SEC. __. IMPROVED PROTECTION OF CERTAIN FACILITIES AND ASSETS FROM UNMANNED AIRCRAFT THREATS.

Section 130i of title 10, United States Code, is amended—

(1) in subsection (a)—

(A) by striking "officers and civilian employees" and inserting "officers, civilian employees, and contract personnel"; and

(B) by inserting "or a temporarily covered facility or asset for the duration of the period for which the Secretary determines there is a high risk of loss to the facility or asset" after "a covered facility or asset";

(2) by striking subsection (i);

(3) by redesignating subsection (j) as subsection (i); and

(4) in subsection (i), as redesignated by paragraph (3) of this section—

(A) in subparagraph (C) of paragraph (3)—

(i) in clause (viii), by striking "; or" and inserting a semicolon;

(ii) in clause (ix), by striking the period and inserting a semicolon; and

(iii) by adding at the end the following new clauses:

"(x) organizing, training, equipping, and other functions at Department of Defense installations necessary to prepare the armed forces to deploy and conduct military operations in support of a contingency operation;

"(xi) deployment and sustainment of the armed forces in support of a contingency operation;

"(xii) a military training route (as defined in section 183a(h)(6) of this title);

"(xiii) an Army arsenal (as defined in section 7541(d)(1) of this title); or

"(xiv) production, storage, transportation, or decommissioning of chemical or biological materials by the Department.";

(C) by redesignating paragraph (6) as paragraph (7); and

(D) by inserting after paragraph (5) the following new paragraph:

"(6) The term 'temporarily covered facility or asset' means a facility or asset determined by the Secretary of Defense to be temporarily at high risk of loss due to a specific, highly significant vulnerability or due to specific indications that such a facility or asset is a target for hostile action.".

[Please note: the "changes to existing law" section below sets out in red-line format how the legislative text above would amend existing law.]

Section-by-Section Analysis

The proliferation and operation of unmanned aircraft are a rapidly increasing risk to the installations, activities, and personnel of the Department of Defense (DoD). This proposal would make several amendments to section 130i of title 10, U.S. Code, to clarify and strengthen this authority to mitigate the threat that an unmanned aircraft system or unmanned aircraft poses to the safety or security of a covered DoD facility or asset.

The proposal would amend subsection (a) by authorizing the Secretary of Defense to take such actions described in subsection (b)(1), as developed in coordination with the Secretary of Transportation, that are necessary to mitigate the threat (as defined by the Secretary of Defense, in consultation with the Secretary of Transportation) that an unmanned aircraft system or unmanned aircraft poses to the safety or security of a temporarily covered facility or asset. A DoD facility or asset that is not directly associated with a covered mission can temporarily be at high risk of loss due to a specific, highly significant vulnerability or specific indications that such a facility or asset is a target for hostile action. The authority to mitigate the threat to a temporarily covered facility or asset would enable the Secretary of Defense to adapt to emerging vulnerabilities and threats in a timely manner, but only for the duration of the emerging high risk.

This proposal would amend subsection (j)(3)(C) by updating the definition of a covered facility or asset to include a facility or asset that relates to four additional DoD missions that are critical to national security.

Clause (x) would add "organizing, training, equipping, and other functions at Department of Defense installations necessary to prepare the armed forces to deploy and conduct military operations in support of a contingency operation." The Secretaries of the Army, Navy, and Air Force (pursuant to sections 3013(b), 5013(b), and 8013(b) of title 10, U.S. Code) are responsible for, and have the authority necessary to conduct, all affairs of their Military Departments to prepare military units and personnel to deploy in order to conduct contingency operations in support of the national security interests of the United States. The Secretaries are also responsible for the safety and security of their installations and the personnel and activities that are present at their installations. The proliferation of UAS in the United States is a flight hazard to the conduct of these affairs. In addition, the conduct of these affairs would be a high-value target for future adversaries for surveillance – a threat to operations security – or, potentially, to facilitate attacks on such units and personnel before they can deploy to the address a contingency.

Clause (xi) would add "deployment and sustainment of the armed forces in support of a contingency operation." Certain facilities and assets are critical to the ability of the United States to deploy and sustain the armed forces during a contingency. These include, for example, ports and airfields at which personnel, equipment, and supplies are aggregated and shipped; airfields at which transport and air refueling aircraft are located; and ports at which vessels of the Military Sealift Command and the National Defense Reserve Fleet are based. All are essential components of the Department's ability to project power and sustain the armed forces once deployed, and all are potentially vulnerable to threats posed by unmanned aircraft.

