zero bias – a CQ editorial

BY RICH MOSESON,* W2VU

Antenna Restrictions and H.R. 2160

The "Amateur Radio Emergency Communications Enhancement Act of 2009," H.R. 12160, is a bill in the House of Representatives introduced at the request of the ARRL by Texas Congresswoman Shirley Jackson-Lee. The basic goal of this bill is to get the Department of Homeland Security to say that amateur radio is important for our country and to recommend that Congress make it illegal for private land use regulations to prohibit outdoor amateur radio antennas. This is certainly a laudable goal, one with which we strongly agree.

More specifically, the bill instructs the Secretary of Homeland Security to "undertake a study on the uses and capabilities of Amateur Radio communications in emergencies and disaster relief" and to report its findings to Congress within six months. The bill also specifies that the study shall include several specific recommendations, the major one of which is whether Congress should add outdoor amateur radio antennas to the section of the Telecommunications Act of 1996 that currently prohibits private land use regulations (Covenants, Conditions and Restrictions—or CC&Rs—and homeowner association rules) from barring the installation of outdoor TV antennas and dishes for receiving satellite TV.

The ARRL has asked its members, and by extension all hams, to urge their representatives in Congress to support this bill (the full text is available online at <http://thomas.loc.gov/cgi-bin/query/z?c111:H.R.2160:>). We join in this call, but do so with some reservations.

Our support is qualified because, as worthy a goal as this bill aims to achieve, we believe the ARRL is going about the effort in the wrong way. There are several reasons behind our opinion:

1) This is a "study" bill. Generally speaking, study bills are a waste of the government's time and the taxpayers' money, because there is no requirement that Congress act on the recommendations it has requested. More often than not, study bills result in reports being written, recommendations being made and nothing ever really happening as a result. In addition, there is no guarantee that the recommendations made will be those that the bill's original supporters want. The ARRL's investment in political capital in the possible passage of this bill will result, at best, in the need to invest additional political capital in securing the introduction and passage of a follow-up bill to enact the recommended changes. At worst, we will have the Department of Homeland Security saying that its needs regarding amateur radio are met as things stand, and that there is no need to make legislative changes.

2) The language of the bill provides answers in advance for some of the questions it asks to be studied. In the introductory "Findings" section the bill states that Congress "finds the following," and goes on to detail the value of amateur radio communications in emergencies and disasters. If, by enacting this bill, Congress agrees to these "findings," then why is it necessary to have a study to determine what Congress already has determined to be the case? Why not just go straight to a Congressional finding that CC&Rs and HOA rules that prohibit outdoor ham antennas are unreasonable impediments to our providing emergency communications and propose the desired changes to the Telecommunications Act of 1996, or better yet, direct the FCC to apply the limited federal preemption of PRB-1 to private land use regulations as well as state and local laws? (The FCC's stated refusal to act in this area without a specific Congressional mandate suggests it is prepared to do so if it has one.) An action bill is a better use of resources than a study bill whose answers are already known.

3) This bill, like other ARRL efforts in this area, is very tightly focused on amateur radio. It is, of course, the ARRL's job to protect and promote amateur radio in the United States, but the problem with CC&Rs and HOA restrictions extends far beyond ham radio and ham antennas. The much bigger, much broader, problem here is that people who purchase homes in communities covered by these restrictions are forced to give up a host of individual rights. In many areas, these HOA-controlled communities are the only affordable, safe, living option available, and the only choice for a potential homebuyer is *which* of these neighborhoods to live in, not whether or not to live in one.

The FCC has refused to get into these matters without a specific directive from Congress, because it considers CC&Rs to be a matter of contract law, and the federal government has historically—and correctly—tried to avoid putting restrictions on what individuals and/or companies can agree to in a contract. But this assumes that both parties to a contract are equal negotiating partners, and that the terms of their contract are negotiable by both parties. In the vast majority of cases involving CC&Rs, however, this is not so. The developer or HOA has total leverage, and the prospective buyer has none whatsoever, except to purchase elsewhere … and most likely still be subject to similar restrictions.

Plus, in most cases, homeowner association boards are not accountable to anyone for their actions, and are not subject to oversight by elected officials or state agencies, despite their ability to impose taxes, levy hefty fines and even force you to give up your home. And as Lord Acton once famously said, "Power corrupts, and absolute power corrupts absolutely."

There is a growing resistance movement to the often unreasonable restrictions imposed by HOA rules and CC&Rs that extend far beyond amateur radio antennas. It would do the ARRL well, along with such efforts as H.R. 2160, to join forces with one or more of the groups that have been formed to combat CC&R abuses, and thus to speak with an even louder voice. The voices of these groups are beginning to be heard, even within the Community Associations Institute, the trade organization representing HOAs. Preferring self-initiated change to restrictions imposed by government, the CAI has recently published a book for HOAs, titled *Reinventing the Rules: A Step-By-Step Guide for Being Reasonable.* Perhaps this new "reasonableness" at CAI could provide an opening for the ARRL to work with the group on inserting "reasonable" rules regarding amateur radio antennas into the boilerplate regulations that the institute provides for its member associations.

At the moment, H.R. 2160 is the best option we have going for antenna-restriction reform, so we encourage you to urge your representative to support it. But all avenues must be pursued, including working with other like-minded groups, trying to work with HOAs to find middle ground, and promoting legislation that is more than window-dressing.

Dayton

I am writing this just after returning home from the 2009 Dayton Hamvention®. It was its usual semi-controlled chaos, and a shot of ham radio adrenaline for anyone who attended. Our impression, without having seen any numbers from the sponsors or even having time to fully assess our own numbers, is that attendance may have been *up* slightly from the past couple of years. There was lots of good stuff in the flea-market. Even the city itself had more life than we've seen in recent years. The primary impact of the recession seemed to have been that people were favoring smaller, less-expensive radios and accessories over big-ticket items. Even so, that didn't stop one Japanese tower company from shipping in and displaying a huge motorized crankup tower with an equally huge price tag of more than $50,000! As we've said in this space many times before, not too bad for a hobby that's supposedly at death's door (as it has been for at least the past 60 years). As always, a visit to Dayton in mid-May is, to steal a line from the popular books, chicken soup for the ham radio soul. *73, W2VU*

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