118TH CONGRESS
1ST SESSION

H. R. _____

To amend the Communications Act of 1934 to prohibit the application of certain private land use restrictions to amateur station antennas, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. JOHNSON of Ohio introduced the following bill; which was referred to the Committee on ___________________

A BILL

To amend the Communications Act of 1934 to prohibit the application of certain private land use restrictions to amateur station antennas, and for other purposes.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
3 SECTION 1. SHORT TITLE.
4 This Act may be cited as the “Amateur Radio Emer-
5 gency Preparedness Act”.
6 SEC. 2. FINDINGS.
7 Congress finds the following:
(1) More than 770,000 amateur operators in the United States are licensed by the Federal Communications Commission (in this section referred to as the "Commission") in the amateur radio services, and, by treaty, amateur operators licensed by other countries are authorized to operate within the United States.

(2) Amateur radio, in addition to providing lifesaving emergency communications 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 amateur operators. Among other reasons, when an emergency arises, it can be too late, and too dangerous, to erect an effective antenna. However, amateur stations have been shown to be frequently and increasingly precluded by unreasonable private land use restrictions, including restrictive covenants.

(4) Commission regulations have for more than 3 decades prohibited State and local regulation of amateur station antenna structures that precludes
or fails to reasonably accommodate amateur service communications, or that does not constitute the minimum practicable regulation to accomplish a legitimate State or local purpose. The policy of the Commission has been and is to require States and localities to permit erection of a station antenna structure at heights and dimensions sufficient to reasonably accommodate amateur service communications. The Commission struck an appropriate balance by enabling effective use of the amateur service without burdening localities and adjoining properties.

(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) In 1996, Congress provided guidance, direction, and authority to the Commission by directing the Commission to promulgate regulations (Public Law 104–104, title II, section 207, 110 Stat. 114; 47 U.S.C. 303 note) that have preempted all private land use restrictions applicable to exterior communications facilities that impair the ability of citizens to receive television broadcast signals, direct broadcast satellite services, or multichannel multipoint
distribution services, or to transmit and receive wire-
less internet services.

(7) To further the public interest benefits that
amateur radio brings to society, private land use re-
strictions that prohibit, restrict, or impair amateur
operators from operating, installing, or maintaining
effective outdoor amateur station antenna structures
should also be preempted.

SEC. 3. APPLICATION OF PRIVATE LAND USE RESTRI-
CTIONS TO AMATEUR STATION ANTENNAS.

(a) IN GENERAL.—Part I of title III of the Commu-
nications Act of 1934 (47 U.S.C. 301 et seq.) is amended
by adding at the end the following:

"SEC. 346. APPLICATION OF PRIVATE LAND USE RESTRI-
CTIONS TO AMATEUR STATION ANTENNAS.

"(a) IN GENERAL.—A private land use restriction
that prohibits, restricts, or impairs, or has the effect of
prohibiting, restricting, or impairing, an amateur operator
from operating, installing, or maintaining any amateur
station antenna on property subject to the control of the
amateur operator may not be adopted or enforced, except
as permitted by subsection (b).

"(b) PERMISSIBLE RESTRICTIONS.—

"(1) IN GENERAL.—Subject to paragraph (2),
the following private land use restrictions applicable
to amateur station antennas may be adopted or enforced:

"(A) A restriction that requires an amateur station antenna to be installed in compliance with the specifications of the manufacturer of the antenna, applicable zoning ordinances, amateur radio tower ordinances (if any), and governmentally adopted building codes.

"(B) A restriction that requires an amateur station antenna to be maintained in a structurally safe condition.

"(C) A restriction that requires any deteriorated or structurally unsafe component of an amateur station antenna to be repaired, replaced, or removed.

"(D) A restriction that requires an amateur station antenna to be removed if the property on which the antenna is located ceases to be subject to the control of an amateur operator.

