



Written by [Joe Wolverton, II, J.D.](#) on April 21, 2013

Florida Legislature Passes Flawed but Forceful Anti-drone Bill

The state legislature of Florida has approved a bill protecting citizens' rights guaranteed by the Fourth Amendment from being abrogated by a federal government about to launch thousands of drones into the domestic skies. The bill has been sent to the desk of Governor Rick Scott.



The state [House unanimously passed](#) the [Freedom from Unwarranted Surveillance Act \(SB 92\)](#) on April 17 by a vote of 117 to 0. In so doing, House members followed in the footsteps of their Senate colleagues who had earlier [unanimously passed](#) the measure 39 to 0.

If signed by Governor Scott, the bill would forbid federal agents "from using a drone to gather evidence or other information" on citizens of the Sunshine State.

Should a state citizen be the target of an unlawful search and seizure in violation of this bill, he or she would be authorized "to initiate a civil action in order to prevent or remedy" that violation.

As some commentators have observed, the bill is not perfect. Section 4(a) of the bill carves out a dangerous exception to its otherwise commendable constitutional protections.

Section 4(a) authorizes the Secretary of the Department of Homeland Security to launch a drone over Florida (and seemingly violate the Fourth Amendment's protection of "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures") "to counter a high risk of a terrorist attack by a specific individual or organization."

That is an enormous loophole, one just large enough for a Hellfire missile. Such an occurrence is not unthinkable in this era when the United States has been declared a battleground and Congress has given the president the power to indefinitely detain any American he believes to be aiding enemies of the state. Ostensibly, drones would be the perfect tool to accomplish such round-up of potential prisoners. (See, for example, the [comments made by Senator Lindsey Graham](#) (R-S.C.) regarding the search for the suspected Boston marathon bomber.)

With that glaring deficiency in mind, the bill is better than nothing. As [noted by the Tenth Amendment Center](#):

Today, without *The Freedom from Unwarranted Surveillance Act*:

1. The DHS can call on Florida to use drones for any "non-emergency" situation it wants.
2. The DHS can call on Florida to use drones for any emergency situation it wants.
3. Law enforcement in Florida can use drones in any situation they want.

Signing the bill into law would eliminate number one and number three, so this bill ushers in a



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MASSIVE improvement over the status quo.

“As it is now, law enforcement agencies in Florida can use drones any time, anywhere with absolutely no parameters. And they don’t appear to want any limitations on their ability to search without warrants. What many people don’t realize is the Florida AG Pam Bondi and the Sheriffs oppose another bill that would require a search warrant to search cell phones. These are not people that you want to give unrestrained drone search and surveillance powers to. The thought of passing nothing and ending up with absolutely no limits on drone use would be a major problem. This law will be a good first step,” Florida Tenth Amendment Center chapter coordinator Andrew Nappi said. [Emphasis in original.]

In [a statement released after the state senate’s passage of the bill](#), Governor Scott seemed to suggest that he will sign the measure, joining the state legislature in erecting at least some sort of shield against the gaze of the federal government’s never-blinking eyes in the sky.

“This law will ensure that the rights of Florida families are protected from the unwarranted use of drones and other unmanned aircraft,” Scott said.

If and when the bill becomes law, the state of Florida will be taking that “first step” toward addressing what has become a vital issue of the continuation of constitutional civil liberties. An [article published by Computer World](#) quoted a spokesman for the ACLU’s Florida chapter praising the bill:

“We have long warned about the dangers of unregulated, warrantless use of surveillance technology, and unfortunately the changes in surveillance technology have outstripped the law’s ability to adapt to protect people,” said Baylor Johnson, a spokesman for the Florida chapter of the American Civil Liberties Union.

From that standpoint, the Florida bill is a major step forward, he said. “The fact that both votes were unanimous shows a recognition by our legislators that these protections are overdue,” he said via email. “This bill is a major leap for Florida in catching up to the state of technology by putting strict controls in place that protect everyone from needless, invasive surveillance.”

[A similar bill was signed into law in Idaho](#) earlier this month by Idaho Governor C.L. “Butch” Otter. Idaho’s new law reinforces the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures” by amending the Idaho code. Specifically, the law imposes new restrictions on the use of drones by government or law enforcement, particularly when it comes to the gathering of evidence and surveillance of private property.

Should police in Idaho try to submit in court evidence illegally obtained by drone, they would find themselves running headlong into Section 5, which directs that, “No information obtained or collected in violation of the provisions of this act may be admissible as evidence in a criminal proceeding in any court of law in the state or in an administrative hearing.”

Assuming Governor Scott signs the bill, then Florida will join Idaho and Virginia in passing laws preparing for the coming onslaught of drones.

On February 7, the Federal Aviation Administration (FAA) [released an updated list of entities](#) (cities, towns, states, law enforcement agencies, and universities) that have requested and received licenses to deploy drones. The Electronic Freedom Foundation (EFF) received the list from the FAA as part of a Freedom of Information Act disclosure. According to [an EFF statement](#) announcing the release of the new list, there are now more than 81 public entities that have applied to the FAA for permission to



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launch drones.

Even though it's rapidly approaching, the day when the skies of the homeland are buzzing with drones can't come soon enough for many lawmakers.

While the Florida act suffers from an unfortunate flaw, it is an otherwise commendable measure — one that Governor Scott should sign.

Photo of drone: AP Images

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