



● **Board of Directors**  
***Communications and Legislation Committee***

10/10/2017 Board Meeting

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**8-2**

**Subject**

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Adopt CEQA determination and express support, if amended, for S. 1272 (Feinstein, D-CA) – Drone Federalism Act of 2017

**Executive Summary**

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Senator Feinstein introduced S. 1272, the “Drone Federalism Act of 2017,” on May 25, 2017 along with Senators Lee (R-Utah), Blumenthal (D-Conn.), and Cotton (R-Ark.) (**Attachment 1**). S. 1272 establishes state, local, and tribal authority to place reasonable time, place, and manner restrictions on drone operations within 200 feet of ground level or any structure. S. 1272 allows Metropolitan to influence state and local laws that would restrict drone operations over Metropolitan property to enhance safety and security, protect environmentally sensitive areas, and ensure quiet enjoyment of recreational property.

S. 1272, however, should be amended to exempt public aircraft (i.e., government-operated drones) from state, local, and tribal authority regulation when conducting public flight operations on government-owned property.

**Details**

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**Background**

Over the past decade, the government, commercial, and recreational use of unmanned aircraft systems (drones) has expanded dramatically. Drones are now widely used for purposes such as construction imaging, infrastructure monitoring, emergency management, filmmaking, and photogrammetry. Nationally, local jurisdictions have adopted regulations affecting the use of drones in their respective communities. However, jurisdiction over national airspace has been in the control of the Federal Aviation Administration (FAA). Recent court decisions have questioned the extent of FAA’s legal authority to regulate drones, creating uncertainty about the limits of federal regulatory jurisdiction over drones. S. 1272 establishes a clear boundary between local and federal control over the use of drones, by expressly authorizing states and local authorities to regulate up to 200 feet above ground and from any building.

**Proposed Bill**

S. 1272 recognizes the FAA’s general authority to ensure safe and efficient use of the national airspace while preserving the ability of state and local governments to issue (or not issue) additional restrictions on low-altitude drone operations. This approach balances federal oversight of interstate commerce with the state and local government interests and unique capacity to manage land use, protect public safety, safeguard personal privacy, define property rights, and respond to nuisance complaints. S. 1272 affects the operation of commercial and hobbyist drones. However, the bill’s effect on public aircraft (i.e., government-operated drones) conducting public flight operations is unclear.

S. 1272 would carve out a narrow slice of the airspace below 200 feet whereby state and local governments could impose reasonable restrictions on drones such as: (1) limitations on speed; (2) limitations on operations near schools, parks, roadways, bridges, or other public or private property; and (3) restrictions on the time or day of

operation, including restrictions during public or private activities such as parades, sporting events, or construction activities.

To ensure that the balance of federal and local authority is carried out in a coordinated and meaningful way, the bill directs the FAA to establish collaborative pilot programs in different communities and to issue a report on best practices after two years.

### **Effect on Metropolitan**

The proliferation of low-cost yet increasingly powerful and capable drones could place employees and equipment at risk of injury or damage from a collision by a drone or from the unauthorized gathering and publishing of high-quality video or images of sensitive facilities. Currently, offsite drone pilots may fly over Metropolitan property without local restrictions up to 400 feet above ground level (FAA retains authority above 400 feet). S. 1272 allows Metropolitan to lobby for and influence local regulations to enhance safety and security for Metropolitan's operations, protect environmentally sensitive areas, and ensure quiet enjoyment of recreational property within the specified 200 feet flight elevation in combination with existing trespassing and general nuisance ordinances for Metropolitan's operational and recreational facilities. Metropolitan could also adopt ordinances related to on-site drone operations to minimize the safety risk to employees, to reduce the potential for collisions with critical equipment, and to ensure the peaceful enjoyment and environmental protection of recreational facilities.

As currently drafted, S. 1272 could result in Metropolitan's own drone flights being regulated or restricted by state, local, and tribal authorities, since the bill does not distinguish between hobby, commercial, or public flight operations. Metropolitan's drone operations are reasonably considered a "government function," and therefore Metropolitan engages in public flight operations using public aircraft. Clarifying amendments for Metropolitan's benefit could include an exemption or exclusion from the 200-foot jurisdictional envelope for public aircraft conducting public operations.

### **Policy**

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Metropolitan Water District Administrative Code Section 1301(c)(1), (3), & (7): Board Product (adoption of policies regarding protection of the existing water and power supplies, protection and enhancement of water quality, and development and/or maintenance of infrastructure)

Metropolitan Water District Operating Policy E-01: Security and Protection of Infrastructure

### **California Environmental Quality Act (CEQA)**

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#### **CEQA determination for Option #1:**

The proposed action is not defined as a project under CEQA because it involves continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not defined as a project and is not subject to CEQA pursuant to Sections 15378(b)(2) and 15061(b)(3) of the State CEQA Guidelines.

#### **CEQA determination for Option #2:**

None required.

