(122nd General Assembly)
(Amended Substitute Senate Bill Number 132)

AN ACT

To amend sections 303.211, 519.211, and 4921.11 and to enact sections 4921.35 to 4921.40 of the Revised Code to provide a new state certification system for household goods moving companies in Ohio that generally eliminates restrictions as to area of service; to subject to that certification system existing certificate holders and certain previously exempt household goods moving companies; and to authorize county and township zoning of public utilities engaged in the business of transporting persons or property, with certain exceptions.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 303.211, 519.211, and 4921.11 be amended and sections 4921.35, 4921.36, 4921.37, 4921.38, 4921.39, and 4921.40 of the Revised Code be enacted to read as follows:

Sec. 303.211. (A) Except as otherwise provided in division (B) or (C) of this section, sections 303.01 to 303.25 of the Revised Code do not confer any power on any board of county commissioners or board of zoning appeals in respect to the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any buildings or structures of any public utility or railroad, whether publicly or privately owned, or the use of land by any public utility or railroad for the operation of its business.

(B)(1) As used in this division, "telecommunications tower" means any free-standing structure, or any structure to be attached to a building or other structure, that meets all of the following criteria:

(a) The free-standing or attached structure is proposed to be constructed on or after ~~the effective date of this amendment~~ October 31, 1996.

(b) The free-standing or attached structure is proposed to be owned or principally used by a public utility engaged in the provision of telecommunications services.

(c) The free-standing or attached structure is proposed to be located in an unincorporated area of a township, in an area zoned for residential use.

(d)(i) The free-standing structure is proposed to top at a height that is greater than either the maximum allowable height of residential structures within the zoned area as set forth in the applicable zoning regulations, or the maximum allowable height of such a free-standing structure as set forth in any applicable zoning regulations in effect immediately prior to ~~the effective date of this amendment~~ October 31, 1996, or as those regulations subsequently are amended.

(ii) The attached structure is proposed to top at a height that is greater than either the height of the building or other structure to which it is to be attached, or the maximum allowable height of such an attached structure as set forth in any applicable zoning regulations in effect immediately prior to ~~the effective date of this amendment~~ October 31, 1996, or as those regulations subsequently are amended.

(e) The free-standing or attached structure is proposed to have attached to it radio frequency transmission or reception equipment.

(2) Sections 303.01 to 303.25 of the Revised Code confer power on a board of county commissioners or board of zoning appeals with respect to the location, erection, construction, reconstruction, change, alteration, removal, or enlargement of a telecommunications tower, but not with respect to the maintenance or use of such a tower or any change or alteration that would not substantially increase the tower's height. However, the power so conferred shall apply to a particular telecommunications tower only upon the provision of a notice, in accordance with division (B)(4)(a) of this section, to the person proposing to construct the tower.

(3) Any person who plans to construct a telecommunications tower in an area subject to county zoning regulations shall provide both of the following by certified mail:

(a) Written notice to the board of township trustees of the township in which the tower is proposed to be constructed and to each owner of property, as shown on the county auditor's current tax list, whose land is contiguous to or directly across a street or roadway from the property on which the tower is proposed to be constructed, stating all of the following in clear and concise language:

(i) The person's intent to construct the tower;

(ii) A description of the property sufficient to identify the proposed location;

(iii) That, no later than fifteen days after the date of mailing of the notice, such board of township trustees or any such property owner may

give written notice to the board of county commissioners requesting that sections 303.01 to 303.25 of the Revised Code apply to the proposed location of the tower as provided under division (B)(4)(a) of this section.

If the notice to the board of township trustees or to a property owner is returned unclaimed or refused, the person shall mail the notice by regular mail. The failure of delivery of the notice does not invalidate the notice.

(b) Written notice to the board of county commissioners of the information specified in divisions (B)(3)(a)(i) and (ii) of this section. The notice to the board also shall include verification that the person has complied with division (B)(3)(a) of this section.

(4)(a) If the board of county commissioners receives notice from the board of township trustees or a property owner under division (B)(3)(a)(iii) of this section within the time specified in that division or if a member of the board of county commissioners makes an objection to the proposed location of the telecommunications tower within fifteen days after the date of mailing of the notice sent under division (B)(3)(b) of this section, the board of county commissioners shall send the person proposing to construct the tower written notice that the tower is subject to the power conferred by and in accordance with division (B)(2) of this section. The notice shall be sent no later than five days after the earlier of the date the board first receives such a notice from the board of township trustees or a property owner or the date upon which a member of the board of county commissioners makes an objection. Upon the date of mailing of the notice to the person, sections 303.01 to 303.25 of the Revised Code shall apply to the tower.

