

2001 DRAFTING REQUEST

Bill

Received: 03/05/2001

Received By: shoveme

Wanted: As time permits

Identical to LRB:

For: Joan Wade (608) 266-7746

By/Representing: Rep. Wade

This file may be shown to any legislator: NO

Drafter: shoveme

May Contact:

Addl. Drafters:

Subject: Counties - zoning
Munis - zoning

Extra Copies: SRM, MDK

Submit via email: NO

Requester's email:

Pre Topic:

No specific pre topic given

Topic:

Zoning ordinances that affect amateur radio operators' antennas

Instructions:

See Attached.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	shoveme 04/09/2001	jdyer 04/11/2001	pgreensl 04/11/2001	_____	lrb_docadmin 04/11/2001	lrb_docadminS&L 04/12/2001	

FE Sent For:

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1/?	shoveme	1 4/11/01	11 PJ	4/11 PJ/KF			

11 MES 4/6/01

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BILL
REQUEST FORM

LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street

Use of this form is optional. It is often better to talk directly with the LRB attorney who will draft the bill.

Use this form only for **BILL** drafts. Attach more pages if necessary.

Legislator, agency or other body requesting this draft:

Rep. Joan Wade

Date: 3/2/01 Person submitting request (name, phone number):

Rep. Joan Wade 6-7746

Persons to contact for questions about this draft (names, phone numbers):

Tanya Hein or Joan Wade 6-7746

Describe the problem, including any helpful examples. Re: PRB-1 and amateur radio towers

How do you want to solve the problem?

- Eliminate the conflict between amateur radio operators regarding radio antennas and local authorities regarding restrictive ordinances which preclude effective ~~radio~~ amateur radio communications.
- * ◦ Please model after FL, ME, WA, WY, TX laws which are all the same
- * ◦ Enclosed: legislation from all 10 states that have laws on this issue & PRB-1 from F.C.C.

Please attach a copy of any correspondence or other material that may help us.

If you know of any statute sections that might be affected, list them or provide a marked-up (not retyped) copy.

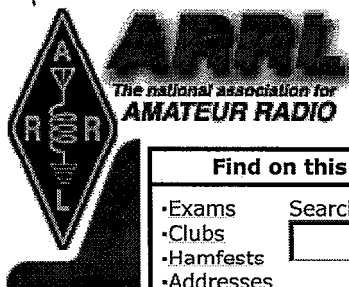
You may attach a marked-up (not retyped) copy of any LRB draft, or provide its number (e.g., 1999 LRB-2345/1 or 1997 AB-67):

Requests are confidential unless stated otherwise.

- May we tell others that we are working on this for you? Yes No
- If yes: Anyone who asks? Yes No Any legislator? Yes No Only the following persons: _____

Do you consider this request urgent? Yes No If yes, please indicate why: _____

Should we give this request priority over any other pending request of this legislator, agency or body? Yes No If yes, sign your name here: _____



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PRB-1

[Local Zoning Ordinances](#) · [Deed Restrictions](#) · [Conclusion](#)
 · [CC&Rs in the Amateur Service](#)


PRB-1, cited as "Amateur Radio Preemption, 101 FCC2d 952 (1985)," is a limited preemption of local zoning ordinances. It delineates three rules for local municipalities to follow in regulating antenna structures: (1) state and local regulations that operate to preclude amateur communications are in direct conflict with federal objectives and must be preempted; (2) local regulations that involve placement, screening or height of antennas based on health, safety or aesthetic considerations must be crafted to reasonably accommodate amateur communications; and (3) such local regulations must represent the minimum practicable regulation to accomplish the local authority's legitimate purpose. The heart of PRB-1 is codified in the FCC Rules [97.15(e)]. Of course, what is "reasonable" depends on the circumstances! For suggestions about what to do when you are faced with a restrictive ordinance, see "Interacting with Municipal Officials," below. A package containing the full text of PRB-1 and supplementary materials not found here may be obtained by sending \$10.00 (ARRL members, \$15.00 non-members) to the Regulatory Information Branch at ARRL HQ.

Local Zoning Ordinances


In the past, amateurs relied solely on their powers of persuasion when dealing with local officials. Conflicts between amateurs and local authorities over the antenna height, placement in the yard, number of antennas on a particular support structure (eg, a tower) and the like were common. In the absence of detailed federal regulations governing amateur antennas (except for those aspects discussed previously), municipal leaders often fill in the void and use their broad discretion in public health and safety matters to enact regulations that limit antennas and supporting structures. The people who write these regulations have a lot of other things on their mind, so these regulations seldom take into account your need for an


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antenna of certain dimensions and height to be effective (working the DXpeditions, running phone patches to the South Pole and so on), so conflicts arise.

for the OMF/microwave experimenter.

