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[Report No. 115-332]

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, Mr. COTTON, Mr. CASSIDY, Mr. JONES, and Mr. RUBIO) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

SEPTEMBER 4, 2018

Reported by Mr. JOHNSON, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Preventing Emerging
3 Threats Act of 2018”.

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

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

9 **“§ 210G. Protection of certain facilities and assets**
10 **from unmanned aircraft**

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

24 “(b) **ACTIONS DESCRIBED.**—

25 “(1) **IN GENERAL.**—The actions authorized in
26 subsection (a) are the following:

1 “(A) Detect, identify, monitor, and track
2 the unmanned aircraft system or unmanned air-
3 craft, without prior consent, including by means
4 of intercept or other access of a wire commu-
5 nication, an oral communication, or an elec-
6 tronic communication used to control the un-
7 manned aircraft system or unmanned aircraft.

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

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

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

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

1 “(F) Use reasonable force to disable, dam-
2 age, or destroy the unmanned aircraft system
3 or unmanned aircraft.

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

9 “(3) RESEARCH, TESTING, TRAINING, AND
10 EVALUATION.—The Secretary shall conduct re-
11 search, testing, training on, and evaluation of any
12 equipment, including any electronic equipment, to
13 determine its capability and utility to enable any of
14 the actions described in subsection (b)(1).

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

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

24 “(d) REGULATIONS AND GUIDANCE.—

1 “(1) IN GENERAL.—The Secretary, the Attor-
2 ney General, and the Secretary of Transportation
3 may prescribe regulations and shall issue guidance
4 in the respective areas of each Secretary or the At-
5 torney General to carry out this section.

6 “(2) COORDINATION.—

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

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

22 “(c) PRIVACY PROTECTION.—The regulations pre-
23 scribed or guidance issued under subsection (d) shall en-
24 sure that—

1 “(1) the interception or acquisition of, or access
2 to, communications to or from an unmanned aircraft
3 system under this section is conducted in a manner
4 consistent with the Fourth amendment to the Con-
5 stitution of the United States and applicable provi-
6 sions of Federal law;

7 “(2) communications to or from an unmanned
8 aircraft system are intercepted, acquired, or accessed
9 only to the extent necessary to support a function of
10 the Department of Homeland Security or the De-
11 partment of Justice;

12 “(3) records of such communications are not
13 maintained for more than 180 days unless the Sec-
14 retary or the Attorney General determine that main-
15 tenance of such records—

16 “(A) is necessary to support one or more
17 functions of the Department of Homeland Secu-
18 rity or the Department of Justice, respectively;
19 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 function of the Depart-
 2 ment of Homeland Security or the Department
 3 of Justice, respectively;

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

12 “(C) is otherwise required by law.

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

22 “(g) SEMIANNUAL BRIEFINGS.—

23 “(1) IN GENERAL.—On a semiannual basis dur-
 24 ing the 5-year period beginning 6 months after the
 25 date of enactment of this section, the Secretary and

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

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

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

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

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

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

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

22 “(4) UNCLASSIFIED FORM.—Each briefing re-
23 quired under paragraph (1) shall be in unclassified
24 form, consistent with the needs of law enforcement

1 agencies and national security, but may be accom-
2 panied by an additional classified briefing.

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

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

9 “(2) vest in the Secretary of Transportation or
10 the Administrator of the Federal Aviation Adminis-
11 tration any authority of the Secretary or the Attor-
12 ney General under this title;

13 “(3) vest in the Secretary of Homeland Secu-
14 rity any authority of the Attorney General under
15 this title; and

16 “(4) vest in the Attorney General any authority
17 of the Secretary of Homeland Security under this
18 title.

19 “(i) TERMINATION.—

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

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

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

11 “(k) DEFINITIONS.—In this section:

12 “(1) The term ‘appropriate congressional com-
13 mittees’ means—

14 “(A) the Committee on Homeland Security
15 and Governmental Affairs, the Committee on
16 Commerce, Science, and Transportation, and
17 the Committee on the Judiciary of the Senate;
18 and

19 “(B) the Committee on Homeland Secu-
20 rity, the Committee on Transportation and In-
21 frastructure, the Committee on Energy and
22 Commerce, and the Committee on the Judiciary
23 of the House of Representatives.

24 “(2) The term ‘budget’, with respect to a fiscal
25 year, means the budget for that fiscal year that is

1 submitted to Congress by the President under sec-
2 tion 1105(a) of title 31.