(b) If the board of county commissioners receives no notice under division (B)(3)(a)(iii) of this section within the time prescribed by that division or no board member has an objection as provided under division (B)(4)(a) of this section within the time prescribed by that division, division (A) of this section shall apply to the tower without exception.

(C) sections 303.01 to 303.25 of the Revised Code confer power on a board of county commissioners or board of zoning appeals with respect to the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any buildings or structures of a public utility engaged in the business of transporting persons or property, or both, or providing or furnishing such transportation service, over any public street, road, or highway in this state, and with respect to the use of land by any such public utility for the operation of its business, to the extent that any exercise of such power is reasonable and not inconsistent with Chapters 4901., 4903., 4905., 4909., 4921., and 4923. of the Revised Code. However, this division confers no power on a board of county

commissioners or board of zoning appeals with respect to a building or structure of, or the use of land by, a person engaged in the transportation of farm supplies to the farm or farm products from farm to market or to food fabricating plants.

(D) Sections 303.01 to 303.25 of the Revised Code confer no power on any county rural zoning commission, board of county commissioners, or board of zoning appeals to prohibit the sale or use of alcoholic beverages in areas where the establishment and operation of any retail business, hotel, lunchroom, or restaurant is permitted.

~~(D)~~(E) Sections 303.01 to 303.25 of the Revised Code do not confer any power on any county rural zoning commission, board of county commissioners, or board of zoning appeals to prohibit the use of any land owned or leased by an industrial firm for the conduct of oil or natural gas well drilling or production activities or the location of associated facilities or equipment when such oil or natural gas obtained by the industrial firm is used for the operation of its own plants.

~~(E)~~(F)(1) Any person who plans to construct a telecommunications tower within one hundred feet of a residential dwelling shall provide a written notice to the owner of the residential dwelling and to the person occupying the residence, if that person is not the owner of the residence, stating in clear and concise language the person's intent to construct the tower and a description of the property sufficient to identify the proposed location. The notice shall be sent by certified mail. If the notice is returned unclaimed or refused, the person shall mail the notice by regular mail. The failure of delivery does not invalidate the notice.

(2) As used in division ~~(E)~~(F) of this section:

(a) "Residential dwelling" means a building used or intended to be used as a personal residence by the owner, part-time owner, or lessee of the building, or any person authorized by such a person to use the building as a personal residence;

(b) "Telecommunications tower" has the same meaning as in division (B)(1) of this section, except that the proposed location of the free-standing or attached structure may be an area other than an unincorporated area of a township, in an area zoned for residential use.

Sec. 519.211. (A) Except as otherwise provided in division (B) or (C) of this section, sections 519.02 to 519.25 of the Revised Code confer no power on any board of township trustees or board of zoning appeals in respect to the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any buildings or structures of any public utility or railroad, whether publicly or privately owned, or the use

of land by any public utility or railroad, for the operation of its business.

(B)(1) As used in this division, "telecommunications tower" means any free-standing structure, or any structure to be attached to a building or other structure, that meets all of the following criteria:

(a) The free-standing or attached structure is proposed to be constructed on or after ~~the effective date of this amendment~~ October 31, 1996.

(b) The free-standing or attached structure is proposed to be owned or principally used by a public utility engaged in the provision of telecommunications services.

(c) The free-standing or attached structure is proposed to be located in an unincorporated area of a township, in an area zoned for residential use.

(d)(i) The free-standing structure is proposed to top at a height that is greater than either the maximum allowable height of residential structures within the zoned area as set forth in the applicable zoning regulations, or the maximum allowable height of such a free-standing structure as set forth in any applicable zoning regulations in effect immediately prior to ~~the effective date of this amendment~~ October 31, 1996, or as those regulations subsequently are amended.

(ii) The attached structure is proposed to top at a height that is greater than either the height of the building or other structure to which it is to be attached, or the maximum allowable height of such an attached structure as set forth in any applicable zoning regulations in effect immediately prior to ~~the effective date of this amendment~~ October 31, 1996, or as those regulations subsequently are amended.

(e) The free-standing or attached structure is proposed to have attached to it radio frequency transmission or reception equipment.

(2) Sections 519.02 to 519.25 of the Revised Code confer power on a board of township trustees or board of zoning appeals with respect to the location, erection, construction, reconstruction, change, alteration, removal, or enlargement of a telecommunications tower, but not with respect to the maintenance or use of such a tower or any change or alteration that would not substantially increase the tower's height. However, the power so conferred shall apply to a particular telecommunications tower only upon the provision of a notice, in accordance with division (B)(4)(a) of this section, to the person proposing to construct the tower.