The situation reached epidemic proportions in the early 1980s and amateurs who invested family savings in fighting local zoning, building codes and covenant restrictions in the courts around the country were losing because there was no clear statement of any federal interest in the matter by the FCC. The courts held that the FCC regulates radio, but because the FCC had issued no statement restraining the zoning power of cities and counties, the traditionally local interest in zoning regulations that protects the public generally superseded the interests of any individual amateur.

By October 1983, the ARRL Board of Directors reviewed the adverse court decisions and recognized that antenna restrictions would continue to be a major stumbling block unless a statement of federal preemption emerged from the FCC. On July 16, 1984, the League filed a formal request asking the FCC to issue a declaratory ruling that would declare void all local ordinances that preclude or significantly inhibit effective, reliable amateur communications. Hundreds of comments were filed when the FCC established a pleading cycle, labeled PRB-1 ("PRB" being the designation for the FCC's Private Radio Bureau, the bureau in the FCC's internal organization that handled Amateur Radio matters at that time. It has been replaced by the Wireless Telecommunications Bureau). Comments were filed by amateurs, zoning authorities and city planners.

September 19, 1985, was a red-letter day in the history of Amateur Radio, as the FCC issued its now-famous PRB-1 declaratory *Memorandum Opinion and Order*, which says, in pertinent part, that "state and local regulations that operate to preclude amateur communications in their communities are in direct conflict with federal objectives and must be preempted."

May 31, 1989, marked another milestone when the Commission adopted the revised and reorganized Part 97. The new rules codify the essence of the PRB-1 ruling: "... State or local regulation of amateur antennas may not preclude, but must reasonably accommodate, such communications, and must constitute the minimum practicable regulation to accomplish the local authority's legitimate purpose." [97.15(e)].

The specific holding of PRB-1 has been of extreme benefit to amateurs and, with a few exceptions, has encouraged open cooperation and dialoguc between the communities seeking to regulate amateur antennas and amateurs. Now that important language of PRB-1 has been incorporated into the FCC rules, the federal interest and official FCC policy with respect to amateur communications can be more easily demonstrated to municipal officials who need to be educated by you and your fellow hams.

Interaction with Municipal Officials

Don't be intimidated by the thought of going to city hall for a permit. Virtually all ham radio operators who own the physical area necessary for the safe installation of a tower should be able to legally erect a tower of *some* size. Here are the steps to take to enhance your chances of getting as much tower as you wish:

Information Gathering

Because regulations pertaining to antennas and the way building and zoning departments (or the

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Memorandum Opinion and Order in PRB-1

Memorandum Opinion and Order in PRB-1

Before the
Federal Communications Commission
Washington, DC 20554

FCC 85-506
36149

In the Matter of)
)
 Federal preemption of state and) PRB-1
 local regulations pertaining)
 to Amateur radio facilities.)

MEMORANDUM OPINION AND ORDER

Adopted: September 16, 1985 ; Released: September 19, 1985

By the Commission: Commissioner Rivera not participating.

Background

1. On July 16, 1984, the American Radio Relay League, Inc (ARRL) filed a Request for Issuance of a Declaratory Ruling asking us to delineate the limitations of local zoning and other local and state regulatory authority over Federally-licensed radio facilities. Specifically, the ARRL wanted an explicit statement that would preempt all local ordinances which provably preclude or significantly inhibit effective reliable amateur radio communications. The ARRL acknowledges that local authorities can regulate amateur installations to insure the safety and health of persons in the community, but believes that those regulations cannot be so restrictive that they preclude effective amateur communications.

2. Interested parties were advised that they could file comments in the matter. \fn 1/ With extension, comments were due on or before December 26, 1984, \fn 2/ with reply comments due on or before January 25, 1985 \fn 3/ Over sixteen hundred comments were filed.

Local Ordinances

3. Conflicts between amateur operators regarding radio antennas and local authorities regarding restrictive ordinances are common. The amateur operator is governed by the regulations contained in Part 97 of our rules. Those rules do not limit the height of an amateur antenna but they require, for aviation safety reasons, that certain FAA notification and FCC approval

procedures must be followed for antennas which exceed 200 feet in height above ground level or antennas which are to be erected near airports. Thus, under FCC rules some antenna support structures require obstruction marking and lighting. On the other hand, local municipalities or governing bodies frequently enact regulations limiting antennas and their support structures in height and location, e.g. to side or rear yards, for health, safety or aesthetic considerations. These limiting regulations can result in conflict because the effectiveness of the communications that emanate from an amateur radio station are directly dependent upon the location and the height of the antenna. Amateur operators maintain that they are precluded from operating in certain bands allocated for their use if the height of their antennas is limited by a local ordinance.

