


(Original Signature of Member)

117TH CONGRESS
2D SESSION

H. R. _____

To amend the Communications Act of 1934 to prohibit the application of certain private land use restrictions to amateur station antennas, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. JOHNSON of Ohio introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Communications Act of 1934 to prohibit the application of certain private land use restrictions to amateur station antennas, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Amateur Radio Emer-
5 gency Preparedness Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) More than 770,000 amateur operators in
2 the United States are licensed by the Federal Com-
3 munications Commission (in this section referred to
4 as the “Commission”) in the amateur radio services,
5 and, by treaty, amateur operators licensed by other
6 countries are authorized to operate within the
7 United States.

8 (2) Amateur radio, in addition to providing life-
9 saving emergency communications at no cost to tax-
10 payers, provides a fertile ground for technical self-
11 training in modern telecommunications, electronics
12 technology, and emergency communications tech-
13 niques and protocols.

14 (3) There is a strong Federal interest in the ef-
15 fective performance of amateur stations established
16 at the residences of amateur operators. Among other
17 reasons, when an emergency arises, it can be too
18 late, and too dangerous, to erect an effective an-
19 tenna. However, amateur stations have been shown
20 to be frequently and increasingly precluded by un-
21 reasonable private land use restrictions, including re-
22 strictive covenants.

23 (4) Commission regulations have for more than
24 3 decades prohibited State and local regulation of
25 amateur station antenna structures that precludes

1 or fails to reasonably accommodate amateur service
2 communications, or that does not constitute the min-
3 imum practicable regulation to accomplish a legiti-
4 mate State or local purpose. The policy of the Com-
5 mission has been and is to require States and local-
6 ities to permit erection of a station antenna struc-
7 ture at heights and dimensions sufficient to reason-
8 ably accommodate amateur service communications.
9 The Commission struck an appropriate balance by
10 enabling effective use of the amateur service without
11 burdening localities and adjoining properties.

12 (5) The Commission has sought guidance and
13 direction from Congress with respect to the applica-
14 tion of the Commission's limited preemption policy
15 regarding amateur service communications to private
16 land use restrictions, including restrictive covenants.

17 (6) In 1996, Congress provided guidance, direc-
18 tion, and authority to the Commission by directing
19 the Commission to promulgate regulations (Public
20 Law 104-104, title II, section 207, 110 Stat. 114;
21 47 U.S.C. 303 note) that have preempted all private
22 land use restrictions applicable to exterior commu-
23 nications facilities that impair the ability of citizens
24 to receive television broadcast signals, direct broad-
25 cast satellite services, or multichannel multipoint

1 distribution services, or to transmit and receive wire-
2 less internet services.

3 (7) To further the public interest benefits that
4 amateur radio brings to society, private land use re-
5 strictions that prohibit, restrict, or impair amateur
6 operators from operating, installing, or maintaining
7 effective outdoor amateur station antenna structures
8 should also be preempted.

9 **SEC. 3. APPLICATION OF PRIVATE LAND USE RESTRIC-**
10 **TIONS TO AMATEUR STATION ANTENNAS.**

11 (a) IN GENERAL.—Part I of title III of the Commu-
12 nications Act of 1934 (47 U.S.C. 301 et seq.) is amended
13 by adding at the end the following:

14 **“SEC. 345. APPLICATION OF PRIVATE LAND USE RESTRIC-**
15 **TIONS TO AMATEUR STATION ANTENNAS.**

16 “(a) IN GENERAL.—A private land use restriction
17 that prohibits, restricts, or impairs, or has the effect of
18 prohibiting, restricting, or impairing, an amateur operator
19 from operating, installing, or maintaining any amateur
20 station antenna on property subject to the control of the
21 amateur operator may not be adopted or enforced, except
22 as permitted by subsection (b).

23 “(b) PERMISSIBLE RESTRICTIONS.—

24 “(1) IN GENERAL.—Subject to paragraph (2),
25 the following private land use restrictions applicable

1 to amateur station antennas may be adopted or en-
2 forced:

3 “(A) A restriction that requires an ama-
4 teur station antenna to be installed in compli-
5 ance with the specifications of the manufacturer
6 of the antenna, applicable zoning ordinances,
7 amateur radio tower ordinances (if any), and
8 governmentally adopted building codes.

9 “(B) A restriction that requires an ama-
10 teur station antenna to be maintained in a
11 structurally safe condition.

12 “(C) A restriction that requires any dete-
13 riorated or structurally unsafe component of an
14 amateur station antenna to be repaired, re-
15 placed, or removed.

16 “(D) A restriction that requires an ama-
17 teur station antenna to be removed if the prop-
18 erty on which the antenna is located ceases to
19 be subject to the control of an amateur oper-
20 ator.

