

(122nd General Assembly)
(Substitute House Bill Number 228)

AN ACT

To amend sections 306.35 and 306.43 of the Revised Code to authorize regional transit authorities to use the lease and leaseback financing technique to finance their facilities, to remove from the Regional Transit Authority Law a reference to an obsolete provision of the Internal Revenue Code of 1954, and to declare an emergency.

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

SECTION 1. That sections 306.35 and 306.43 of the Revised Code be amended to read as follows:

Sec. 306.35. Upon the creation of a regional transit authority as provided by section 306.32 of the Revised Code, and upon the qualifying of its board of trustees and the election of a president and a vice-president, the authority shall exercise in its own name all the rights, powers, and duties vested in and conferred upon it by sections 306.30 to 306.53 of the Revised Code. Subject to any reservations, limitations, and qualifications that are set forth in those sections, the regional transit authority:

- (A) May sue or be sued in its corporate name;
- (B) May make contracts in the exercise of the rights, powers, and duties conferred upon it;
- (C) May adopt and at will alter a seal and use such seal by causing it to be impressed, affixed, reproduced, or otherwise used, but failure to affix the seal shall not affect the validity of any instrument;
- (D) May adopt, amend, and repeal bylaws for the administration of its affairs and rules for the control of the administration and operation of transit facilities under its jurisdiction, and for the exercise of all of its rights of ownership in those transit facilities;
- (E) May fix, alter, and collect fares, rates, and rentals and other charges for the use of transit facilities under its jurisdiction to be determined exclusively by it for the purpose of providing for the payment of the expenses of the regional transit authority, the acquisition, construction, improvement, extension, repair, maintenance, and operation of transit facilities under its jurisdiction, the payment of principal and interest on its

obligations, and to fulfill the terms of any agreements made with purchasers or holders of any such obligations, or with any person or political subdivision;

(F) Shall have jurisdiction, control, possession, and supervision of all property, rights, easements, licenses, moneys, contracts, accounts, liens, books, records, maps, or other property rights and interests conveyed, delivered, transferred, or assigned to it;

(G) May acquire, construct, improve, extend, repair, lease, operate, maintain, or manage transit facilities within or without its territorial boundaries, considered necessary to accomplish the purposes of its organization and make charges for the use of transit facilities;

(H) May levy and collect taxes as provided in sections 306.40 and 306.49 of the Revised Code;

(I) May issue bonds secured by its general credit as provided in section 306.40 of the Revised Code;

(J) May hold, encumber, control, acquire by donation, by purchase for cash or by installment payments, by lease-purchase agreement, by lease with option to purchase, or by condemnation, and may construct, own, lease as lessee or lessor, use, and sell, real and personal property, or any interest or right in real and personal property, within or without its territorial boundaries, for the location or protection of transit facilities and improvements and access to transit facilities and improvements, the relocation of buildings, structures, and improvements situated on lands acquired by the regional transit authority, or for any other necessary purpose, or for obtaining or storing materials to be used in constructing, maintaining, and improving transit facilities under its jurisdiction;

(K) May exercise the power of eminent domain to acquire property or any interest in property, within or without its territorial boundaries, that is necessary or proper for the construction or efficient operation of any transit facility or access to any transit facility under its jurisdiction in accordance with section 306.36 of the Revised Code;

(L) May provide by agreement with any county, including the counties within its territorial boundaries, or any municipal corporation or any combination of counties or municipal corporations for the making of necessary surveys, appraisals, and examinations preliminary to the acquisition or construction of any transit facility and the amount of the expense for the surveys, appraisals, and examinations to be paid by each such county or municipal corporation;

(M) May provide by agreement with any county, including the counties within its territorial boundaries, or any municipal corporation or any

combination of those counties or municipal corporations for the acquisition, construction, improvement, extension, maintenance, or operation of any transit facility owned or to be owned and operated by it or owned or to be owned and operated by any such county or municipal corporation and the terms on which it shall be acquired, leased, constructed, maintained, or operated, and the amount of the cost and expense of the acquisition, lease, construction, maintenance, or operation to be paid by each such county or municipal corporation;

(N) May issue revenue bonds for the purpose of acquiring, replacing, improving, extending, enlarging, or constructing any facility or permanent improvement that it is authorized to acquire, replace, improve, extend, enlarge, or construct, including all costs in connection with and incidental to the acquisition, replacement, improvement, extension, enlargement, or construction, and their financing, as provided by section 306.37 of the Revised Code;