4. Examples of restrictive local ordinances were submitted by several amateur operators in this proceeding. Stanley J. Cichy, San Diego, California, noted that in San Diego amateur radio antennas come under a structures ruling which limits building heights to 30 feet. Thus, antennas there are also limited to 30 feet. Alexander Vrenios, Mundelein, Illinois wrote that an ordinance of the Village of Mundelein provides that an antenna must be a distance from the property line that is equal to one and one-half times its height. In his case, he is limited to an antenna tower for his amateur station just over 53 feet in height.

5. John C. Chapman, an amateur living in Bloomington, Minnesota, commented that he was not able to obtain a building permit to install an amateur radio antenna exceeding 35 feet in height because the Bloomington city ordinance restricted "structures" heights to 35 feet. Mr. Chapman said that the ordinance, when written, undoubtedly applied to buildings but was now being applied to antennas in the absence of a specific ordinance regulating them. There were two options open to him if he wanted to engage in amateur communications. He could request a variance to the ordinance by way of hearing before the City Council, or he could obtain affidavits from his neighbors swearing that they had no objection to the proposed antenna installation. He got the building permit after obtaining the cooperation of his neighbors. His concern, however, is that he had to get permission from several people before he could effectively engage radio communications for which he had a valid FCC amateur license.

6. In addition to height restrictions, other limits are enacted by local jurisdictions--anti-climb devices on towers or fences around them; minimum distances from high voltage power lines; minimum distances of towers from property lines; and regulations pertaining to the structural soundness of the antenna installation. By and large, amateurs do not find these safety precautions objectionable. What they do object to are the sometimes prohibitive, non-refundable application filing fees to obtain a permit to erect an antenna installation and those provisions in ordinances which regulate antennas for purely aesthetic reasons. The amateurs contend, almost universally, that "beauty is in the eye of the beholder." They assert that an antenna installation is not more aesthetically displeasing than other objects that people keep on their property, e.g. motor homes, trailers, pick-up trucks, solar collectors and gardening equipment.

Restrictive Covenants

7. Amateur operators also oppose restrictions on their amateur operations which are contained in the deeds for their homes or in their apartment leases. Since these restrictive

covenants are contractual agreements between private parties, they are not generally a matter of concern to the Commission. However, since some amateurs who commented in this proceeding provided us with examples of restrictive covenants, they are included for information. Mr. Eugene O. Thomas of Hollister, California included in his comments an extract of the Declaration of Covenants and Restrictions for Ridgemark Estates, County of San Benito, State of California. It provides:

No antenna for transmission or reception of radio signals shall be erected outdoors for use by any dwelling unit except upon approval of the Directors. No radio or television signals or any other form of electromagnetic radiation shall be permitted to originate from any lot which may unreasonably interfere with the reception of television or radio signals upon any other lot.

Marshall Wilson, Jr. provided a copy of the restrictive covenant contained in deeds for the Bell Martin Addition #2, Irving, Texas. It is binding upon all of the owners or purchasers of the lots in the said addition, his or their heirs, executors, administrators or assigns. It reads:

No antenna or tower shall be erected upon any lot for the purposes of radio operations.

William J. Hamilton resides in an apartment building in Gladstone, Missouri. He cites a clause in his lease prohibiting the erection of an antenna. He states that he has been forced to give up operation amateur radio equipment except a hand-held 2 meter (144-148 MHz) radio transceiver. He maintains that he should not be penalized just because he lives in an apartment.

Other restrictive covenants are less global in scope than those cited above. For example, Robert Webb purchased a home in Houston, Texas. His deed restriction prohibited "transmitting or receiving antennas extending above the roof line."

8. Amateur operators generally oppose restrictive covenants for several reasons. They maintain that such restrictions limit the places that they can reside if they want to pursue their hobby of amateur radio. Some state that they impinge on First Amendment rights of speech. Others believe that a constitutional right is being abridged because, in their view, everyone has a right to access the airwaves regardless of where they live.

