

Amendment to HB 417

1 Amend the bill by replacing all after the enacting clause with the following:

2

3 1 New Section; Amateur Radio Communications. Amend RSA 477 by inserting after section 22-
4 a the following new section:

5 477:22-b Amateur Radio Communications; Enforcement of Restrictions.

6 I. In this section:

7 (a) "Amateur radio services," "amateur service," and "amateur station" have the
8 meanings given such terms in the Code of Federal Regulations, 47 C.F.R. section 97.3.

9 (b) "Community association" means any nonprofit mandatory membership organization
10 composed of owners of real estate described in a declaration of covenants or created pursuant to a
11 covenant or other applicable law with respect to which a person, by virtue of the person's ownership
12 of or interest in a unit or parcel, is obligated to pay for a share of real estate taxes, insurance
13 premiums, maintenance, improvement, services, or other expenses related to common elements,
14 other units, or any other real estate other than the unit or parcel described in the declaration,
15 where such organization, commonly known as a home owner association, has an existing board,
16 with published rules and procedures, and such rules or procedures have granted to that board the
17 right to control architectural features such as an amateur radio station antenna structure. The
18 term "community association" does not include limited purpose associations such as road
19 associations and lake associations that have not reserved the right to control architectural features,
20 or to control development.

21 (c) "Radio amateur" means a duly authorized person interested in radio technique solely
22 with a personal aim and without pecuniary interest.

23 (d) "Antenna support structure" means a structure, such as a tower, pole or mast used
24 to support one or more antennas for the purpose of engaging in authorized radio communications.

25 II. A community association may not adopt or enforce a property restriction or private land
26 use restriction, including a restrictive covenant, that, on its face or as applied, prohibits or restricts:

27 (a) An owner from owning, operating, installing or maintaining antennas or antenna
28 support structures for the purpose of engaging in communications at frequencies authorized to the
29 amateur radio service on property under the exclusive control of the radio amateur; or

30 (b) An owner from using common areas, such as a roof-top or wooded area, where an
31 amateur radio antenna or antenna support structure may have little or no visibility.

32 III.(a) Notwithstanding paragraph II, a community association may adopt or enforce any of

Amendment to HB 417

- Page 2 -

1 the following restrictions on the installation and maintenance of antennas and antenna support
2 structures:

3 (1) Require that antennas and antenna support structures be installed in
4 compliance with manufacturer's specifications, applicable zoning ordinances, amateur radio tower
5 ordinances, if any, and national or governmental building codes.

6 (2) Require that antennas and antenna support structures be maintained in good
7 condition and that any deteriorated or structurally unsafe apparatus be repaired, replaced, or
8 removed.

9 (3) Require that antennas and antenna support structures be removed if the
10 property on which they are located is sold to a person who does not have federal authorization to
11 operate the radio apparatus installed on the property.

12 (4) Require that ground-mounted electrical enclosures, ground-mounted control
13 enclosures or guy wire anchors be screened, if the ground-mounted electrical enclosures, ground-
14 mounted control enclosures, or guy wire anchors are visible from the public street faced by the
15 dwelling.

16 (b) A restriction permitted by subparagraph (a), if adopted, shall be reasonably applied
17 and enforced.

18 (c) Where there is a "limited common area" and a radio amateur has the right to
19 exclude use by others, the property so concerned shall be treated as property under the exclusive
20 use or control of the owner. For the purposes of this regulation, an association's access for roof
21 repairs, landscaping, or other maintenance activities, shall be treated as a permission or an
22 easement that does not limit or destroy the owner's exclusive use or control.

23 (d) A community association may not require a radio amateur to notify and obtain prior
24 approval from the association for the installation of an outdoor antenna or antenna support
25 structure, if such notice and requirement for prior approval was not present in the covenants
26 presented to the owner at the real estate closing.

27 (e) If a community association requires that the installation of antennas or antenna
28 support structures be approved before installation, approval shall not be withheld if the proposed
29 installation meets or exceeds the restrictions permitted by subparagraph (a).

30 (f) If a covenant or restriction requires an owner to submit an application for approval
31 of antennas or antenna support structures, this section shall not negate the requirement, but the
32 information required to be submitted as part of the application for the installation of antennas or
33 antenna support structures shall not be greater or more detailed than the application for any other
34 improvement.

35 (g) Where existing covenants or restrictions require prior approval for the installation
36 of antennas or antenna support structures, the failure of the association to act on the owners
37 request for approval within 45 days from the time that an owner seeks approval shall be deemed to

1 be approval.

2 (h) Where a radio amateur chooses to use an existing structure as an antenna or
3 antenna support structure, creating no additional material element, no prior approval shall be
4 required.

5 (i) Where no organizational mechanism for approval of an antenna or antenna support
6 structure exists, no mechanism is required and neither notification nor prior approval may be
7 required.

8 (j) In a hearing, action, or proceeding to determine whether an antenna or antenna
9 support structure complies with the restrictions permitted by this section, the party asserting
10 noncompliance bears the burden of proof.

11 IV. Radio amateurs may erect and maintain antennas similar or identical in appearance to
12 satellite dishes, VHF/UHF TV Broadcast Service Yagi antennas, or broadband Internet antennas
13 (see the OTARD Rule at 47 CFR section 1.4000); single wires or minimally visible antennas;
14 temporary antennas or antennas raised only in hours of darkness; and temporary antennas no
15 higher than 33 feet above ground level, without prior approval. A flagpole that is consistent with,
16 and controlled by, "The Freedom to Display the American Flag Act of 2005," 4 U.S.C. section 7(3),
17 with no appurtenance at a height greater than 5 feet above ground level, may also be used as an
18 antenna in the amateur service without further regulation by the association.

19 V.(a) An association seeking to enforce an antenna restriction shall suspend all enforcement
20 efforts pending completion of the review of any appeal to a court of competent jurisdiction.

21 (b) Before any charges or sanctions may be imposed, the radio amateur shall be given
22 an opportunity to be heard and to be represented by counsel before the board of directors or other
23 tribunal specified in the association's covenants;

24 (c) Notice of a hearing, including the charges or other sanctions that may be imposed,
25 shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the
26 radio amateur at the address of record with the association at least 14 days prior to the hearing;
27 and thereafter, the hearing result shall be hand-delivered or mailed by registered or certified mail,
28 return receipt requested, to the member at the address of record with the association within 7 days
29 of the hearing.

30 (d) The amount of charges or penalty assessed for a violation shall be limited to the
31 expense or damage to the association caused by the violation, but shall not exceed \$50 for a single
32 offense or \$10 per day for any offense of a continuing nature; however, the total charges for any
33 offense of a continuing nature shall not be assessed for a period exceeding 30 days. After the date a
34 lawsuit is filed challenging any such charges, no additional charges shall accrue.

35 VI. Nothing in this section shall affect RSA 674:16 IV, which shall remain applicable to
36 state and land use regulation of amateur service communications.

37 2 Effective Date. This act shall take effect 60 days after its passage.

2019-0277h

AMENDED ANALYSIS

This bill regulates the enforcement of property restrictions by a community association on the installation and maintenance of amateur radio antennas and antenna support structures.

UNAPPROVED