

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1197 w/CS Relating to Radio Transmission
SPONSOR(S): Rivera
TIED BILLS: **IDEN./SIM. BILLS:** SB 2714

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Business Regulation</u>	<u>28 Y, 8 N w/CS</u>	<u>Holt</u>	<u>Liepshutz</u>
2) <u>Appropriations</u>	<u>37 Y, 5 N w/CS</u>	<u>DeBeaugrine</u>	<u>Baker</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Section 301 of the Federal Communications Act prohibits the "use or operation of any apparatus for the transmission of energy or communications or signals by radio" without a license issued by the Federal Communications Commission (FCC). As a result, generally to operate a radio station, the Communications Act requires that one first obtain a license from the FCC. There are certain limited exceptions to this licensure requirement.

Current Florida law provides for criminal prosecution for a person to transmit or cause to be transmitted over any radio frequency with knowledge that such frequency is assigned by the FCC to a state, county, or municipal law enforcement agency, or state agency. Also, criminal penalties are provided for using communication devices to assist in the commission of a crime or to assist others to avoid prosecution for the commission of a crime.

Unlicensed radio operators or stations, also known as "pirate" radio stations, are illegal entities transmitting without station licensure or a valid amateur radio operator's license from the FCC. Due to the unpredictable interference with public and private radio stations that can occur with illegal transmissions, "pirate" radio poses a threat, for example, to the state's Emergency Alert System.

The committee substitute creates section 877.27, F.S., which prohibits a person, firm or corporation from transmitting radio signals without applicable federal licensure or licensure exemption. The act further prohibits an individual or entity from, directly or indirectly, performing any act which intentionally causes interference with licensed public or commercial radio stations. Any violation of this section constitutes a felony of the third degree.

Section 16.56, F.S., is amended to provide the Office of Statewide Prosecution the jurisdiction to investigate violations of section 877.27, F.S. relating to unlicensed radio transmission or transmission interference with public or commercial FCC licensed stations.

The bill would have an indeterminate fiscal impact due to lack of data on the number of violations that would be prosecuted.

This act shall take effect upon becoming a law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1197c.ap.doc
DATE: April 2, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Current Federal Law

Section 301 of the Communications Act prohibits the "use or operation of any apparatus for the transmission of energy or communications or signals by radio" without a license issued by the Federal Communications Commission (FCC). As a result a license from the FCC is generally required to operate a radio station.

There are certain limited exceptions to this licensure requirement. For example, the FCC has provided blanket authorization for transmitting radio signals to operators of CB radios, hobbyists that utilize radio controlled devices, and domestic ship and aircraft radios. In addition, the FCC has authorized the operation of certain low power radios pursuant to Part 15 of the FCC's Rules. Operators of these radio facilities are not required to have individual licenses. However, these operators are required to operate their stations in a manner consistent with the FCC's operational and technical rules for those services.

Parties found operating radio stations without FCC authorization are subject to a variety of enforcement actions including seizure of equipment, imposition of monetary forfeitures, ineligibility to hold any FCC license, and criminal penalties.

Current State Law

Pursuant to s. 843.165, F.S., unauthorized transmissions or interference with governmental and associated radio frequencies is a misdemeanor of the first degree. Section 843.16, F.S., provides for a second degree misdemeanor for installing radio equipment in a motor vehicle or business when such equipment is tuned to receive frequencies assigned to state or local law enforcement officers or to the state or its agencies.

Section 843.167, F. S., prohibits the use of police scanners or similar devices to intercept police communications to aid in the commission of a crime. In such instances, the punishment shall be enhanced by one degree (e.g. 3rd degree felony punished as if it were a 2nd degree felony). This section further provides that it is a 1st degree misdemeanor to assist another in avoiding detection or arrest for a crime by divulging the substance of a police radio communication.

In addition, section 934.215, F.S., provides that the use of a two-way communications device to facilitate or further the commission of any felony is also a felony.

Proposed Changes

The committee substitute creates section 877.27, F.S., which prohibits a person, firm or corporation from transmitting radio signals without applicable federal licensure or licensure exemption. The act further prohibits an individual or entity from, directly or indirectly, performing any act which causes interference with licensed public or commercial radio stations. Any violation of this section constitutes a felony of the third degree.

Section 16.56, F.S., is amended to expand the jurisdiction of the Office of Statewide Prosecution to include investigating violations of section 877.27, F.S. relating to unlicensed radio transmission or transmission interference with public or commercial FCC licensed stations.

This act shall take effect upon becoming a law.

C. SECTION DIRECTORY:

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate. See fiscal comments.

2. Expenditures:

Indeterminate. See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate. See fiscal comments.

2. Expenditures:

Indeterminate. See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Statewide Prosecutor's Office reports an indeterminate fiscal impact from expanding the scope of its authority to investigate violations of the newly created 827.27, F.S.

In addition, the bill creates a third degree felony for violation of 827.27, F.S. which has the potential to affect the demand for prison beds. The Criminal Justice Impact Conference has not met to project the prison bed impact of the bill; however, unranked third degree felony convictions rarely result in a prison sanction under the current sentencing guidelines. Each principal of the Criminal Justice Impact Conference was individually contacted on March 31, 2004 and each agreed that the likely impact of this bill on the prison system population would be insignificant. There could, however, be some impact on demand for space in local jails. The impact is indeterminate because of a lack of data to allow for the estimation of the number of arrests and subsequent convictions.

Felony convictions typically involve fines and payment of various court costs and fees. Effective July 1, 2004, many of these fines and costs will accrue to the clerks of court, with a portion of these revenues ultimately going to the state General Revenue Fund. The revenue impact of any increased fines and court costs is indeterminate because of a lack of data on the number of cases that would be successfully prosecuted.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 17, 2004, the Committee on Business Regulation (Committee) passed HB 1197 as a committee substitute. The Committee adopted one amendment. This amendment provides intent language which establishes that no person, firm, or corporation shall intentionally transmit radio signals without applicable federal licensure or licensure exemption. The committee substitute further prohibits an individual or entity from, directly or indirectly, performing any act which intentionally causes interference with licensed public or commercial radio stations. Any violation of this section constitutes a felony of the third degree.

On April 2, 2004, the Appropriations Committee passed HB 1197 as a committee substitute. It changes the committee substitute passed by the Committee on Business Regulation by removing the condition that unlicensed radio transmissions or interference with licensed radio transmissions must be intentional in order to constitute a crime. This analysis is drafted to the committee substitute.