

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: In the nature of a substitute.

**IN THE SENATE OF THE UNITED STATES—115th Cong., 2d Sess.**

**S. 2836**

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

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended  
to be proposed by \_\_\_\_\_

Viz:

1 Strike all after the enacting clause and insert the fol-  
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Preventing Emerging  
5 Threats Act of 2018”.

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

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

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

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

16 “(b) **ACTIONS DESCRIBED.**—

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

19 “(A) Detect, identify, monitor, and track  
20 the unmanned aircraft system or unmanned air-  
21 craft, without prior consent, including by means  
22 of intercept or other access of a wire commu-  
23 nication, an oral communication, or an elec-  
24 tronic communication used to control the un-  
25 manned aircraft system or unmanned aircraft.

1           “(B) Warn the operator of the unmanned  
2 aircraft system or unmanned aircraft, including  
3 by passive or active, and direct or indirect phys-  
4 ical, electronic, radio, and electromagnetic  
5 means.

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

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

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

18           “(F) Use reasonable force to disable, dam-  
19 age, or destroy the unmanned aircraft system  
20 or unmanned aircraft.

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

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

8           “(4) COORDINATION.—The Secretary shall co-  
9 ordinate with the Administrator of the Federal Avia-  
10 tion Administration when subsection (b)(3) might  
11 affect aviation safety, civilian aviation, use of air-  
12 space, aerospace operations, or aircraft airworthi-  
13 ness.

14           “(c) FORFEITURE.—Any unauthorized unmanned  
15 aircraft system or unmanned aircraft described in sub-  
16 section (a) that is seized by the Secretary or the Attorney  
17 General is subject to forfeiture to the United States.

18           “(d) REGULATIONS AND GUIDANCE.—

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

24           “(2) COORDINATION.—

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

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

16          “(3) RISK-BASED ASSESSMENT.—The guidance  
17          issued by the Secretary and the Attorney General,  
18          respectively, shall include criteria of the risk-based  
19          assessment required under subsection (k)(3)(A) that  
20          includes an evaluation of the potential impacts on  
21          the use of the authorities granted in this section on  
22          the safety and efficiency of the national airspace sys-  
23          tem, including the ability to provide advance notice  
24          to aircraft operators as appropriate, and the needs  
25          of law enforcement agencies and national security.

1       “(e) PRIVACY PROTECTION.—The regulations pre-  
2 scribed or guidance issued under subsection (d) shall en-  
3 sure that—

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

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

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

19           “(A) is necessary to support one or more  
20 functions of the Department of Homeland Secu-  
21 rity or the Department of Justice, respectively;  
22 or

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

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

4                   “(A) would fulfill a function of the Depart-  
5 ment of Homeland Security or the Department  
6 of Justice, respectively;

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

15                   “(C) is otherwise required by law.

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

25           “(g) SEMIANNUAL BRIEFINGS.—

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

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

10          “(3) CONTENT.—Each briefing required under  
11          paragraph (1) shall include—

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

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

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

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

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

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

8           “(1) vest in the Secretary or the Attorney Gen-  
9           eral any authority of the Secretary of Transpor-  
10          tation or the Administrator of the Federal Aviation  
11          Administration under title 14 or 49, United States  
12          Code;

13          “(2) vest in the Secretary of Transportation or  
14          the Administrator of the Federal Aviation Adminis-  
15          tration any authority of the Secretary or the Attor-  
16          ney General under this title;

17          “(3) vest in the Secretary of Homeland Secu-  
18          rity any authority of the Attorney General under  
19          this title; and

20          “(4) vest in the Attorney General any authority  
21          of the Secretary of Homeland Security under this  
22          title.

23          “(i) TERMINATION.—

24          “(1) IN GENERAL.—Except as provided in para-  
25          graph (2), the authority to carry out this section

1 with respect to the covered facilities or assets shall  
2 terminate on the date that is 5 years after the date  
3 of enactment of this section.

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

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

14 “(k) DEFINITIONS.—In this section:

15 “(1) The term ‘appropriate congressional com-  
16 mittees’ means—

17 “(A) the Committee on Homeland Security  
18 and Governmental Affairs, the Committee on  
19 Commerce, Science, and Transportation, and  
20 the Committee on the Judiciary of the Senate;  
21 and

22 “(B) the Committee on Homeland Secu-  
23 rity, the Committee on Transportation and In-  
24 frastructure, the Committee on Energy and

1 Commerce, and the Committee on the Judiciary  
2 of the House of Representatives.

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

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

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

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

18 “(C) directly relates to—

19 “(i) a mission authorized to be per-  
20 formed by the Department, consistent with  
21 governing statutes, regulations, and orders  
22 issued by the Secretary, relating to—

23 “(I) security operations by the  
24 United States Coast Guard and U.S.  
25 Customs and Border Protection, in-

1 including securing facilities, aircraft,  
2 and authorized vessels, whether  
3 moored or underway;

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

8 “(III) protection of facilities pur-  
9 suant to section 1315 of title 40,  
10 United States Code, considered to be  
11 high-risk or assessed to be a potential  
12 target for unlawful unmanned aircraft  
13 activity;

14 “(ii) a mission authorized to be per-  
15 formed by the Department of Justice, con-  
16 sistent with governing statutes, regula-  
17 tions, and orders issued by the Attorney  
18 General, relating to—

19 “(I) personnel protection oper-  
20 ations by the Federal Bureau of In-  
21 vestigation and the United States  
22 Marshals Service, including the pro-  
23 tection of Federal jurists, court offi-  
24 cers, witnesses and other persons in  
25 the interests of justice, as specified in

