

SB 264-FN – AS AMENDED BY THE HOUSE

01/30/14 0188s
23Apr2014... 1319h
14May2014... 1735h
14May2014... 1843h

2014 SESSION

14-2698
10/06

SENATE BILL **264-FN**

AN ACT requiring the election of benefits by certain members of the judicial retirement plan or their beneficiaries and relative to the use of drones.

SPONSORS: Sen. Carson, Dist 14; Sen. Cataldo, Dist 6; Sen. Lasky, Dist 13; Sen. Soucy, Dist 18; Rep. Rowe, Hills 22; Rep. M. Smith, Straf 6; Rep. Wall, Straf 6

COMMITTEE: Finance

AMENDED ANALYSIS

This bill requires certain eligible judges or their beneficiary under the judicial retirement plan to give notice of their election to receive benefits under the former judicial retirement statutes or retirement benefits paid pursuant to RSA 100-C.

This bill also regulates the use of drones by government agencies and individuals. It establishes criminal penalties and civil remedies for violations of the law.

Explanation: Matter added to current law appears in **bold italics**.
Matter removed from current law appears [~~in brackets and struck through~~].
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fourteen

AN ACT requiring the election of benefits by certain members of the judicial retirement plan or their beneficiaries and relative to the use of drones.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Section; Judicial Retirement Plan; Notice of Election. Amend RSA 100-C by inserting
2 after section 17 the following new section:

3 100-C:18 Notice of Election. Each full-time judge who was appointed prior to January 1, 2005,
4 or an eligible beneficiary of such judge who retired after attaining age 65, shall notify the plan in
5 writing no later than 90 days after the plan mails to each affected person a statement of the method
6 by which retirement benefits are calculated under RSA 100-C as well as under the provisions of the
7 former judicial retirement statutes, RSA 490:2, RSA 491:2, RSA 502-A:6-a, or RSA 547:2-a, as to
8 whether the member or beneficiary intends to claim retirement benefits pursuant to one of the
9 former judicial retirement statutes instead of the retirement benefits paid pursuant to RSA 100-C.
10 Such election, once made, shall be irrevocable. If an election is not made within 90 days after the
11 plan mails such statement, the member or beneficiary shall only receive benefits under the
12 provisions of RSA 100-C. In the event that a member or beneficiary elects to claim retirement
13 benefits pursuant to one of the former judicial retirement statutes, he or she shall not be entitled to
14 reimbursement for any contributions made pursuant to RSA 100-C:13 or RSA 100-C:14.

15 2 New Chapter; Drones. Amend RSA by inserting after chapter 644 the following new chapter:

16 CHAPTER 644-A

17 DRONES

18 644-A:1 Definitions. In this chapter:

19 I. "Airspace" means the space above the ground in New Hampshire.

20 II. "Drone" means an aerial vehicle, excluding a geosynchronous satellite, that:

21 (a) Does not carry a human operator;

22 (b) Uses aerodynamic forces to provide vehicle lift;

23 (c) Can fly autonomously or be piloted remotely; and

24 (d) Can be expendable or recoverable.

25 III. "Government" means federal, state, and local agencies and departments and any
26 political subdivisions thereof, including employees, agents, and contractors.

27 IV. "Individual" means a living human being.

1 V. “Information” means any evidence, images, sounds, or data gathered by a drone.

2 VI. “Person” means individuals, corporations, organizations, and for-profit and not-for-profit
3 entities, excluding the government.

4 VII.(a) “Surveillance” means:

5 (1) The willful act of tracking or following, while photographing, taking images of,
6 listening to, or making a recording of a recognizable individual or a group of individuals, including
7 their movements, activities, or communications; or

8 (2) Photographing, taking images of, listening in, or making a recording in the
9 interior of a building or structure in which there is a reasonable expectation of privacy.

10 (b) “Surveillance” shall not apply to a newsworthy event or an event to which the public
11 is invited.

12 644-A:2 Government Use of Drones Limited; Exceptions.

13 I.(a) A government may use a drone for law enforcement purposes only under the following
14 conditions:

15 (1) If a government first obtains a search warrant signed by a judge and based on
16 probable cause or the use is pursuant to a legally-recognized exception to the warrant requirement.

17 (2) If a government possesses reasonable suspicion that, under particular
18 circumstances, swift action is needed to prevent imminent harm to life or serious damage to
19 property, or to forestall the imminent escape of a suspect, or the destruction of evidence. The use of
20 a drone under this subparagraph shall be limited to a period of 48 hours of its initial use. Within 24
21 hours of the initiation of the use of a drone under this subparagraph, the government shall report in
22 writing the use of a drone to the attorney general who shall annually post such reports on the
23 department of justice website in a searchable format.

