federally-obligated airports, this principle has been set forth in the Grant Assurances, which specifically require airports to make efforts to ensure that the surrounding airspace is safe and compatible with airport operations (such as getting local land use and zoning regulations to be in line with airport operations).

With the advent of UAS (drones), concerns about potential interference with air traffic have been amplified. Adding to this concern is the reality that the FAA does not have the resources or the personnel to effectively monitor and regulate UAS use near airports. Nevertheless, federal legislation in 2012 directed the FAA to integrate UAS into the national aviation system and severely restricted the FAA from regulating small UAS that were only flown for recreational purposes.

Congress put the FAA in a box and told the agency that it generally cannot regulate recreational UAS operations—even if such flights are close to an airport (at least if the UAS is flown in a certain manner—details which are beyond the scope of this alert).

Senate leadership introduced their version of the FAA reauthorization legislation on Wednesday, March 9. That proposal would take away all state and local government authority to regulate the location of UAS flights, including around an airport. The relevant part reads:

Section 2142

(a) FEDERAL PREEMPTION.—**No State or political subdivision of a State may enact or enforce any law, regulation, or other provision having the force and effect of law relating to the design, manufacture, testing, licensing, registration, certification, operation, or maintenance of an unmanned aircraft system, including airspace, altitude, flight paths, equipment or technology requirements, purpose of operations, and pilot, operator, and observer qualifications, training, and certification.**

It is important to recognize that this is *just a proposal*. The House bill does not contain similar language. The Congressional process is uncertain, complex and time consuming. Many observers believe that any bill will be substantially amended before it is ultimately enacted. However, it is of note that the bill is scheduled for committee markup on March 16. Therefore, local governments and airport operators should consider contacting their Senators in the near future if they have concerns about the bill.