21 “(E) A restriction that requires an ama-
22 teur station antenna ground-mounted electrical
23 enclosure, ground-mounted control enclosure, or
24 guy wire anchor to be visually screened if such
25 enclosure or anchor—

1 “(i) is visible from the street faced by
2 the dwelling; or

3 “(ii) is located in an unfenced side or
4 rear yard and is visible from an adjoining
5 property.

6 “(2) REASONABLE APPLICATION AND ENFORCE-
7 MENT.—A private land use restriction permitted by
8 paragraph (1) shall be reasonably applied and en-
9 forced.

10 “(c) LIMITATIONS ON PRIOR APPROVAL.—

11 “(1) REQUIREMENT NOT PRESENT IN LAND
12 RECORDS AT TIME OF PURCHASE OR LEASE.—A re-
13 quirement in a private land use restriction for an
14 amateur operator to obtain prior approval for the in-
15 stallation of an amateur station antenna may not be
16 adopted or enforced if such requirement for prior
17 approval was not present in the publicly recorded
18 land records prior to the purchase or lease of the
19 property by the amateur operator.

20 “(2) INFORMATION REQUIRED FOR PRIOR AP-
21 PROVAL.—A private land use restriction that re-
22 quires an amateur operator to submit an application
23 for approval of an amateur station antenna prior to
24 installation may not be adopted or enforced if the in-
25 formation required to be submitted as part of the

1 application is greater or more detailed than the in-
2 formation required to be submitted as part of an ap-
3 plication for any other improvement.

4 “(3) DEEMED APPROVAL.—If a community as-
5 sociation or other person authorized to enforce a pri-
6 vate land use restriction applicable to an amateur
7 station antenna does not approve or deny an appli-
8 cation of an amateur operator for approval of the in-
9 stallation of an amateur station antenna by the day
10 that is 45 days after the date on which the applica-
11 tion is submitted, the application shall be deemed to
12 be approved on the 45th day.

13 “(4) EXISTING APPROVAL.—If a private land
14 use restriction requires an amateur operator to sub-
15 mit an application for approval of an amateur sta-
16 tion antenna prior to installation, after a community
17 association or other person authorized to enforce the
18 restriction approves the application, no further ap-
19 proval of the antenna may be required, unless there
20 is a material change in the dimensions or structural
21 integrity of the antenna.

22 “(d) ANTENNAS THAT DO NOT REQUIRE PRIOR AP-
23 PROVAL.—A requirement in a private land use restriction
24 for an amateur operator to obtain prior approval for the
25 installation of an amateur station antenna may not be

1 adopted or enforced with respect to any of the following
2 types of amateur station antennas:

3 “(1) 1 METER OR LESS IN DIAMETER OR DI-
4 AGONAL MEASUREMENT.—An antenna for use by an
5 amateur operator that is less than 1 meter in diame-
6 ter or diagonal measurement, or having other meas-
7 urements prescribed by the Commission.

8 “(2) FLAGPOLE ANTENNAS.—A flagpole, capa-
9 ble of dual use as a flagpole and an amateur station
10 antenna, not greater than 43 feet in height above
11 ground.

12 “(3) WIRE ANTENNAS.—Minimally obtrusive
13 wire antennas, of a length necessary for the fre-
14 quency of use intended.

15 “(4) VERTICAL ANTENNAS.—Vertical antennas,
16 not to exceed 43 feet in height above ground, includ-
17 ing collapsible whip and tilt-over antennas.

18 “(e) RULES OF CONSTRUCTION.—

19 “(1) CONTROL OF PROPERTY.—For purposes of
20 this section, property is subject to the control of an
21 amateur operator if the amateur operator is an
22 owner, lessee, or legal resident of the property.

23 “(2) IMPAIRMENT OF INSTALLATION, MAINTEN-
24 NANCE, OR OPERATION.—For purposes of this sec-
25 tion, a private land use restriction prohibits, re-

1 stricts, or impairs the installation, maintenance, or
2 operation of an amateur station antenna if the re-
3 striction—

4 “(A) unreasonably delays or prevents in-
5 stallation, maintenance, or operation of the an-
6 tenna;

7 “(B) unreasonably increases the costs or
8 difficulty of installation, maintenance, or oper-
9 ation of the antenna; or

10 “(C) prevents or degrades reception or
11 transmission of a signal acceptable to the ama-
12 teur operator.

13 “(3) LIMITED COMMON AREA.—

14 “(A) IN GENERAL.—For purposes of this
15 section, if there exists, within the property for
16 which a community association is responsible, a
17 limited common area to which an amateur oper-
18 ator has the right to exclude use by others, the
19 limited common area shall be treated as prop-
20 erty under the control of the amateur operator.