(O) May enter into and supervise franchise agreements for the operation of a transit system;

(P) May accept the assignment of and supervise an existing franchise agreement for the operation of a transit system;

(Q) May exercise a right to purchase a transit system in accordance with the acquisition terms of an existing franchise agreement; and in connection with the purchase the regional transit authority may issue revenue bonds as provided by section 306.37 of the Revised Code or issue bonds secured by its general credit as provided in section 306.40 of the Revised Code;

(R) May apply for and accept grants or loans from the United States, the state, or any other public body for the purpose of providing for the development or improvement of transit facilities, mass transportation facilities, equipment, techniques, methods, or services, and grants or loans needed to exercise a right to purchase a transit system pursuant to agreement with the owner of those transit facilities, or for providing lawful financial assistance to existing transit systems; and may provide any consideration that may be required in order to obtain those grants or loans from the United States, the state, or other public body, either of which grants or loans may be evidenced by the issuance of revenue bonds as provided by section 306.37 of the Revised Code or general obligation bonds as provided by section 306.40 of the Revised Code;

(S) May employ and fix the compensation of consulting engineers, superintendents, managers, and such other engineering, construction, accounting and financial experts, attorneys, and other employees and agents necessary for the accomplishment of its purposes;

(T) May procure insurance against loss to it by reason of damages to its properties resulting from fire, theft, accident, or other casualties or by reason of its liability for any damages to persons or property occurring in the construction or operation of transit facilities under its jurisdiction or the conduct of its activities;

(U) May maintain funds that it considers necessary for the efficient performance of its duties;

(V) May direct its agents or employees, when properly identified in writing, after at least five days' written notice, to enter upon lands within or without its territorial boundaries in order to make surveys and examinations preliminary to the location and construction of transit facilities, without liability to it or its agents or employees except for actual damage done;

(W) On its own motion, may request the appropriate zoning board, as defined in section 4563.03 of the Revised Code, to establish and enforce zoning regulations pertaining to any transit facility under its jurisdiction in the manner prescribed by sections 4563.01 to 4563.21 of the Revised Code;

(X) If it acquires any existing transit system, shall assume all the employer's obligations under any existing labor contract between the employees and management of the system. If the board acquires, constructs, controls, or operates any such facilities, it shall negotiate arrangements to protect the interests of employees affected by the acquisition, construction, control, or operation. The arrangements shall include, but are not limited to:

(1) The preservation of rights, privileges, and benefits under existing collective bargaining agreements or otherwise, the preservation of rights and benefits under any existing pension plans covering prior service, and continued participation in social security in addition to participation in the public employees retirement system as required in Chapter 145. of the Revised Code;

(2) The continuation of collective bargaining rights;

(3) The protection of individual employees against a worsening of their positions with respect to their employment;

(4) Assurances of employment to employees of those transit systems and priority reemployment of employees terminated or laid off;

(5) Paid training or retraining programs;

(6) Signed written labor agreements.

The arrangements may include provisions for the submission of labor disputes to final and binding arbitration.

(Y) May provide for and maintain security operations, including a transit police department, subject to section 306.352 of the Revised Code. Regional transit authority police officers shall have the power and duty to

act as peace officers within transit facilities owned, operated, or leased by the transit authority to protect the transit authority's property and the person and property of passengers, to preserve the peace, and to enforce all laws of the state and ordinances and regulations of political subdivisions in which the transit authority operates. Regional transit authority police officers also shall have the power and duty to act as peace officers when they render emergency assistance outside their jurisdiction to any other peace officer who is not a regional transit authority police officer and who has arrest authority under section 2935.03 of the Revised Code. Regional transit authority police officers may render emergency assistance if there is a threat of imminent physical danger to the peace officer, a threat of physical harm to another person, or any other serious emergency situation and if either the peace officer who is assisted requests emergency assistance or it appears that the peace officer who is assisted is unable to request emergency assistance and the circumstances observed by the regional transit authority police officer reasonably indicate that emergency assistance is appropriate.

Before exercising powers of arrest and the other powers and duties of a peace officer, each regional transit authority police officer shall take an oath and give bond to the state in a sum that the board of trustees prescribes for the proper performance of the officer's duties.

Persons employed as regional transit authority police officers shall complete training for the position to which they have been appointed as required by the Ohio peace officer training commission as authorized in section 109.77 of the Revised Code, or be otherwise qualified. The cost of the training shall be provided by the regional transit authority.

