

PROTECTING THE BORDER FROM
UNMANNED AIRCRAFT SYSTEMS ACT

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 4919

TO REQUIRE AN INTERAGENCY STRATEGY FOR CREATING
A UNIFIED POSTURE ON COUNTER-UNMANNED AIRCRAFT
SYSTEMS (C-UAS) CAPABILITIES AND PROTECTIONS
AT INTERNATIONAL BORDERS OF THE UNITED STATES



DECEMBER 19, 2022.—Ordered to be printed

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117TH CONGRESS }
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SENATE

{ REPORT
{ 117-279

**PROTECTING THE BORDER FROM UNMANNED AIRCRAFT
SYSTEMS ACT**

DECEMBER 19, 2022.—Ordered to be printed

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

R E P O R T

[To accompany S. 4919]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 4919) to require an interagency strategy for creating a unified posture on counter-unmanned aircraft systems (C-UAS) capabilities and protections at international borders of the United States, having considered the same, reports favorably thereon with an amendment, in the nature of a substitute, and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

S. 4919, the *Protecting the Border from Unmanned Aircraft Systems Act*, requires the Department of Homeland Security (DHS) to work with the Department of Justice (DOJ), the Federal Aviation Administration (FAA), and the Department of Defense (DOD) to develop a strategy to guide a unified posture on counter-unmanned aircraft systems (C-UAS) capabilities and protections along the international borders of the United States. Among other items, the strategy must examine C-UAS capabilities along the borders, in-

cluding covered facilities and assets, and efforts to protect civil rights and civil liberties during the operation of C-UAS capabilities. The strategy must also contain assessments of the training required for the successful operation of C-UAS detection and mitigation technologies at U.S. borders and the interagency research and development efforts of C-UAS technologies. The strategy must be submitted to Congress no later than 180 days after the enactment of the bill and a report must be submitted no later than 180 days and annually until 7 years after enactment that describes the resources necessary to carry out the strategy and any significant developments relating to the required elements of the strategy.

II. BACKGROUND AND NEED FOR THE LEGISLATION

The globe is experiencing rapid growth in the use of unmanned aircraft system (UAS) technologies and the FAA estimates that by 2026, as many as 1.84 million small drones could be registered to fly in the U.S.¹ While the increasing availability of UAS will bring substantial benefits to our society and economy, their low barrier to entry in the national airspace system (NAS) due to their wide availability and ease of operation allow them to be potentially misused. As a result, nefarious actors could exploit vulnerabilities in traditional security measures.²

In July 2022, this Committee held a hearing to examine the threats posed by UAS to our homeland security, including the impacts malicious UAS could have on manned aircraft operations, airports, critical infrastructure facilities, and high-profile events.³ During the hearing, this Committee heard from DHS, DOJ, and the FAA about the need for Congress to close gaps in current DHS and DOJ C-UAS authorities provided by the Preventing Emerging Threats Act of 2018, which became law in the FAA Reauthorization Act.⁴ The Committee also heard about challenges that DHS has facing in carrying out its C-UAS mission sets, including protecting our international borders from malicious drones.⁵

According to DHS, transnational criminal organizations (TCOs) use UAS to transport narcotics and contraband across U.S. borders and conduct hostile surveillance of law enforcement.⁶ According to U.S. Customs and Border Protection (CBP), more than 8,000 illegal cross border UAS flights were detected by the agency between August 2021 and May 2022 at the southern border, which is an average of 900 incursions per month.⁷ As UAS technologies evolve, so will the threat, and CBP further assesses that TCOs will pursue larger UAS with increased speed, range, and payload capacity in

¹Federal Aviation Administration, *FAA Aerospace Forecast Fiscal Years 2022–2042* (https://www.faa.gov/sites/faa.gov/files/2022-06/FY2022_42_FAA_Aerospace_Forecast.pdf) at 54.

