

AN ANALYSIS OF THE NEW MISSISSIPPI PRB-1 LAW

On March 13, 2006, Governor Haley Barbour signed House Bill No. 736 of the Mississippi legislature which incorporates the language of the limited federal preemption known as PRB-1. This new law is codified as Section 17-1-3(2) of the Mississippi Code.

This new law reads as follows:

(2) Local land use regulation ordinances involving the placement, screening, or height of amateur radio antenna structures must reasonably accommodate amateur communications and must constitute the minimum practicable regulation to accomplish local authorities' legitimate purposes of addressing health, safety, welfare and aesthetic considerations. Judgments as to the types of reasonable accommodation to be made and the minimum practicable regulation necessary to address these purposes will be determined by local governing authorities within the parameters of the law. This legislation supports the amateur radio service in preparing for and providing emergency communications for the State of Mississippi and local emergency management agencies.

This new statute was the culmination of more than six years work on the part of several dedicated amateurs and some legislators, who were supporters of amateur radio. The new law specifically recognizes the value of amateur radio in Mississippi to provide emergency communications and sets forth guidance and direction to local governing authorities in the regulation of amateur radio structures.

This new law is particularly timely in view of the recent proliferation of cellular telephone towers in Mississippi. These new cell towers have prompted many local governments to enact tower ordinances to regulate them. Although ham radio structures are not the reason for these new ordinances, in some cases these new cell tower ordinances are so restrictive that they unintentionally restrict amateur towers. Because of these new ordinances, there have been situations in Mississippi where amateur radio towers have been denied or restricted by local zoning boards. In addition, amateurs have had to appear before zoning boards to seek exemptions for amateur radio structures where such ordinances were being proposed.

The wording of the new statute is similar to PRB-1 and incorporates the terms “reasonably accommodate” and “minimum practicable regulation” with regard to ordinances regulating amateur radio structures. PRB-1 was issued by the Federal Communications Commission in 1985 as a limited federal preemption of state and local regulations that operate to preclude amateur communications and states that its purpose is “to strike a balance between the federal interest in promoting amateur operations and the legitimate interests of local governments in regulating zoning matters”. PRB-1, Par. 22, 24.

The relevant portion of PRB-1 reads as follows:

Because amateur station communications are only as effective as the antennas employed, antenna height restrictions directly affect the effectiveness of amateur communications. Some amateur antenna configurations require more substantial installations than others if they are to provide the amateur operator with the communications that he/she desires to engage in. For example, an antenna array for international amateur communications will differ from an antenna used to contact other amateur operators at shorter distances. We will not, however, specify any particular height limitation below which a local government may not regulate, nor will we suggest the precise language that must be for special exceptions, variances, or conditional use permits. Nevertheless, **local regulations which involve placement, screening, or height of antennas based on health, safety, or aesthetic considerations must be crafted to accommodate reasonably amateur communications, and to represent the minimum practicable regulation to accomplish the local authority’s legitimate purpose.**

PRB-1 Par. 25 (emphasis added).

Although PRB-1 has been around for a number of years, it has been hard to explain to local authorities exactly what PRB-1 meant and what legal authority it represents. Because of this, local zoning authorities in Mississippi have sometimes ignored the federal PRB-1 directive. However, with the new Mississippi statute on the books, local zoning officials will be required to follow the new guidelines set forth.

The new Mississippi law does not mean that an amateur can put up a tower at any height. Local zoning boards have the authority to regulate amateur structures but must be reasonable

and use the minimum regulation necessary in addressing health, safety, welfare and aesthetic considerations. What is considered reasonable regarding amateur radio antenna structures? There are some related ordinances and reported court cases which may provide some guidance on these points as summarized in the following paragraphs:

There have been PRB-1 related statutes passed in some 23 states and a few of these statutes generally exempt amateur structures of up to approximately 70-75 feet. Also, there are some recently enacted ordinances in Mississippi designed primarily for cellular telephone towers which exempt amateur radio towers of up to 70-75 feet in height.

Although there are no reported court decisions in Mississippi involving amateur towers, there have been a few reported court decisions in other states. The courts in these cases which involved municipal lots have allowed amateur towers ranging from 30 feet to 86 feet in height, depending on the circumstances. There are also cases involving large lots of several acres where towers of 90 feet to 125 feet were approved.

The above cases would seem to indicate that it would be reasonable for a Mississippi amateur to erect a tower in the 40-75 feet range for the average size municipal lot and possibly higher for lots consisting of several acres or in rural locations.

The PRB-1 related statutes and reported court cases on amateur towers are included in the ARRL PRB-1 Package which can be found on its website at www.arrl.org.

An amateur planning on erecting a tower should first ascertain whether or not his municipality or county has adopted an ordinance governing communications towers. If such an ordinance has been adopted, it is possible that there may be exceptions for amateur radio structures. If it is determined that a hearing before a zoning board is required, the amateur should find out who the local zoning officials are and discuss his tower plans with them. He

should educate the local zoning officials about amateur radio and the new Mississippi statute prior to the hearing. The amateur should not wait and attempt to do all of this initially at the zoning hearing itself.

It would be advisable for an amateur facing a zoning problem to seek the advice of an ARRL Volunteer Counsel or the amateur's own attorney. An attorney can be valuable in keeping a zoning hearing focused on the issues and avoiding personal feelings or animosity. The ARRL has resources that can be very valuable to an amateur or his attorney in zoning matters.

The new Mississippi law is significant in that it expressly supports the amateur radio service and provides much needed guidance and direction to local zoning officials in dealing with amateur radio structures. Although zoning boards have the authority to regulate amateur towers, they must reasonably accommodate amateur communications with the minimum practicable regulation necessary. An amateur should also endeavor to be reasonable and consider the size of his lot and the effect on his neighborhood when making plans for a tower.

Finally, the last sentence of the new statute cannot be overemphasized. The Mississippi legislature has expressed its support of the amateur radio service in preparing for and providing emergency communications. The role of hams in providing communications during the recent natural disasters in the state played a pivotal role in the passage of this legislation. It is now up to the Mississippi amateur radio operators to continue to live up to this trust which has been placed in them.

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