(3) Any person who plans to construct a telecommunications tower in an area subject to township zoning regulations shall provide both of the following by certified mail:

(a) Written notice to each owner of property, as shown on the county auditor's current tax list, whose land is contiguous to or directly across a

eet or roadway from the property on which the tower is proposed to be constructed, stating all of the following in clear and concise language:

(i) The person's intent to construct the tower;

(ii) A description of the property sufficient to identify the proposed location;

(iii) That, no later than fifteen days after the date of mailing of the notice, any such property owner may give written notice to the board of township trustees requesting that sections 519.02 to 519.25 of the Revised Code apply to the proposed location of the tower as provided under division (B)(4)(a) of this section.

If the notice to a property owner is returned unclaimed or refused, the person shall mail the notice by regular mail. The failure of delivery of the notice does not invalidate the notice.

(b) Written notice to the board of township trustees of the information specified in divisions (B)(3)(a)(i) and (ii) of this section. The notice to the board also shall include verification that the person has complied with division (B)(3)(a) of this section.

(4)(a) If the board of township trustees receives notice from a property owner under division (B)(3)(a)(iii) of this section within the time specified in that division or if a board member makes an objection to the proposed location of the telecommunications tower within fifteen days after the date of mailing of the notice sent under division (B)(3)(b) of this section, the board shall request that the clerk of the township send the person proposing to construct the tower written notice that the tower is subject to the power conferred by and in accordance with division (B)(2) of this section. The notice shall be sent no later than five days after the earlier of the date the board first receives such a notice from a property owner or the date upon which a board member makes an objection. Upon the date of mailing of the notice to the person, sections 519.02 to 519.25 of the Revised Code shall apply to the tower.

(b) If the board of township trustees receives no notice under division (B)(3)(a)(iii) of this section within the time prescribed by that division or no board member has an objection as provided under division (B)(4)(a) of this section within the time prescribed by that division, division (A) of this section shall apply to the tower without exception.

(C) sections 519.02 to 519.25 of the Revised Code confer power on a board of township trustees or board of zoning appeals with respect to the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any buildings or structures of a public utility engaged in the business of transporting persons or property,

or both, or providing or furnishing such transportation service, over any public street, road, or highway in this state, and with respect to the use of land by any such public utility for the operation of its business, to the extent that any exercise of such power is reasonable and not inconsistent with Chapters 4901., 4903., 4905., 4909., 4921., and 4923. of the Revised Code. However, this division confers no power on a board of township trustees or board of zoning appeals with respect to a building or structure of, or the use of land by, a person engaged in the transportation of farm supplies to the farm or farm products from farm to market or to food fabricating plants.

(D) Sections 519.02 to 519.25 of the Revised Code confer no power on any township zoning commission, board of township trustees, or board of zoning appeals to prohibit the sale or use of alcoholic beverages in areas where the establishment and operation of any retail business, hotel, lunchroom, or restaurant is permitted.

~~(D)~~(E) Sections 519.02 to 519.25 of the Revised Code do not confer any power on any township zoning commission, board of township trustees, or board of zoning appeals to prohibit the use of any land owned or leased by an industrial firm for the conduct of oil or natural gas well drilling or production activities or the location of associated facilities or equipment when such oil or natural gas obtained by the industrial firm is used for the operation of its own plants.

~~(E)~~(F)(1) Any person who plans to construct a telecommunications tower within one hundred feet of a residential dwelling shall provide a written notice to the owner of the residential dwelling and to the person occupying the residence, if that person is not the owner of the residence stating in clear and concise language the person's intent to construct the tower and a description of the property sufficient to identify the proposed location. The notice shall be sent by certified mail. If the notice is returned unclaimed or refused, the person shall mail the notice by regular mail. The failure of delivery does not invalidate the notice.

(2) As used in division ~~(E)~~(F) of this section:

(a) "Residential dwelling" means a building used or intended to be used as a personal residence by the owner, part-time owner, or lessee of the building, or any person authorized by such a person to use the building as a personal residence;

(b) "Telecommunications tower" has the same meaning as in division (B)(1) of this section, except that the proposed location of the free-standing or attached structure may be an area other than an unincorporated area of a township, in an area zoned for residential use.

Sec. 4921.11. (A) As used in this section, "motor transportation

company" has the same meaning as in section 4921.35 of the Revised Code.

