

115TH CONGRESS
2D SESSION

S. 2836

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

IN THE SENATE OF THE UNITED STATES

MAY 14, 2018

Mr. JOHNSON (for himself, Mrs. McCASKILL, Mr. HOEVEN, Ms. HEITKAMP, and Mr. COTTON) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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 **“§ 210G. Protection of certain facilities and assets**
7 **from unmanned aircraft**

8 “(a) AUTHORITY.—Notwithstanding section 46502 of
9 title 49, United States Code, or any provision of title 18,
10 United States Code, the Secretary and the Attorney Gen-
11 eral may, for their respective Departments, take, and may
12 authorize personnel of the Department of Homeland Secu-
13 rity or the Department of Justice with assigned duties
14 that include safety, security, or protection of personnel,
15 facilities, or assets, to take, such actions described in sub-
16 section (b)(1) that are necessary to mitigate the threat
17 (as defined by the Secretary or the Attorney General, in
18 consultation with the Secretary of Transportation) that an
19 unmanned aircraft system or unmanned aircraft poses to
20 the safety or security of a covered facility or asset.

21 “(b) ACTIONS DESCRIBED.—

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

24 “(A) Detect, identify, monitor, and track
25 the unmanned aircraft system or unmanned air-
26 craft, without prior consent, including by means

1 of intercept or other access of a wire commu-
2 nication, an oral communication, or an elec-
3 tronic communication used to control the un-
4 manned aircraft system or unmanned aircraft.

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

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

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

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

22 “(F) Use reasonable force to disable, dam-
23 age, or destroy the unmanned aircraft system
24 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 shall conduct re-
8 search, testing, training on, and evaluation of any
9 equipment, including any electronic equipment, to
10 determine its capability and utility to enable any of
11 the actions described in subsection (b)(1).

12 “(4) COORDINATION.—The Secretary shall co-
13 ordinate with the Administrator of the Federal Avia-
14 tion Administration when subsection (b)(3) might
15 affect aviation safety, civilian aviation and aerospace
16 operations, or aircraft airworthiness.

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

21 “(d) REGULATIONS AND GUIDANCE.—

22 “(1) IN GENERAL.—The Secretary, the Attor-
23 ney General, and the Secretary of Transportation
24 may prescribe regulations and shall issue guidance

1 in the respective areas of each Secretary or the At-
2 torney General to carry out this section.

3 “(2) COORDINATION.—

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

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

19 “(e) PRIVACY PROTECTION.—The regulations pre-
20 scribed or guidance issued under subsection (d) shall en-
21 sure that—

22 “(1) the interception or acquisition of, or access
23 to, communications to or from an unmanned aircraft
24 system under this section is conducted in a manner
25 consistent with the Fourth amendment to the Con-

stitution of the United States and applicable provisions of Federal law;

“(2) communications to or from an unmanned aircraft system are intercepted, acquired, or accessed only to the extent necessary to support a function of the Department of Homeland Security or the Department of Justice;

“(3) records of such communications are not maintained for more than 180 days unless the Secretary or the Attorney General determine that maintenance of such records—

“(A) is necessary to support one or more functions of the Department of Homeland Security or the Department of Justice, respectively; or

“(B) is required for a longer period to support a civilian law enforcement agency or by any other applicable statute or regulation; and

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

“(A) would fulfill a function of the Department of Homeland Security or the Department of Justice, respectively;

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

9 “(C) is otherwise required by law.

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

19 “(g) SEMIANNUAL BRIEFINGS.—

20 “(1) IN GENERAL.—On a semiannual basis dur-
21 ing the 5-year period beginning 6 months after the
22 date of enactment of this section, the Secretary and
23 the Attorney General shall, respectively, provide a
24 briefing to the appropriate congressional committees
25 on the activities carried out pursuant to this section.

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

4 “(3) CONTENT.—Each briefing required under
5 paragraph (1) shall include—

6 “(A) policies, programs, and procedures to
7 mitigate or eliminate impacts of such activities
8 to the National Airspace System;

9 “(B) a description of instances where ac-
10 tions described in subsection (b)(1) have been
11 taken;

12 “(C) how the Secretary and the Attorney
13 General have informed the public as to the pos-
14 sible use of authorities under this section; and

15 “(D) how the Secretary and the Attorney
16 General have engaged with Federal, State, and
17 local law enforcement agencies to implement
18 and use such authorities.

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

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

1 “(1) vest in the Secretary or the Attorney Gen-
2 eral any authority of the Secretary of Transpor-
3 tation or the Administrator of the Federal Aviation
4 Administration under title 49, United States Code;

5 “(2) vest in the Secretary of Transportation or
6 the Administrator of the Federal Aviation Adminis-
7 tration any authority of the Secretary or the Attor-
8 ney General under this title;

9 “(3) vest in the Secretary of Homeland Secu-
10 rity any authority of the Attorney General under
11 this title; and

12 “(4) vest in the Attorney General any authority
13 of the Secretary of Homeland Security under this
14 title.

15 “(i) TERMINATION.—

16 “(1) IN GENERAL.—Except as provided in para-
17 graph (2), the authority to carry out this section
18 with respect to the covered facilities or assets shall
19 terminate on the date that is 5 years after the date
20 of enactment of this section.

21 “(2) EXTENSION.—The President may extend
22 by 180 days the termination date described in para-
23 graph (1) if, not later than 45 days before the ter-
24 mination date described in paragraph (1), the Presi-

1 dent certifies to Congress that such extension is in
2 the national security interest of the United States.