21 “(B) PERMISSION ACCESS.—For purposes
22 of subparagraph (A), access by a community
23 association for roof repairs, landscaping, or
24 other maintenance activities shall be treated as
25 a permission, or authorized access, which does

1 not limit or destroy the control of the amateur
2 operator.

3 “(f) ENFORCEMENT.—

4 “(1) STAY OF ENFORCEMENT.—If an action is
5 initiated to seek a declaratory ruling from the Com-
6 mission or a court of competent jurisdiction regard-
7 ing whether a private land use restriction complies
8 with this section, any community association or
9 other person seeking to enforce the restriction shall
10 suspend all enforcement efforts with respect to the
11 restriction until a ruling in the action has become
12 final.

13 “(2) PROHIBITION ON ACCRUAL OF PENALTIES
14 OR OTHER COSTS.—No penalty or other cost related
15 to an amateur station antenna may accrue against
16 an amateur operator under a private land use re-
17 striction while an action described in paragraph (1)
18 is pending to determine whether the restriction com-
19 plies with this section.

20 “(3) BURDEN OF PROOF.—

21 “(A) REGARDING COMPLIANCE WITH THIS
22 SECTION.—In any action before the Commis-
23 sion or a court of competent jurisdiction involv-
24 ing the interpretation of any provision of this
25 section, the burden of demonstrating that a

1 particular private land use restriction complies
2 with this section shall be on the party that
3 seeks to impose, maintain, or enforce the re-
4 striction.

5 “(B) REGARDING VIOLATION OF PRIVATE
6 LAND USE RESTRICTION.—In any action before
7 the Commission or a court of competent juris-
8 diction to determine whether an amateur sta-
9 tion antenna violates a private land use restric-
10 tion, the party alleging the violation bears the
11 burden of proof.

12 “(g) ACCESS TO FEDERAL COURT.—An action to en-
13 force the rights and requirements under this section may
14 be brought in an appropriate district court of the United
15 States without first exhausting remedies under State law.

16 “(h) AFFIRMATION OF LIMITED PREEMPTION OF
17 STATE AND LOCAL LAND USE REGULATION.—Nothing in
18 this section shall be construed to modify or otherwise limit
19 the applicability of section 97.15(b) of title 47, Code of
20 Federal Regulations, or any successor regulation.

21 “(i) DEFINITIONS.—In this section:

22 “(1) AMATEUR OPERATOR.—The term ‘amateur
23 operator’—

1 “(A) has the meaning given such term in
2 section 97.3 of title 47, Code of Federal Regu-
3 lations, or any successor regulation; and

4 “(B) includes any other person authorized
5 to operate an amateur station in the United
6 States.

7 “(2) AMATEUR STATION.—The term ‘amateur
8 station’ has the meaning given such term in section
9 97.3 of title 47, Code of Federal Regulations, or any
10 successor regulation.

11 “(3) ANTENNA.—The term ‘antenna’ in-
12 cludes—

13 “(A) the transmitting and receiving ele-
14 ments;

15 “(B) any feedline, control enclosures, or
16 electrical enclosures necessary for effective
17 transmission or reception; and

18 “(C) any support structure, guy wire, an-
19 chor, or tie-off.

20 “(4) COMMUNITY ASSOCIATION.—The term
21 ‘community association’ means—

22 “(A) a condominium association (as de-
23 fined in section 604 of the Condominium and
24 Cooperative Abuse Relief Act of 1980 (15
25 U.S.C. 3603));

1 “(B) a cooperative association (as defined
2 in such section); and

3 “(C) a residential real estate management
4 association (as defined in section 528 of the In-
5 ternal Revenue Code of 1986).

6 “(5) LESSEE.—The term ‘lessee’ means a per-
7 son who, in exchange for payment—

8 “(A) takes temporary possession of resi-
9 dential real estate through a lease; or

10 “(B) takes possession, in whole or in part,
11 by lease or purchase, of residential real estate
12 subject to a ground lease.

13 “(6) PRIVATE LAND USE RESTRICTION.—The
14 term ‘private land use restriction’ means—

15 “(A) a publicly recorded provision (whether
16 such provision is denoted as a covenant, deed
17 restriction, declaration, use restriction, covenant
18 that runs with the land, or otherwise) that—

19 “(i) touches or concerns the real es-
20 tate to which the provision applies; and

21 “(ii) limits or restricts the use of the
22 real estate or imposes conditions on the
23 use of the real estate; or

24 “(B) a rule or regulation of a community
25 association, whether publicly recorded or not,

1 that limits or restricts the use of real estate or
2 imposes conditions on the use of real estate.”.

3 (b) REGULATIONS.—Not later than 180 days after
4 the date of the enactment of this Act, the Federal Commu-
5 nications Commission shall promulgate regulations to im-
6 plement the amendment made by subsection (a).