

H.R. 5515: National Defense Authorization Act for Fiscal Year 2019

A BILL

To authorize appropriations for fiscal year 2019 for military activities of the Department of Defense and for military construction, to prescribe military personnel strengths for such fiscal year, and for other purposes.

Division A—DEPARTMENT OF DEFENSE AUTHORIZATIONS

Title X – General Provisions

Subtitle G – Other Matters

Section 1083 – Amateur Radio Parity

(a) – 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.

(b) - Application of private land use restrictions to amateur stations

(1) - 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—

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

(B) - 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

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

(2) - Additional requirements - In amending its rules as required by subsection (a), the Commission shall—

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

(B) - 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

(C) - 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.

(c) - 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.

(d) – Definitions - In this section:

(1) - 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) - 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.