



ASSOCIATION FOR UNCREWED VEHICLE SYSTEMS INTERNATIONAL
CASCADE CHAPTER
11160 SW Durham Lane, Suite 7
McMinnville, Oregon 97128

Wendie Kellington
wk@klgpc.com, (503) 636-0069

ADVOCATE. EDUCATE. CONNECT.

February 21, 2023

House Committee on Judiciary
Chair Kropf
900 Court Jason St. NE, H-491
Salem, Oregon 97301

RE: HB 2688

Dear Chair Kropf and Members of the House Committee on the Judiciary.

This letter is written in opposition to HB 2688 on behalf of AUVSI Cascade. AUVSI Cascade is the Pacific Northwest chapter of the Autonomous Uncrewed Vehicles Association International. Our members represent those who operate UAS and other robotic systems in the Pacific Northwest, including Oregon.

Please include this letter in the record for HB 2688. HB 2688 expands the situations in ORS 837.380 for which unmanned aerial systems (UAS) operators may be held liable and exposed to attorney fees for operations that occur over “property” without the “permission of the property owner or occupier.”

While we appreciate a reexamination of ORS 837.380, we recommend this body take a hard look at whether it makes any sense at all and not expand it, as HB 2688 proposes. The proposed amendments almost certainly overstep the jurisdictional boundaries of the Federal Aviation Administration (FAA). The FAA has exclusive authority to regulate flights in the National Airspace System, which always occur over “property.” The proposal expressly penalizes such flights, including those that the FAA has expressly authorized. State circuit judges should not be called upon to answer the complex legal question of what private property rights to exclude others exist in the national airspace system. Where such rights exist, they are narrow ones.

If the idea behind the proposed amendments is to punish misconduct, ORS 837.370(1) **already prohibits** a person from operating a UAS “over the boundaries of privately owned premises in a manner so as to intentionally, knowingly or recklessly harass or annoy the owner or occupant of the privately owned premises.” It is unclear exactly what the proposed amendments to ORS 837.380 will achieve other than to inadvertently stifle



ADVOCATE. EDUCATE. CONNECT.

STEM and recreational flights. The proposal also will undoubtedly undermine technological innovation in Oregon innovation for which our state is otherwise known.

Proposed HB 2688 is misguided for the following reasons:

1. It adds uncertainty and litigious consequences to UAS technology, which is a disincentive to innovation. Oregon has significant UAS innovation centers – such as in the Columbia Gorge, Central Oregon, the Oregon Coast and Eastern Oregon and more, employing Oregonians in interesting and rewarding family wage jobs. State law disincentives UAS technology, and risks innovators choosing other states.
2. The proposed amendments threaten the viability of flights by high schools, colleges and trade schools that are not commercial flights, but rather STEM experiences. They are unlikely to have the resources to comb property records, find owners or occupiers and obtain the requisite timely permission, in advance of flights. But STEM and recreational fliers must demonstrate proficiency by taking an FAA knowledge test and they too operate under strict FAA rules. Why are they targeted for punishment for doing nothing anyone would understand is wrong?
3. The proposal punishes conduct that the federal government FAA expressly allows. The proposal also punishes conduct that is not for the purpose of bothering anyone and, as written, need not bother anyone in fact to be punished. The proposal is likely unenforceable.
4. The exemption for commercial UAS operations that are “in compliance” with authorization “granted by the [FAA]” has always been a problematic one, because whether any flight is “in compliance” with federal rules requires highly specialized knowledge that a complainant will not understand. Thus, the legislation incentivizes litigation against all UAS operators, including commercial ones, who operate UAS in perfect consistency with federal law.
5. Tax assessment information to locate property owners does not always reflect up-to-date contact information about who owns property. Neither do deed records. And there is no repository to use to locate contact details for “occupiers.” Moreover, obtaining one property owner’s consent, would not apparently apply to a subsequent property owner and later flights. How would an UAS operator know if real property changes hands? Also problematic is that



ADVOCATE. EDUCATE. CONNECT.

- recorded property records rarely if at all include email addresses or telephone numbers. Thus, to obtain permission, an operator would have to rely upon the US Mail, imposing an unduly burdensome and unreliable means for obtaining permission.
6. The proposal creates great uncertainty regarding the locations where UAS operations may occur. No one would know ahead of any flight where they can or cannot operate a UAS. Airspace maps do not correspond to tax assessment boundaries or deed records. At least under the current version of ORS 837.380, if a property owner or occupier does not like a flight they observe, they must notify the operator, who then knows what property is to be avoided.
 7. It is unclear what happens in the circumstance where permission is obtained from one occupier, but not another. What about permission given by someone who turns out to be a contractor or employee but not the person who may be a “full time” occupier? Is permission from someone who *appears* to be an “occupier” enough?
 8. The new “exemption” in proposed new (4) is puzzling. ORS 837.320, 335 and 340 already authorize UAS to be used in connection with a law enforcement warrant, for search and rescue operations, and with crime and accident investigation. We are unaware of any judge who has applied current ORS 837.380 to undermine the express UAS operational authorizations in ORS 837.320, 335 or 340. While we applaud making clear that emergency and law enforcement services UAS operations are not subject to ORS 837.380, the referenced operations seem to be already permitted. Moreover, if there is to be an exemption, we would recommend that it be broadened to include *all* emergency services operations, not just those that are listed in the proposed amendments. UAS operations are extremely valuable to emergency services agencies to locate downed electrical infrastructure, flooding, and other hazards that may not fall within the specified exemptions. And there would not be time in such situations to locate owners/occupiers and obtain permission.

We appreciate this opportunity to comment. We are committed to working with the Oregon Legislature to address concerns and provide advice on UAS operations. In prior years, the state convened a “UAS Task Force” to discuss the technology. If this or



ASSOCIATION FOR UNCREWED VEHICLE SYSTEMS INTERNATIONAL

CASCADE CHAPTER

11160 SW Durham Lane, Suite 7

McMinnville, Oregon 97128

Wendie Kellington

wk@klgpc.com, (503) 636-0069

ADVOCATE. EDUCATE. CONNECT.

any other committee would like to reconstitute that group and discuss concerns, we are committed to participating. Thank you for your courtesies.

Very truly yours,

Wendie L. Kellington
Kellington Law Group
President

CC: Scott Shtofman, AUVSI
AUVSI Cascade Board