9. The contrary belief held by housing subdivision communities and condominium or homeowner's associations is that amateur radio installations constitute safety hazards, cause interference to other electronic equipment which may be operated in the home (television, radio, stereos) or are eyesores that detract from the aesthetic and tasteful appearance of the housing development or apartment complex. To counteract these negative consequences, the subdivisions and associations include in their deeds, leases or by-laws, restrictions and limitations on the location and height of antennas or, in some cases, prohibit them altogether. The restrictive covenants are contained in the contractual agreement entered into at the time of the sale or lease of the property. Purchasers or lessees are free to choose whether they wish to reside where such restrictions on amateur antennas are in effect or settle elsewhere.

Supporting Comments

10. The Department of Defense (DOD) supported the ARRL and emphasized in its comments that continued success of existing national security and emergency preparedness telecommunications

plans involving amateur stations would be severely diminished if state and local ordinances were allowed to prohibit the construction and usage of effective amateur transmission facilities. DOD utilizes volunteers in the Military Affiliate Radio Service (MARS), \fn 4/ Civil Air Patrol (CAP) and the Radio Amateur Civil Emergency Service (RACES). It points out that these volunteer communicators are operating radio equipment installed in their homes and that undue restrictions on antennas by local authorities adversely affect their efforts. DOD states that the responsiveness of these volunteer systems would be impaired if local ordinances interfere with the effectiveness of these important national telecommunication resources. DOD favors the issuance of a ruling that would set limits for local and state regulatory bodies when they are dealing with amateur stations.

11. Various chapters of the American Red Cross also came forward to support the ARRL's request for a preemptive ruling. The Red Cross works closely with amateur radio volunteers. It believes that without amateurs' dedicated support, disaster relief operations would significantly suffer and that its ability to serve disaster victims would be hampered. It feels that antenna height limitations that might be imposed by local bodies will negatively affect the service now rendered by the volunteers.

12. Cities and counties from various parts of the United States filed comments in support of the ARRL's request for a Federal preemption ruling. The comments from the Director of Civil Defense, Port Arthur, Texas are representative:

The Amateur Radio Service plays a vital role with our Civil Defense program here in Port Arthur and the design of these antennas and towers lends greatly to our ability to communicate during times of disaster. We do not believe there should be any restrictions on the antennas and towers except for reasonable safety precautions. Tropical storms, hurricanes and tornadoes are a way of life here on the Texas Gulf Coast and good communications are absolutely essential when preparing for a hurricane and even more so during recovery operations after the hurricane has past.

13. The Quarter Century Wireless Association took a strong stand in favor of the Issuance of a declaratory ruling. It believes that Federal preemption is necessary so that there will be uniformity for all Amateur Radio installations on private property throughout the United States.

14. In its comments, the ARRL argued that the Commission has the jurisdiction to preempt certain local land use regulations which frustrate or prohibit amateur radio communications. It said that the appropriate standard in preemption cases is not the extent of state and local interest in a given regulation, but rather the impact of the regulation on Federal goals. Its position is that Federal preemption is warranted whenever local government regulations relate adversely to the operational aspects of amateur communication. The ARRL maintains that localities routinely employ a variety of land use devices to preclude the installation of effective amateur antennas, including height restrictions, conditional use permits, building setbacks and dimensional limitations on antennas. It sees a declaratory ruling of Federal preemption as necessary to cause municipalities to accommodate amateur operator needs in land use planning efforts.

15. James C. O'Connell, an attorney who has represented several amateurs before local zoning authorities, said that requiring amateurs to seek variances or special use approval to

erect reasonable antennas unduly restricts the operation of amateur stations. He suggested that the Commission preempt zoning ordinances which impose antenna height limits of less than 65 feet. He said that this height would represent a reasonable accommodation of the communication needs of most amateurs and the legitimate concerns of local zoning authorities.

Opposing Comments

16. The City of La Mesa, California has a zoning regulation which controls amateur antennas. Its comments reflected an attempt to reach a balanced view.

This regulation has neither the intent, nor the effect, of precluding or inhibiting effective and reliable communications. Such antennas may be built as long as their construction does not unreasonably block views or constitute eyesores. The reasonable assumption is that there are always alternatives at a given site for different placement, and/or methods for aesthetic treatment. Thus, both public objectives of controlling land use for the public health, safety, and convenience, and providing an effective communications network, can be satisfied. A blanket to completely set aside local control, or a ruling which recognizes control only for the purpose of safety of antenna construction, would be contrary to...legitimate local control.

17. Comments from the County of San Diego state:

While we are aware of the benefits provided by amateur operators, we oppose the issuance of a preemption ruling which would elevate 'antenna effectiveness' to a position above all other considerations. We must, however, argue that the local government must have the ability to place reasonable limitations upon the placement and configuration of amateur radio transmitting and receiving antennas. Such ability is necessary to assure that the local decision-makers have the authority to protect the public health, safety and welfare of all citizens.