(Z) May procure a policy or policies insuring members of its board of trustees against liability on account of damages or injury to persons and property resulting from any act or omission of a member in the member's official capacity as a member of the board or resulting solely out of the member's membership on the board;

(AA) May enter into any agreement for the sale and leaseback or lease ~~and leaseback of qualified mass commuting vehicles for federal income tax purposes under section 168(F)(8) of the Internal Revenue Code of 1954, as amended~~ transit facilities, which agreement may contain all necessary covenants for the security and protection of any lessor or the regional transit authority including, but not limited to, indemnification of the lessor against the loss of anticipated tax benefits arising from acts, omissions, or misrepresentations of the regional transit authority. In connection with that transaction, the regional transit authority may contract for insurance and letters of credit and pay any premiums or other charges for the insurance and

letters of credit. The fiscal officer shall not be required to furnish any certificate under section 5705.41 of the Revised Code in connection with the execution of any such agreement.

(BB) In regard to any contract entered into on or after March 19, 1993, for the rendering of services or the supplying of materials or for the construction, demolition, alteration, repair, or reconstruction of transit facilities in which a bond is required for the faithful performance of the contract, may permit the person awarded the contract to utilize a letter of credit issued by a bank or other financial institution in lieu of the bond;

(CC) May enter into agreements with municipal corporations located within the territorial jurisdiction of the regional transit authority permitting regional transit authority police officers employed under division (Y) of this section to exercise full arrest powers, as provided in section 2935.03 of the Revised Code, for the purpose of preserving the peace and enforcing all laws of the state and ordinances and regulations of the municipal corporation within the areas that may be agreed to by the regional transit authority and the municipal corporation.

Sec. 306.43. (A) The board of trustees of a regional transit authority or any officer or employee designated by such board may make any contract for the purchase of goods or services, the cost of which does not exceed twenty-five thousand dollars. When an expenditure, other than for the acquisition of real estate, the discharge of claims, or the acquisition of goods or services under the circumstances described in division (H) of this section, is expected to exceed twenty-five thousand dollars, such expenditure shall be made through full and open competition by the use of competitive procedures. The regional transit authority shall use the competitive procedure, as set forth in divisions (B), (C), (D), and (E) of this section, that is most appropriate under the circumstances of the procurement.

(B) Competitive sealed bidding is the preferred method of procurement and a regional transit authority shall use that method if all of the following conditions exist:

- (1) A clear, complete and adequate description of the goods, services, or work is available;
- (2) Time permits the solicitation, submission, and evaluation of sealed bids;
- (3) The award will be made on the basis of price and other price-related factors;
- (4) It is not necessary to conduct discussions with responding offerors about their bids;
- (5) There is a reasonable expectation of receiving more than one sealed

bid.

A regional transit authority shall publish a notice calling for bids once a week for no less than two consecutive weeks in at least one newspaper of general circulation within the territorial boundaries of the regional transit authority. A regional transit authority may require that a bidder for any contract other than a construction contract provide a bid guaranty in the form, quality, and amount considered appropriate by the regional transit authority. The board may let the contract to the lowest responsive and responsible bidder. Where fewer than two responsive bids are received, a regional transit authority may negotiate price with the sole responsive bidder or may rescind the solicitation and procure under division (H)(2) of this section.

(C) A regional transit authority may use two-step competitive bidding, consisting of a technical proposal and a separate, subsequent sealed price bid from those submitting acceptable technical proposals, if both of the following conditions exist:

(1) A clear, complete, and adequate description of the goods, services, or work is not available, but definite criteria exist for the evaluation of technical proposals;

(2) It is necessary to conduct discussions with responding offerors.

A regional transit authority shall publish a notice calling for technical proposals once a week for no less than two consecutive weeks in at least one newspaper of general circulation within the territorial boundaries of the regional transit authority. A regional transit authority may require a bid guaranty in the form, quality, and amount the regional transit authority considers appropriate. The board may let the contract to the lowest responsive and responsible bidder. Where fewer than two responsive and responsible bids are received, a regional transit authority may negotiate price with the sole responsive and responsible bidder or may rescind the solicitation and procure under division (H)(2) of this section.

(D) A regional transit authority shall make a procurement by competitive proposals if competitive sealed bidding or two-step competitive bidding is not appropriate.

