

ASSEMBLY, No. 3641

STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED JANUARY 10, 2005

Sponsored by:

Assemblywoman LINDA STENDER

District 22 (Middlesex, Somerset and Union)

SYNOPSIS

Prohibits municipalities from adopting zoning ordinances that prohibit construction or use of antenna structures by federally licensed amateur radio operators.

CURRENT VERSION OF TEXT

As introduced.



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1 AN ACT clarifying municipal power to zone with respect to certain
2 antenna structures and amending P.L.1975, c.291.

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4 WHEREAS, Amateur radio operators can provide, at no cost to the
5 State, valuable emergency communication services in the event of
6 natural or man-made disaster or other crises where conventional
7 communication systems are disabled or overwhelmed; and

8 WHEREAS, Because amateur radio communications are only as
9 effective as the antennas that are employed, antenna height and
10 placement restrictions imposed by local zoning ordinances can
11 directly impact on the effectiveness of amateur communications;
12 and

13 WHEREAS, The Federal Communications Commission has stated that
14 there is a strong federal interest in promoting amateur radio
15 communications and that any state or local regulation that
16 precludes these communications is in direct conflict with federal
17 objectives and must be preempted; and

18 WHEREAS, It is altogether fitting and proper that the State of New
19 Jersey prohibit the adoption of any ordinance by a municipality that
20 could preclude effective amateur radio communications; now,
21 therefore,

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23 **BE IT ENACTED** by the Senate and General Assembly of the State
24 of New Jersey:

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26 1. Section 49 of P.L.1975, c.291 (C.40:55D-62) is amended to
27 read as follows:

28 49. Power to zone. a. The governing body may adopt or amend
29 a zoning ordinance relating to the nature and extent of the uses of land
30 and of buildings and structures thereon. Such ordinance shall be
31 adopted after the planning board has adopted the land use plan element
32 and the housing plan element of a master plan, and all of the provisions
33 of such zoning ordinance or any amendment or revision thereto shall
34 either be substantially consistent with the land use plan element and
35 the housing plan element of the master plan or designed to effectuate
36 such plan elements; provided that the governing body may adopt a
37 zoning ordinance or amendment or revision thereto which in whole or
38 part is inconsistent with or not designed to effectuate the land use plan
39 element and the housing plan element, but only by affirmative vote of
40 a majority of the full authorized membership of the governing body,
41 with the reasons of the governing body for so acting set forth in a
42 resolution and recorded in its minutes when adopting such a zoning
43 ordinance; and provided further that, notwithstanding anything

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

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1 aforesaid, the governing body may adopt an interim zoning ordinance
2 pursuant to subsection b. of section 77 of P.L.1975, c.291
3 (C.40:55D-90).

4 The zoning ordinance shall be drawn with reasonable consideration
5 to the character of each district and its peculiar suitability for
6 particular uses and to encourage the most appropriate use of land. The
7 regulations in the zoning ordinance shall be uniform throughout each
8 district for each class or kind of buildings or other structure or uses of
9 land, including planned unit development, planned unit residential
10 development and residential cluster, but the regulations in one district
11 may differ from those in other districts.

12 b. No zoning ordinance and no amendment or revision to any
13 zoning ordinance shall be submitted to or adopted by initiative or
14 referendum.

15 c. The zoning ordinance shall provide for the regulation of any
16 airport safety zones delineated under the "Air Safety and Zoning Act
17 of 1983," P.L.1983, c.260 (C.6:1-80 et seq.), in conformity with
18 standards promulgated by the Commissioner of Transportation.

19 d. The zoning ordinance shall provide for the regulation of land
20 adjacent to State highways in conformity with the State highway
21 access management code adopted by the Commissioner of
22 Transportation under section 3 of the "State Highway Access
23 Management Act," P.L.1989, c.32 (C.27:7-91), for the regulation of
24 land with access to county roads and highways in conformity with any
25 access management code adopted by the county under R.S.27:16-1
26 and for the regulation of land with access to municipal streets and
27 highways in conformity with any municipal access management code
28 adopted under R.S.40:67-1. This subsection shall not be construed as
29 requiring a zoning ordinance to establish minimum lot sizes or
30 minimum frontage requirements for lots adjacent to but restricted from
31 access to a State highway.

32 e. No governing body shall adopt a zoning ordinance that prohibits
33 or has the effect of prohibiting the construction, maintenance or use
34 of an antenna and support structure therefor by a federally licensed
35 amateur radio operator. Zoning ordinances may reasonably regulate
36 the location and height of those antenna structures for the purposes of
37 health, safety or aesthetics; provided, however, that those ordinances
38 permit sufficient height of those antennas and support structures so as
39 to reasonably accommodate amateur radio communications by
40 federally licensed amateur radio operators. Restrictions imposed on
41 such antennas and support structures by ordinances shall constitute the
42 minimum practicable regulation necessary to accomplish the legitimate
43 purposes of the governing body enacting that ordinance. For purposes
44 of this section, it is presumed that any ordinance that prohibits or has
45 the effect of prohibiting any antenna support structure that is 70 feet
46 or less in height above ground level, exclusive of any antenna upon the

1 structure, is unreasonable. No federally licensed amateur radio
2 operator, applying for permission to install or modify an amateur radio
3 antenna or amateur radio antenna structure, shall be required to pay an
4 application fee that is in excess of that which may be assessed for
5 residential variances generally, nor shall such applicant be assessed any
6 amounts for legal, technical, or other consultation or advisory costs
7 incurred by the reviewing agency in evaluating the application
8 submitted.

9 (cf: P.L.1991, c.445, s.9)

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11 2. This act shall take effect immediately.

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STATEMENT

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16 Amateur radio operators can provide, at no cost to the State,
17 valuable emergency communication services in the event of natural or
18 man-made disaster or other crises where conventional communication
19 systems are disabled or overwhelmed. Because amateur radio
20 communications are only as effective as the antennas employed,
21 antenna height and placement restrictions imposed by local zoning
22 ordinances can directly impact on the effectiveness of amateur
23 communications.

24 The Federal Communications Commission (FCC), which regulates
25 amateur radio operators, announced in a 1985 declaratory ruling that
26 there is a strong federal interest in promoting amateur radio
27 communications and state and local regulations that preclude amateur
28 communications are in direct conflict with federal objectives and must
29 therefore be preempted.

30 To this end, the FCC established that an antenna structure may be
31 erected at heights and dimensions sufficient to accommodate amateur
32 service communications. Local zoning authorities must reasonably
33 accommodate such communications and any regulation of this area
34 must constitute the "minimum practicable regulation to accomplish the
35 state or local authority's legitimate purpose" (47 C.F.R. 97.15(b)).
36 For technical reasons discussed in the FCC's ruling, any regulation that
37 prohibits or has the effect of prohibiting an antenna support structure
38 less than 70 feet in height will preclude or unreasonably hinder such
39 communications by licensed amateur radio stations.

40 In limiting the power of municipalities to prohibit the construction
41 or use of antenna structures by federally licensed amateur radio
42 operators, this bill codifies the federal ruling. In so doing, this bill
43 attempts to protect those municipalities or counties that might
44 otherwise prohibit or unreasonably regulate such structures from the
45 litigation that would occur because of the preemptive effect of federal
46 policy. At the same time, State policy serves the public interest in that

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1 it enhances the State's available pool of emergency communications
2 operators and stations that can provide reliable emergency
3 communications.