

119TH CONGRESS
1ST SESSION

S. _____

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 SENATE OF THE UNITED STATES

Mr. WICKER (for himself and Mr. BLUMENTHAL) introduced the following bill; which was read twice and 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:

8 (1) More than 770,000 amateur operators in
9 the United States are licensed by the Federal Com-

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

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

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

21 (4) Commission regulations have for more than
22 3 decades prohibited State and local regulation of
23 amateur station antenna structures that precludes
24 or fails to reasonably accommodate amateur service
25 communications, or that does not constitute the min-

1 imum practicable regulation to accomplish a legiti-
2 mate State or local purpose. The policy of the Com-
3 mission has been and is to require States and local-
4 ities to permit erection of a station antenna struc-
5 ture at heights and dimensions sufficient to reason-
6 ably accommodate amateur service communications.
7 The Commission struck an appropriate balance by
8 enabling effective use of the amateur service without
9 burdening localities and adjoining properties.

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

15 (6) In section 207 of the Telecommunications
16 Act of 1996 (47 U.S.C. 303 note; Public Law 104-
17 104), Congress provided guidance, direction, and au-
18 thority to the Commission by directing the Commis-
19 sion to promulgate regulations that have preempted
20 all private land use restrictions applicable to exterior
21 communications facilities that impair the ability of
22 citizens to receive television broadcast signals, direct
23 broadcast satellite services, or multichannel
24 multipoint distribution services, or to transmit and
25 receive wireless internet services.

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

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

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

12 **“SEC. 346. APPLICATION OF PRIVATE LAND USE RESTRIC-**
13 **TIONS TO AMATEUR STATION ANTENNAS.**

14 “(a) DEFINITIONS.—In this section:

15 “(1) AMATEUR OPERATOR.—The term ‘amateur
16 operator’—

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

20 “(B) includes any other person authorized
21 to operate an amateur station in the United
22 States.

23 “(2) AMATEUR STATION.—The term ‘amateur
24 station’ has the meaning given such term in section

1 97.3 of title 47, Code of Federal Regulations, or any
2 successor regulation.

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

5 “(A) the transmitting and receiving ele-
6 ments;

7 “(B) any feedline, control enclosures, or
8 electrical enclosures necessary for effective
9 transmission or reception; and

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

12 “(4) COMMUNITY ASSOCIATION.—The term
13 ‘community association’ means—

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

18 “(B) a cooperative association (as defined
19 in such section); and

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

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

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

3 “(B) takes possession, in whole or in part,
4 by lease or purchase, of residential real estate
5 subject to a ground lease.

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

8 “(A) a publicly recorded provision (whether
9 such provision is denoted as a covenant, deed
10 restriction, declaration, use restriction, covenant
11 that runs with the land, or otherwise) that—

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

14 “(ii) limits or restricts the use of the
15 real estate or imposes conditions on the
16 use of the real estate; or

17 “(B) a rule or regulation of a community
18 association, whether publicly recorded or not,
19 that limits or restricts the use of real estate or
20 imposes conditions on the use of real estate.

21 “(b) CERTAIN RESTRICTIONS PROHIBITED.—A pri-
22 vate land use restriction that prohibits, restricts, or im-
23 pairs, or has the effect of prohibiting, restricting, or im-
24 pairing, an amateur operator from operating, installing,
25 or maintaining any amateur station antenna on property

1 subject to the control of the amateur operator may not
2 be adopted or enforced, except as permitted by subsection
3 (c).

4 “(c) PERMISSIBLE RESTRICTIONS.—

5 “(1) IN GENERAL.—Subject to paragraph (2),
6 the following private land use restrictions applicable
7 to amateur station antennas may be adopted or en-
8 forced:

9 “(A) A restriction that requires an ama-
10 teur station antenna to be installed in compli-
11 ance with the specifications of the manufacturer
12 of the antenna, applicable zoning ordinances,
13 amateur radio tower ordinances (if any), and
14 governmentally adopted building codes.

15 “(B) A restriction that requires an ama-
16 teur station antenna to be maintained in a
17 structurally safe condition.

18 “(C) A restriction that requires any dete-
19 riorated or structurally unsafe component of an
20 amateur station antenna to be repaired, re-
21 placed, or removed.

22 “(D) A restriction that requires an ama-
23 teur station antenna to be removed if the prop-
24 erty on which the antenna is located ceases to

1 be subject to the control of an amateur oper-
2 ator.

3 “(E) A restriction that requires an ama-
4 teur station antenna ground-mounted electrical
5 enclosure, ground-mounted control enclosure, or
6 guy wire anchor to be visually screened if such
7 enclosure or anchor—

8 “(i) is visible from the street faced by
9 the dwelling; or

10 “(ii) is located in an unfenced side or
11 rear yard and is visible from an adjoining
12 property.

13 “(2) REASONABLE APPLICATION AND ENFORCE-
14 MENT.—A private land use restriction permitted by
15 paragraph (1) shall be reasonably applied and en-
16 forced.