In conclusion, I would like to emphasize an important difference between your regulatory powers and that of local governments. Your Commission's approval of the preemptive requests would establish a "national policy." However, any regulation adopted by a local jurisdiction could be overturned by your Commission or a court if such regulation was determined to be unreasonable.

18. The City of Anderson, Indiana, summarized some of the problems that face local communities:

I am sympathetic to the concerns of these antenna owners and I understand that to gain the maximum reception from their devices, optimal location is necessary. However, the preservation of residential zoning districts as "liveable" neighborhoods is jeopardized by placing these antennas in front yards of homes. Major problems of public safety have been encountered, particularly vision blockage for auto and pedestrian access. In addition, all communities are faced with various building lot sizes. Many building lots are so small that established setback requirements (in order to preserve adequate air and light) are vulnerable to the unregulated placement of antennas.

...the exercise of preemptive authority by the FCC in granting this request would not be in the best interest of the general public.

19. The National Association of Counties (NACO), the American

Planning Association (APA) and the National League of Cities (NLC) all opposed the issuance of an antenna preemption ruling. NACO emphasized that federal and state power must be viewed in harmony and warns that Federal intrusion into local concerns of health, safety and welfare could weaken the traditional police power exercised by the state and unduly interfere with the legitimate activities of the states. NLC believed that both Federal and local interests can be accommodated without preempting local authority to regulate the installation of amateur radio antennas. The APA said that the FCC should continue to leave the issue of regulating amateur antennas with the local government and with the state and Federal courts.

Discussion

20. When considering preemption, we must begin with two constitutional provisions. The tenth amendment provides that any powers which the constitution either does not delegate to the United States or does not prohibit the states from exercising are reserved to the states. These are the police powers of the states. The Supremacy Clause, however, provides that the constitution and the laws of the United States shall supersede any state law to the contrary. Article III, Section 2. Given these basic premises, state laws may be preempted in three ways: First, Congress may expressly preempt the state law. See *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977). Or, Congress may indicate its intent to completely occupy a given field so that any state law encompassed within that field would implicitly be preempted. Such intent to preempt could be found in a congressional regulatory scheme that was so pervasive that it would be reasonable to assume that Congress did not intend to permit the states to supplement it. See *Fidelity Federal Savings & Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 153 (1982). Finally, preemption may be warranted when state law conflicts with federal law. Such conflicts may occur when "compliance with both Federal and state regulations is a physical impossibility," *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142, 143 (1963), or when state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). Furthermore, federal regulations have the same preemptive effect as federal statutes, *Fidelity Federal Savings & Loan Association v. de la Cuesta*, supra.

21. The situation before us requires us to determine the extent to which state and local zoning regulations may conflict with federal policies concerning amateur radio operators.

22. Few matters coming before us present such a clear dichotomy of view point as does the instant issue. The cities, counties, local communities and housing associations see an obligation to all of their citizens and try to address their concerns. This is accomplished through regulations, ordinances or covenants oriented toward the health, safety and general welfare of those they regulate. At the opposite pole are the individual amateur operators and their support groups who are troubled by local regulations which may inhibit the use of amateur stations or, in some instances, totally preclude amateur communications. Aligned with the operators are such entities as the Department of Defense, the American Red Cross and local civil defense and emergency organizations who have found in Amateur Radio a pool of skilled radio operators and a readily available backup network. In this situation, we believe it is appropriate to strike a balance between the federal interest in promoting amateur operations and the legitimate interests of local governments in regulating local zoning matters. The cornerstone

on which we will predicate our decision is that a reasonable accommodation may be made between the two sides.

23. Preemption is primarily a function of the extent of the conflict between federal and state and local regulation. Thus, in considering whether our regulations or policies can tolerate a state regulation, we may consider such factors as the severity of the conflict and the reasons underlying the state's regulations. In this regard, we have previously recognized the legitimate and important state interests reflected in local zoning regulations. For example, in *Earth Satellite Communications, Inc.*, 95 FCC 2d 1223 (1983), we recognized that

...countervailing state interests inhere in the present situation... For example, we do not wish to preclude a state or locality from exercising jurisdiction over certain elements of an SMATV operation that properly may fall within its authority, such as zoning or public safety and health, provided the regulation in question is not undertaken as a pretext for the actual purpose of frustrating achievement of the preeminent federal objective and so long as the non-federal regulation is applied in a nondiscriminatory manner.