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

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

10 ~~“(B) is located in the United States (in-~~
11 ~~cluding the territories and possessions, terri-~~
12 ~~torial seas or navigable waters of the United~~
13 ~~States); and~~

14 ~~“(C) directly relates to—~~

15 ~~“(i) a mission authorized to be per-~~
16 ~~formed by the Department, consistent with~~
17 ~~governing statutes, regulations, and orders~~
18 ~~issued by the Secretary, relating to—~~

19 ~~“(I) security operations by the~~
20 ~~United States Coast Guard and U.S.~~
21 ~~Customs and Border Protection, in-~~
22 ~~cluding securing facilities, aircraft,~~
23 ~~and authorized vessels, whether~~
24 ~~moored or underway;~~

1 “(II) United States Secret Serv-
2 ice protection operations pursuant to
3 sections 3056 and 3056A of title 18,
4 United States Code; or

5 “(III) protection of facilities pur-
6 suant to section 1315 of title 40,
7 United States Code;

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

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

22 “(II) penal, detention, and cor-
23 rectional operations conducted by the
24 Federal Bureau of Prisons considered
25 to be high-risk or assessed to be a po-

1 tentative target for unlawful unmanned
2 aircraft activity; or

3 “(III) protection of the buildings
4 and grounds leased, owned, or oper-
5 ated by or for the Department of Jus-
6 tice identified as essential to the func-
7 tion of the Department of Justice,
8 and the provision of security for Fed-
9 eral courts, as specified in section
10 566(a) of title 28, United States
11 Code; and

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

19 “(I) National Special Security
20 Events and Special Event Assessment
21 Rating events;

22 “(II) upon the request of a
23 State’s governor or attorney general,
24 providing support to State, local, or
25 tribal law enforcement to ensure pro-

1 tection of people and property at mass
2 gatherings, where appropriate and
3 within available resources;

4 “(III) active Federal law enforce-
5 ment investigations, emergency re-
6 sponses, or security operations; or

7 “(IV) in the event that either the
8 Department of Homeland Security or
9 the Department of Justice has identi-
10 fied a national security threat against
11 the United States and the threat
12 could involve unlawful use of an un-
13 manned aircraft, responding to such
14 national security threat.

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

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

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

1 “(A) officers and employees of the Depart-
2 ment of Homeland Security or the Department
3 of Justice; or

4 “(B) individuals employed by contractors
5 of the Department of Homeland Security who
6 are subject to the supervision, control, or direc-
7 tion of the respective department and are as-
8 signed by that department to perform the du-
9 ties described in subsection (a) in accordance
10 with regulations or guidance established under
11 subsection (d).

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

17 “(1) DEPARTMENT OF HOMELAND SECURITY AS-
18 SESSMENT.—

19 “(1) REPORT.—Not later than 1 year after the
20 date of the enactment of this section, the Secretary
21 shall issue an assessment to the appropriate congress-
22 sional committees, including—

23 “(A) an evaluation of the threat from un-
24 manned aircraft systems to United States crit-
25 ical infrastructure (as defined in this Act) and

1 to domestic large hub airports (as defined in
2 section 40102(a)(29) of title 49, United States
3 Code);

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

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

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

24 “(E) an assessment of what, if any, addi-
25 tional research and development the Depart-

1 ment needs to counter the threat identified in
2 subparagraph (A).

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

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

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

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

13 (a) DEFINITION.—In this section—

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

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

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

1 (1) assess the threat of vehicular terrorism and
2 activities the Department of Homeland Security is
3 undertaking to support emergency response pro-
4 viders and the private sector to prevent, mitigate,
5 and respond to vehicular terrorism; and

6 (2) based on the assessment conducted under
7 paragraph (1), brief the Committee on Homeland
8 Security and Governmental Affairs of the Senate
9 and the Committee on Homeland Security of the
10 House of Representatives on—

11 (A) the findings of the assessment; and

12 (B) a strategy to improve the efforts of the
13 Department of Homeland Security to support
14 emergency response providers and the private
15 sector to prevent, mitigate, and respond to the
16 threat of vehicular terrorism.

