AMENDMENT NO. _________ Calendar No. _______

Purpose: In the nature of a substitute.


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 following:

3 SECTION 1. SHORT TITLE.

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

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

8 (a) IN GENERAL.—Subtitle A of title II of the Homeland Security Act of 2002 (6 U.S.C. 121 et seq.) is amended by adding at the end the following:
§ 210G. Protection of certain facilities and assets from unmanned aircraft

(a) AUTHORITY.—Notwithstanding section 46502 of title 49, United States Code, or any provision of title 18, United States Code, the Secretary and the Attorney General may, for their respective Departments, take, and may authorize personnel of the Department of Homeland Security or the Department of Justice with assigned duties that include safety, security, or protection of personnel, facilities, or assets, to take, such actions described in subsection (b)(1) that are necessary to mitigate the threat (as defined by the Secretary or the Attorney General, in consultation with the Secretary of Transportation) that an unmanned aircraft system or unmanned aircraft poses to the safety or security of a covered facility or asset.

(b) ACTIONS DESCRIBED.—

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

(A) Detect, identify, monitor, and track the unmanned aircraft system or unmanned aircraft, without prior consent, including by means of intercept or other access of a wire communication, an oral communication, or an electronic communication used to control the unmanned aircraft system or unmanned aircraft.
“(B) Warn the operator of the unmanned aircraft system or unmanned aircraft, including by passive or active, and direct or indirect physical, electronic, radio, and electromagnetic means.

“(C) Disrupt control of the unmanned aircraft system or unmanned aircraft, without prior consent, including by disabling the unmanned aircraft system or unmanned aircraft by intercepting, interfering, or causing interference with wire, oral, electronic, or radio communications used to control the unmanned aircraft system or unmanned aircraft.

“(D) Seize or exercise control of the unmanned aircraft system or unmanned aircraft.

“(E) Seize or otherwise confiscate the unmanned aircraft system or unmanned aircraft.

“(F) Use reasonable force to disable, damage, or destroy the unmanned aircraft system or unmanned aircraft.

“(2) REQUIRED COORDINATION.—The Secretary and the Attorney General shall develop for their respective Departments the actions described in paragraph (1) in coordination with the Secretary of Transportation.
“(3) Research, testing, training, and evaluation.—The Secretary and the Attorney General shall conduct research, testing, training on, and evaluation of any equipment, including any electronic equipment, to determine its capability and utility to enable any of the actions described in subsection (b)(1).

“(4) Coordination.—The Secretary shall coordinate with the Administrator of the Federal Aviation Administration when subsection (b)(3) might affect aviation safety, civilian aviation, use of airspace, aerospace operations, or aircraft airworthiness.

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

“(d) Regulations and Guidance.—

“(1) In general.—The Secretary, the Attorney General, and the Secretary of Transportation may prescribe regulations and shall issue guidance in the respective areas of each Secretary or the Attorney General to carry out this section.

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

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

“(3) R ISK-BASED ASSESSMENT.—The guidance
issued by the Secretary and the Attorney General,
respectively, shall include criteria of the risk-based
assessment required under subsection (k)(3)(A) that
includes an evaluation of the potential impacts on
the use of the authorities granted in this section on
the safety and efficiency of the national airspace sys-

system, including the ability to provide advance notice
to aircraft operators as appropriate, and the needs
of law enforcement agencies and national security.
“(e) PRIVACY PROTECTION.—The regulations prescribed or guidance issued under subsection (d) shall ensure that—

“(1) the interception or acquisition of, or access to, communications to or from an unmanned aircraft system under this section is conducted in a manner consistent with the Fourth amendment to the Constitution 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;

“(B) would support the Department of Defense, another civilian law enforcement agency, or the activities of a regulatory agency of the Federal Government in connection with a criminal or civil investigation of, or any regulatory, statutory, or other enforcement action arising out of an action described in subsection (b)(1); or

“(C) is otherwise required by law.

“(f) BUDGET.—The Secretary and the Attorney General shall submit to Congress, as a part of the homeland security or justice budget materials for each fiscal year after fiscal year 2018, a consolidated funding display that identifies the funding source and funding requirements for the actions described in subsection (b)(1) within the Department of Homeland Security or the Department of Justice. The funding display shall be in unclassified form, but may contain a classified annex.

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

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

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

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

“(B) a description of instances where actions described in subsection (b)(1) have been taken;

“(C) how the Secretary and the Attorney General have informed the public as to the possible use of authorities under this section; and

“(D) how the Secretary and the Attorney General have engaged with Federal, State, and local law enforcement agencies to implement and use such authorities.
“(4) UNCLASSIFIED FORM.—Each briefing required under paragraph (1) shall be in unclassified form, consistent with the needs of law enforcement agencies and national security, but may be accompanied by an additional classified briefing.

