

Calendar No. 700

114TH CONGRESS }
2d Session }

SENATE

{ REPORT
114-400

AMATEUR RADIO PARITY ACT OF 2015

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 1685

together with

ADDITIONAL VIEWS



DECEMBER 9, 2016.—Ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

69-010

WASHINGTON : 2016

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

JOHN THUNE, South Dakota, *Chairman*

ROGER F. WICKER, Mississippi	BILL NELSON, Florida
ROY BLUNT, Missouri	MARIA CANTWELL, Washington
MARCO RUBIO, Florida	CLAIRE MCCASKILL, Missouri
KELLY AYOTTE, New Hampshire	AMY KLOBUCHAR, Minnesota
TED CRUZ, Texas	RICHARD BLUMENTHAL, Connecticut
DEB FISCHER, Nebraska	BRIAN SCHATZ, Hawaii
JERRY MORAN, Kansas	ED MARKEY, Massachusetts
DAN SULLIVAN, Alaska	CORY BOOKER, New Jersey
RON JOHNSON, Wisconsin	TOM UDALL, New Mexico
DEAN HELLER, Nevada	JOE MANCHIN, West Virginia
CORY GARDNER, Colorado	GARY PETERS, Michigan
STEVE DAINES, Montana	

NICK ROSSI, *Staff Director*

ADRIAN ARNAKIS, *Deputy Staff Director*

JASON VAN BEEK, *General Counsel*

KIM LIPSKY, *Democratic Staff Director*

CHRISTOPHER DAY, *Democratic Deputy Staff Director*

CLINT ODOM, *Democratic General Counsel*

Calendar No. 700

114TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 114-400

AMATEUR RADIO PARITY ACT OF 2015

DECEMBER 9, 2016.—Ordered to be printed

Mr. THUNE, from the Committee on Commerce, Science, and
Transportation, submitted the following

R E P O R T

[To accompany S. 1685]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1685) to direct the Federal Communications Commission to extend to private land use restrictions its rule relating to reasonable accommodation of amateur service communications, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of S. 1685 is to direct the Federal Communications Commission (FCC) to extend to private land use restrictions its rule relating to reasonable accommodation of amateur radio service communications. This would build on the FCC's previous actions to balance promoting amateur radio operations with the legitimate interests of local governments in local zoning matters. As with existing restrictions on local regulations, private land use restrictions would be required to reasonably accommodate amateur radio communications and constitute no more than the minimum practicable regulation to accomplish the legitimate purpose of such restrictions.

BACKGROUND AND NEEDS

More than 700,000 amateur radio operators are currently licensed in the United States. Amateur radio service is a voluntary, noncommercial communications service used by persons of any age who are interested in radio technique solely with a personal aim and without financial interest. Individuals must obtain a license from the FCC and abide by FCC rules in order to operate an ama-

teur radio station. Amateur radio communications take place across 27 spectrum frequency bands on a shared use basis.

There is a strong and long-time Federal interest in promoting amateur radio communications, as evidenced by the comprehensive rules and regulations adopted by the FCC for amateur radio service. These rules, found in part 97 of title 47 of the Code of Federal Regulations, establish procedures for station licensing, operator licensing, radio frequency allocations, technical standards required of amateur radio equipment, and practices required of amateur operators. The amateur radio service provides a reservoir of trained operators, technicians, and electronic experts who can be called on in times of national or local emergencies.

In 1985, the FCC found that local zoning ordinances often unreasonably restricted amateur radio antennas in residential areas and thereby interfered with the strong Federal interest in supporting effective amateur radio communications. The policy implemented to protect both amateur radio service and legitimate local zoning purposes, known as “PRB-1,” established a three-part test for such regulations: (1) they must not preclude amateur service communications; (2) they must reasonably accommodate such communications, (3) and they must constitute the minimum practicable regulation to accomplish the State or local authority’s legitimate purpose.

The FCC has not extended this policy to private land use regulations in covenants, conditions, and restrictions (CC&Rs), noting that deed restrictions, covenants, and homeowner association regulations were private agreements that did not normally concern the FCC. The FCC has explained, however, “should Congress see fit to enact a statutory directive mandating the expansion of our reasonable accommodation policy, the Commission would expeditiously act to fulfill its obligation thereunder.”¹ It is estimated that CC&Rs today now cover more than 25 million housing units – nearly five times as many as when PRB-1 was adopted.

Congress has previously directed the FCC to prohibit land use restrictions that impair installation of certain types of antenna by a private individual. In particular, section 207 of the Telecommunications Act of 1996 (47 U.S.C. 303 note) directed the FCC to promulgate regulations to prohibit restrictions on over-the-air television antennas and direct broadcast satellite dishes. The regulations adopted by the FCC included preemption of private restrictions.

SUMMARY OF PROVISIONS

S. 1685, the Amateur Radio Parity Act of 2015, would direct the FCC to extend to private land use restrictions its rule relating to reasonable accommodation of amateur service communications.