17 **SECTION 1. SHORT TITLE.**

18 *This Act may be cited as the “Preventing Emerging*
19 *Threats Act of 2018”.*

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

22 (a) *IN GENERAL.*—*Subtitle A of title II of the Home-*
23 *land Security Act of 2002 (6 U.S.C. 121 et seq.) is amended*
24 *by adding at the end the following:*

1 **“§210G. Protection of certain facilities and assets**
2 **from unmanned aircraft**

3 “(a) *AUTHORITY.*—

4 “(1) *IN GENERAL.*—Notwithstanding section
5 46502 of title 49, United States Code, or any provi-
6 sion of title 18, United States Code, the Secretary and
7 the Attorney General may, for their respective De-
8 partments, take, and may authorize personnel of the
9 Department of Homeland Security or the Department
10 of Justice with assigned duties that include safety, se-
11 curity, or protection of personnel, facilities, or assets,
12 to take, such actions described in subsection (b)(1)
13 that are necessary to mitigate the threat (as defined
14 by the Secretary or the Attorney General, in consulta-
15 tion with the Secretary of Transportation, in accord-
16 ance with paragraph (3)) that an unmanned aircraft
17 system or unmanned aircraft poses to the safety or se-
18 curity of a covered facility or asset.

19 “(2) *REQUIREMENTS.*—In taking the actions de-
20 scribed in subsection (b)(1), the Secretary or the At-
21 torney General, as the case may be, shall—

22 “(A) avoid infringement of the privacy and
23 civil liberties of the people of the United States
24 and the freedom of the press consistent with Fed-
25 eral law and the Constitution of the United
26 States, including with regard to the testing of

1 *any equipment and the interception or acquisi-*
2 *tion of unmanned aircraft or systems;*

3 “(B) *limit the geographic reach and dura-*
4 *tion of the actions to only those areas and time-*
5 *frames that are reasonably necessary to address*
6 *a reasonable threat; and*

7 “(C) *use reasonable care not to interfere*
8 *with authorized or non-threatening manned or*
9 *unmanned aircraft, communications, equipment,*
10 *facilities or services.*

11 “(3) *THREAT DEFINED.—In defining the term*
12 *‘threat’ for purposes of carrying out paragraph (1),*
13 *the Secretary or the Attorney General, as the case*
14 *may be, shall take into account factors, including, but*
15 *not limited to, the potential for bodily harm or loss*
16 *of human life, the potential loss or compromise of sen-*
17 *sitive national security information, or the potential*
18 *severe economic damage resulting from use of an un-*
19 *authorized unmanned aerial system in the vicinity of*
20 *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-*

1 *craft, without prior consent, including by means*
2 *of intercept or other access of a wire communica-*
3 *tion, an oral communication, or an electronic*
4 *communication used to control the unmanned*
5 *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 to disable, dam-
24 age, or destroy the unmanned aircraft system or
25 unmanned aircraft.

1 “(2) *REQUIRED COORDINATION.*—*The Secretary*
2 *and the Attorney General shall develop for their re-*
3 *spective Departments the actions described in para-*
4 *graph (1) in coordination with the Secretary of*
5 *Transportation.*

6 “(3) *RESEARCH, TESTING, TRAINING, AND EVAL-*
7 *UATION.*—*The Secretary and the Attorney General*
8 *may conduct research, testing, training on, and eval-*
9 *uation of any equipment, including any electronic*
10 *equipment, to determine its capability and utility to*
11 *enable any of the actions described in paragraph (1).*

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

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

21 “(d) *REGULATIONS AND GUIDANCE.*—

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

1 *respective areas of each Secretary or the Attorney*
2 *General to carry out this section.*

3 “(2) *COORDINATION.*—

4 “(A) *COORDINATION WITH DEPARTMENT OF*
5 *TRANSPORTATION.*—*The Secretary and the Attor-*
6 *ney General shall coordinate the development of*
7 *their respective guidance under paragraph (1)*
8 *with the Secretary of Transportation.*

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

19 “(3) *RISK-BASED ASSESSMENT.*—*The guidance*
20 *issued by the Secretary and the Attorney General, re-*
21 *spectively, shall include criteria of the risk-based as-*
22 *essment required under subsection (k)(3)(A) that in-*
23 *cludes an evaluation of the potential impacts on the*
24 *use of the authorities granted in this section on the*
25 *safety and efficiency of the national airspace system,*

1 *including the ability to provide advance notice to air-*
2 *craft operators as appropriate, and the needs of law*
3 *enforcement agencies and national security.*