Clause (xii) would add "a military training route (as defined in section 183a(h)(6) of this title)." In accordance with section 183a(h)(6), the term "military training route" means "a training route developed as part of the Military Training Route Program, carried out jointly by the Federal Aviation Administration and the Secretary of Defense, for use by the armed forces for the purpose of conducting low-altitude, high-speed military training." The proliferation of UAS in the United States is a clear and present flight hazard to low-altitude, high-speed military training.

Clause (xiii) would add "an Army arsenal (as defined in section 7541(d)(1) of this title)." In accordance with section 7541(d)(1), the term "army arsenal" means "a Government-owned, Government-operated defense plant of the Department of the Army that manufactures weapons, weapon components, or both."

Clause (xiv) would add DoD "production, storage, transportation, or decommissioning of chemical and biological materials." Clause (xiii) would permit DoD to mitigate the threat posed by unmanned aircraft of the limited number of facilities responsible for the highly sensitive function of producing, storing, transporting, or decommissioning chemical and biological materials. This would include specialized DoD laboratories.

Budget Implications: The resources required are reflected in the table below and are included within the Fiscal Year (FY) 2021 President's Budget.

RESOURCE IMPACT ($MILLIONS)									
Program	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**	**Appropriation**	**Budget Activity**	**BLI/SAG**	**Program Element (for all RDT&E programs)**
Air Force	61	77	74	56	56	Operation and Maintenance, Air Force, Procurement, Air Force, Research, Development, Test and Evaluation, Air Force	03	31 (BLI) 12C (SAG)	64287F
Navy	14.18	5.55	6.00	5.89	6.01	Research, Development, Test and Evaluation, Navy	Various	Various	0604636N
Navy	13.95	9.91	9.91	12.71	33.18	Operation and Maintenance, Navy	Various	Various	
Navy	21.78	7.10	26.21	30.00	10.36	Other Procurement, Navy	Various	Various	Various
USMC	0.02	0.03	0.03	0.03	0.02	USMC O&M, Procurement, RDT&E	01 03 07	1A2A 3006 0206313M	0206626M 0206211M 0206313M
Army	0	0	0	0	0	Army does not intend to use this authority.			
Total	110.93	99.59	116.15	104.63	105.57				

*Air Force, Army, and Navy assert that FY 2025 budget data is not releasable prior to the FY 2021 PBR.

Changes to Existing Law: This proposal would amend section 130i of title 10, United States Code, as follows:

§ 130i. Protection of certain facilities and assets from unmanned aircraft

(a) AUTHORITY.—Notwithstanding section 46502 of title 49, or any provision of title 18, the Secretary of Defense may take, and may authorize members of the armed forces and officers,

~~and~~ civilian employees, and contract personnel of the Department of Defense 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 of Defense, 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 or a temporarily covered facility or asset for the duration of the period for which the Secretary determines there is a high risk of loss to the facility or asset.

(b) ACTIONS DESCRIBED.—(1) The actions described in this paragraph 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) The Secretary of Defense shall develop the actions described in paragraph (1) in coordination with the Secretary of Transportation.

(c) FORFEITURE.—Any unmanned aircraft system or unmanned aircraft described in subsection (a) that is seized by the Secretary of Defense is subject to forfeiture to the United States.

(d) REGULATIONS AND GUIDANCE.—(1) The Secretary of Defense and the Secretary of Transportation may prescribe regulations and shall issue guidance in the respective areas of each Secretary to carry out this section.

(2)(A) The Secretary of Defense and the Secretary of Transportation shall coordinate in the development of guidance under paragraph (1).

(B) The Secretary of Defense shall 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 airworthiness, or the use of airspace.

(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 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 Defense;

(3) records of such communications are not maintained for more than 180 days unless the Secretary of Defense determines that maintenance of such records—

(A) is necessary to support one or more functions of the Department of Defense; or

(B) is required for a longer period to support a civilian law enforcement agency or by any other applicable law or regulation; and

(4) such communications are not disclosed outside the Department of Defense unless the disclosure—

(A) would fulfill a function of the Department of Defense;

(B) would support a civilian law enforcement agency or the enforcement activities of a regulatory agency of the Federal Government in connection with a criminal or civil investigation of, or any regulatory action with regard to, an action described in subsection (b)(1); or

(C) is otherwise required by law or regulation.

