

AMATEUR RADIO PARITY ACT OF 2016

SEPTEMBER 9, 2016.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. UPTON, from the Committee on Energy and Commerce, submitted the following

R E P O R T

[To accompany H.R. 1301]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 1301) 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, report favorably thereon with amendments and recommend that the bill as amended do pass.

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The amendments are as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Amateur Radio Parity Act of 2016”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) More than 730,000 radio amateurs in the United States are licensed by the Federal Communications Commission in the amateur radio services.

(2) Amateur radio, at no cost to taxpayers, provides a fertile ground for technical self-training in modern telecommunications, electronics technology, and emergency communications techniques and protocols.

(3) There is a strong Federal interest in the effective performance of amateur stations established at the residences of licensees. Such stations have been shown to be frequently and increasingly precluded by unreasonable private land use restrictions, including restrictive covenants.

(4) Federal Communications Commission regulations have for three decades prohibited the application to stations in the amateur service of State and local regulations that preclude or fail to reasonably accommodate amateur service communications, or that do not constitute the minimum practicable regulation to accomplish a legitimate State or local purpose. Commission policy has been and is to require States and localities to permit erection of a station antenna structure at heights and dimensions sufficient to accommodate amateur service communications.

(5) The Commission has sought guidance and direction from Congress with respect to the application of the Commission’s limited preemption policy regarding amateur service communications to private land use restrictions, including restrictive covenants.

(6) There are aesthetic and common property considerations that are uniquely applicable to private land use regulations and the community associations obligated to enforce covenants, conditions, and restrictions in deed-restricted communities. These considerations are dissimilar to those applicable to State law and local ordinances regulating the same residential amateur radio facilities.

(7) In recognition of these considerations, a separate Federal policy than exists at section 97.15(b) of title 47, Code of Federal Regulations, is warranted concerning amateur service communications in deed-restricted communities.

(8) Community associations should fairly administer private land use regulations in the interest of their communities, while nevertheless permitting the installation and maintenance of effective outdoor amateur radio antennas. There exist antenna designs and installations that can be consistent with the aesthetics and physical characteristics of land and structures in community associations while accommodating communications in the amateur radio services.

SEC. 3. APPLICATION OF PRIVATE LAND USE RESTRICTIONS TO AMATEUR STATIONS.

(a) **AMENDMENT OF FCC RULES.**—Not later than 120 days after the date of the enactment of this Act, the Federal Communications Commission shall amend section 97.15 of title 47, Code of Federal Regulations, by adding a new paragraph that prohibits the application to amateur stations of any private land use restriction, including a restrictive covenant, that—

(1) on its face or as applied, precludes communications in an amateur radio service;

(2) fails to permit a licensee in an amateur radio service to install and maintain an effective outdoor antenna on property under the exclusive use or control of the licensee; or

(3) does not constitute the minimum practicable restriction on such communications to accomplish the lawful purposes of a community association seeking to enforce such restriction.

(b) **ADDITIONAL REQUIREMENTS.**—In amending its rules as required by subsection (a), the Commission shall—

(1) require any licensee in an amateur radio service to notify and obtain prior approval from a community association concerning installation of an outdoor antenna;

(2) permit a community association to prohibit installation of any antenna or antenna support structure by a licensee in an amateur radio service on common property not under the exclusive use or control of the licensee; and

(3) subject to the standards specified in paragraphs (1) and (2) of subsection (a), permit a community association to establish reasonable written rules concerning height, location, size, and aesthetic impact of, and installation requirements for, outdoor antennas and support structures for the purpose of conducting communications in the amateur radio services.

SEC. 4. AFFIRMATION OF LIMITED PREEMPTION OF STATE AND LOCAL LAND USE REGULATION.

The Federal Communications Commission may not change section 97.15(b) of title 47, Code of Federal Regulations, which shall remain applicable to State and local land use regulation of amateur service communications.

SEC. 5. DEFINITIONS.