4 “(e) *PRIVACY PROTECTION.*—*In carrying out actions*
5 *authorized under subsection (b), the Secretary or the Attor-*
6 *ney General, as the case may be, shall ensure that—*

7 “(1) *the interception or acquisition of, or access*
8 *to, communications to or from an unmanned aircraft*
9 *system under this section is conducted in a manner*
10 *consistent with the Fourth amendment to the Con-*
11 *stitution of the United States and applicable provi-*
12 *sions of Federal law;*

13 “(2) *communications to or from an unmanned*
14 *aircraft system are intercepted, acquired, or accessed*
15 *only to the extent necessary to mitigate the reasonable*
16 *threat that an unmanned aircraft system or un-*
17 *manned aircraft poses to the safety or security of a*
18 *covered facility or asset, or to investigate or prosecute*
19 *a threat, as defined by the Secretary or the Attorney*
20 *General, respectively, under subsection (a)(1);*

21 “(3) *records of such communications are main-*
22 *tained only for as long as necessary, and in no event*
23 *for more than 180 days, unless the Secretary or the*
24 *Attorney General determine that maintenance of such*
25 *records—*

1 “(A) is necessary to support one or more
2 safety or security functions of the Department of
3 Homeland Security or the Department of Jus-
4 tice, respectively, or to investigate or prosecute a
5 threat, as defined by the Secretary or the Attor-
6 ney General, respectively, under subsection
7 (a)(1); or

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

11 “(4) such communications are not disclosed out-
12 side the Department of Homeland Security or the De-
13 partment of Justice unless the disclosure—

14 “(A) would fulfill a safety or security func-
15 tion of the Department of Homeland Security or
16 the Department of Justice, respectively, or to in-
17 vestigate or prosecute a threat, as defined by the
18 Secretary or the Attorney General, respectively,
19 under subsection (a)(1);

20 “(B) would support the Department of De-
21 fense, another civilian law enforcement agency,
22 or the activities of a regulatory agency of the
23 Federal Government in connection with a crimi-
24 nal or civil investigation of, or any regulatory,
25 statutory, or other enforcement action arising

1 *out of, an action described in subsection (b)(1);*

2 *or*

3 *“(C) is otherwise required by law.*

4 *“(f) BUDGET.—The Secretary and the Attorney Gen-*
5 *eral shall submit to Congress, as a part of the homeland*
6 *security or justice budget materials for each fiscal year after*
7 *fiscal year 2018, a consolidated funding display that identi-*
8 *fies the funding source and funding requirements for the*
9 *actions described in subsection (b)(1) within the Depart-*
10 *ment of Homeland Security or the Department of Justice.*
11 *The funding display shall be in unclassified form, but may*
12 *contain a classified annex.*

13 *“(g) SEMIANNUAL BRIEFINGS.—*

14 *“(1) IN GENERAL.—On a semiannual basis dur-*
15 *ing the 5-year period beginning 6 months after the*
16 *date of enactment of this section, the Secretary and*
17 *the Attorney General shall, respectively, provide a*
18 *briefing to the appropriate congressional committees*
19 *on the activities carried out pursuant to this section.*

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

23 *“(3) CONTENT.—Each briefing required under*
24 *paragraph (1) shall include—*

1 “(A) policies, programs, and procedures to
2 mitigate or eliminate impacts of such activities
3 to the National Airspace System;

4 “(B) a description of instances where ac-
5 tions described in subsection (b)(1) have been
6 taken;

7 “(C) a description of efforts to address pri-
8 vacy, civil rights, and civil liberties issues impli-
9 cated by the actions allowed under this section;

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

13 “(E) a description of actions the Secretary
14 and the Attorney General have taken to inform
15 owners and operators of covered facilities of their
16 status under this section; and

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

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

1 “(h) *RULE OF CONSTRUCTION.*—*Nothing in this sec-*
2 *tion may be construed to—*

3 “(1) *vest in the Secretary or the Attorney Gen-*
4 *eral any authority of the Secretary of Transportation*
5 *or the Administrator of the Federal Aviation Admin-*
6 *istration under title 49, United States Code;*

7 “(2) *vest in the Secretary of Transportation or*
8 *the Administrator of the Federal Aviation Adminis-*
9 *tration any authority of the Secretary or the Attorney*
10 *General under this title or title 14, United States*
11 *Code;*

12 “(3) *vest in the Secretary of Homeland Security*
13 *any authority of the Attorney General under this*
14 *title; and*