1 section 566(e) of title 28, United  
2 States Code;

3 “(II) penal, detention, and cor-  
4 rectional operations conducted by the  
5 Federal Bureau of Prisons considered  
6 to be high-risk or assessed to be a po-  
7 tential target for unlawful unmanned  
8 aircraft activity; or

9 “(III) protection of the buildings  
10 and grounds leased, owned, or oper-  
11 ated by or for the Department of Jus-  
12 tice identified as essential to the func-  
13 tion of the Department of Justice,  
14 and the provision of security for Fed-  
15 eral courts, as specified in section  
16 566(a) of title 28, United States  
17 Code, considered to be high-risk or as-  
18 sessed to be a potential target for un-  
19 lawful unmanned aircraft activity; and

20 “(iii) a mission authorized to be per-  
21 formed by the Department of Homeland  
22 Security or the Department of Justice, act-  
23 ing together or separately, consistent with  
24 governing statutes, regulations, and orders

1 issued by the Secretary or the Attorney  
2 General, respectively, relating to—

3 “(I) National Special Security  
4 Events and Special Event Assessment  
5 Rating events;

6 “(II) upon the request of a  
7 State’s governor or attorney general,  
8 providing support to State, local, or  
9 tribal law enforcement authorities to  
10 ensure protection of people and prop-  
11 erty at mass gatherings, where appro-  
12 priate and within available resources;

13 “(III) active Federal law enforce-  
14 ment investigations, emergency re-  
15 sponses, or security operations; or

16 “(IV) in the event that either the  
17 Department of Homeland Security or  
18 the Department of Justice has identi-  
19 fied a national security threat against  
20 the United States and the threat  
21 could involve unlawful use of an un-  
22 manned aircraft, responding to such  
23 national security threat.

24 “(4) The terms ‘electronic communication’,  
25 ‘intercept’, ‘oral communication’, and ‘wire commu-

1       nication’ have the meaning given those terms in sec-  
2       tion 2510 of title 18, United States Code.

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

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

10           “(A) officers and employees of the Depart-  
11       ment of Homeland Security or the Department  
12       of Justice; or

13           “(B) individuals employed by contractors  
14       of the Department of Homeland Security who  
15       are subject to the supervision, control, or direc-  
16       tion of the respective department and are as-  
17       signed by that department to perform the du-  
18       ties described in subsection (a) in accordance  
19       with regulations or guidance established under  
20       subsection (d).

21           “(7) The terms ‘unmanned aircraft’ and ‘un-  
22       manned aircraft system’ have the meanings given  
23       those terms in section 331 of the FAA Moderniza-  
24       tion and Reform Act of 2012 (49 U.S.C. 40101  
25       note).

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

3               “(1) REPORT.—Not later than 1 year after the  
4       date of the enactment of this section, the Secretary  
5       shall conduct, in coordination with the Attorney  
6       General and the Secretary of Transportation, an as-  
7       sessment to the appropriate congressional commit-  
8       tees, including—

9               “(A) an evaluation of the threat from un-  
10       manned aircraft systems to United States crit-  
11       ical infrastructure (as defined in this Act) and  
12       to domestic large hub airports (as defined in  
13       section 40102(a)(29) of title 49, United States  
14       Code);

15              “(B) an evaluation of current Federal and  
16       State, local, or tribal law enforcement authori-  
17       ties to counter the threat identified in subpara-  
18       graph (A);

19              “(C) an evaluation of the knowledge of, ef-  
20       ficiency of, and effectiveness of current proce-  
21       dures and resources available to owners of crit-  
22       ical infrastructure and domestic large hub air-  
23       ports when they believe a threat from un-  
24       manned aircraft systems is present and what  
25       additional actions, if any, the Department could

1           implement under existing authorities to assist  
2           these entities to counter the threat identified in  
3           subparagraph (A);

4           “(D) an assessment of what, if any, addi-  
5           tional authorities the Department needs to  
6           counter the threat identified in subparagraph  
7           (A); and

8           “(E) an assessment of what, if any, addi-  
9           tional research and development the Depart-  
10          ment needs to counter the threat identified in  
11          subparagraph (A).

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

16          (b) CLERICAL AMENDMENT.—The table of sections  
17          at the beginning of such chapter is amended by inserting  
18          after the item relating to section 210F<sup>1</sup> the following:

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

19   **SEC. 3. DEPARTMENT OF HOMELAND SECURITY EFFORTS**  
20                   **TO HELP PROTECT INDIVIDUALS FROM VE-**  
21                   **HICULAR TERRORISM.**

22          (a) DEFINITION.—In this section—

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

4           (2) the term “vehicular terrorism” means an  
5           action that uses automotive transportation to inflict  
6           violence and intimidation on individuals for a polit-  
7           ical purpose.

8           (b) ASSESSMENT.—Not later than 1 year after the  
9           date of enactment of this Act, the Secretary of Homeland  
10          Security shall—

11           (1) assess the threat of vehicular terrorism and  
12           activities the Department of Homeland Security is  
13           undertaking to support emergency response pro-  
14           viders and the private sector to prevent, mitigate,  
15           and respond to vehicular terrorism; and

16           (2) based on the assessment conducted under  
17           paragraph (1), brief the Committee on Homeland  
18           Security and Governmental Affairs of the Senate  
19           and the Committee on Homeland Security of the  
20           House of Representatives on—

21                   (A) the findings of the assessment; and

22                   (B) a strategy to improve the efforts of the  
23           Department of Homeland Security to support  
24           emergency response providers and the private

1 sector to prevent, mitigate, and respond to the  
2 threat of vehicular terrorism.