

Calendar No. 195

116TH CONGRESS }
1st Session }

SENATE

{ REPORT
116-91

DHS COUNTERING UNMANNED AIRCRAFT
SYSTEMS COORDINATOR ACT

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 1867

TO AMEND THE HOMELAND SECURITY ACT OF 2002 TO
ESTABLISH IN THE DEPARTMENT OF HOMELAND SECURITY
AN UNMANNED AIRCRAFT SYSTEMS COORDINATOR, AND FOR
OTHER PURPOSES



SEPTEMBER 10, 2019.—Ordered to be printed

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Mr. JOHNSON, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 1867]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 1867) to amend the Homeland Security Act of 2002 to establish in the Department of Homeland Security an Unmanned Aircraft Systems Coordinator, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. PURPOSE AND SUMMARY

S. 1867, the DHS Countering Unmanned Aircraft Systems Coordinator Act, establishes a Countering Unmanned Aircraft Systems Coordinator (Coordinator) within the Department of Homeland Security's (DHS or the Department) Office of Strategy, Policy, and Plans (PLCY) to oversee and coordinate the Department's efforts to counter Unmanned Aircraft Systems (UAS). Specifically, it requires the Secretary to designate a current senior official within PLCY as the Coordinator. The Coordinator is required to oversee the Depart-

ment's efforts to develop guidance and regulations, promote research and development, and share threat intelligence, among other things, to counter malicious UAS. The Coordinator is also required to serve as the primary liaison between DHS and Federal, state, local, and tribal law enforcement entities, as well as the private sector, regarding DHS counter-UAS activities.

II. BACKGROUND AND THE NEED FOR LEGISLATION

Terrorist groups and criminal organizations encourage and engage in the use of UAS to transport contraband, deliver explosive payloads, carry illegal substances, and conduct surveillance on potential targets.¹ In May 2018, Chairman Ron Johnson, then-Ranking Member Claire McCaskill, and Senators Heidi Heitkamp, John Hoeven, and Tom Cotton introduced the Preventing Emerging Threats Act of 2018. The legislation authorized select Federal law enforcement agencies, including several DHS components, "to protect certain critical facilities and assets when there is a national security risk to public safety posed by an unmanned aircraft system (UAS)."² The bill also restricted what communications and data could be stored by the Government and where, and placed requirements on the components to provide briefings and other reports to Congress on the use of authorities.³ The bill was passed and signed into law later in 2018 as Division H of the FAA Reauthorization Act of 2018 [hereinafter referred to as Division H of the FAA].⁴ As passed in the FAA, the authorities granted under Division H will sunset after four years.

S. 1867 builds upon Division H of the FAA by establishing a counter-UAS Coordinator position within DHS PLCY to provide leadership to DHS and its components as it develops and implements the authorities provided to the Department.

The bill also mandates that the Coordinator work to oversee and coordinate the development of counter-UAS guidance and regulations. In doing so, the Coordinator must work with the DHS Office of Civil Rights and Civil Liberties and the Privacy Office to ensure any regulations and guidance protect the privacy of U.S. citizens and adhere to any current Federal privacy laws and regulations.

The Coordinator position will provide a channel for intelligence about UAS and counter-UAS assessments and technology for agencies within DHS so that each component is provided clarity regarding the application of counter-UAS systems, regulations, and guidance.

The Coordinator's mandate to promote research in countering the threat of UAS will aid DHS in securing important personnel and facilities across the United States. Establishing a leader to aid DHS in focusing on solutions to counter potential threats will assist in keeping counter-UAS projects on track. Additionally, the solution to providing a counter-UAS enterprise will rely heavily on the private sector to research solutions and develop technology to

¹ U.S. Dep't of Homeland Sec., *Illicit Threats from Unmanned Aircraft Systems (UAS)* (2018) (on file with S. Comm. On Homeland Sec. & Gov't Affairs).

² S. 2836, *Preventing Emerging Threats Act* (115th Cong.); S. Rept. 115-332 (2018).

³ S. 2836, *Preventing Emerging Threats Act* (115th Cong.).

⁴ H.R. 302, *FAA Reauthorization Act of 2018*, Div. H, Sec. 1601, et seq.; Pub. L. No. 115-254 (2018); 6 U.S.C. § 124n.

effectively counter UAS. It is important that the Coordinator remains engaged with private industry.

At the same time, the Coordinator’s role will serve as a valuable resource to law enforcement agencies. State and local law enforcement are often the first to respond to any national security incident. The Coordinator, along with relevant offices such as the Office of Partnership and Engagement, will be able to provide them with useful information and guidance as DHS provides UAS protection to assets under Division H of the FAA. The Coordinator will also act as the liaison in coordinating protection of mass gatherings that the chief executive officer of a State or territory may request.

Finally, the Coordinator will support the Secretary of Homeland Security in maintaining information about DHS’ counter UAS initiative and ensuring that the Department meets the notification, briefing, and reporting requirements under Division H of the FAA.

The authorities in S. 1867 will expire concurrent with the sunset in Division H of the FAA.⁵ This provides Congress the opportunity to re-evaluate the Coordinator position and how effective the role is in DHS’ counter-UAS efforts.

III. LEGISLATIVE HISTORY

Chairman Ron Johnson (R–WI), Ranking Member Gary Peters (D–MI) and Senator Margaret Wood Hassan (D–NH) introduced S. 1867, the DHS Countering Unmanned Aircraft Systems Coordinator Act, on June 13, 2019. The bill was referred to the Committee on Homeland Security and Governmental Affairs.

The Committee considered S. 1867 at a business meeting on June 19, 2019. The bill was ordered reported favorably by voice vote. Senators present for the vote were Johnson, Portman, Paul, Lankford, Romney, Scott, Enzi, Hawley, Peters, Carper, Hassan, Sinema, and Rosen.