A regional transit authority shall publish a notice calling for proposals once a week for no less than two consecutive weeks in at least one newspaper of general circulation within the territorial boundaries of the regional transit authority. A regional transit authority may require a proposal guaranty in the form, quality, and amount considered appropriate by the regional transit authority. The board may let the contract to the proposer making the offer considered most advantageous to the authority. Where

fewer than two competent proposals are received, a regional transit authority may negotiate price and terms with the sole proposer or may rescind the solicitation and procure under division (H)(2) of this section.

(E)(1) A regional transit authority shall procure the services of an architect or engineer in the manner prescribed by the "Federal Mass Transportation Act of 1987," Public Law 100-17, section 316, 101 Stat. 227, 232-234, 49 U.S.C.A. app. 1608 and the services of a construction manager in the manner prescribed by sections 9.33 to 9.332 of the Revised Code.

(2) A regional transit authority may procure revenue rolling stock in the manner prescribed by division (B), (C), or (D) of this section.

(3) All contracts for construction in excess of twenty-five thousand dollars shall be made only after the regional transit authority has published a notice calling for bids once a week for two consecutive weeks in at least one newspaper of general circulation within the territorial boundaries of the regional transit authority. The board may award a contract to the lowest responsive and responsible bidder. Where only one responsive and responsible bid is received, the regional transit authority may negotiate price with the sole responsive bidder or may rescind the solicitation. The regional transit authority shall award construction contracts in accordance with sections 153.12 to 153.14 and 153.54 of the Revised Code. Divisions (B) and (C) of this section shall not apply to the award of contracts for construction.

(F) All contracts involving expenditures in excess of twenty-five thousand dollars shall be in writing and shall be accompanied by or shall refer to plans and specifications for the work to be done. The plans and specifications shall at all times be made and considered part of the contract. For all contracts other than construction contracts, a regional transit authority may require performance, payment, or maintenance guaranties or any combination of such guaranties in the form, quality, and amount it considers appropriate. The contract shall be approved by the board and signed on behalf of the regional transit authority and by the contractor.

(G) In making a contract, a regional transit authority may give preference to goods produced in the United States in accordance with the Buy America requirements in the "Surface Transportation Assistance Act of 1982," Public Law 97-424, section 165, 96 Stat. 2097, 23 U.S.C.A. 101 note, as amended, and the rules adopted thereunder. The regional transit authority also may give preference to providers of goods produced in and services provided in labor surplus areas as defined by the United States department of labor in 41 U.S.C.A. 401 note, Executive Order No. 12073, August 16, 1978, 43 Fed. Reg. 36873, as amended.

(H) Competitive procedures under this section are not required in any of the following circumstances:

(1) The board of trustees of a regional transit authority, by a two-thirds affirmative vote of its members, determines that a real and present emergency exists under any of the following conditions, and the board enters its determination and the reasons for it in its proceedings:

(a) Affecting safety, welfare, or the ability to deliver transportation services;

(b) Arising out of an interruption of contracts essential to the provision of daily transit services;

(c) Involving actual physical damage to structures, supplies, equipment, or property.

(2) The purchase consists of goods or services, or any combination thereof, and after reasonable inquiry the board or any officer or employee the board designates finds that only one source of supply is reasonably available.

(3) The expenditure is for a renewal or renegotiation of a lease or license for telecommunications or electronic data processing equipment, services, or systems, or for the upgrade of such equipment, services, or systems, or for the maintenance thereof as supplied by the original source or its successors or assigns.

(4) The purchase of goods or services is made from another political subdivision, public agency, public transit system, regional transit authority, the state, or the federal government, or as a third-party beneficiary under a state or federal procurement contract, or as a participant in a department of administrative services contract under division (B) of section 125.04 of the Revised Code.

(5) The sale and leaseback or lease and leaseback of ~~qualified mass commuting vehicles~~ transit facilities is made as provided in division (AA) of section 306.35 of the Revised Code.

(6) The purchase substantially involves services of a personal, professional, highly technical, or scientific nature, including but not limited to the services of an attorney, physician, surveyor, appraiser, investigator, court reporter, adjuster, advertising consultant, or licensed broker, or involves the special skills or proprietary knowledge required for the servicing of specialized equipment owned by the regional transit authority.

(7) Services or supplies are available from a qualified nonprofit agency pursuant to sections 4115.31 to 4115.35 of the Revised Code.

(8) The purchase consists of the product or services of a public utility.

