

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2714
 SPONSOR: Senator Villalobos
 SUBJECT: Radio Transmission
 DATE: April 9, 2004 REVISED: 04/13/04 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wiehle</u>	<u>Caldwell</u>	<u>CU</u>	<u>Favorable</u>
2.	<u>Clodfelter</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill makes it unlawful to make a radio transmission without a license or an exemption or to interfere with a licensed public or commercial radio station. It also authorizes the Office of Statewide Prosecution to investigate and prosecute these crimes.

The bill substantially amends section 16.56 and creates section 877.27 of the Florida Statutes.

II. Present Situation:

Federal law prohibits any person from using or operating any apparatus for the transmission of communications or signals by radio except with a federal license and under and in accordance with the federal law. 47 U.S.C. s. 301.

Section 843.165, F.S., makes it unlawful for a person to transmit or cause to be transmitted over any radio frequency any sounds, jamming device, jamming transmissions, speech, or radio frequency carrier wave with knowledge that such frequency is assigned by the Federal Communications Commission to a state, county, or municipal governmental agency or water management district, including, but not limited to, a law enforcement, fire, government administration, or emergency management agency or any public or private emergency medical services provider. Additionally, it is unlawful for a person to knowingly obstruct, jam, or interfere with radio transmissions made by volunteer communications personnel of any state, county, or municipal governmental agency, water management district, volunteers of any public or private emergency medical services provider, or volunteers in any established Skywarn program when the volunteers are providing communications support upon request of the governmental agency during tests, drills, field operations, or emergency events. A violation of these provisions is a first degree misdemeanor.

III. Effect of Proposed Changes:

Section 1 creates s. 877.27, F.S., which makes it unlawful for a person to:

- Make, or cause to be made, a radio transmission in this state unless the person obtains a license or an exemption from licensure from the Federal Communications Commission under 47 U.S.C. s. 301, or other applicable federal law or regulation; or
- Do any act, whether direct or indirect, to cause an unlicensed radio transmission to, or interference with, a public or commercial radio station licensed by the Federal Communications Commission or to enable the radio transmission or interference to occur.

A violation is a third degree felony.

Section 2 amends s. 16.56(1)(a), F.S., to authorize the Office of Statewide Prosecution to investigate and prosecute violations of s. 877.27, F.S.

The bill takes effect July 1, 2004.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Indeterminate. Licensed radio stations will benefit from the prohibition on interference, and those persons interfering with licensed radio stations will face fines.

C. Government Sector Impact:

Indeterminate. The number of investigations and prosecutions, and the amount of the associated expenses, cannot be projected.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Because this bill deals with an area of law that is regulated by the federal government, it is possible that it will be subject to federal preemption under the Supremacy Clause of Article VI of the United States Constitution. Local and state regulation of radio frequency interference is not expressly preempted by federal law. However, federal courts and the Federal Communications Commission have consistently held that the Commission has exclusive authority in the area of local and state regulation of radio frequency interference. *See In the Matter of Petition of Cingular Wireless*, FCC Docket No. WT-02-100 (Memorandum Opinion and Order Released July 7, 2003).

Despite this apparent preemption of the field, there are significant differences between the provisions of this bill and the types of regulation that have been addressed in previous cases. Those cases generally dealt with regulation by local or state government of the operations of entities who are legally operating within the parameters of FCC rules and regulations. This case deals specifically with operations of entities who act illegally outside of FCC regulation or affect the operations of legally-operating licensees. It is not clear whether the federal government would be compelled to protect the principle of field preemption of radio frequency interference, or would welcome state assistance in enforcing the telecommunications laws.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
