

115TH CONGRESS
2D SESSION

H. R. 6401

To assist the Department of Homeland Security in preventing emerging threats from unmanned aircraft and vehicles, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 17, 2018

Mr. McCAUL (for himself, Mr. CHABOT, and Mrs. HARTZLER) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Transportation and Infrastructure, and Homeland Security, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To assist the Department of Homeland Security in preventing emerging threats from unmanned aircraft and vehicles, 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 “Preventing Emerging
5 Threats Act of 2018”.

1 **SEC. 2. PROTECTION OF CERTAIN FACILITIES AND ASSETS**
2 **FROM UNMANNED AIRCRAFT.**

3 (a) IN GENERAL.—Subtitle A of title II of the Home-
4 land Security Act of 2002 (6 U.S.C. 121 et seq.) is amend-
5 ed by adding at the end the following:

6 **“SEC. 210G. PROTECTION OF CERTAIN FACILITIES AND AS-**
7 **SETS FROM UNMANNED AIRCRAFT.**

8 “(a) AUTHORITY.—Notwithstanding section 46502 of
9 title 49, United States Code, or sections 32, 1030, 1367
10 and chapters 119 and 206 of title 18, United States Code,
11 the Secretary and the Attorney General may, for their re-
12 spective Departments, take, and may authorize personnel
13 of the Department of Homeland Security or the Depart-
14 ment of Justice with assigned duties that include safety,
15 security, or protection of people, facilities, or assets, to
16 take, such actions as are described in subsection (b)(1)
17 that are necessary to mitigate a credible threat (as defined
18 by the Secretary or the Attorney General, in consultation
19 with the Secretary of Transportation) that an unmanned
20 aircraft system or unmanned aircraft poses to the safety
21 or security of a covered facility or asset.

22 “(b) ACTIONS DESCRIBED.—

23 “(1) IN GENERAL.—The actions authorized in
24 subsection (a) are the following:

25 “(A) Detect, identify, monitor, and track
26 the unmanned aircraft system or unmanned air-

1 craft, without prior consent, including by means
2 of intercept or other access of a wire commu-
3 nication, an oral communication, or an elec-
4 tronic communication used to control the un-
5 manned aircraft system or unmanned aircraft.

6 “(B) Warn the operator of the unmanned
7 aircraft system or unmanned aircraft, including
8 by passive or active, and direct or indirect phys-
9 ical, electronic, radio, and electromagnetic
10 means.

11 “(C) Disrupt control of the unmanned air-
12 craft system or unmanned aircraft, without
13 prior consent, including by disabling the un-
14 manned aircraft system or unmanned aircraft
15 by intercepting, interfering, or causing inter-
16 ference with wire, oral, electronic, or radio com-
17 munications used to control the unmanned air-
18 craft system or unmanned aircraft.

19 “(D) Seize or exercise control of the un-
20 manned aircraft system or unmanned aircraft.

21 “(E) Seize or otherwise confiscate the un-
22 manned aircraft system or unmanned aircraft.

23 “(F) Use reasonable force, if necessary, to
24 disable, damage, or destroy the unmanned air-
25 craft system or unmanned aircraft.

1 “(2) REQUIRED COORDINATION.—The Sec-
2 retary and the Attorney General shall develop for
3 their respective Departments the actions described
4 in paragraph (1) in coordination with the Secretary
5 of Transportation.

6 “(3) RESEARCH, TESTING, TRAINING, AND
7 EVALUATION.—The Secretary and the Attorney Gen-
8 eral may conduct research, testing, training on, and
9 evaluation of any equipment, including any elec-
10 tronic equipment, to determine its capability and
11 utility to enable any of the actions described in sub-
12 section (b)(1).

13 “(4) COORDINATION.—The Secretary and the
14 Attorney General shall coordinate with the Adminis-
15 trator of the Federal Aviation Administration when
16 subsection (b)(3) might affect aviation safety, civil-
17 ian aviation and aerospace operations, aircraft air-
18 worthiness, or the use of the airspace.

19 “(c) FORFEITURE.—Any unmanned aircraft system
20 or unmanned aircraft described in subsection (a) that is
21 seized by the Secretary or the Attorney General is subject
22 to forfeiture to the United States.