In this Act:

(1) **COMMUNITY ASSOCIATION.**—The term “community association” means any non-profit mandatory membership organization composed of owners of real estate described in a declaration of covenants or created pursuant to a covenant or other applicable law with respect to which a person, by virtue of the person’s ownership of or interest in a unit or parcel, is obligated to pay for a share of real estate taxes, insurance premiums, maintenance, improvement, services, or other expenses related to common elements, other units, or any other real estate other than the unit or parcel described in the declaration.

(2) **TERMS DEFINED IN REGULATIONS.**—The terms “amateur radio services”, “amateur service”, and “amateur station” have the meanings given such terms in section 97.3 of title 47, Code of Federal Regulations.

Amend the title so as to read:

A bill to direct the Federal Communications Commission to amend its rules so as to prohibit the application to amateur stations of certain private land use restrictions, and for other purposes.

PURPOSE AND SUMMARY

H.R. 1301 minimizes the restrictions placed on amateur radio operators residing in communities governed by community associations. Covenants imposed by community associations may include strict restrictions on antennae and support structures on residences, preventing amateur radio licensees residing in private communities from operating at all. Current rules prohibit state and local regulations from precluding amateur service communications; however, these rules do not apply to community associations and private land use regulations. The legislation would help to allow amateur radio licensees to operate and clarify the extent to which community associations may impose rules.

H.R. 1301 directs the Federal Communications Commission (FCC) to adopt rules to protect the rights of amateur radio operators to use amateur radio equipment with minimal restriction. In general, communications equipment is recognized under current law as having a societal benefit in providing access to information. Land use restrictions imposed by governments or homeowners’ associations on other pieces of communications equipment are currently prohibited by FCC regulation. The legislation directs the FCC to adopt regulations for the use of amateur radio equipment, ensuring that restrictions are minimally restrictive and tailored to achieve a legitimate end. In addition, the legislation requires any amateur operator to obtain prior approval for equipment installation from the community association and allows community associations to prohibit equipment installation on commonly owned property within the community.

BACKGROUND AND NEED FOR LEGISLATION

There are currently more than 730,000 amateur radio operators licensed in the United States. To be eligible to operate an amateur radio station, individuals must obtain a license from the FCC and comply with FCC rules. The FCC has six classes of licensed opera-

tors, each of which is determined by the licensee's level of skill and knowledge displayed during the licensing exam. In addition to obtaining a license, the licensee must own and install the necessary equipment to be able to operate a radio. This includes a radio transceiver, antenna system, and transmission lines. There are 27 spectrum bands allocated for shared use among amateur radio operators.

Besides serving as an educational or social hobby, amateur radio stations have also been utilized to provide critical assistance during times of emergencies. If a natural disaster knocks out traditional communications or internet access, amateur radio operators in several instances have provided assistance by relaying critical information to the local community and public safety agencies. There are currently 40,000 licensed amateur radio operators that serve as members of the Amateur Radio Emergency Service.

Amateur radio licensees residing in homeowner community associations face challenges installing the necessary outdoor radio equipment attached to their homes. Community association-imposed covenants require residents to follow specific guidelines for what can and cannot be done to the resident's home. Covenants typically place restrictions on physical characteristics of the home, including restrictions on physical antenna equipment used to utilize amateur radio communications.

Current law recognizes the societal benefits provided by amateur radio stations. Physical structures of stations are required to be reasonably accommodated by state and local government. However, this does not apply to community associations or privately owned land. Land use restrictions imposed by governments or homeowners' associations on other pieces of communications equipment, such as antenna used to receive satellite services or video programming, are currently prohibited by FCC regulations. These rules do not extend to antennae used for operating amateur radio.

H.R. 1301, the Amateur Radio Parity Act of 2016, would remedy ongoing differences between community association covenant restrictions and the installation of outdoor amateur radio equipment. The legislation ensures community association rules for amateur radio equipment are minimal and provides licensees the ability to install reasonably sized equipment and operate stations.