"(E) A restriction that requires an amateur station antenna ground-mounted electrical enclosure, ground-mounted control enclosure, or guy wire anchor to be visually screened if such enclosure or anchor—
"(i) is visible from the street faced by
the dwelling; or

"(ii) is located in an unfenced side or
rear yard and is visible from an adjoining
property.

"(2) REASONABLE APPLICATION AND ENFORCE-
MENT.—A private land use restriction permitted by
paragraph (1) shall be reasonably applied and en-
forced.

"(c) LIMITATIONS ON PRIOR APPROVAL.—

"(1) REQUIREMENT NOT PRESENT IN LAND
RECORDS AT TIME OF PURCHASE OR LEASE.—A re-
quirement in a private land use restriction for an
amateur operator to obtain prior approval for the in-
stallation of an amateur station antenna may not be
adopted or enforced if such requirement for prior
approval was not present in the publicly recorded
land records prior to the purchase or lease of the
property by the amateur operator.

"(2) INFORMATION REQUIRED FOR PRIOR AP-
PROVAL.—A private land use restriction that re-
quires an amateur operator to submit an application
for approval of an amateur station antenna prior to
installation may not be adopted or enforced if the in-
formation required to be submitted as part of the
application is greater or more detailed than the information required to be submitted as part of an application for any other improvement.

"(3) DEEMED APPROVAL.—If a community association or other person authorized to enforce a private land use restriction applicable to an amateur station antenna does not approve or deny an application of an amateur operator for approval of the installation of an amateur station antenna by the day that is 45 days after the date on which the application is submitted, the application shall be deemed to be approved on the 45th day.

"(4) EXISTING APPROVAL.—If a private land use restriction requires an amateur operator to submit an application for approval of an amateur station antenna prior to installation, after a community association or other person authorized to enforce the restriction approves the application, no further approval of the antenna may be required, unless there is a material change in the dimensions or structural integrity of the antenna.

"(d) ANTENNAS THAT DO NOT REQUIRE PRIOR APPROVAL.—A requirement in a private land use restriction for an amateur operator to obtain prior approval for the installation of an amateur station antenna may not be
adopted or enforced with respect to any of the following types of amateur station antennas:

"(1) 1 METER OR LESS IN DIAMETER OR DIAGONAL MEASUREMENT.—An antenna for use by an amateur operator that is less than 1 meter in diameter or diagonal measurement, or having other measurements prescribed by the Commission.

"(2) FLAGPOLE ANTENNAS.—A flagpole, capable of dual use as a flagpole and an amateur station antenna, not greater than 43 feet in height above ground.

"(3) WIRE ANTENNAS.—Minimally obtrusive wire antennas, of a length necessary for the frequency of use intended.

"(4) VERTICAL ANTENNAS.—Vertical antennas, not to exceed 43 feet in height above ground, including collapsible whip and tilt-over antennas.

"(e) RULES OF CONSTRUCTION.—

"(1) CONTROL OF PROPERTY.—For purposes of this section, property is subject to the control of an amateur operator if the amateur operator is an owner, lessee, or legal resident of the property.

"(2) IMPAIRMENT OF INSTALLATION, MAINTENANCE, OR OPERATION.—For purposes of this section, a private land use restriction prohibits, re-
stricts, or impairs the installation, maintenance, or
operation of an amateur station antenna if the re-
striction—

"(A) unreasonably delays or prevents in-
stallation, maintenance, or operation of the an-
tenna;

"(B) unreasonably increases the costs or
difficulty of installation, maintenance, or oper-
ation of the antenna; or

"(C) prevents or degrades reception or
transmission of a signal acceptable to the ama-
teur operator.

"(3) LIMITED COMMON AREA.—

"(A) IN GENERAL.—For purposes of this
section, if there exists, within the property for
which a community association is responsible, a
limited common area to which an amateur oper-
ator has the right to exclude use by others, the
limited common area shall be treated as prop-
erty under the control of the amateur operator.

"(B) PERMISSION ACCESS.—For purposes
of subparagraph (A), access by a community
association for roof repairs, landscaping, or
other maintenance activities shall be treated as
a permission, or authorized access, which does
not limit or destroy the control of the amateur
operator.

