

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

Senate Bill 5

BY SENATORS SWOPE, NELSON, BALDWIN, JEFFRIES,
PHILLIPS, HAMILTON, LINDSAY, WOODRUM, STOLLINGS,
PLYMALE, ROBERTS, TAKUBO, AND CAPUTO

[Introduced January 12, 2022; referred
to the Committee on Economic Development]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §5B-2-18; to amend and reenact §17-2A-19a of said code; and to amend and
 3 reenact §61-16-2 of said code, all relating generally to unmanned aircraft systems;
 4 establishing the West Virginia Unmanned Aircraft Systems Advisory Council; clarifying the
 5 ability of a county or municipality to lease space above a public road under its control; and
 6 recognizing ownership of certain air space above lands and waters of the state.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2. DEPARTMENT OF ECONOMIC DEVELOPMENT.

§5B-2-18. West Virginia Unmanned Aircraft Systems Advisory Council.

1 (a) The West Virginia Unmanned Aircraft Systems Advisory Council is hereby created
 2 within the Department of Economic Development.

3 (b) The council consists of the following five members, including the chairperson:

4 (1) The Secretary of the Department of Economic Development or his or her designee, ex
 5 officio, who shall serve as the chair of the committee;

6 (2) Four members to be appointed by the Governor and serve at his or her will and
 7 pleasure;

8 (3) One member representing the unmanned aircraft system industry;

9 (4) One member representing the military;

10 (5) One member representing business and industry; and

11 (6) One member representing academia.

12 (c) Members of the council will receive no compensation but are entitled to reimbursement
 13 for mileage expenses while attending meetings of the committee to the extent that funds are
 14 available through the Department of Economic Development.

15 (d) The council shall:

16 (1) Identify trends and technologies driving innovation in unmanned aircraft systems;

17 (2) Develop comprehensive strategies to promote research and development, economic
 18 growth, and manufacturing jobs in the unmanned aircraft system industry in West Virginia;

19 (3) Develop recommended legislation addressing specific issues and to foster research
 20 and development, economic growth, and manufacturing jobs in the unmanned aircraft system
 21 industry in West Virginia.

22 (e) The council shall meet at least once each year and may convene public meetings to
 23 gather information or receive public comments.

24 (f) The council shall report on the status of its duties, goals, accomplishments, and
 25 recommendations to the Legislature on at least an annual basis.

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-19a. Transfer of airspace; procedures to be followed.

1 (a) In any instance where the West Virginia ~~department of highways~~ Division of
 2 Highways has or shall hereafter acquire title to the airspace upon and over any highway or right-
 3 of-way for highway purposes, ~~such the department~~ division may, subject to the conditions
 4 herein, transfer such airspace or any part thereof to any person, firm or corporation by sale,
 5 lease, or permit to use.

6 (b) When such airspace or any part thereof is determined by the commissioner not
 7 necessary, or desirable for present or presently foreseeable future state road purposes, it may be
 8 transferred by lease for such period or periods of time and on such terms and conditions, including
 9 consideration, as the commissioner shall determine to be fair and reasonable, or it may be
 10 transferred by sale, or the commissioner may transfer the use thereof by a permit to use such
 11 airspace or any part thereof for such period or periods of time as he or she shall determine and
 12 under such terms and conditions, including consideration, as he or she shall deem fair and

13 reasonable, except that in the case of a publicly or privately owned utility, no consideration shall
14 be required for an easement through such airspace or any part thereof.

15 (c) Every such transfer by sale shall be at public auction in the county in which the airspace
16 to be transferred by sale is located, and the ~~department~~ division shall advertise, by publication,
17 the time, place and terms of such sale at least 20 days prior thereto. The publication shall be
18 published as a Class I-O legal advertisement in compliance with the provisions of ~~article three,~~
19 ~~chapter fifty-nine~~ §3-59-1 et seq. of this code, and the publication area for such publication shall
20 be the county in which the airspace to be transferred by sale is located. The airspace shall be
21 sold in a manner which will bring the highest and best price therefor. The ~~department~~ division may
22 reject any or all bids received at the sale. The commissioner shall keep a record, open to public
23 inspection, indicating the newspapers in which the airspace to be transferred by sale was publicly
24 advertised for sale, the highest bid received therefor and from what party, the party to whom sold,
25 and the payment received therefor. Such record shall be kept for a period of five years and may
26 thereafter be destroyed. Every such transfer by lease with any party other than another agency
27 of this state or any county or municipality in this state or any agency thereof shall be upon the
28 basis of competitive bids solicited by publication of a notice of the proposed lease published as a
29 Class I-O legal advertisement in compliance with the provisions of ~~article three, chapter fifty-nine~~
30 §59-3-1 et seq. of this code, and the publication area for such publication shall be the county in
31 which the airspace to be transferred by lease is located.