HEARINGS

The Subcommittee on Communications and Technology held a hearing on H.R. 1301 on January 12, 2016. The Subcommittee received testimony from:

- Elizabeth Bowles, President and Chair of the Board, Aristotle, Inc., on behalf of Wireless Internet Service Providers Association;
- Harold Feld, Senior Vice President, Public Knowledge; and
- Robert McDowell, Partner, Wiley Rein LLP, Senior Fellow, Hudson Institute, former Commissioner of the Federal Communications Commission.

COMMITTEE CONSIDERATION

On February 10, 2016, the Subcommittee on Communications and Technology met in open markup session and forwarded H.R. 1301 to the full Committee, without amendment, by a voice vote.

On July 13, 2016, the full Committee on Energy and Commerce met in open markup session and ordered H.R. 1301 reported to the House, as amended, by a voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken in connection with ordering H.R. 1301 reported.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a hearing and made findings that are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goal of the legislation is to allow amateur radio station operators residing in community associations to install equipment that is consistent with minimal restrictions of the community associations.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 1301 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

EARMARK, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives, the Committee finds that H.R. 1301 contains no earmarks, limited tax benefits, or limited tariff benefits.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 3, 2016.

Hon. FRED UPTON,
*Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1301, the Amateur Radio Parity Act of 2016.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Stephen Rabent.

Sincerely,

MARK P. HADLEY
(For Keith Hall).

Enclosure.

H.R. 1301—Amateur Radio Parity Act of 2016

H.R. 1301 would direct the Federal Communications 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. The bill also would require any licensee in an amateur radio service to obtain prior approval from a community association before installing an outdoor antenna. In addition, H.R. 1301 would allow community associations to prohibit the installation of antenna or support structures on common property and would permit community associations to establish rules concerning the nature of the installation.

Based on information from the FCC, CBO estimates that implementing H.R. 1301 would cost less than \$500,000 to update agency rules. Moreover, 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 H.R. 1301 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting H.R. 1301 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

H.R. 1301 contains no intergovernmental mandates as defined in 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 limit 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 bill also would impose a private-sector mandate on amateur radio licensees by requiring them to obtain prior approval from their community association before installing an outdoor antenna. The cost of the

mandates would be any costs associated with revising private land-use policies if necessary to comply with the bill, and the cost of notifying community associations of the intent to install an outdoor antenna. Based on an analysis of information about the existing practices of community associations, such costs would probably be small. Therefore, CBO estimates that the aggregate cost of the mandates would fall well below the annual threshold established in UMRA for private-sector mandates (\$154 million in 2016, adjusted annually for inflation).

On February 9, 2016, CBO transmitted a cost estimate for S. 1685, the Amateur Radio Parity Act of 2015, as ordered reported by the Senate Committee on Commerce, Science, and Transportation on November 18, 2015. The two pieces of legislation are similar and CBO's estimates of the budgetary effects are the same.

The CBO staff contacts for this estimate are Stephen Rabent (for federal costs) and Logan Smith (for private-sector mandates). The estimate was approved by Theresa Gullo, Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 1301 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that enacting H.R. 1301 specifically directs to be completed 1 rule making within the meaning of 5 U.S.C. 551.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section provides the short title of Amateur Radio Parity Act of 2016.

Section 2. Findings

This section identifies benefits that over 730,000 licensed amateur radio stations in the United States provide to societies. The findings acknowledge the unique challenges for amateur radio licenses complying with private land use regulations and community associations, but recognize that there are antenna designs and installations consistent with community association land and structure requirements.

Section 3. Application of private land use restrictions to amateur stations

Section 3 establishes that private land use restrictions may not prevent amateur radio communications, but require licensees to obtain approval from a community association prior to equipment installation. The section allows a community association to prohibit amateur radio installation equipment on common property not under exclusive ownership of the licensee. Community associations may establish reasonable rules concerning aesthetics and installation requirements for outdoor equipment.

Section 4. Affirmation of limited preemption of state and local land use regulation

Section 4 Affirms current preemption of state and local land use regulations in regards to precluding amateur service communications.

Section 5. Definitions

Section 5 contains definitions for a community association, and other terms defined in current regulations.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

This legislation does not amend any existing Federal statute.