

Legislation: S.1534/H.R. 555 + State PRB-1 Laws

May 19, 2017

**Dayton
Hamvention**

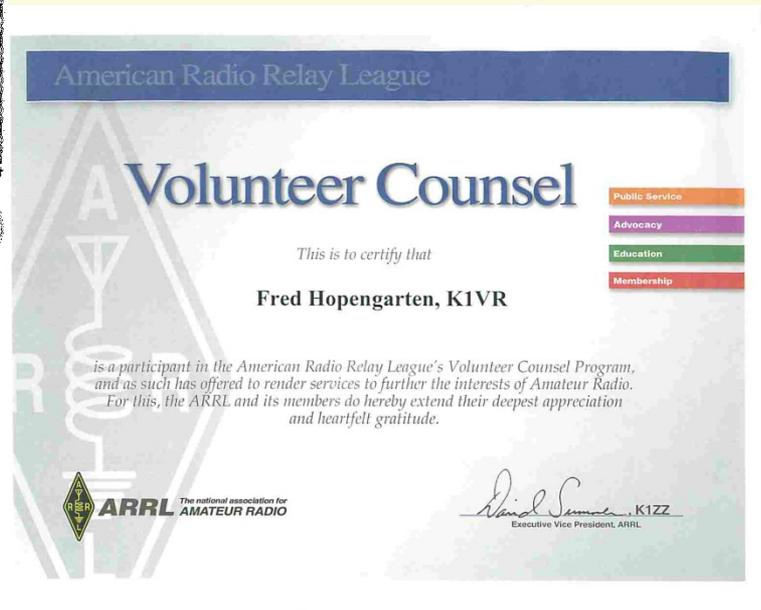
Fred Hopengarten, Esq., K1VR

hopengarten@post.harvard.edu

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H.R. 555/S.1534

“Amateur Radio Parity Act of 2017”

§ 3 (a) [FCC shall add] 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.

ARPA of 2017 (continued)

3(b) Additional requirements. . . . 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) . . . , **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.

Problem #1: Prior Approval

3(b)(1) [Ham must] notify and obtain prior approval from a community association concerning installation of an outdoor antenna;

NOTIFY

- **Required** [No stealth antennas.]
- When? [Prior to erection.]
- How? [Vote of Association. Maybe ARC first.]

OBTAIN *PRIOR* APPROVAL

- What if *ultra vires*? [Assoc. only does roads & trash]
- What if not *ultra vires*, but no active association?
- What if submitted, but no decision?

Problem #2:

Exclusive Use or Control

3(b)(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

Issues:

- Prohibit use of roof? Yes.
- Prohibit use of “back yard” in townhouses? [Exclusive use?]
- Prohibit use of deck, porch or lanai? [Exclusive use?]

Problem #3:

Reasonable . . . Rules

3(b)(3) . . . **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.

- *NOT* PRB-1 test of “communications he or she desires” (1985, ¶ 25)
- May be only a 440 MHz whip, which (1) allows communications and is (2) “effective”
- Note : 1 meter dish, or VHF/UHF TV Yagi (OTARD – 47 CFR § 1.4000) **do NOT require prior approval**

Problem #4: “Or”

☞ If HOA does not preclude communications [3(a)(1)] and allows an effective outdoor antenna [3(a)(2)], HOA does NOT have to meet test of 3(a)(3) [minimum practicable restriction], because of the word “or”

☞ As written: 3(a)(1), 3(a)(2) *or* 3(a)(3)

If I Were King . . . Change Def

H.R. 555/S.1534 Definition of a Community Association:

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.

If King , I'd Slice the Loaf

One size does *not* fit all:

- **MUD's** – apartments: roof and any porch
- **PUD's** – townhouses: the fenced backyard and deck/lanai, not to exceed 7' over the height of the roof
- **Lots over one acre:** back yard; not to exceed 70'

New Topic

State PRB-1 Statutes

20 States [40%] Without

[Even if you live in a state with a law,
perhaps you'll find a useful amendment here.]

States +		
Alabama	Georgia	New Jersey
Arizona	Hawaii	New York
Arkansas	Iowa	North Dakota
Connecticut	Kentucky	Rhode Island
Delaware	Maryland	South Carolina
D.C.	Minnesota	South Dakota
Florida	Nebraska	

FCC – 47 C.F.R. § 97.15(b)

Sec. 97.15 Station antenna structures.

(b) . . . a station antenna structure may be erected at heights and dimensions sufficient to accommodate amateur service communications. (State and local regulation of a station antenna structure **must not preclude** amateur service communications. Rather, it must **reasonably accommodate** such communications communications **and** *[not “OR”]* must constitute the **minimum practicable regulation** to accomplish the state or local authority's legitimate purpose. See PRB-1, 101 FCC 2d 952 (1985) for details.)

§ 97.15(b) has THREE parts

- 1) a complete preemption of local regulation that *precludes* amateur service communications,
- (2) a requirement that local regulations that involve placement, screening or height or antennas *must be crafted* to “*reasonably accommodate*” amateur communications, and
- (3) local law must be the “*minimum practicable regulation.*”
The federal courts have recognized this “minimum practicable regulation” test to be a form of “least restrictive means” test. (fn)

(fn) cf. *Pentel v. City of Mendota Heights (MN)*, 13 F.3d 1261, 1265 (8th Cir. 1994).