(f) BUDGET.—The Secretary of Defense shall submit to Congress, as a part of the defense budget materials for each fiscal year after fiscal year 2018, a consolidated funding display that identifies the funding source for the actions described in subsection (b)(1) within the Department of Defense. The funding display shall be in unclassified form, but may contain a classified annex.

(g) SEMIANNUAL BRIEFINGS.—(1) On a semiannual basis during the five-year period beginning March 1, 2018, the Secretary of Defense and the Secretary of Transportation, shall jointly provide a briefing to the appropriate congressional committees on the activities carried out pursuant to this section. Such briefings 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 Secretaries have informed the public as to the possible use of authorities under this section; and

(D) how the Secretaries have engaged with Federal, State, and local law enforcement agencies to implement and use such authorities.

(2) Each briefing under paragraph (1) shall be in unclassified form, 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 of Defense any authority of the Secretary of Transportation or the Administrator of the Federal Aviation Administration under title 49; and

(2) vest in the Secretary of Transportation or the Administrator of the Federal Aviation Administration any authority of the Secretary of Defense under this title.

~~(i) PARTIAL TERMINATION.—(1) Except as provided by paragraph (2), the authority to carry out this section with respect to the covered facilities or assets specified in clauses (iv) through (viii) of subsection (j)(3)(C) 1 shall terminate on December 31, 2023.~~

~~(2) The President may extend by 180 days the termination date specified in paragraph (1) if before November 15, 2023, the President certifies to Congress that such extension is in the national security interests of the United States.~~

(~~j~~i) DEFINITIONS.—In this section:

(1) The term "appropriate congressional committees" means—

(A) the congressional defense committees;

(B) the Select Committee on Intelligence, the Committee on the Judiciary, and the Committee on Commerce, Science, and Transportation of the Senate; and

(C) the Permanent Select Committee on Intelligence, the Committee on the Judiciary, and the Committee on Transportation and Infrastructure 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 of Defense, 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 of the United States); and

(C) directly relates to the missions of the Department of Defense pertaining to—

(i) nuclear deterrence, including with respect to nuclear command and control, integrated tactical warning and attack assessment, and continuity of government;

(ii) missile defense;

(iii) national security space;

(iv) assistance in protecting the President or the Vice President (or other officer immediately next in order of succession to the office of the President) pursuant to the Presidential Protection Assistance Act of 1976 (18 U.S.C. 3056 note);

(v) air defense of the United States, including air sovereignty, ground-based air defense, and the National Capital Region integrated air defense system;

(vi) combat support agencies (as defined in paragraphs (1) through (4) of section 193(f) of this title);

(vii) special operations activities specified in paragraphs (1) through (9) of section 167(k) of this title;

(viii) production, storage, transportation, or decommissioning of high-yield explosive munitions, by the Department; ~~or~~

(ix) a Major Range and Test Facility Base (as defined in section 196(i) of this title)~~.~~;

(x) organizing, training, equipping, and other functions at Department of Defense installations necessary to prepare the armed forces to deploy and conduct military operations in support of a contingency operation;

(xi) deployment and sustainment of the armed forces in support of a contingency operation;

(xii) a military training route (as defined in section 183a(h)(6) of this title);

(xiii) an Army arsenal (as defined in section 7541(d)(1) of this title); or

(xiv) production, storage, transportation, or decommissioning of chemical or biological materials by the Department.

(4) The term "defense budget materials", with respect to a fiscal year, means the materials submitted to Congress by the Secretary of Defense in support of the budget for that fiscal year.

(5) The terms "electronic communication", "intercept", "oral communication", and "wire communication" have the meanings given those terms in section 2510 of title 18.

(6) The term "temporarily covered facility or asset" means a facility or asset determined by the Secretary of Defense to be temporarily at high risk of loss due to a specific, highly significant vulnerability or due to specific indications that such a facility or asset is a target for hostile action.

(~~6~~7) The terms "unmanned aircraft" and "unmanned aircraft system" have the meanings given those terms in section 44801 of title 49.