23 “(d) REGULATIONS AND GUIDANCE.—

24 “(1) IN GENERAL.—The Secretary, the Attor-
25 ney General, and the Secretary of Transportation

1 may prescribe regulations and shall issue guidance
2 in the respective areas of each Secretary or the At-
3 torney General to carry out this section.

4 “(2) COORDINATION.—

5 “(A) COORDINATION WITH DEPARTMENT
6 OF TRANSPORTATION.—The Secretary and the
7 Attorney General shall coordinate the develop-
8 ment of their respective guidance under para-
9 graph (1) with the Secretary of Transportation.

10 “(B) EFFECT ON AVIATION SAFETY.—The
11 Secretary and the Attorney General shall re-
12 spectively coordinate with the Secretary of
13 Transportation and the Administrator of the
14 Federal Aviation Administration before issuing
15 any guidance, or otherwise implementing this
16 section, if such guidance or implementation
17 might affect aviation safety, civilian aviation
18 and aerospace operations, aircraft airworthi-
19 ness, or the use of airspace.

20 “(e) PRIVACY PROTECTION.—The regulations or
21 guidance issued to carry out actions authorized under sub-
22 section (b) by the Secretary or the Attorney General, as
23 the case may be, shall ensure that—

24 “(1) the interception or acquisition of, or access
25 to, or maintenance or use of, communications to or

1 from an unmanned aircraft system under this sec-
2 tion is conducted in a manner consistent with the
3 Fourth amendment to the Constitution of the
4 United States and applicable provisions of Federal
5 law;

6 “(2) communications to or from an unmanned
7 aircraft system are intercepted or acquired only to
8 the extent necessary to support an action described
9 in subsection (b)(1);

10 “(3) records of such communications are main-
11 tained only for as long as necessary, and in no event
12 for more than 180 days, unless the Secretary or the
13 Attorney General determine that maintenance of
14 such records—

15 “(A) is necessary to support 1 or more
16 safety or security functions of the Department
17 of Homeland Security or the Department of
18 Justice, respectively, or to investigate or pros-
19 ecute a violation of law; or

20 “(B) is required for a longer period to sup-
21 port a civilian law enforcement agency or by
22 any other applicable statute or regulation; and

23 “(4) such communications are not disclosed
24 outside the Department of Homeland Security or the
25 Department of Justice unless the disclosure—

1 “(A) would fulfill a safety or security func-
2 tion of the Department of Homeland Security
3 or the Department of Justice, respectively, or to
4 investigate or prosecute a violation of law;

5 “(B) would support the Department of De-
6 fense, another civilian law enforcement agency,
7 or the activities of a regulatory agency of the
8 Federal Government in connection with a crimi-
9 nal or civil investigation of, or any regulatory,
10 statutory, or other enforcement action arising
11 out of an action described in subsection (b)(1);
12 or

13 “(C) is otherwise required by law.

14 “(f) BUDGET.—The Secretary and the Attorney Gen-
15 eral shall submit to Congress, as a part of the homeland
16 security or justice budget materials for each fiscal year
17 after fiscal year 2018, a consolidated funding display that
18 identifies the funding source for the actions described in
19 subsection (b)(1) within the Department of Homeland Se-
20 curity or the Department of Justice. The funding display
21 shall be in unclassified form, but may contain a classified
22 annex.

23 “(g) SEMIANNUAL BRIEFINGS.—

24 “(1) IN GENERAL.—On a semiannual basis dur-
25 ing the 5-year period beginning 6 months after the

1 date of enactment of this section, the Secretary and
2 the Attorney General shall, respectively, provide a
3 briefing to the appropriate congressional committees
4 on the activities carried out pursuant to this section.

5 “(2) REQUIREMENT.—Each briefing required
6 under paragraph (1) shall be conducted jointly with
7 the Secretary of Transportation.

8 “(3) CONTENT.—Each briefing required under
9 paragraph (1) shall include—

10 “(A) policies, programs, and procedures to
11 mitigate or eliminate impacts of such activities
12 to the National Airspace System;

13 “(B) a description of instances where ac-
14 tions described in subsection (b)(1) have been
15 taken;

16 “(C) a description of the guidance, policies,
17 or procedures established to address privacy,
18 civil rights, and civil liberties issues implicated
19 by the action allowed under this section, as well
20 as any changes or subsequent efforts that would
21 significantly affect privacy, civil rights or civil
22 liberties;

23 “(D) how the Secretary and the Attorney
24 General have informed the public as to the pos-
25 sible use of authorities under this section; and

1 “(E) how the Secretary and the Attorney
2 General have engaged with Federal, State, and
3 local law enforcement agencies to implement
4 and use such authorities.