(9) The purchase is for the services of individuals with handicaps to

work in the authority's commissaries or cafeterias and those individuals are supplied by a nonprofit corporation or association whose purpose is to assist individuals with handicaps, whether or not that organization or association is funded entirely or in part by the federal government, or the purchase is for services provided by a nonprofit corporation or association whose purpose is to assist individuals with handicaps, whether or not that organization or association is funded entirely or in part by the federal government. For purposes of division (G)(9) of this section, "handicap" has the same meaning as in section 4112.01 of the Revised Code.

(I) A regional transit authority may enter into blanket purchase agreements for purchases of maintenance, operating, or repair goods or services where the item cost does not exceed five hundred dollars and the annual expenditure does not exceed twenty-five thousand dollars.

(J) Nothing contained in this section prohibits a regional transit authority from participating in intergovernmental cooperative purchasing arrangements.

(K) Except as otherwise provided in this chapter, a regional transit authority shall make a sale or other disposition of property through full and open competition. Except as provided in division (L) of this section, all dispositions of personal property and all grants of real property for terms exceeding five years shall be made by public auction or competitive procedure.

(L) The competitive procedures required by division (K) of this section are not required in any of the following circumstances:

(1) The grant is a component of a joint development between public and private entities and is intended to enhance or benefit public transit.

(2) The grant of a limited use or of a license affecting land is made to an owner of abutting real property.

(3) The grant of a limited use is made to a public utility.

(4) The grant or disposition is to a department of the federal or state government, to a political subdivision of the state, or to any other governmental entity.

(5) Used equipment is traded on the purchase of equipment and the value of the used equipment is a price-related factor in the basis for award for the purchase.

(6) The value of the personal property is such that competitive procedures are not appropriate and the property either is sold at its fair market value or is disposed of by gift to a nonprofit entity having the general welfare or education of the public as one of its principal objects.

(M) The board of trustees of a regional transit authority, when making a

contract funded exclusively by state or local moneys or any combination thereof, shall make a good faith effort to use disadvantaged business enterprise participation to the same extent required under Section 105(f) of the "Surface Transportation Assistance Act of 1982," Public Law 97-424, 96 Stat. 2100, and Section 106(c) of the "Surface Transportation and Uniform Relocation Assistance Act of 1987," Public Law 100-17, 101 Stat. 145, and the rules adopted thereunder.

(N) As used in this section:

(1) "Goods" means all things, including specially manufactured goods, that are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities, and things in action. "Goods" also includes other identified things attached to realty as described in section 1302.03 of the Revised Code.

(2) "Services" means the furnishing of labor, time, or effort by a contractor, not involving the delivery of goods or reports other than goods or reports that are merely incidental to the required performance, including but not limited to insurance, bonding, or routine operation, routine repair, or routine maintenance of existing structures, buildings, real property or equipment, but does not include employment agreements, collective bargaining agreements, or personal services.

(3) "Construction" means the process of building, altering, repairing, improving, painting, decorating, or demolishing any structure or building, or other improvements of any kind to any real property owned or leased by a regional transit authority.

(4) "Full and open competition" has the same meaning as in the "Office of Federal Procurement Policy Act," Public Law 98-369, section 2731, 98 Stat. 1195 (1984), 41 U.S.C.A. 403.

(5) A bidder is "responsive" if, applying the criteria of division (A) of section 9.312 of the Revised Code, the bidder is "responsive" as described in that section.

(6) A bidder is "responsible" if, applying the criteria of division (A) of section 9.312 of the Revised Code and of the "Office of Federal Procurement Policy Act," Public Law 98-369, section 2731, 98 Stat. 1195 (1984), 41 U.S.C.A. 403, the bidder is "responsible" as described in those sections.

SECTION 2. That existing sections 306.35 and 306.43 of the Revised Code are hereby repealed.

SECTION 3. This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity lies in the fact that the Federal Transit Authority, because of reductions made by the Congress in the amount of federal funds available to public transit agencies, is encouraging and providing regulatory authority for such agencies to employ innovative financing techniques in order to make the best possible use of the federal funds that are available. Among these techniques is that of lease and leaseback, which cannot be utilized by Ohio regional transit authorities under current law. However, granting the authorities the authority to use the lease and leaseback financing technique at the earliest possible time can save them many hundreds of thousands of dollars, which then will become available for other transit needs such as additional equipment and route maintenance. Therefore, this act shall go into immediate effect.

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.

Director, Legislative Service Commission.

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

Secretary of State.

File No. _____ Effective Date _____