24. Similarly, we recognize here that there are certain general state and local interests which may, in their even-handed application, legitimately affect amateur radio facilities. Nonetheless, there is also a strong federal interest in promoting amateur communications. Evidence of this interest may be found in the comprehensive set of rules that the Commission has adopted to regulate the amateur service. \fn 5/ Those rules set forth procedures for the licensing of stations and operators, frequency allocations, technical standards which amateur radio equipment must meet and operating practices which amateur operators must follow. We recognize the amateur radio service as a voluntary, noncommercial communication service, particularly with respect to providing emergency communications. Moreover, 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. By its nature, the Amateur Radio Service also provides the opportunity for individual operators to further international goodwill. Upon weighing these interests, we believe a limited preemption policy is warranted. State and local regulations that operate to preclude amateur communications in their communities are in direct conflict with federal objectives and must be preempted.

25. Because amateur station communications are only as effective as the antennas employed, antenna height restrictions directly affect the effectiveness of amateur communications. 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. For example, an antenna array for international amateur communications will differ from an antenna used to contact other amateur operators at shorter distances. We will not, however, specify a particular regulation, and we will not suggest the precise language that must be contained in local ordinances, such as mechanisms for special exceptions, variances, or conditional use permits. Nevertheless, local regulations which involve placement, screening, or other restrictions based on health, safety, or aesthetic considerations must be crafted to accommodate reasonably amateur communications, and to represent the minimum practicable regulation to accomplish the local authority's regulatory purpose. \fn 6/

26. Obviously, we do not have the staff or financial

resources to review all state and local laws that affect amateur operations. We are confident, however, that state and local governments will endeavor to legislate in a manner that affords appropriate recognition to the important federal interest at stake here and thereby avoid unnecessary conflicts with federal policy, as well as time-consuming and expensive litigation in this area. Amateur operators who believe that local or state governments have been overreaching and thereby have precluded accomplishment of their legitimate communications goals, may, in addition, use this document to bring our policies to the attention of local tribunals and forums.

27. Accordingly, the Request for Declaratory Ruling filed July 16, 1984, by the American Radio Relay League, Inc., IS GRANTED to the extent indicated herein and in all other respects, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION
William J. Tricarico
Secretary

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Page author: reginfo@arrl.org

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Maine

TITLE 30-A: MUNICIPALITIES AND COUNTIES (HEADING: PL 1987, c. 737, Pt. A, @2 (new))

- PART 2: MUNICIPALITIES (HEADING: PL 1987, c. 737, Pt. A, @2 (new))
 - SUBPART 4: ORDINANCE AUTHORITY AND LIMITATIONS (HEADING: PL 1987, c. 737, Pt. A, @2 (new))
 - CHAPTER 141: ORDINANCES (HEADING: PL 1987, c. 737, Pt. A, @2 (new))
 - § 3012. Radio antenna towers; construction in conformance with federal requirements

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DOWNLOAD TEXT

§ 3012. Radio antenna towers; construction in conformance with federal requirements

A municipality may not adopt or enforce any ordinance or regulation that is preempted by a Federal Communications Commission regulation that states that local regulations that involve placement, screening or height of radio antennas based on health, safety or aesthetic considerations must be crafted to reasonably accommodate amateur radio communications and to represent the minimum practicable regulation to accomplish the municipality's legitimate purpose. [1999, c. 269, §1 (new).]

Section History:

1999, c. 269, § 1 (NEW).

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Office of the Revisor of Statutes

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State House Room 108

Augusta, Maine 04333-0007

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Wyoming

Hein, Tanya

From: Hein, Tanya
Sent: Thursday, March 01, 2001 9:40 AM
To: Tanya Hein
Subject: PBR-1 Amateur Radio rules -- Wyoming

WYOMING:

15-1-130. Prohibitions; amateur radio antenna regulation.

No city or town shall enact or enforce an ordinance or regulation that fails to conform to the limited preemption entitled "Amateur Radio Preemption, 101 FCC 2d 952 (1985)" issued by the federal communications commission. Ordinances or regulations may be adopted by a city or town with respect to amateur radio antennas which shall conform to the limited federal preemption entitled "Amateur Radio Preemption, 101 FCC 2d 952 (1985)" which states local regulations that involve placement, screening or height of antennas based on health, safety or aesthetic considerations shall be crafted to reasonably accommodate amateur communications. No ordinance or regulation adopted by a city or town under this section shall establish a maximum height for an amateur radio antenna of less than seventy (70) feet above ground.

18-2-114. Prohibitions; amateur radio antenna regulation.