24 (3) If a government obtains the prior consent of the person who is the subject of the
25 surveillance and the owner or lessee of the property which is the subject of the surveillance.

26 (b) If a government uses a drone under this paragraph, it shall within 24 hours
27 permanently destroy all information gathered by the drone other than that relating directly to the
28 purpose for which the drone was used or any evidence of another crime discovered inadvertently, and
29 only such information may be retained or disclosed to another government.

30 (c) Evidence obtained by a government through the use of a drone in violation of this
31 paragraph shall not be admissible in any judicial or administrative proceeding and shall not be used
32 to establish reasonable suspicion or probable cause to believe that an offense has been committed.

33 II. No government shall own, use, or exercise control over a drone that is equipped with any
34 kind of lethal or non-lethal weapon.

35 III. Except as provided in paragraph I, no government shall use a drone for surveillance.

36 IV. A government that owns, uses, or exercises control over a drone in this state that causes
37 injury to a person or a person’s property shall be strictly liable for such injury.

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1 V. A government that owns, uses, or exercises control over one or more drones shall
2 annually on July 1 submit a written report to the attorney general containing information on the
3 number of such drones and the number of times each such drone was used during the prior year.
4 The attorney general shall annually post such reports on the department of justice website in a
5 searchable format.

6 644-A:3 Non-government Use of Drones Limited; Exceptions.

7 I. No person shall use a drone to conduct surveillance without the prior consent of each
8 affected person and each owner or possessor of affected buildings or structures or parts thereof. It
9 shall not be a defense to a charge of violating this chapter that the buildings or structures were not
10 marked with a no-trespassing sign or similar notice.

11 II. No person shall own, use, or exercise control over a drone that is equipped with any kind
12 of lethal or non-lethal weapon.

13 III. Any person that owns, uses, or exercises control over a drone in this state that causes
14 injury to a person or such person's property shall be strictly liable for the injury.

15 IV. No person shall use a drone to harass or stalk another person.

16 644-A:4 Federal Preemption. If federal law preempts any provision of this chapter, that
17 provision shall not apply.

18 644-A:5 Construction. This chapter, as civilly applied, shall be construed to provide the greatest
19 possible protection of the privacy of the people of this state.

20 644-A:6 Penalties.

21 I. An individual, including a government employee, agent, and contractor, who violates RSA
22 644-A:2 shall be guilty of a class A misdemeanor.

23 II. A government that violates RSA 644-A:2 shall be subject to a civil penalty of up to
24 \$10,000 which shall be deposited in the general fund of the state.

25 III. A person who violates RSA 644-A:3 shall be guilty of a class B misdemeanor.

26 IV. Any person who suffers injury caused by a drone operated in violation of this chapter
27 shall be entitled to damages from the person or government that committed the violation of not less
28 than \$1,000 and an award of reasonable attorney fees.

29 V. In addition to any other remedies allowed by law, a person who willfully gains
30 unauthorized control over a drone shall be liable to the owner of the drone in an amount of not less
31 than \$1,000 and an award of reasonable attorney fees.

32 3 Effective Date.

33 I. Section 2 of this act shall take effect January 1, 2015.

34 II. The remainder of this act shall take effect upon its passage.

SB 264-FN FISCAL NOTE

AN ACT requiring the election of benefits by certain members of the judicial retirement plan.

FISCAL IMPACT:

The Judicial Retirement Plan states this bill, **as amended by the House (Amendment #2014-1319h)**, may increase state expenditures by an indeterminable amount in FY 2014 and each year thereafter. There is no impact on county and local expenditures, or state, county and local revenue.

METHODOLOGY:

The Judicial Retirement Plan's actuary states this bill requires certain eligible judges under the Plan to give notice of their election to receive benefits under the former judicial retirement statutes (in effect through December 31, 2004) or retirement benefits paid pursuant to RSA 100-C (in effect starting January 1, 2005). The Plan's actuary states there are 14 retired judges and 22 active judges that meet the conditions set forth in the Raymond A. Cloutier v. State of NH case to be grandfathered to elect to receive the retirement benefits under the former judicial retirement plan in place through December 31, 2004. Assuming all 36 judges eligible for "grandfathering" seek to receive benefits under the former judicial retirement plan, the Plan's actuary states the additional liability as of January 1, 2012 would be \$3,394,000. If this amount is not deposited into the Judicial Retirement Plan in whole and is funded on a going forward basis the employer contribution will increase from 63.3 percent to 72.8 percent, a 9.5 percent increase.