BTW, Don't Forget DA 99-2569

- “Balancing of interests” forbidden (§ 7)
- Regulations must not “impinge on the needs of amateur operators” (§ 9)

(fn) **MODIFICATION AND CLARIFICATION OF POLICIES AND PROCEDURES GOVERNING SITING AND MAINTENANCE OF AMATEUR RADIO ANTENNAS**

<https://www.fcc.gov/wireless/bureau-divisions/mobility-division/amateur-radio-service/prb-1-1999#block-menu-block-4>

So let's propose a state law – better, but within § 97.15(b)

First, a title – **An Act:**

**TO RECOGNIZE THE VALUE OF AMATEUR RADIO
COMMUNICATIONS BY REQUIRING LOCAL UNITS OF
GOVERNMENT TO REASONABLY ACCOMMODATE
AMATEUR RADIO COMMUNICATIONS**

OR (shorter)

**RELATING TO LOCAL UNIT OF GOVERNMENT
REGULATION OF AMATEUR RADIO ANTENNAS**

§ 1. INTENT.

Recognizing the amateur radio service as a public benefit, amateur radio operation from residences, private vehicles and public areas must be facilitated and encouraged at all levels of government ^[fn] so as to promote the effective operation of a station by individual amateurs, and to **meet the** communications **need** of an authorized applicant seeking any necessary any necessary permission.

OR

The Long Form,

**if you have a cooperative legislative
committee**

§ 1. INTENT.

Amateur radio station antenna structures may be erected at heights and dimensions sufficient to accommodate **effective** amateur service **communications**. As required by federal law, 47 CFR § 97.15(b), local regulation of a station antenna structure must not preclude amateur service communications. Rather, it must reasonably accommodate such communications and must constitute the minimum practicable regulation to accomplish the state or local authority's legitimate purpose. Some amateur antenna configurations require more substantial installations than others if they are to provide the amateur operator with the communications **that he/she desires to engage in**. (See PRB-1, 101 FCC 2d 952 (1985) for details.) Among other purposes, this article is intended to conform state law to current federal law.

§ 2. DEFINITIONS.

- (a) An “amateur radio station” means a radio station operated by a duly authorized person interested in radio technique solely with a personal aim and **without pecuniary interest**, as defined in 47 USC § 153 (3).
- (b) An amateur radio station antenna structure and associated antennas are **not** part of a “**commercial** mobile service” regulated by 47 USC § 332, or wireless communication facility, such as cellular telephone facilities, and no local unit of government may regulate an amateur radio station antenna structure as a commercial facility.

§ 3. USES.

An amateur radio station antenna structure is an accessory use of a lot, but may **also** be a **principal use** of a lot.

Why? Deals with the “two lot” problem. *Village of St. Louis Park v. Casey (MN)*, 218 Minn. 394, 16 N.W. 2d 459 (1944), (“The two lots comprise but a single tract or parcel.”)

§ 4. HEIGHT AND DIMENSIONS.

Any code, ordinance or by-law must allow for heights and dimensions of such antenna structures sufficient to effectively accommodate amateur radio communications **desired by the radio amateur.**

Sources: “Heights and dimensions” from 47 CFR § 97.15(b)
“Desired by the radio amateur” from PRB-1 ¶ 25

§ 5. ENCROACHMENTS.

Amateur radio station antenna structures shall be located such that guy wires and other accessories shall not cross or encroach upon any street or other public space, or over above-ground electric utility lines, or encroach upon any property not owned or controlled by the applicant, without the **written consent** of the owner of the encroached-upon property, space or above-ground electric utility lines.

§ 6. NUMBER OF ALLOWED STRUCTURES.

Nothing in this section shall preclude the installation of **more than one** amateur radio antenna support structure on any lot in the rural zoning districts, provided the standards of this section are met and there **is at least 10,000 square feet of lot area** for each **newly-constructed antenna support structure**. There is **no limit** to the number of amateur radio antennas **mounted to a building** and such structures shall be considered a building appurtenance.

Or, if you are not adventurous

OR:

A local unit of government may not restrict the number of **support structures** for an amateur radio antenna.

OR:

A local unit of government may not restrict the number of amateur radio **station antenna structures**.

§ 7. BALANCING NOT PERMITTED.

In accordance with 47 CFR § 97.15(b) requirements of reasonable accommodation and minimum practicable regulation, a **balancing of interests** approach is **not appropriate** when considering any building or use permit.

Source:

<https://www.fcc.gov/wireless/bureau-divisions/mobility-division/amateur-radio-service/prb-1-1999#block-menu-block-4>

§ 8. MINIMUM PRACTICABLE REGULATION; FEES.

In accordance with 47 CFR § 97.15(b) requirements of reasonable accommodation and minimum practicable regulation, **unreasonable fees or onerous conditions** are not permitted. Any application fee, review fee, or required payment must not be too high, and therefore unreasonable. No condition shall be more than the minimum practicable regulation.

§ 9. EFFECT; BURDEN.

Any ordinance, resolution, regulation, plan or other action adopted or taken by local unit of government in violation of the provisions of this section is void. Any local unit of government that denies an application for approval of an amateur station antenna structure shall **state the reasons** for the denial and shall, on appeal, **bear the burden** of proving that the authority's actions are consistent with this act.

§ 10. CHOICE OF COURT.

Any lawsuit questioning the validity of an ordinance, resolution, regulation, plan or other action adopted or taken by local unit of government in violation of the provisions of this section may be brought in **either federal or state court.**

Why? *DePolo v. Bd. of Sup'rs Tredyffrin Tp.* , 835 F. 3d 381 (3d Cir. 2016)

§ 11. GRANDFATHER CLAUSE; REPAIRS.

Station antenna structures constructed prior to the effective date of this section are **exempted from subsequent changes** in zoning regulations by any local unit of government and may be repaired as required.

Crass Commercial

\$49.95

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Array Solutions

HRO

Fred Hopengarten, Esq.

K1VR

hopengarten@post.harvard.edu

www.antennazoning.com

