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.

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

SECTION 1. SHORT TITLE.

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

SEC. 2. PRESERVATION OF STATE, LOCAL, AND TRIBAL AUTHORITIES WITH RESPECT TO UNMANNED AIRCRAFT SYSTEMS.

(a) Scope of Preemption for Civil Unmanned Aircraft Regulations.—In prescribing regulations or standards related to civil unmanned aircraft systems, the Administrator shall—

(1) define the scope of the preemptive effect of such regulations or standards pursuant to section 40103 or 41713 of title 49, United States Code, which shall be limited to the extent necessary to ensure the safety and efficiency of the national airspace system for interstate commerce; and

(2) preserve, to the greatest extent practicable, legitimate interests of State, local, and tribal governments, including—

(A) protecting public safety;

(B) protecting personal privacy;

(C) protecting property rights;

(D) managing land use; and

(E) restricting nuisances and noise pollution.

(b) Reserved Powers.—

(1) In general.—In prescribing regulations or standards related to civil unmanned aircraft systems, the Administrator shall ensure that the au-
authority of a State, local, or tribal government to issue reasonable restrictions on the time, manner, and place of operation of a civil unmanned aircraft system that is operated below 200 feet above ground level or within 200 feet of a structure is not pre-empted.

(2) Reasonable Restrictions.—For purposes of paragraph (1), reasonable restrictions on the time, manner, and place of operation of a civil unmanned aircraft system include the following:

(A) Limitations on speed.

(B) Prohibitions or limitations on operations in the vicinity of schools, parks, roadways, bridges, or other public or private property.

(C) Restrictions on operations at certain times of the day or week or on specific occasions such as during parades or sporting events.

(D) Prohibitions on operations while the operator is under the influence of drugs or alcohol.

(E) Prohibitions on careless or reckless operations.
(F) Other prohibitions that protect public safety, personal privacy, or property rights, or that manage land use or restrict noise pollution.

SEC. 3. PRESERVATION OF PRIVATE PROPERTY RIGHTS.

(a) Affirmation of applicability of constitutional takings clause to Federal Aviation Administration regulations.—In prescribing regulations or standards related to civil unmanned aircraft systems, the Administrator shall not authorize the operation of a civil unmanned aircraft in the immediate reaches of the airspace above property without permission of the property owner.

(b) Affirmation of applicability of constitutional takings clause absent Federal Aviation Administration regulations.—Section 336(a) of the FAA Modernization and Reform Act of 2012 (Public Law 112–95; 49 U.S.C. 40101 note) is amended—

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

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

(3) by adding at the end the following:

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

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

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

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

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

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

SEC. 4. PILOT PROGRAM ON FEDERAL PARTNERSHIPS.

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

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

and
(2) the Administrator and such governments shall coordinate efforts with respect to the enforcement of regulations relating to the operation of civil unmanned aircraft systems.

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

(1) governments that vary in their size and intended approach to regulation of civil unmanned aircraft systems; and

(2) not less than one State government, not less than one county government, not less than one city government, and not less than one tribal government.

(e) UNMANNED AIRCRAFT SYSTEMS TRAFFIC MANAGEMENT SYSTEM.—The Administrator shall coordinate with Administrator of the National Aeronautics and Space Administration to ensure that participants in pilot programs established under subsection (a) are consulted in the development of the unmanned aircraft systems traffic management system under subsection (a) section 2208 of the FAA Extension, Safety, and Security Act of 2016 (Public Law 114–190; 49 U.S.C. 40101 note) and the pilot program under subsection (b) of that section.
(d) **Report Required.**—Not later than 2 years after establishing the pilot programs required by subsection (a), the Administrator shall submit to Congress, and make available to the public, a report identifying best practices for State, local, and tribal governments to regulate the operation of civil unmanned aircraft systems and to collaborate with the Federal Aviation Administration with respect to the regulation of such systems.

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

Nothing in this Act shall be construed—

(1) to diminish or expand the preemptive effect of the authority of the Federal Aviation Administration with respect to manned aviation; or

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

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

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

**SEC. 6. DEFINITIONS.**

In this Act:

(1) **Administrator.**—The term “Administrator” means the Administrator of the Federal Aviation Administration.
(2) Civil.—The term “civil”, with respect to an unmanned aircraft system, means that the unmanned aircraft is not a public aircraft (as defined in section 40102 of title 49, United States Code).

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

(4) Local Government.—The term “local”, with respect to a government, means the government of a subdivision of a State.

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

(6) Tribal Government.—The term “tribal”, with respect to a government, means the governing body of an Indian tribe.

(7) Unmanned Aircraft; Unmanned Aircraft System.—The terms “unmanned aircraft” and “unmanned aircraft system” have the meanings given those terms in section 331 of the FAA Modernization and Reform Act of 2012 (Public Law 112–95; 49 U.S.C. 40101 note).