²Senate Committee on Homeland Security and Governmental Affairs, Testimony Submitted for the Record of Deputy Associate Administrator for Security and Hazardous Safety Tonya Coultas, Federal Aviation Administration, *Hearing on Protecting the Homeland from Unmanned Aircraft Systems*, 117th Cong. (July 14, 2022) (S. Hrg. 117–XX).

³Senate Committee on Homeland Security and Governmental Affairs, *Hearing on Protecting the Homeland from Unmanned Aircraft Systems*, 117th Cong. (July 14, 2022) (S. Hrg. 117–XX).

⁴FAA Reauthorization Act of 2018, Pub. L. No. 115–254, Sec. 1602; *Id.*

⁵Senate Committee on Homeland Security and Governmental Affairs, Testimony Submitted for the Record of Acting Assistant Secretary for Counterterrorism, Threat Prevention, and Law Enforcement Samantha Vinograd, Department of Homeland Security, *Hearing on Protecting the Homeland from Unmanned Aircraft Systems*, 117th Cong. (July 14, 2022) (S. Hrg. 117–XX) at 3–4.

⁶*Id.*

⁷*Id.*

an effort to evade CBP and other law enforcement agencies.⁸ While the volume of UAS incursions at the U.S. southern border highlights the challenges DHS faces in combatting the cross-border UAS threat, much remains unknown about the volume of UAS incursions our nation faces at our northern and maritime borders. As DHS works to implement the Northern Border Strategy, released in 2018, DHS must continue to meet its objective of utilizing surveillance, detection, and monitoring assets to monitor and, if necessary, counter the UAS threat.⁹

To ensure DHS can effectively counter the UAS threat posed at all U.S. borders, this bill requires DHS, DOJ, the FAA, and the Department of Defense (DOD) to develop an interagency strategy to combat unauthorized UAS along U.S. international borders. This strategy will include assessments of the federal government’s C–UAS capabilities, privacy protections, intelligence tools, training programs, resources, and research efforts along U.S. international borders. The bill also includes important provisions to increase transparency regarding UAS-related threats along the border, encourage more robust interagency research and development efforts, and ensure the federal government protects the privacy and civil liberties of individuals lawfully operating drones along our international borders.

III. LEGISLATIVE HISTORY

Senators Lankford (R–OK) and Sinema (D–AZ) introduced S. 4919, the *Protecting the Border from Unmanned Aircraft Systems Act*, on September 22, 2022. The bill was referred to the Senate Committee on Homeland Security and Governmental Affairs.

The Committee considered S. 4919 at a business meeting on September 28, 2022. During the business meeting, Senators Lankford and Sinema offered a substitute amendment that clarified that the strategy required by the bill shall examine C–UAS capabilities and protections at both covered facilities or assets, as defined under 6 U.S.C. 124n(k)(3), along U.S. international borders, as well as other border-adjacent facilities or assets at which capabilities may be used under federal law. The substitute amendment was adopted *en bloc* by voice vote with Senators Peters, Carper, Hassan, Sinema, Rosen, Padilla, Ossoff, Portman, Johnson, Paul, Lankford, Romney, Scott, and Hawley present for the vote. The Committee ordered the bill, as amended, to be favorably reported by voice vote *en bloc*. Senators present for the vote were: Peters, Carper, Hassan, Sinema, Rosen, Padilla, Ossoff, Portman, Johnson, Paul, Lankford, Romney, Scott, and Hawley.

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

Section 1. Short title

This section designates the name of the bill as the “Protecting the Border from Unmanned Aircraft Systems Act.”

⁸*Id.*

⁹U.S. Department of Homeland Security, *Department of Homeland Security Northern Border Strategy* (June 12, 2018) (https://www.dhs.gov/sites/default/files/publications/18_0612_PLCY_DHS-Northern-Border-Strategy.pdf).

Section 2. Interagency strategy for creating a unified posture on Counter-Unmanned Aircraft Systems capabilities and protections at international borders of the United States

Subsection (a) defines the terms “appropriate congressional committee” and “covered facility or asset.”