(B) No certificate of public convenience and necessity shall be issued by the public utilities commission to any motor transportation company until it has filed with the commission a liability insurance certificate, policy, or bond satisfactory to the commission, in such sum and with such provisions as the commission deems necessary adequately to protect the interests of the public, having due regard for the number of persons and amount of property affected. Such liability insurance certificate, policy, or bond shall insure such company against loss sustained by reason of the death of or injuries to persons and for loss of or damage to property resulting from the negligence of such company.

(C) No such certificate of public convenience and necessity shall be issued to ~~such~~ a company until it has filed with the commission a freight cargo insurance certificate, policy, or bond ~~which~~ that the commission has determined to be adequate to protect the interests of the shipping public. Such freight cargo insurance certificate, policy, or bond shall insure such company against all loss, in excess of ~~fifty~~ one thousand dollars and within the limits fixed in such certificate, policy, or bond, sustained by reason of any loss or damage to the property being transported.

~~Such~~ (D) A certificate, policy, or bond required by this section shall provide that ten days' notice in writing shall be given to the commission of intention to cancel such insurance certificate, policy, or bond.

If ~~such~~ a certificate, policy, or bond is canceled during its term or lapses for any reason, the commission shall require ~~such~~ the company to replace ~~such certificate, policy, or bond~~ it with another certificate, policy, or bond fully complying with the requirements of this section. In default of such replacement, all operations under the certificate of public convenience and necessity shall cease immediately, and further operations shall not be conducted without the specific approval of the commission, which may be given after the motor transportation company has complied with this section. The commission shall not reinstate ~~such~~ a certificate of public convenience and necessity until a satisfactory insurance certificate, policy, or bond has been filed.

(E) To ensure minimum standards of protection of the consumer's household goods, the commission may adopt rules governing requirements for cargo insurance for motor transportation companies engaged, for hire, in the business of transporting household goods over a public highway in this state. As used in this division, "household goods" has the same meaning as in section 4921.35 Of the Revised Code.

Sec. 4921.35. As used in sections 4921.35 to 4921.40 of the Revised

Code:

(A) "Household goods" means personal effects and property used or to be used in a dwelling, excluding property moving from a factory or store.

(B) "Motor transportation company" has the same meaning as in section 4921.02 of the Revised Code, except that it includes any person otherwise exempted under division (A)(2) of that section that is engaged, for hire, in the business of transporting household goods over a public highway in this state.

(C) "Person" has the same meaning as in section 1.59 of the Revised Code.

Sec. 4921.36. Except as otherwise provided in sections 4921.35 to 4921.40 of the Revised Code, a motor transportation company engaged, for hire, in the business of transporting household goods over a public highway in this state:

(A) Is subject to sections 4921.01 to 4921.32 of the Revised Code and to all other provisions of the Revised Code applicable to a motor transportation company that is subject to sections 4921.01 to 4921.32 of the Revised Code, including sections 4506.22, 4511.78, 5502.01, 5503.02, and 5503.34 of the Revised Code;

(B) Is not a public utility as defined in section 4911.02 of the Revised Code.

Sec. 4921.37. Notwithstanding any provision of this chapter or Chapters 4901. to 4909. and 4923. of the Revised Code to the contrary:

(A) Not later than six months after the effective date of this section, the public utilities commission, in accordance with sections 4921.35 to 4921.40 of the Revised Code, shall establish by order a certification system for motor transportation companies engaged, for hire, in the business of transporting household goods over a public highway in this state.

(B) Beginning on the effective date of the order of the commission as initially issued under division (A) of this section, no motor transportation company shall engage, for hire, in the business of transporting household goods over a public highway in this state without first holding a valid certificate issued by the public utilities commission pursuant to sections 4921.35 to 4921.40 of the Revised Code.

(C) No motor transportation company engaged, for hire, in the business of transporting household goods over a public highway in this state shall fail to comply with this section or the order of the commission issued under this section.

Sec. 4921.38. (A) The public utilities commission shall approve an application for a certificate under sections 4921.35 to 4921.40 of the

Revised Code and shall issue a certificate, provided the applicant submits to the commission a completed application, on a form prescribed by the commission, that is substantially the same as the application prescribed by the commission pursuant to sections 4921.08 and 4921.09 of the Revised Code, and includes a certification of all of the following by responsible officials of the applicant:

(1) The applicant's workers' compensation coverage is current pursuant to Chapter 4123. of the Revised Code.

(2) The applicant's unemployment compensation coverage is current pursuant to Chapter 4141. of the Revised Code.

