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

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

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

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

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

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

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

49. Power to zone. a. The governing body may adopt or amend
a zoning ordinance relating to the nature and extent of the uses of land
and of buildings and structures thereon. Such ordinance shall be
adopted after the planning board has adopted the land use plan element
and the housing plan element of a master plan, and all of the provisions
of such zoning ordinance or any amendment or revision thereto shall
either be substantially consistent with the land use plan element and
the housing plan element of the master plan or designed to effectuate
such plan elements; provided that the governing body may adopt a
zoning ordinance or amendment or revision thereto which in whole or
part is inconsistent with or not designed to effectuate the land use plan
element and the housing plan element, but only by affirmative vote of
a majority of the full authorized membership of the governing body,
with the reasons of the governing body for so acting set forth in a
resolution and recorded in its minutes when adopting such a zoning
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.
aforesaid, the governing body may adopt an interim zoning ordinance pursuant to subsection b. of section 77 of P.L.1975, c.291 (C.40:55D-90).

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

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


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

e. No governing body shall adopt a zoning ordinance that prohibits or has the effect of prohibiting the construction, maintenance or use of an antenna and support structure therefor by a federally licensed amateur radio operator. Zoning ordinances may reasonably regulate the location and height of those antenna structures for the purposes of health, safety or aesthetics; provided, however, that those ordinances permit sufficient height of those antennas and support structures so as to reasonably accommodate amateur radio communications by federally licensed amateur radio operators. Restrictions imposed on such antennas and support structures by ordinances shall constitute the minimum practicable regulation necessary to accomplish the legitimate purposes of the governing body enacting that ordinance. For purposes of this section, it is presumed that any ordinance that prohibits or has the effect of prohibiting any antenna support structure that is 70 feet or less in height above ground level, exclusive of any antenna upon the
structure, is unreasonable. No federally licensed amateur radio
operator, applying for permission to install or modify an amateur radio
antenna or amateur radio antenna structure, shall be required to pay an
application fee that is in excess of that which may be assessed for
residential variances generally, nor shall such applicant be assessed any
amounts for legal, technical, or other consultation or advisory costs
incurred by the reviewing agency in evaluating the application
submitted.
(cf: P.L.1991, c.445, s.9)

2. This act shall take effect immediately.

STATEMENT

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

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

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

In limiting the power of municipalities to prohibit the construction
or use of antenna structures by federally licensed amateur radio
operators, this bill codifies the federal ruling. In so doing, this bill
attempts to protect those municipalities or counties that might
otherwise prohibit or unreasonably regulate such structures from the
litigation that would occur because of the preemptive effect of federal
policy. At the same time, State policy serves the public interest in that
it enhances the State's available pool of emergency communications operators and stations that can provide reliable emergency communications.