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1. Short title

This section establishes the bill title as the “DHS Countering Unmanned Aircraft Systems Coordinator Act.”

Section 2. Countering Unmanned Aircraft Systems Coordinator

Subsection (a) establishes the role of the counter-UAS Coordinator and explains its responsibilities. The responsibilities include: overseeing and coordinating with relevant offices on the development of guidance and regulations to counter UAS threats; advocating for research and development in countering UAS technologies with the Office of Science and Technology; serving as a DHS liaison on countering UAS to law enforcement entities in addition to the private sector; maintaining information required under Division H of the FAA for the Secretary of Homeland Security, Attorney General, and Secretary of Transportation; and as directed by the Secretary of Homeland Security, carrying out related counter-UAS activities.

⁵ 6 U.S.C. § 124n.

Subsection (b) requires the Coordinator to work with DHS to ensure that testing, evaluation, or deployment of a counter-UAS system is carried out in accordance with Federal law.

Subsection (c) requires that the Coordinator coordinate with the private sector. This section requires that the Coordinator work with the Office of Partnership and Engagement and other relevant offices or agencies while serving as the principal DHS official to work with the private sector to share information about how counter-UAS technology may impact private sector services or systems.

Subsection (d) sunsets the authority of the Coordinator to coincide with the termination of authorities provided for in section 210G(i) of the *Preventing Emerging Threats Act*.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office's statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 18, 2019.

Hon. RON JOHNSON,
Chairman, Committee on Homeland Security and Governmental Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1867, the DHS Countering Unmanned Aircraft Systems Coordinator Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

| S. 1867, DHS Countering Unmanned Aircraft Systems Coordinator Act | | | |
|--|------|-------------------------------------|-----------|
| As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on June 19, 2019 | | | |
| By Fiscal Year, Millions of Dollars | 2019 | 2019-2024 | 2019-2029 |
| Direct Spending (Outlays) | 0 | 0 | 0 |
| Revenues | 0 | 0 | 0 |
| Deficit Effect | 0 | 0 | 0 |
| Spending Subject to Appropriation (Outlays) | 0 | 3 | 3 |
| Statutory pay-as-you-go procedures apply? | No | Mandate Effects | |
| Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030? | No | Contains intergovernmental mandate? | No |
| | | Contains private-sector mandate? | No |

S. 1867 would direct the Department of Homeland Security (DHS) to designate one of its officials to coordinate the department's efforts to combat threats from unmanned aircraft systems (or drones) and to provide a staff for that person. The bill's provisions would expire in December 2022.

Using information from DHS, we expect the designated coordinator would need a staff of about five senior employees to coordinate those efforts including promoting research and development; serving as a liaison with state, local, and tribal entities; and sharing information with the private sector. Assuming enactment by the end of 2019, CBO estimates that the additional staff would cost about \$3 million through December 2022 (a period of about three years). Any spending would be subject to the availability of appropriated funds.

The CBO staff contact for this estimate is Mark Grabowicz. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows: (existing law proposed to be omitted is enclosed in brackets, new matter is printed in *italics*, and existing law in which no change is proposed is shown in roman:

HOMELAND SECURITY ACT OF 2002

* * * * *

TITLE III—SCIENCE AND TECHNOLOGY IN SUPPORT OF HOMELAND SECURITY

* * * * *

SEC. 321. COUNTERING UNMANNED AIRCRAFT SYSTEMS COORDINATOR.

(a) *COORDINATOR.*—

(1) *IN GENERAL.*—The Secretary shall designate a senior official of the Department within the Office of Strategy, Policy, and Plans as the Countering Unmanned Aircraft Systems Coordinator (in this section referred to as the “Coordinator”) and provide appropriate staff to carry out the responsibilities of the Coordinator.

(2) *RESPONSIBILITIES.*—The Coordinator shall—

(A) oversee and coordinate with relevant Department offices and components, including the Office of Civil Rights and Civil Liberties and the Privacy Office, on the development of guidance and regulations to counter threats associated with unmanned aircraft systems (in this section referred to as “UAS”) as described in section 210G;

(B) promote research and development of counter UAS technologies in coordination with the Office of Science and Technology;

(C) coordinate with the relevant components and offices of the Department, including the Office of Intelligence and Analysis, to ensure the sharing of information, guidance, and intelligence relating to countering UAS threats, counter UAS threat assessments, and counter UAS technology, including the retention of UAS and counter UAS incidents within the Department;

(D) serve as the Department liaison, in coordination with relevant components and offices of the Department, to Federal, State, local, and Tribal law enforcement entities and the private sector regarding the activities of the Department relating to countering UAS;

(E) maintain the information required under section 210G(g)(3); and

(F) carry out other related counter UAS authorities and activities under section 210G, as directed by the Secretary.

(b) *COORDINATION WITH APPLICABLE FEDERAL LAWS.*—The Coordinator shall, in addition to other assigned duties, coordinate with relevant Department components and offices to ensure testing, evaluation, or deployment of a system used to identify, assess, or defeat a UAS is carried out in accordance with applicable Federal laws.

(c) *COORDINATION WITH PRIVATE SECTOR.*—The Coordinator shall, among other assigned duties, working with the Office of Partnership and Engagement and other relevant Department offices and components, or other Federal agencies, as appropriate, serve as the principal Department official responsible for sharing to the private sector information regarding counter UAS technology, particularly information regarding instances in which counter UAS technology may impact lawful private sector services or systems.

(d) *TERMINATION OF AUTHORITY.*—The authority to carry out this section shall terminate on the date described in section 210G(i).

* * * * *