15 “(4) *vest in the Attorney General any authority*
16 *of the Secretary of Homeland Security under this*
17 *title.*

18 “(i) *TERMINATION.*—

19 “(1) *IN GENERAL.*—*Except as provided in para-*
20 *graph (2), the authority to carry out this section with*
21 *respect to the covered facilities or assets shall termi-*
22 *nate on the date that is 5 years after the date of en-*
23 *actment of this section.*

24 “(2) *EXTENSION.*—*The President may extend by*
25 *180 days the termination date described in paragraph*

1 (1) if, not later than 45 days before the termination
2 date described in paragraph (1), the President cer-
3 tifies to Congress that such extension is in the na-
4 tional security interest of the United States.

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

9 “(k) *DEFINITIONS.*—In this section:

10 “(1) The term ‘appropriate congressional com-
11 mittees’ means—

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

16 “(B) the Committee on Homeland Security,
17 the Committee on Transportation and Infra-
18 structure, the Committee on Energy and Com-
19 merce, and the Committee on the Judiciary of
20 the House of Representatives.

21 “(2) The term ‘budget’, with respect to a fiscal
22 year, means the budget for that fiscal year that is
23 submitted to Congress by the President under section
24 1105(a) of title 31, United States Code.

1 “(3) *The term ‘covered facility or asset’ means*
2 *any facility or asset that—*

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

8 “(B) *is located in the United States (includ-*
9 *ing the territories and possessions, territorial*
10 *seas, or navigable waters of the United States);*
11 *and*

12 “(C) *directly relates to—*

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

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

23 “(II) *United States Secret Service*
24 *protection operations pursuant to sec-*

1 *tions 3056 and 3056A of title 18,*
2 *United States Code; or*

3 *“(III) protection of facilities pur-*
4 *suant to section 1315 of title 40,*
5 *United States Code, considered to be*
6 *high-risk or assessed to be a potential*
7 *target for unlawful unmanned aircraft*
8 *activity;*

9 *“(ii) a mission authorized to be per-*
10 *formed by the Department of Justice, con-*
11 *sistent with governing statutes, regulations,*
12 *and orders issued by the Attorney General,*
13 *relating to—*

14 *“(I) personnel protection oper-*
15 *ations by the Federal Bureau of Inves-*
16 *tigation and the United States Mar-*
17 *shals Service, including the protection*
18 *of Federal jurists, court officers, wit-*
19 *nesses, and other persons in the inter-*
20 *ests of justice, as specified in section*
21 *566(e) of title 28, United States Code;*

22 *“(II) penal, detention, and correc-*
23 *tional operations conducted by the*
24 *Federal Bureau of Prisons considered*
25 *to be high-risk or assessed to be a po-*

1 *tential target for unlawful unmanned*
2 *aircraft activity; or*

3 “(III) *protection of the buildings*
4 *and grounds leased, owned, or operated*
5 *by or for the Department of Justice*
6 *identified as essential to the function of*
7 *the Department of Justice, and the*
8 *provision of security for Federal*
9 *courts, as specified in section 566(a) of*
10 *title 28, United States Code, considered*
11 *to be high-risk or assessed to be a po-*
12 *tential target for unlawful unmanned*
13 *aircraft activity; and*

14 “(iii) *a mission authorized to be per-*
15 *formed by the Department of Homeland Se-*
16 *curity or the Department of Justice, acting*
17 *together or separately, consistent with gov-*
18 *erning statutes, regulations, and orders*
19 *issued by the Secretary or the Attorney*
20 *General, respectively, relating to—*

21 “(I) *National Special Security*
22 *Events and Special Event Assessment*
23 *Rating events;*

24 “(II) *upon the request of a State’s*
25 *governor or attorney general, providing*

1 support to State, local, or tribal law
2 enforcement authorities to ensure pro-
3 tection of people and property at mass
4 gatherings, where appropriate and
5 within available resources;

6 “(III) active Federal law enforce-
7 ment investigations, emergency re-
8 sponses, or security operations; or

9 “(IV) in the event that either the
10 Department of Homeland Security or
11 the Department of Justice has identi-
12 fied a national security threat against
13 the United States and the threat could
14 involve unlawful use of an unmanned
15 aircraft, responding to such national
16 security threat.

