

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.

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

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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