**Board Options**

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**Option #1**

Adopt the CEQA determination that the proposed action is not defined as a project and is not subject to CEQA, and

Authorize the General Manager to express support, if amended, for S. 1272.

**Fiscal Impact:** Unknown, but likely minimal.

**Business Analysis:** Expressing support, if amended, for S. 1272 may allow Metropolitan to adopt ordinances which would prohibit or restrict the use of recreational zones in the immediate airspace above Metropolitan’s facilities and property. Further, the proposed amendments would clarify that Metropolitan’s government function would exempt its own drone flights from restriction.

**Option #2**

Take no position on S. 1272.


**Fiscal Impact:** Unknown, but likely minimal.

**Business Analysis:** Without passage of S. 1272, local governments could not be assured of the ability to establish laws and ordinances that control drones in the immediate airspace above private or public property.

**Staff Recommendation**

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Option #1

	9/27/2017
_____ Dee Zinke Assistant General Manager/Chief External Affairs Officer	Date

	9/27/2017
_____ Jeffrey Kightlinger General Manager	Date

**Attachment 1 – S 1272 as introduced 5/25/17**

115TH CONGRESS  
1ST SESSION

# S. 1272

To preserve State, local, and tribal authorities and private property rights with respect to unmanned aircraft systems, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MAY 25, 2017

Mrs. FEINSTEIN (for herself, Mr. LEE, Mr. BLUMENTHAL, and Mr. COTTON) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To preserve State, local, and tribal authorities and private property rights with respect to unmanned aircraft systems, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Drone Federalism Act  
5 of 2017”.

1 **SEC. 2. PRESERVATION OF STATE, LOCAL, AND TRIBAL AU-**  
2 **THORITIES WITH RESPECT TO UNMANNED**  
3 **AIRCRAFT SYSTEMS.**

4 (a) SCOPE OF PREEMPTION FOR CIVIL UNMANNED  
5 AIRCRAFT REGULATIONS.—In prescribing regulations or  
6 standards related to civil unmanned aircraft systems, the  
7 Administrator shall—

8 (1) define the scope of the preemptive effect of  
9 such regulations or standards pursuant to section  
10 40103 or 41713 of title 49, United States Code,  
11 which shall be limited to the extent necessary to en-  
12 sure the safety and efficiency of the national air-  
13 space system for interstate commerce; and

14 (2) preserve, to the greatest extent practicable,  
15 legitimate interests of State, local, and tribal govern-  
16 ments, including—

17 (A) protecting public safety;

18 (B) protecting personal privacy;

19 (C) protecting property rights;

20 (D) managing land use; and

21 (E) restricting nuisances and noise pollu-  
22 tion.

23 (b) RESERVED POWERS.—

24 (1) IN GENERAL.—In prescribing regulations or  
25 standards related to civil unmanned aircraft sys-  
26 tems, the Administrator shall ensure that the au-

1       thority of a State, local, or tribal government to  
2       issue reasonable restrictions on the time, manner,  
3       and place of operation of a civil unmanned aircraft  
4       system that is operated below 200 feet above ground  
5       level or within 200 feet of a structure is not pre-  
6       empted.

7               (2) REASONABLE RESTRICTIONS.—For pur-  
8       poses of paragraph (1), reasonable restrictions on  
9       the time, manner, and place of operation of a civil  
10       unmanned aircraft system include the following:

11               (A) Limitations on speed.

12               (B) Prohibitions or limitations on oper-  
13       ations in the vicinity of schools, parks, road-  
14       ways, bridges, or other public or private prop-  
15       erty.

16               (C) Restrictions on operations at certain  
17       times of the day or week or on specific occa-  
18       sions such as during parades or sporting events.

19               (D) Prohibitions on operations while the  
20       operator is under the influence of drugs or alco-  
21       hol.

22               (E) Prohibitions on careless or reckless op-  
23       erations.

1 (F) Other prohibitions that protect public  
2 safety, personal privacy, or property rights, or  
3 that manage land use or restrict noise pollution.

4 **SEC. 3. PRESERVATION OF PRIVATE PROPERTY RIGHTS.**

5 (a) AFFIRMATION OF APPLICABILITY OF CONSTITU-  
6 TIONAL TAKINGS CLAUSE TO FEDERAL AVIATION ADMIN-  
7 ISTRATION REGULATIONS.—In prescribing regulations or  
8 standards related to civil unmanned aircraft systems, the  
9 Administrator shall not authorize the operation of a civil  
10 unmanned aircraft in the immediate reaches of the air-  
11 space above property without permission of the property  
12 owner.