32 (d) The commissioner shall adopt and promulgate rules and regulations governing and
33 controlling the transferring of airspaces by sale, lease, or permit to use, pursuant to the provisions
34 of this section, which rules and regulations shall provide for the giving of preferential treatment in
35 making leases or issuing permits to use to the persons from whom the airspace was acquired, or
36 their heirs or assigns.

37 (e) The commissioner may insert in any instrument executed pursuant to the provisions of
38 this section such conditions as are in the public interest and have been approved in advance by

39 the Governor.

40 (f) All moneys received from the sale or lease of, or permit to use, any airspace or any part
41 thereof, shall be paid into the State Treasury and credited to the state road fund.

42 (g) Nothing in this section shall be construed to prohibit a county or municipality from
43 leasing the space above a public road which the county or municipality controls.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 16. USE OF UNMANNED AIRCRAFT SYSTEMS.

§61-16-2. Prohibited use of an unmanned aircraft system; criminal penalties.

1 (a) The ownership of the space above the lands and waters of this state is declared to be
2 vested in the owner of the surface beneath, but this ownership extends only so far as is necessary
3 to the enjoyment and use of the surface without the interference and is subject to the right of
4 passage or flight of aircraft, including unmanned aircraft systems.

5 (b) Flight by an unmanned aircraft system over the lands and waters of this state is lawful,
6 unless at an altitude low enough to interfere with the then-existing use to which the land or water
7 or the space over the land or water is put by the owner or unless so conducted as to be dangerous
8 or damaging to persons or property lawfully on the land or water beneath.

9 (c) Except as authorized by the provisions of this article, a person may not operate an
10 unmanned aircraft system:

11 (1) To knowingly and intentionally capture or take photographs, images, video, or audio of
12 another person or the private property of another, without the other person’s permission, in a
13 manner that would invade the individual’s reasonable expectation of privacy, including, but not
14 limited to, capturing, or recording through a window.

15 (2) To knowingly and intentionally view, follow, or contact another person or the private
16 property of another without the other person’s permission in a manner that would invade the
17 individual’s reasonable expectation of privacy, including, but not limited to, viewing, following, or

18 contacting through a window;

19 (3) To knowingly and intentionally harass another person;

20 (4) To violate a restraining order or similar judicial order;

21 (5) To act with a willful wanton disregard for the safety of persons or property; or

22 (6) To knowingly and intentionally operate an unmanned aircraft system in a manner that
23 interferes with the official duties of law enforcement personnel or emergency medical personnel.

24 ~~(b)~~ (d) Any person violating the provisions of subsection ~~(a)~~ (c) of this section is guilty of a
25 misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than
26 \$1,000 or confined in jail for not more than one year, or both fined and confined.

27 ~~(c)~~ (e) Any person who equips an unmanned aircraft system with any deadly weapon or
28 operates any unmanned aircraft system equipped with any deadly weapon, other than for military
29 in an official capacity, is guilty of a felony and, upon conviction thereof, shall be fined not less than
30 \$1,000 nor more than \$5,000 or imprisoned in a state correctional facility for not less than one nor
31 more than five years, or both fined and imprisoned.

32 ~~(d)~~ (f) Any person who operates an unmanned aircraft system with the intent to cause
33 damage to or disrupt in any way the flight of a manned aircraft is guilty of a felony and, upon
34 conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000 imprisoned for not
35 less than one nor more than five years, or both fined and imprisoned.

36 ~~(e)~~ (g) A person that is authorized by the Federal Aviation Administration to operate
37 unmanned aircraft systems for commercial purposes may operate an unmanned aircraft system
38 in this state for such purposes if the unmanned aircraft system is operated in a manner consistent
39 with federal law.

NOTE: This bill relates generally to unmanned aircraft systems. The bill establishes the West Virginia Unmanned Aircraft Systems Advisory Council; clarifies the ability of a county or municipality to lease space above a public road under its control; and recognizes ownership of certain air space above lands and waters of the state.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.