No county shall enact or enforce an ordinance or regulation that fails to conform to the limited preemption entitled "Amateur Radio Preemption, 101 FCC 2d 952 (1985)" issued by the federal communications commission. An ordinance or regulation adopted by a county with respect to amateur radio antennas shall conform to the limited federal preemption which states local regulations that involve placement, screening or height of antennas based on health, safety or aesthetic considerations shall be crafted to reasonably accommodate amateur communications. No ordinance or regulation adopted by a county under this section shall establish a maximum height for an amateur radio antenna of less than seventy (70) feet above ground.

Tanya R. Hein, JD
Office of Rep. Joan Wade
10 West, State Capitol
Tel: 608-266-7746 or Toll Free: 1-888-534-0042
~~~~~



RCW 36.32.600 Amateur radio antennas--Local regulation to conform with federal law. No county shall enact or enforce an ordinance or regulation that fails to conform to the limited preemption entitled "Amateur Radio Preemption, 101 FCC 2nd 952 (1985)" issued by the federal communications commission. An ordinance or regulation adopted by a county with respect to amateur radio antennas shall conform to the limited federal preemption, that states local regulations that involve placement, screening, or height of antennas based on health, safety, or aesthetic considerations must be crafted to reasonably accommodate amateur communications, and to represent the minimal practicable regulation to accomplish the local authority's legitimate purpose. [1994 c 50 § 3.]

NOTES:

Effective date--1994 c 50: See note following RCW 35.21.315.



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## The 2000 Florida Statutes

**Title XI**  
 COUNTY ORGANIZATION AND INTERGOVERNMENTAL  
 RELATIONS

**Chapter 125**  
 County  
 Government

[View Entire Chapter](#)

**125.561 Amateur radio antennas; construction in conformance with federal requirements.--**

(1) No county shall enact or enforce any ordinance or regulation which fails to conform to the limited preemption entitled "Amateur Radio Preemption, 101 FCC 2d 952 (1985)" as issued by the Federal Communications Commission. Any ordinance or regulation adopted by a county with respect to amateur radio antennas shall conform to the above-cited limited preemption, which states that local regulations which involve placement, screening, or height of antennas based on health, safety, or aesthetic considerations must be crafted to reasonably accommodate amateur communications, and to represent the minimum practicable regulation to accomplish the local authority's legitimate purpose.

(2) Nothing in this section shall affect any applicable provisions of chapter 333.

**History.**--s. 1, ch. 91-28.

**Note.**--Former s. 125.0185.

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## The 2000 Florida Statutes

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**Title XII**  
MUNICIPALITIES

**Chapter 166**  
Municipalities

**[View Entire Chapter](#)**

**166.0435 Amateur radio antennas; construction in conformance with federal requirements.--**

(1) No municipality shall enact or enforce any ordinance or regulation which fails to conform to the limited preemption entitled "Amateur Radio Preemption, 101 FCC 2d 952 (1985)" as issued by the Federal Communications Commission. Any ordinance or regulation adopted by a municipality with respect to amateur radio antennas shall conform to the above cited limited preemption, which states that local regulations which involve placement, screening, or height of antennas based on health, safety, or aesthetic considerations must be crafted to reasonably accommodate amateur communications, and to represent the minimum practicable regulation to accomplish the local authority's legitimate purpose.

(2) Nothing in this section shall effect any applicable provisions of chapter 333.

**History.--**s. 2, ch. 91-28.

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JLD

2001 BILL

D-NOTE

gen

1 AN ACT relating to: the authority of cities, villages, towns, and counties to  
2 regulate amateur radio antennas and antenna support structures

**Analysis by the Legislative Reference Bureau**

Under current law, no city, village, town, or county (political subdivision) may enact or enforce an ordinance or resolution that affects satellite antennas with a diameter of <sup>two</sup> 2 feet or less unless one of several conditions <sup>applies</sup> apply. The conditions include a requirement that the ordinance or resolution have a reasonable and clearly defined aesthetic, <sup>of</sup> public health, or safety objective, or a requirement that the ordinance or resolution does not impose an unreasonable limitation on, or prevent the reception of, satellite-delivered signals by a satellite antenna with a diameter of <sup>two</sup> 2 feet or less.

<sup>two</sup> Under this bill, no political subdivision may enact or enforce an ordinance or resolution that affects the placement, screening, or height of amateur radio antennas or antenna support structures unless the regulation has a reasonable and clearly defined aesthetic, public health, or safety objective; represents the minimum practical regulation that is necessary to accomplish the objectives; and reasonably accommodates amateur radio communications.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**BILL**