13 (b) AFFIRMATION OF APPLICABILITY OF CONSTITU-  
14 TIONAL TAKINGS CLAUSE ABSENT FEDERAL AVIATION  
15 ADMINISTRATION REGULATIONS.—Section 336(a) of the  
16 FAA Modernization and Reform Act of 2012 (Public Law  
17 112–95; 49 U.S.C. 40101 note) is amended—

18 (1) in paragraph (4), by striking “; and” and  
19 inserting a semicolon;

20 (2) in paragraph (5), by striking the period at  
21 the end and inserting “; and”; and

22 (3) by adding at the end the following:

23 “(6) when flown in the immediate reaches of  
24 the airspace above property (as defined in section

1 3(c) of the Drone Federalism Act of 2017), the op-  
2 erator has the permission of the property owner.”.

3 (c) DEFINITION.—In this section, the term “imme-  
4 diate reaches of the airspace above property”, with respect  
5 to the operation of a civil unmanned aircraft system, in-  
6 cludes—

7 (1) any area within 200 feet above the ground  
8 level of the property;

9 (2) any area within 200 feet above any struc-  
10 ture on the property; and

11 (3) any area where operation of the aircraft  
12 system could interfere with the enjoyment or use of  
13 the property.

14 **SEC. 4. PILOT PROGRAM ON FEDERAL PARTNERSHIPS.**

15 (a) IN GENERAL.—Not later than one year after the  
16 date of the enactment of this Act, the Administrator shall  
17 enter into agreements with not more than 10 State, local,  
18 or tribal governments to establish pilot programs under  
19 which—

20 (1) the Administrator shall provide technical as-  
21 sistance to such governments in regulating the oper-  
22 ation of civil unmanned aircraft systems, including  
23 through the use of the latest available technologies;  
24 and



1           (2) the Administrator and such governments  
2 shall coordinate efforts with respect to the enforce-  
3 ment of regulations relating to the operation of civil  
4 unmanned aircraft systems.

5           (b) SELECTION.—In selecting among State, local,  
6 and tribal governments for purposes of establishing pilot  
7 programs under subsection (a), the Administrator shall  
8 seek to enter into agreements with—

9           (1) governments that vary in their size and in-  
10 tended approach to regulation of civil unmanned air-  
11 craft systems; and

12           (2) not less than one State government, not less  
13 than one county government, not less than one city  
14 government, and not less than one tribal govern-  
15 ment.

16           (c) UNMANNED AIRCRAFT SYSTEMS TRAFFIC MAN-  
17 AGEMENT SYSTEM.—The Administrator shall coordinate  
18 with Administrator of the National Aeronautics and Space  
19 Administration to ensure that participants in pilot pro-  
20 grams established under subsection (a) are consulted in  
21 the development of the unmanned aircraft systems traffic  
22 management system under subsection (a) section 2208 of  
23 the FAA Extension, Safety, and Security Act of 2016  
24 (Public Law 114–190; 49 U.S.C. 40101 note) and the  
25 pilot program under subsection (b) of that section.

1 (d) REPORT REQUIRED.—Not later than 2 years  
2 after establishing the pilot programs required by sub-  
3 section (a), the Administrator shall submit to Congress,  
4 and make available to the public, a report identifying best  
5 practices for State, local, and tribal governments to regu-  
6 late the operation of civil unmanned aircraft systems and  
7 to collaborate with the Federal Aviation Administration  
8 with respect to the regulation of such systems.

9 **SEC. 5. RULE OF CONSTRUCTION.**

10 Nothing in this Act shall be construed—

11 (1) to diminish or expand the preemptive effect  
12 of the authority of the Federal Aviation Administra-  
13 tion with respect to manned aviation; or

14 (2) to affect the civil or criminal jurisdiction  
15 of—

16 (A) any Indian tribe relative to any State  
17 or local government; or

18 (B) any State or local government relative  
19 to any Indian tribe.

20 **SEC. 6. DEFINITIONS.**

21 In this Act:

22 (1) ADMINISTRATOR.—The term “Adminis-  
23 trator” means the Administrator of the Federal  
24 Aviation Administration.

1           (2) CIVIL.—The term “civil”, with respect to an  
2           unmanned aircraft system, means that the un-  
3           manned aircraft is not a public aircraft (as defined  
4           in section 40102 of title 49, United States Code).

5           (3) INDIAN TRIBE.—The term “Indian tribe”  
6           has the meaning given that term in section 4 of the  
7           Indian Self-Determination and Education Assistance  
8           Act (25 U.S.C. 5304).

9           (4) LOCAL GOVERNMENT.—The term “local”,  
10          with respect to a government, means the government  
11          of a subdivision of a State.

12          (5) STATE.—The term “State” means each of  
13          the several States, the District of Columbia, and the  
14          territories and possessions of the United States.

15          (6) TRIBAL GOVERNMENT.—The term “tribal”,  
16          with respect to a government, means the governing  
17          body of an Indian tribe.

18          (7) UNMANNED AIRCRAFT; UNMANNED AIR-  
19          CRAFT SYSTEM.—The terms “unmanned aircraft”  
20          and “unmanned aircraft system” have the meanings  
21          given those terms in section 331 of the FAA Mod-  
22          ernization and Reform Act of 2012 (Public Law  
23          112–95; 49 U.S.C. 40101 note).

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