“(h) RULE OF CONSTRUCTION.—Nothing in this section may be construed to—

“(1) vest in the Secretary or the Attorney General any authority of the Secretary of Transportation or the Administrator of the Federal Aviation Administration under title 14 or 49, United States Code;

“(2) vest in the Secretary of Transportation or the Administrator of the Federal Aviation Administration any authority of the Secretary or the Attorney General under this title;

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

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

“(i) TERMINATION.—

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

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

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

“(k) DEFINITIONS.—In this section:

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

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

“(B) the Committee on Homeland Secu-
rity, the Committee on Transportation and In-
frastucture, the Committee on Energy and
Commerce, and the Committee on the Judiciary of the House of Representatives.

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

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

“(A) is identified by the Secretary or the Attorney General, in consultation with the Secretary of Transportation with respect to potentially impacted airspace, through a risk-based assessment for purposes of this section;

“(B) is located in the United States (including the territories and possessions, territorial seas or navigable waters of the United States); and

“(C) directly relates to—

“(i) a mission authorized to be performed by the Department, consistent with governing statutes, regulations, and orders issued by the Secretary, relating to—

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

“(II) United States Secret Service protection operations pursuant to sections 3056 and 3056A of title 18, United States Code; or

“(III) protection of facilities pursuant to section 1315 of title 40, United States Code, considered to be high-risk or assessed to be a potential target for unlawful unmanned aircraft activity;

“(ii) a mission authorized to be performed by the Department of Justice, consistent with governing statutes, regulations, and orders issued by the Attorney General, relating to—

“(I) personnel protection operations by the Federal Bureau of Investigation and the United States Marshals Service, including the protection of Federal jurists, court officers, witnesses and other persons in the interests of justice, as specified in
section 566(e) of title 28, United States Code;

“(II) penal, detention, and correctional operations conducted by the Federal Bureau of Prisons considered to be high-risk or assessed to be a potential target for unlawful unmanned aircraft activity; or

“(III) protection of the buildings and grounds leased, owned, or operated by or for the Department of Justice identified as essential to the function of the Department of Justice, and the provision of security for Federal courts, as specified in section 566(a) of title 28, United States Code, considered to be high-risk or assessed to be a potential target for unlawful unmanned aircraft activity; and

“(iii) a mission authorized to be performed by the Department of Homeland Security or the Department of Justice, acting together or separately, consistent with governing statutes, regulations, and orders
issued by the Secretary or the Attorney General, respectively, relating to—

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

“(II) upon the request of a State’s governor or attorney general, providing support to State, local, or tribal law enforcement authorities to ensure protection of people and property at mass gatherings, where appropriate and within available resources;

“(III) active Federal law enforcement investigations, emergency responses, or security operations; or

“(IV) in the event that either the Department of Homeland Security or the Department of Justice has identified a national security threat against the United States and the threat could involve unlawful use of an unmanned aircraft, responding to such national security threat.

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

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

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

“(A) officers and employees of the Department of Homeland Security or the Department of Justice; or

“(B) individuals employed by contractors of the Department of Homeland Security who are subject to the supervision, control, or direction of the respective department and are assigned by that department to perform the duties described in subsection (a) in accordance with regulations or guidance established under subsection (d).

“(7) 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 (49 U.S.C. 40101 note).
“(l) Department of Homeland Security Assessment.—

“(1) Report.—Not later than 1 year after the date of the enactment of this section, the Secretary shall conduct, in coordination with the Attorney General and the Secretary of Transportation, an assessment to the appropriate congressional committees, including—

“(A) an evaluation of the threat from unmanned aircraft systems to United States critical infrastructure (as defined in this Act) and to domestic large hub airports (as defined in section 40102(a)(29) of title 49, United States Code);

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

“(C) an evaluation of the knowledge of, efficiency of, and effectiveness of current procedures and resources available to owners of critical infrastructure and domestic large hub airports when they believe a threat from unmanned aircraft systems is present and what additional actions, if any, the Department could
implement under existing authorities to assist
these entities to counter the threat identified in
subparagraph (A);

“(D) an assessment of what, if any, additional authorities the Department needs to
counter the threat identified in subparagraph (A); and

“(E) an assessment of what, if any, additional research and development the Depart-
ment needs to counter the threat identified in

subparagraph (A).

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

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

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

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

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

(2) the term “vehicular terrorism” means an action that uses automotive transportation to inflict violence and intimidation on individuals for a political purpose.

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

(1) assess the threat of vehicular terrorism and activities the Department of Homeland Security is undertaking to support emergency response providers and the private sector to prevent, mitigate, and respond to vehicular terrorism; and

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

(A) the findings of the assessment; and

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