“(f) ENFORCEMENT.—

“(1) STAY OF ENFORCEMENT.—If an action is
initiated to seek a declaratory ruling from the Com-
mission or a court of competent jurisdiction regard-
ing whether a private land use restriction complies
with this section, any community association or
other person seeking to enforce the restriction shall
suspend all enforcement efforts with respect to the
restriction until a ruling in the action has become
final.

“(2) PROHIBITION ON ACCRUAL OF PENALTIES
or other costs.—No penalty or other cost related
to an amateur station antenna may accrue against
an amateur operator under a private land use re-
striction while an action described in paragraph (1)
is pending to determine whether the restriction com-
plies with this section.

“(3) BURDEN OF PROOF.—

“(A) REGARDING COMPLIANCE WITH THIS
SECTION.—In any action before the Commiss-
sion or a court of competent jurisdiction involv-
ing the interpretation of any provision of this
section, the burden of demonstrating that a
particular private land use restriction complies with this section shall be on the party that seeks to impose, maintain, or enforce the restriction.

"(B) REGARDING VIOLATION OF PRIVATE LAND USE RESTRICTION.—In any action before the Commission or a court of competent jurisdiction to determine whether an amateur station antenna violates a private land use restriction, the party alleging the violation bears the burden of proof.

"(g) PRIVATE RIGHT OF ACTION.—A person harmed by a violation of this section may bring an action against the person alleged to have committed the violation in an appropriate district court of the United States without first exhausting remedies under State law.

"(h) AFFIRMATION OF LIMITED PREEMPTION OF STATE AND LOCAL LAND USE REGULATION.—Nothing in this section shall be construed to modify or otherwise limit the applicability of section 97.15(b) of title 47, Code of Federal Regulations, or any successor regulation.

"(i) DEFINITIONS.—In this section:

"(1) AMATEUR OPERATOR.—The term 'amateur operator'—
"(A) has the meaning given such term in section 97.3 of title 47, Code of Federal Regulations, or any successor regulation; and

"(B) includes any other person authorized to operate an amateur station in the United States.

"(2) AMATEUR STATION.—The term ‘amateur station’ has the meaning given such term in section 97.3 of title 47, Code of Federal Regulations, or any successor regulation.

"(3) ANTENNA.—The term ‘antenna’ includes—

"(A) the transmitting and receiving elements;

"(B) any feedline, control enclosures, or electrical enclosures necessary for effective transmission or reception; and

"(C) any support structure, guy wire, anchor, or tie-off.

"(4) COMMUNITY ASSOCIATION.—The term ‘community association’ means—

"(A) a condominium association (as defined in section 604 of the Condominium and Cooperative Abuse Relief Act of 1980 (15 U.S.C. 3603));
“(B) a cooperative association (as defined in such section); and

“(C) a residential real estate management association (as defined in section 528 of the Internal Revenue Code of 1986).

“(5) LESSEE.—The term ‘lessee’ means a person who, in exchange for payment—

“(A) takes temporary possession of residential real estate through a lease; or

“(B) takes possession, in whole or in part, by lease or purchase, of residential real estate subject to a ground lease.

“(6) PRIVATE LAND USE RESTRICTION.—The term ‘private land use restriction’ means—

“(A) a publicly recorded provision (whether such provision is denoted as a covenant, deed restriction, declaration, use restriction, covenant that runs with the land, or otherwise) that—

“(i) touches or concerns the real estate to which the provision applies; and

“(ii) limits or restricts the use of the real estate or imposes conditions on the use of the real estate; or

“(B) a rule or regulation of a community association, whether publicly recorded or not,
that limits or restricts the use of real estate or
imposes conditions on the use of real estate.".
(b) REGULATIONS.—Not later than 180 days after
the date of the enactment of this Act, the Federal Commu-
nications Commission shall promulgate regulations to im-
plement the amendment made by subsection (a).