5 “(4) UNCLASSIFIED FORM.—Each briefing re-
6 quired under paragraph (1) shall be in unclassified
7 form, consistent with the needs of law enforcement
8 agencies and national security, but may be accom-
9 panied by an additional classified briefing.

10 “(h) RULE OF CONSTRUCTION.—Nothing in this sec-
11 tion may be construed to—

12 “(1) vest in the Secretary or the Attorney Gen-
13 eral any authority of the Secretary of Transpor-
14 tation or the Administrator of the Federal Aviation
15 Administration;

16 “(2) vest in the Secretary of Transportation or
17 the Administrator of the Federal Aviation Adminis-
18 tration any authority of the Secretary or the Attor-
19 ney General;

20 “(3) vest in the Secretary of Homeland Secu-
21 rity any authority of the Attorney General; and

22 “(4) vest in the Attorney General any authority
23 of the Secretary of Homeland Security.

24 “(i) TERMINATION.—

1 “(1) IN GENERAL.—Except as provided in para-
2 graph (2), the authority to carry out this section
3 with respect to the covered facilities or assets speci-
4 fied in subsection (k)(3) shall terminate on the date
5 that is 5 years after the date of enactment of this
6 section.

7 “(2) EXTENSION.—The President may extend
8 by 180 days the termination date described in para-
9 graph (1) if, not later than 45 days before the ter-
10 mination date described in paragraph (1), the Presi-
11 dent certifies to Congress that such extension is in
12 the national security interest of the United States.

13 “(j) SCOPE OF AUTHORITY.—Nothing in this section
14 shall be construed to provide the Secretary or the Attorney
15 General with additional authorities beyond those described
16 in subsections (a), (b)(1), and (k)(3)(C)(iii).

17 “(k) DEFINITIONS.—In this section:

18 “(1) The term ‘appropriate congressional com-
19 mittees’ means—

20 “(A) the Committee on Homeland Security
21 and Governmental Affairs, the Committee on
22 Commerce, Science, and Transportation, and
23 the Committee on the Judiciary of the Senate;
24 and

1 “(B) the Committee on Homeland Secu-
2 rity, the Committee on Transportation and In-
3 frastructure, the Committee on Energy and
4 Commerce, and the Committee on the Judiciary
5 of the House of Representatives.

6 “(2) The term ‘budget’, with respect to a fiscal
7 year, means the budget for that fiscal year that is
8 submitted to Congress by the President under sec-
9 tion 1105(a) of title 31.

10 “(3) The term ‘covered facility or asset’ means
11 any facility or asset that—

12 “(A) is identified by the Secretary or the
13 Attorney General, in consultation with the Sec-
14 retary of Transportation with respect to poten-
15 tially impacted airspace, through a risk-based
16 assessment for purposes of this section;

17 “(B) is located in the United States (in-
18 cluding the territories and possessions, terri-
19 torial seas or navigable waters of the United
20 States); and

21 “(C) directly relates to one or more of—

22 “(i) the following missions authorized
23 to be performed by the Department of
24 Homeland Security, consistent with gov-

1 erning statutes, regulations, and orders
2 issued by the Secretary, pertaining to—

3 “(I) security operations by the
4 United States Coast Guard and U.S.
5 Customs and Border Protection, in-
6 cluding securing facilities, aircraft,
7 and vessels, whether moored or under-
8 way and considered to be high-risk or
9 assessed to be a target for unlawful
10 unmanned aircraft activity;

11 “(II) United States Secret Serv-
12 ice protection operations pursuant to
13 sections 3056 and 3056A of title 18,
14 United States Code; or

15 “(III) protection of facilities pur-
16 suant to section 1315 of title 40,
17 United States Code considered to be
18 high-risk or assessed to be a target
19 for unlawful unmanned aircraft activ-
20 ity;

21 “(ii) the following missions authorized
22 to be performed by the Department of Jus-
23 tice, consistent with governing statutes,
24 regulations, and orders issued by the At-
25 torney General, pertaining to—