17 “(4) The terms ‘electronic communication’,
18 ‘intercept’, ‘oral communication’, and ‘wire commu-
19 nication’ have the meanings given those terms in sec-
20 tion 2510 of title 18, United States Code.

21 “(5) The term ‘homeland security or justice
22 budget materials’, with respect to a fiscal year, means
23 the materials submitted to Congress by the Secretary
24 and the Attorney General in support of the budget for
25 that fiscal year.

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

3 “(A) officers and employees of the Depart-
4 ment of Homeland Security or the Department
5 of Justice; or

6 “(B) individuals employed by contractors of
7 the Department of Homeland Security who are
8 subject to the supervision, control, or direction of
9 the Department and are assigned by the Depart-
10 ment to perform the duties described in sub-
11 section (a) in accordance with regulations or
12 guidance established under subsection (d).

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

17 “(l) DEPARTMENT OF HOMELAND SECURITY ASSESS-
18 MENT.—

19 “(1) REPORT.—Not later than 1 year after the
20 date of the enactment of this section, the Secretary
21 shall conduct, in coordination with the Attorney Gen-
22 eral and the Secretary of Transportation, and submit
23 an assessment to the appropriate congressional com-
24 mittees, including—

1 “(A) an evaluation of the threat from un-
2 manned aircraft systems to United States crit-
3 ical infrastructure (as defined in this Act) and
4 to domestic large hub airports (as defined in sec-
5 tion 40102(a)(29) of title 49, United States
6 Code);

7 “(B) an evaluation of current Federal and
8 State, local, or tribal law enforcement authorities
9 to counter the threat identified in subparagraph
10 (A);

11 “(C) an evaluation of the knowledge of, effi-
12 ciency of, and effectiveness of current procedures
13 and resources available to owners of critical in-
14 frastructure and domestic large hub airports
15 when they believe a threat from unmanned air-
16 craft systems is present and what additional ac-
17 tions, if any, the Department could implement
18 under existing authorities to assist these entities
19 to counter the threat identified in subparagraph
20 (A);

21 “(D) an assessment of what, if any, addi-
22 tional authorities the Department needs to
23 counter the threat identified in subparagraph
24 (A); and

1 “(E) an assessment of what, if any, addi-
 2 tional research and development the Department
 3 needs to counter the threat identified in subpara-
 4 graph (A).

5 “(2) UNCLASSIFIED FORM.—The report required
 6 under paragraph (1) shall be submitted in unclassi-
 7 fied form, but may contain a classified annex.”.

8 (b) CLERICAL AMENDMENT.—The table of sections in
 9 section 1(b) of the Homeland Security Act of 2002 (Public
 10 Law 107–296; 116 Stat. 2135) is amended by inserting
 11 after the item relating to section 210F the following:

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

12 **SEC. 3. DEPARTMENT OF HOMELAND SECURITY EFFORTS**
 13 **TO HELP PROTECT INDIVIDUALS FROM VE-**
 14 **HICULAR TERRORISM.**

15 (a) DEFINITION.—In this section—

16 (1) the term “emergency response providers” has
 17 the meaning given the term in section 2 of the Home-
 18 land Security Act of 2002 (6 U.S.C. 101); and

19 (2) the term “vehicular terrorism” means an ac-
 20 tion that uses automotive transportation to inflict vi-
 21 olence and intimidation on individuals for a political
 22 purpose.

23 (b) ASSESSMENT.—Not later than 1 year after the date
 24 of enactment of this Act, the Secretary of Homeland Secu-
 25 rity shall—

1 (1) *assess the threat of vehicular terrorism and*
2 *activities the Department of Homeland Security is*
3 *undertaking to support emergency response providers*
4 *and the private sector to prevent, mitigate, and re-*
5 *spond to vehicular terrorism; and*

6 (2) *based on the assessment conducted under*
7 *paragraph (1), brief the Committee on Homeland Se-*
8 *curity and Governmental Affairs of the Senate and*
9 *the Committee on Homeland Security of the House of*
10 *Representatives on—*

11 (A) *the findings of the assessment; and*

12 (B) *a strategy to improve the efforts of the*
13 *Department of Homeland Security to support*
14 *emergency response providers and the private*
15 *sector to prevent, mitigate, and respond to the*
16 *threat of vehicular terrorism.*

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115TH CONGRESS
2^D SESSION

S. 2836

[Report No. 115-332]

A BILL

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

SEPTEMBER 4, 2018

Reported with an amendment