LEGISLATIVE HISTORY

S. 1685 was introduced by Senators Wicker and Blumenthal on June 25, 2015. Senators Franken, Moran, and Coons are cosponsors. On November 18, 2015, the Committee met in open Executive Session, and, by a voice vote, ordered S. 1685 to be reported favorably without amendment.

¹Federal Communications Commission Order on Reconsideration, RM 8763, November 13, 2000, at http://wireless.fcc.gov/services/index.htm?job=prb-1*id=amateur*page=3.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

S. 1685—Amateur Radio Parity Act of 2015

S. 1685 would direct the Federal Communication Commission (FCC) to amend regulations related to the height and dimensions of certain antenna structures. Under the bill, the regulations would be amended to prohibit private land-use restrictions from applying to antennas used for amateur radio communications if the restrictions prevent or impede those communications.

Based on information from the FCC, CBO estimates that implementing S. 1685 would cost less than \$500,000. Further, the agency is authorized to collect fees sufficient to offset its regulatory costs each year; therefore, CBO estimates that the net discretionary cost would be negligible, assuming appropriation actions consistent with that authority.

Enacting S. 1685 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting S. 1685 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year period beginning in 2027.

S. 1685 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

The bill contains a private-sector mandate as defined in UMRA because it would prohibit the application of private land-use restrictions that are inconsistent with the requirements in the bill. The mandate would apply to private entities such as homeowners associations by limiting their ability to apply land-use restrictions on amateur radio communications. Homeowner association rules, mobile home park agreements, condo association bylaws, and deed covenants could be affected by the bill's prohibition.

The cost of the mandate would be any costs associated with revising private land-use policies if necessary to comply with the bill. Such costs would probably be small. Therefore, CBO estimates that the aggregate cost of the mandate would fall below the annual threshold established in UMRA for private-sector mandates (\$154 million in 2016, adjusted annually for inflation).

The CBO staff contacts for this estimate are Kim Cawley (for federal costs) and Logan Smith (for private-sector mandates). The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

The bill would apply to entities that establish, enforce, or are otherwise subject to private land use restrictions, including restrictive covenants, that relate to amateur service communications.

ECONOMIC IMPACT

S. 1685 would not have an adverse impact on the Nation's economy.

PRIVACY

The bill would not have any adverse impact on the personal privacy of individuals.

PAPERWORK

S. 1685 would not significantly increase paperwork requirements for individuals and businesses.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title.

This section would designate the short title of this bill as the "Amateur Radio Parity Act of 2015."

Section 2. Findings.

This section would find that there is a strong Federal interest in the effective performance of amateur radio stations by the more than 700,000 radio amateurs licensed by the FCC to operate in the United States. The section also would find that the FCC has sought guidance and direction from Congress with respect to the application of the FCC's limited preemption policy regarding amateur radio communications to private land use restrictions, including restrictive covenants.

Section 3. Accommodation of amateur service communications.

This section would direct the FCC to amend its rules to prohibit a private land use restriction from applying to amateur service communications if the restriction precludes such communications, fails to reasonably accommodate such communications, or does not constitute the minimum practicable restriction to accomplish the legitimate purpose of the private entity seeking to enforce the restriction.

ADDITIONAL VIEWS OF SENATOR NELSON

While I appreciate the goals of S. 1685, I write to express my concerns about the approach taken by the legislation. I agree with my colleagues that amateur radio operators provide a key communications service in the nation. In fact, even the National Hurri-

cane Center has acknowledged that amateur radio operators play an important role in collecting and disseminating information in emergency situations. Given this role that they play, I believe it is important for homeowner's and community associations to try to work cooperatively with the amateur radio community to find ways to further the continued availability of these services.

That said, I have serious concerns about S. 1685. It is one thing to try to find a way to balance the interests of homeowner's associations and amateur radio operators. It is another to preempt the ability of those homeowner's associations to enforce privately-negotiated covenants and restrictions that have been entered into freely by the persons who voluntarily chose to live in those communities. In one fell swoop, this bill would effectively repeal parts of millions of private contracts and agreements relied upon by homeowners around the country.

I know that the bill's sponsors believe that their legislation continues to preserve a measure of authority for homeowners' and other community associations to protect their interests. And I respect the fact that this legislation takes a far different and more limited approach compared to the Over-the-Air Reception Device installation rules. But by requiring "reasonable accommodations" and the "minimum practicable restriction," this bill would tie homeowner's and community associations' hands and leave them open to potentially endless litigation. And there is a fear that the broadly worded language of the bill - that it applies to "any private land use restriction" - could be read to preempt a landlord's ability to place limits on a renter.

It may be that another approach to this issue could gain my full support. But I will look very skeptically on any proposal that would limit the ability of homeowner's and community associations to prohibit the installation of amateur radio equipment in the communities governed by those associations. That includes an approach that would require those associations to allow amateur radio operators to install effective antennas, as some have suggested. What is an effective antenna to one operator is very different to another - and a boundless legal standard like that again threatens these associations with endless litigation.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill as reported would make no change to existing law.