

HB 313 - AS INTRODUCED

2021 SESSION

21-0441

10/06

HOUSE BILL           **313**

AN ACT               relative to property restrictions on certain amateur radio antennas.

SPONSORS:         Rep. Aldrich, Belk. 2

COMMITTEE:       Commerce and Consumer Affairs

---

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.

-----

Explanation:       Matter added to current law appears in ***bold italics***.  
                      Matter removed from current law appears ~~[in brackets and struck through.]~~  
                      Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty One*

AN ACT relative to property restrictions on certain amateur radio antennas.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

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

3 477:22-b Amateur Radio Communications; Enforcement of Restrictions.

4 I. In this section:

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

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

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

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

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

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

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

1           III.(a) Notwithstanding paragraph II, a community association may adopt or enforce any of  
2 the following restrictions on the installation and maintenance of antennas and antenna support  
3 structures:

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

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

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

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

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

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

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

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

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

36                  (g) Where existing covenants or restrictions require prior approval for the installation of  
37 antennas or antenna support structures, the failure of the association to act on the owners request

1 for approval within 45 days from the time that an owner seeks approval shall be deemed to be  
2 approval.

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

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

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

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

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

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

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

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

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

**HB 313 - AS INTRODUCED**

**- Page 4 -**

1           2 Effective Date. This act shall take effect 60 days after its passage.