1 “(I) personnel protection oper-
2 ations by the Federal Bureau of In-
3 vestigation and the United States
4 Marshals Service, including the pro-
5 tection of Federal jurists, court offi-
6 cers, witnesses and other persons in
7 the interests of justice, as specified in
8 section 566(e) of title 28, United
9 States Code;

10 “(II) penal, detention, and cor-
11 rectional operations conducted by the
12 Federal Bureau of Prisons considered
13 to be high-risk or assessed to be a tar-
14 get for unlawful unmanned aircraft
15 activity; or

16 “(III) protection of the buildings
17 and grounds leased, owned, or oper-
18 ated by or for the Department of Jus-
19 tice considered to be high-risk or as-
20 sessed to be a target for unlawful un-
21 manned aircraft activity, and the pro-
22 vision of security for Federal courts,
23 as specified in section 566(a) of title
24 28, United States Code; and

1 “(iii) the following missions author-
2 ized to be performed by the Department of
3 Homeland Security or the Department of
4 Justice, acting together or separately, con-
5 sistent with governing statutes, regula-
6 tions, and orders issued by the Secretary
7 or the Attorney General, respectively, per-
8 taining to—

9 “(I) National Special Security
10 Events and Special Event Assessment
11 Rating events;

12 “(II) upon the request of a
13 State’s governor or attorney general,
14 providing support to State, local, or
15 tribal law enforcement to ensure pro-
16 tection of people and property at mass
17 gatherings, where appropriate, within
18 available resources, and without dele-
19 gating any authority under this sec-
20 tion to State, local, or tribal law en-
21 forcement;

22 “(III) active Federal law enforce-
23 ment investigations, emergency re-
24 sponses, or security operations that
25 are considered to be high-risk or as-

1 sessed to be a target for unlawful un-
2 manned aircraft activity; or

3 “(IV) in the event that either the
4 Department of Homeland Security or
5 the Department of Justice has identi-
6 fied a national security threat against
7 the United States where there is rea-
8 son to believe that the threat could in-
9 volve unlawful use of an unmanned
10 aircraft, responding to such national
11 security threat.

12 “(4) The terms ‘electronic communication’,
13 ‘intercept’, ‘oral communication’, and ‘wire commu-
14 nication’ have the meaning given those terms in sec-
15 tion 2510 of title 18, United States Code.

16 “(5) The term ‘homeland security or justice
17 budget materials’, with respect to a fiscal year,
18 means the materials submitted to Congress by the
19 Secretary and the Attorney General in support of
20 the budget for that fiscal year.

21 “(6) For purposes of subsection (a), the term
22 ‘personnel’ means—

23 “(A) officers and employees of the Depart-
24 ment of Homeland Security or the Department
25 of Justice; or

1 “(B) to the extent necessary and upon re-
2 ceiving appropriate training, individuals em-
3 ployed by contractors of the Department of
4 Homeland Security or the Department of Jus-
5 tice who are subject to the supervision, control,
6 or direction of the respective department and
7 are assigned by that department to perform the
8 duties described in subsection (a) in accordance
9 with regulations or guidance established under
10 subsection (d).

11 “(7) The terms ‘unmanned aircraft’ and ‘un-
12 manned aircraft system’ have the meanings given
13 those terms in section 331 of the FAA Moderniza-
14 tion and Reform Act of 2012 (49 U.S.C. 40101
15 note).

16 “(8) For purposes of this section, the term
17 ‘risk-based assessment’ includes an evaluation of the
18 following factors with respect to potential impacts on
19 the safety and efficiency of the national airspace sys-
20 tem and the needs of law enforcement and national
21 security:

22 “(A) Potential impacts to the national air-
23 space system, including potential effects on
24 manned aircraft and unmanned aircraft sys-
25 tems, airport operations, infrastructure, and air

1 navigation services related to the use of any
2 system or technology for carrying out the ac-
3 tions described in subsection (b)(1).

4 “(B) Options for mitigating any identified
5 impacts to the national airspace system related
6 to the use of any system or technology, includ-
7 ing minimizing when possible the use of any
8 technology which disrupts the transmission of
9 radio or electronic signals, for carrying out the
10 actions described in subsection (b)(1).

11 “(C) Potential consequences of the impacts
12 of any actions taken under subsection (b)(1) to
13 the national airspace system and infrastructure
14 if not mitigated.