17 “(d) LIMITATIONS ON PRIOR APPROVAL.—

18 “(1) REQUIREMENT NOT PRESENT IN LAND
19 RECORDS AT TIME OF PURCHASE OR LEASE.—A re-
20 quirement in a private land use restriction for an
21 amateur operator to obtain prior approval for the in-
22 stallation of an amateur station antenna may not be
23 adopted or enforced if such requirement for prior
24 approval was not present in the publicly recorded

1 land records prior to the purchase or lease of the
2 property by the amateur operator.

3 “(2) INFORMATION REQUIRED FOR PRIOR AP-
4 PROVAL.—A private land use restriction that re-
5 quires an amateur operator to submit an application
6 for approval of an amateur station antenna prior to
7 installation may not be adopted or enforced if the in-
8 formation required to be submitted as part of the
9 application is greater or more detailed than the in-
10 formation required to be submitted as part of an ap-
11 plication for any other improvement.

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

21 “(4) EXISTING APPROVAL.—If a private land
22 use restriction requires an amateur operator to sub-
23 mit an application for approval of an amateur sta-
24 tion antenna prior to installation, after a community
25 association or other person authorized to enforce the

1 restriction approves the application, no further ap-
2 proval of the antenna may be required, unless there
3 is a material change in the dimensions or structural
4 integrity of the antenna.

5 “(e) ANTENNAS THAT DO NOT REQUIRE PRIOR AP-
6 PROVAL.—A requirement in a private land use restriction
7 for an amateur operator to obtain prior approval for the
8 installation of an amateur station antenna may not be
9 adopted or enforced with respect to any of the following
10 types of amateur station antennas:

11 “(1) 1 METER OR LESS IN DIAMETER OR DI-
12 AGONAL MEASUREMENT.—An antenna for use by an
13 amateur operator that is less than 1 meter in diame-
14 ter or diagonal measurement, or having other meas-
15 urements prescribed by the Commission.

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

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

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

1 “(f) RULES OF CONSTRUCTION.—

2 “(1) CONTROL OF PROPERTY.—For purposes of
3 this section, property is subject to the control of an
4 amateur operator if the amateur operator is an
5 owner, lessee, or legal resident of the property.

6 “(2) IMPAIRMENT OF INSTALLATION, MAINTENANCE,
7 OR OPERATION.—For purposes of this section,
8 a private land use restriction prohibits, restricts,
9 or impairs the installation, maintenance, or
10 operation of an amateur station antenna if the restriction—
11

12 “(A) unreasonably delays or prevents installation,
13 maintenance, or operation of the antenna;
14

15 “(B) unreasonably increases the costs or
16 difficulty of installation, maintenance, or operation
17 of the antenna; or

18 “(C) prevents or degrades reception or
19 transmission of a signal acceptable to the amateur
20 operator.

21 “(3) LIMITED COMMON AREA.—

22 “(A) IN GENERAL.—For purposes of this
23 section, if there exists, within the property for
24 which a community association is responsible, a
25 limited common area to which an amateur oper-

1 ator has the right to exclude use by others, the
2 limited common area shall be treated as prop-
3 erty under the control of the amateur operator.

4 “(B) PERMISSION ACCESS.—For purposes
5 of subparagraph (A), access by a community
6 association for roof repairs, landscaping, or
7 other maintenance activities shall be treated as
8 a permission, or authorized access, which does
9 not limit or destroy the control of the amateur
10 operator.

11 “(g) ENFORCEMENT.—

12 “(1) STAY OF ENFORCEMENT.—If an action is
13 initiated to seek a declaratory ruling from the Com-
14 mission or a court of competent jurisdiction regard-
15 ing whether a private land use restriction complies
16 with this section, any community association or
17 other person seeking to enforce the restriction shall
18 suspend all enforcement efforts with respect to the
19 restriction until a ruling in the action has become
20 final.

21 “(2) PROHIBITION ON ACCRUAL OF PENALTIES
22 OR OTHER COSTS.—No penalty or other cost related
23 to an amateur station antenna may accrue against
24 an amateur operator under a private land use re-
25 striction while an action described in paragraph (1)

1 is pending to determine whether the restriction com-
2 plies with this section.

3 “(3) BURDEN OF PROOF.—

4 “(A) REGARDING COMPLIANCE WITH THIS
5 SECTION.—In any action before the Commis-
6 sion or a court of competent jurisdiction involv-
7 ing the interpretation of any provision of this
8 section, the burden of demonstrating that a
9 particular private land use restriction complies
10 with this section shall be on the party that
11 seeks to impose, maintain, or enforce the re-
12 striction.

13 “(B) REGARDING VIOLATION OF PRIVATE
14 LAND USE RESTRICTION.—In any action before
15 the Commission or a court of competent juris-
16 diction to determine whether an amateur sta-
17 tion antenna violates a private land use restric-
18 tion, the party alleging the violation bears the
19 burden of proof.

20 “(h) PRIVATE RIGHT OF ACTION.—A person harmed
21 by a violation of this section may bring an action against
22 the person alleged to have committed the violation in an
23 appropriate district court of the United States without
24 first exhausting remedies under State law.

1 “(i) AFFIRMATION OF LIMITED PREEMPTION OF
2 STATE AND LOCAL LAND USE REGULATION.—Nothing in
3 this section shall be construed to modify or otherwise limit
4 the applicability of section 97.15(b) of title 47, Code of
5 Federal Regulations, or any successor regulation.”.

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