Subsection (b) requires the Secretary of Homeland Security to work with the Attorney General, the FAA Administrator, and the Secretary of Defense to develop a strategy for creating a unified posture on C-UAS capabilities and protections at U.S. international borders and border-adjacent facilities or assets where capabilities may be used under federal law. The strategy required by this section must be developed no later than 180 days after the enactment of this legislation.

Subsection (c) requires that the strategy outlined in subsection (b) examine: (1) C-UAS capabilities at covered facilities or assets along U.S. international borders and border-adjacent facilities or assets and their usage to detect or mitigate credible threats; (2) an examination of efforts to protect privacy and civil liberties in the context of C-UAS operations; (3) an examination of intelligence sources and methods and relevant due process considerations; (4) an assessment of the availability and interoperability of C-UAS detection and mitigation technology; (5) an assessment of the training required for successful operation of C-UAS detection and mitigation technology; (5) an assessment of specific methods of operability for deployment and recommendations for additional resources needed; and (6) an assessment of interagency research and development efforts.

Subsection (d) requires the Secretary of Homeland Security to submit the strategy developed as outlined in subsection (b) to Congress no later than 180 days of this bill’s enactment.

Subsection (e) requires the Secretary of Homeland Security, the Attorney General, the FAA Administrator, and the Secretary of Defense jointly produce a report that describes the resources necessary to carry out the strategy developed pursuant to subsection (b) and any significant developments related to the elements described in subsection (c). The report must be submitted to Congress no later than 180 days after the passage of the bill and annually thereafter for 7 years.

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, November 9, 2022.

Hon. GARY C. PETERS,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed table summarizing estimated budgetary effects and mandates information for some of the legislation that has been ordered reported by the Senate Committee on Homeland Security and Governmental Affairs during the 117th Congress.

If you wish further details, we will be pleased to provide them. The CBO staff contact for each estimate is listed on the enclosed table.

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

SUMMARY ESTIMATES OF LEGISLATION ORDERED REPORTED

The Congressional Budget Act of 1974 requires the Congressional Budget Office, to the extent practicable, to prepare estimates of the budgetary effects of legislation ordered reported by Congressional authorizing committees. In order to provide the Congress with as much information as possible, the attached table summarizes information about the estimated direct spending and revenue effects of some of the legislation that has been ordered reported by the Senate Committee on Homeland Security and Governmental Affairs during the 117th Congress. The legislation listed in this table generally would have small effects, if any, on direct spending or revenues, CBO estimates. Where possible, the table also provides information about the legislation's estimated effects on spending subject to appropriation and on intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act.

ESTIMATED BUDGETARY EFFECTS AND MANDATES INFORMATION

Bill Number	Title	Status	Last Action	Budget Function	Direct Spending, 2023-2032	Revenues, 2023-2032	Spending Subject to Appropriation, 2023-2027	Pay-As-You-Go Procedures Apply?	Increases On-Budget Deficits Beginning in 2033?	Mandates	Contact
S. 4919	Protecting the Border from Unmanned Aircraft Systems Act	Ordered reported	09/28/22	750	0	0	Not estimated	No	No	No	Jeremy Crimm

S. 4919 would require the Department of Homeland Security, in coordination with the Department of Justice, the Federal Aviation Administration, and the Department of Defense, to develop a unified strategy for countering unmanned aircraft systems at U.S. borders. The bill would also require the agencies to submit joint annual reports to the Congress describing the resources needed to implement the strategy. CBO estimates that enacting S. 4919 would not affect direct spending or revenues. CBO has not estimated the discretionary costs of implementing the bill. The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

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

This legislation would make no change in existing law, within the meaning of clauses (a) and (b) of subparagraph 12 of rule XXVI of the Standing Rules of the Senate, because this legislation would not repeal or amend any provision of current law.