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

7 “(k) DEFINITIONS.—In this section:

8 “(1) The term ‘appropriate congressional com-
9 mittees’ means—

10 “(A) the Committee on Homeland Security
11 and Governmental Affairs, the Committee on
12 Commerce, Science, and Transportation, and
13 the Committee on the Judiciary of the Senate;
14 and

15 “(B) the Committee on Homeland Secu-
16 rity, the Committee on Transportation and In-
17 frastructure, the Committee on Energy and
18 Commerce, and the Committee on the Judiciary
19 of the House of Representatives.

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

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

1 “(A) is identified by the Secretary or the
2 Attorney General, in consultation with the Sec-
3 retary of Transportation with respect to poten-
4 tially impacted airspace, through a risk-based
5 assessment for purposes of this section;

6 “(B) is located in the United States (in-
7 cluding the territories and possessions, terri-
8 torial seas or navigable waters of the United
9 States); and

10 “(C) directly relates to—

11 “(i) a mission authorized to be per-
12 formed by the Department, consistent with
13 governing statutes, regulations, and orders
14 issued by the Secretary, relating to—

15 “(I) security operations by the
16 United States Coast Guard and U.S.
17 Customs and Border Protection, in-
18 cluding securing facilities, aircraft,
19 and authorized vessels, whether
20 moored or underway;

21 “(II) United States Secret Serv-
22 ice protection operations pursuant to
23 sections 3056 and 3056A of title 18,
24 United States Code; or

1 “(III) protection of facilities pur-
2 suant to section 1315 of title 40,
3 United States Code;

4 “(ii) a mission authorized to be per-
5 formed by the Department of Justice, con-
6 sistent with governing statutes, regula-
7 tions, and orders issued by the Attorney
8 General, relating to—

9 “(I) personnel protection oper-
10 ations by the Federal Bureau of In-
11 vestigation and the United States
12 Marshals Service, including the pro-
13 tection of Federal jurists, court offi-
14 cers, witnesses and other persons in
15 the interests of justice, as specified in
16 section 566(e) of title 28, United
17 States Code;

18 “(II) penal, detention, and cor-
19 rectional operations conducted by the
20 Federal Bureau of Prisons considered
21 to be high-risk or assessed to be a po-
22 tential target for unlawful unmanned
23 aircraft activity; or

24 “(III) protection of the buildings
25 and grounds leased, owned, or oper-

1 ated by or for the Department of Jus-
2 tice identified as essential to the func-
3 tion of the Department of Justice,
4 and the provision of security for Fed-
5 eral courts, as specified in section
6 566(a) of title 28, United States
7 Code; and

8 “(iii) a mission authorized to be per-
9 formed by the Department of Homeland
10 Security or the Department of Justice, act-
11 ing together or separately, consistent with
12 governing statutes, regulations, and orders
13 issued by the Secretary or the Attorney
14 General, respectively, relating to—

15 “(I) National Special Security
16 Events and Special Event Assessment
17 Rating events;

18 “(II) upon the request of a
19 State’s governor or attorney general,
20 providing support to State, local, or
21 tribal law enforcement to ensure pro-
22 tection of people and property at mass
23 gatherings, where appropriate and
24 within available resources;

1 “(III) active Federal law enforce-
2 ment investigations, emergency re-
3 sponses, or security operations; or

4 “(IV) in the event that either the
5 Department of Homeland Security or
6 the Department of Justice has identi-
7 fied a national security threat against
8 the United States and the threat
9 could involve unlawful use of an un-
10 manned aircraft, responding to such
11 national 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) individuals employed by contractors
2 of the Department of Homeland Security who
3 are subject to the supervision, control, or direc-
4 tion of the respective department and are as-
5 signed by that department to perform the du-
6 ties described in subsection (a) in accordance
7 with regulations or guidance established under
8 subsection (d).

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

14 “(l) DEPARTMENT OF HOMELAND SECURITY AS-
15 SESSMENT.—

16 “(1) REPORT.—Not later than 1 year after the
17 date of the enactment of this section, the Secretary
18 shall issue an assessment to the appropriate congres-
19 sional committees, including—

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

1 “(B) an evaluation of current Federal and
2 State, local, or tribal law enforcement authori-
3 ties to counter the threat identified in subpara-
4 graph (A), including section 99.7 of title 14,
5 Code of Federal Regulations, or any successor
6 thereto;

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

17 “(D) an assessment of what, if any, addi-
18 tional authorities the Department needs to
19 counter the threat identified in subparagraph
20 (A); and

21 “(E) an assessment of what, if any, addi-
22 tional research and development the Depart-
23 ment needs to counter the threat identified in
24 subparagraph (A).

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

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

“Sec. 210G. Protection of certain facilities and assets from unmanned air-
 craft.”.

8 **SEC. 3. DEPARTMENT OF HOMELAND SECURITY EFFORTS**
 9 **TO HELP PROTECT INDIVIDUALS FROM VE-**
 10 **HICULAR TERRORISM.**

11 (a) DEFINITION.—In this section—

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

15 (2) the term “vehicular terrorism” means an
 16 action that uses automotive transportation to inflict
 17 violence and intimidation on individuals for a polit-
 18 ical purpose.

19 (b) ASSESSMENT.—Not later than 1 year after the
 20 date of enactment of this Act, the Secretary of Homeland
 21 Security shall—

22 (1) assess the threat of vehicular terrorism and
 23 activities the Department of Homeland Security is
 24 undertaking to support emergency response pro-

1 viders and the private sector to prevent, mitigate,
2 and respond to vehicular terrorism; and

3 (2) based on the assessment conducted under
4 paragraph (1), brief the Committee on Homeland
5 Security and Governmental Affairs of the Senate
6 and the Committee on Homeland Security of the
7 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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