15 “(D) The ability to provide reasonable ad-
16 vance notice to aircraft operators consistent
17 with the safety of the national airspace system
18 and the needs of law enforcement and national
19 security.

20 “(E) The setting and character of any cov-
21 ered facility or asset, including whether it is lo-
22 cated in a populated area or near other struc-
23 tures, whether the facility is open to the public,
24 whether the facility is also used for nongovern-
25 mental functions, and any potential for inter-

1 ference with wireless communications or for in-
2 jury or damage to persons or property.

3 “(F) Potential consequences to national se-
4 curity, public safety, or law enforcement if
5 threats posed by unmanned aircraft systems are
6 not mitigated or defeated.

7 “(1) DEPARTMENT OF HOMELAND SECURITY AS-
8 SESSMENT.—

9 “(1) REPORT.—Not later than 1 year after the
10 date of the enactment of this section, the Secretary
11 shall conduct, in coordination with the Attorney
12 General and the Secretary of Transportation, an as-
13 sessment to the appropriate congressional commit-
14 tees, including—

15 “(A) an evaluation of the threat from un-
16 manned aircraft systems to United States crit-
17 ical infrastructure (as defined in this Act) and
18 to domestic large hub airports (as defined in
19 section 40102(a)(29) of title 49, United States
20 Code);

21 “(B) an evaluation of current Federal and
22 State, local, or tribal law enforcement authori-
23 ties to counter the threat identified in subpara-
24 graph (A);

1 “(C) an evaluation of the knowledge of, ef-
2 ficiency of, and effectiveness of current proce-
3 dures and resources available to owners of crit-
4 ical infrastructure and domestic large hub air-
5 ports when they believe a threat from un-
6 manned aircraft systems is present and what
7 additional actions, if any, the Department of
8 Homeland Security or the Department of
9 Transportation could implement under existing
10 authorities to assist these entities to counter
11 the threat identified in subparagraph (A);

12 “(D) an assessment of what, if any, addi-
13 tional authorities the Department needs to
14 counter the threat identified in subparagraph
15 (A); and

16 “(E) an assessment of what, if any, addi-
17 tional research and development the Depart-
18 ment needs to counter the threat identified in
19 subparagraph (A).

20 “(2) UNCLASSIFIED FORM.—The report re-
21 quired under paragraph (1) shall be submitted in
22 unclassified form, but may contain a classified
23 annex.”.

1 (b) CLERICAL AMENDMENT.—The table of sections
2 at the beginning of such chapter is amended by inserting
3 after the item relating to section 210F the following:

“Sec. 210G. Protection of certain facilities and assets from unmanned aircraft.”.

4 **SEC. 3. DEPARTMENT OF HOMELAND SECURITY EFFORTS**
5 **TO HELP PROTECT INDIVIDUALS FROM VE-**
6 **HICULAR TERRORISM.**

7 (a) DEFINITIONS.—In this section—

8 (1) the term “emergency response providers”
9 has the meaning given the term in section 2 of the
10 Homeland Security Act of 2002 (6 U.S.C. 101); and

11 (2) the term “vehicular terrorism” means an
12 action that uses automotive transportation to inflict
13 violence and intimidation on individuals for a polit-
14 ical purpose.

15 (b) ASSESSMENT.—Not later than 1 year after the
16 date of enactment of this Act, the Secretary of Homeland
17 Security shall—

18 (1) assess the threat of vehicular terrorism and
19 activities the Department of Homeland Security is
20 undertaking to support emergency response pro-
21 viders and the private sector to prevent, mitigate,
22 and respond to vehicular terrorism; and

23 (2) based on the assessment conducted under
24 paragraph (1), brief the Committee on Homeland

1 Security and Governmental Affairs, the Committee
2 on Commerce, Science, and Transportation, and the
3 Committee on the Judiciary of the Senate and the
4 Committee on Homeland Security, the Committee on
5 Transportation and Infrastructure, the Committee
6 on Energy and Commerce, and the Committee on
7 the Judiciary of the House of Representatives on—
8 (A) the findings of the assessment; and
9 (B) a strategy to improve the efforts of the
10 Department of Homeland Security to support
11 emergency response providers and the private
12 sector to prevent, mitigate, and respond to the
13 threat of vehicular terrorism.

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