1           **SECTION 1.** 59.69 (4f) of the statutes is created to read:

2           59.69 (4f) **AMATEUR RADIO ANTENNAS.** The board may not enact an ordinance or  
3 adopt a resolution on or after the effective date of this subsection [revisor inserts  
4 date] or continue to enforce an ordinance or resolution on or after the effective date  
5 of this subsection [revisor inserts date] that affects the placement, screening,  
6 or height of antennas, or antenna support structures, that are used for amateur radio  
7 communications unless all of the following apply:

8           (a) The ordinance or resolution has a reasonable and clearly defined aesthetic,  
9 public health, or safety objective, and represents the minimum practical regulation  
10 that is necessary to accomplish the objectives.

11           (b) The ordinance or resolution reasonably accommodates amateur radio  
12 communications.

13           **SECTION 2.** 60.61 (3d) of the statutes is created to read:

14           60.61 (3d) **AMATEUR RADIO ANTENNAS.** The town board may not enact an  
15 ordinance or adopt a resolution on or after the effective date of this subsection  
16 [revisor inserts date] or continue to enforce an ordinance or resolution on or after the  
17 effective date of this subsection [revisor inserts date] that affects the placement,  
18 screening, or height of antennas, or antenna support structures, that are used for  
19 amateur radio communications unless all of the following apply:

20           (a) The ordinance or resolution has a reasonable and clearly defined aesthetic,  
21 public health, or safety objective, and represents the minimum practical regulation  
22 that is necessary to accomplish the objectives.

23           (b) The ordinance or resolution reasonably accommodates amateur radio  
24 communications.

25           **SECTION 3.** 62.23 (7) (hf) of the statutes is created to read:



DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-2772/1dn

MES.....

*JL*

Representative Wade:

*from other states*

This bill is different from the statutes that you sent me, but I believe that it accomplishes your intent more directly. Instead of simply referring to PRB-1, which is also known as 101 FCC 2d 952 (1985), and stating that local regulations affecting amateur radio antennas must conform to 101 FCC 2d 952 (1985), the bill actually incorporates the key features of the FCC's order into the statutes. The language in the bill is based on the FCC's order and also on 47 CFR 97.15. That federal regulation states that "State and local regulation of a station antenna structure must not preclude amateur service communications" so I don't believe that a parallel provision is required under state law. The bill also incorporates the language of 47 CFR 97.15 regarding the need for local regulations to reasonably accommodate amateur radio communications and the need for the local regulations to represent the minimum regulation that is necessary to accomplish the local government's goals. The language in created ss. 59.69 (4f) (a), 60.61 (3d) (a), and 62.23 (7) (hf) 1. is taken from the FCC's 1985 order, PRB-1. Please let me know if you have any questions about the bill.

Marc E. Shovers  
Senior Legislative Attorney  
Phone: (608) 266-0129  
E-mail: marc.shovers@legis.state.wi.us

*and the federal regulation in 47 CFR 97.15*

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2772/1dn  
MES:jld.pg

April 11, 2001

Representative Wade:

This bill is different from the statutes from other states that you sent me, but I believe that it accomplishes your intent more directly. Instead of simply referring to PRB-1, which is also known as 101 FCC 2d 952 (1985), and stating that local regulations affecting amateur radio antennas must conform to 101 FCC 2d 952 (1985), the bill actually incorporates the key features of the FCC's order into the statutes. The language in the bill is based on the FCC's order and also on 47 CFR 97.15. That federal regulation states that "State and local regulation of a station antenna structure must not preclude amateur service communications" so I don't believe that a parallel provision is required under state law. The bill also incorporates the language of 47 CFR 97.15 regarding the need for local regulations to reasonably accommodate amateur radio communications and the need for the local regulations to represent the minimum regulation that is necessary to accomplish the local government's goals. The language in created ss. 59.69 (4f) (a), 60.61 (3d) (a), and 62.23 (7) (hf) 1. is taken from the FCC's 1985 order, PRB-1, and the federal regulation in 47 CFR 97.15. Please let me know if you have any questions about the bill.

Marc E. Shovers  
Senior Legislative Attorney  
Phone: (608) 266-0129  
E-mail: marc.shovers@legis.state.wi.us





# State of Wisconsin

## LEGISLATIVE REFERENCE BUREAU

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STEPHEN R. MILLER  
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LEGAL SECTION: (608) 266-3561  
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April 11, 2001

### MEMORANDUM

To: Representative Wade

From: Marc E. Shovers, Senior Legislative Attorney

Re: LRB-2772/1 Zoning ordinances that affect amateur radio operators' antennas

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY  JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-0129 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.