(3) The applicant's financial responsibility relating to cargo insurance requirements is in accordance with rules adopted by the commission under section 4921.11 of the Revised Code.

(B) The commission shall not approve any application that does not contain the proper certifications required by this section. The commission may revoke a certificate issued under division (A) of this section if, after at least fifteen days' advance notice to the certificate holder of the basis for such action and providing the holder with an opportunity for a hearing, the commission finds that the holder is not in compliance with this chapter, or rules adopted or orders issued thereunder.

A certificate issued under division (A) of this section is valid for one year and is renewable annually.

(C) The application fee for a certificate issued under this section shall be based on the certificate holder's gross revenue, in the prior year, for the intrastate transportation of household goods. The commission shall establish, by order, ranges of gross revenue and the fee for each range. The fees established by the commission under this division shall be credited to the public utilities fund and shall be used for the purposes of administering and enforcing sections 4921.35 to 4921.40 Of the Revised Code.

The application fee shall be established so that the total fees collected in fiscal year 1999 are no greater than one hundred twenty-five thousand dollars. The application fee shall be established so that the total fees collected for any other fiscal year are approximately the same as the appropriations made for that fiscal year for the administration of sections 4921.35 to 4921.40 of the Revised Code. In the event that the total fees collected for a fiscal year exceed such appropriations, the excess shall be used to reduce the amount of the fees that would otherwise be established pursuant to this section for the next fiscal year.

Sec. 4921.39. (A) Each holder of a certificate issued under sections 4921.35 to 4921.40 of the Revised Code shall do all of the following:

(1) Make its current certificate available for public inspection during normal business hours;

(2) Present each of its customers with information, written in plain and clear language and pursuant to a form prescribed by the commission, outlining a consumer's rights;

(3) Include its certificate number on all advertising, written estimates, and contracts, pursuant to rules adopted by the commission.

(B) No motor transportation company engaged, for hire, in the business of transporting household goods over a public HIGHWAY in this state shall violate or fail to perform a duty imposed by this chapter or rules adopted thereunder, or an order of the commission issued to secure compliance with this chapter or any rules adopted thereunder.

Sec. 4921.40. In accordance with section 4921.04 of the Revised Code, the public utilities commission may adopt rules:

(A) Providing for binding estimates by motor transportation companies engaged, for hire, in the business of transporting household goods over a public HIGHWAY in this state;

(B) Providing for guaranteed-not-to-exceed estimates by such motor transportation companies;

(C) Requiring such motor transportation companies to include their certificate number in all advertising, written estimates, and contracts related to the transportation of household goods in this state;

(D) As are necessary and proper to carry out this chapter with respect to such motor transportation companies.

SECTION 2. That existing sections 303.211, 519.211, and 4921.11 of the Revised Code are hereby repealed.

SECTION 3. A motor transportation company engaged, for hire, in the business of transporting household goods over a public highway in this state pursuant to a certificate issued prior to the effective date of this act by the Public Utilities Commission under sections 4921.01 to 4921.32 of the Revised Code may continue to engage in such business under the terms and conditions of the certificate as they apply to the certificate holder, provided that the company files an application with the Commission for a certificate in accordance with sections 4921.35 to 4921.40 of the Revised Code, as enacted by this act, not later than one month after the effective date of the order issued by the Commission under section 4921.37 of the Revised Code, as enacted by this act. The company may continue to engage in such

business under its existing certificate only until the later of the last day of that month or the effective date of the Commission's approval or disapproval of the company's application filed within that month. On the applicable date, the company's existing certificate expires by operation of law. Nothing in this section or in the terms or conditions of an existing certificate affects the right of another person to apply for, or the authority of the Commission to grant to such person, as of the effective date of the order, a certificate under section 4921.35 to 4921.40 of the Revised Code, as enacted by this act.

SECTION 4. A motor transportation company that was engaged, for hire, in the business of transporting household goods over a public highway in this state prior to the effective date of the Commission's order issued under section 4921.37 of the Revised Code, as enacted by this act, and that was exempt from regulation by the Commission pursuant to division (A)(2) of section 4921.02 of the Revised Code may continue to engage in such business until the Commission acts upon its application, provided that the company files an application with the Commission for a certificate in accordance with section 4921.35 to 4921.40 of the Revised Code, as enacted by this act, not later than 90 days after the effective date of the order issued by the Commission under section 4921.37 of the Revised Code, as enacted by this act.

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Speaker _____ of the House of Representatives.

_____

President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

_____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20____.

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Secretary of State.

File No. _____ Effective Date _____