

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>	_____	_____	_____
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 intentionally 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.

There is an indeterminate fiscal impact on state and local government.

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: h1197a.doc
DATE: March 18, 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:

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, 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. For example, the FCC has provided blanket authorization for transmitting radio signals to operators of CB radios, radio control stations, 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. Such 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.

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., punishes the use of police scanners or other similar devices to intercept police communications to aid in the commission of a crime, or for someone to purposely assist another in avoiding detection or arrest for a crime by divulging the substance of a police radio communication. The punishment for the actual commission of a particular crime is enhanced one degree upwards whenever someone uses a device to aid in the commission of a crime. The punishment for assisting a criminal avoid detection or arrest by divulging the contents of a police communication is a first degree misdemeanor.

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.

The committee substitute creates section 877.27, F.S., which prohibits a person, firm or corporation from intentionally 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 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. The Department of Legal Affairs is unable to establish a fiscal impact because there is no way for the department to estimate the number of cases that may be prosecuted.

2. Expenditures:

Indeterminate. The Department of Legal Affairs is unable to establish a fiscal impact because there is no way for the department to estimate the number of cases that may be prosecuted.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate. The amount of fines that may be collected for violations of the newly created state offense cannot be determined.

2. Expenditures:

Indeterminate. The extent to which local law enforcement resources may be directed to enforcing this new offense cannot be determined.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate.

D. FISCAL COMMENTS:

None.

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.