

Exhibit D



REPORT OF THE LEGISLATIVE TASK FORCE ON INTERMODAL TRANSPORTATION AND COMMERCE

December 2014

presented to the:

**Senate Transportation, Technology, and Legislative Affairs Committee
House Public Transportation Committee**

A MESSAGE FROM THE CO-CHAIRS

Luck, it has been said, is what happens when preparation meets opportunity. Arkansas, sitting as it does at the crossroads of the Nation, is poised to generate its own luck in the form of an efficient and effective intermodal system, supported by responsible and realistic incentives. The basic infrastructure for all major modes of transportation - air, highways, rail, and waterways - is present in our great state, as is opportunity. Indeed, the existing opportunities will likely be surpassed by continued advancement of the global economy. Expansion of the Panama Canal, for instance, is expected to bring significant opportunity for all modes of freight transportation.

With opportunity upon us, and more on the horizon, it is imperative that we move forward with making sure that we, as legislators, business leaders, public and private industry representatives, and concerned citizens, do all we can to insure that we are prepared. This Task Force has taken the first steps towards meeting that obligation.

Resources, however, are sparse. Our recommendations take this into consideration by seeking to continue this Task Force in order to fully explore the idea of bringing all modes of transportation under a single umbrella. Such a move would provide for better intercommunication, coordinated oversight, and practical functionality.

While exploring the creation of a true "Department of Transportation", we also wish to delve further into incentives to draw industry into mutually beneficial relationships with statutory intermodal authorities. Creating opportunity for the private sector, while advancing the interests of the public sector, sets in motion the engine of commerce for the benefit of all.

It has been an honor and privilege to act as co-chairs of this Task Force, and we thank you for the opportunity. We also want to thank the members of the Task Force for their dedication, insight, and experience.

Senator Bruce Holland
Senate Chair

Representative Jonathan Barnett
House Chair

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Introduction

The 89th General Assembly of the State of Arkansas created the Task Force on Intermodal Transportation and Commerce (Task Force) with passage of Act 1430 of the Regular Session. The charge of the Task Force was to:

- (1) Study issues relating to intermodal transportation and commerce for review, consideration, and implementation by the General Assembly.
- (2) Develop specific recommendations relating to intermodal transportation and commerce for review, consideration and implementation by the General Assembly; and
- (3) Report its findings and recommendations between November 15, 2014, and December 15, 2014, to the House Committee on Public Transportation and the Senate Committee on Public Transportation, Technology, and Legislative Affairs.

In addition to members of both the Arkansas State Senate and House of Representatives and their respective transportation committees, the fifteen (15) member Task Force includes the Director of the Arkansas State Highway and Transportation Department, the Commissioner of State Lands, the Executive Director of the Arkansas Waterways Commission, representatives of the Southeast Arkansas Regional Intermodal Facility Authority and the Western Arkansas Regional Intermodal Transportation Authority, two (2) representatives from the Arkansas-Oklahoma Port Operators Association, a representative of the railroad industry, and a representative of the Arkansas Trucking Association.

Having met to perform the assigned tasks, the Task Force now submits this Report pursuant to Act 1430. In accordance with the Act, this Task Force will expire the day after submission of this Report.

I. Study Issues Relating to Intermodal Transportation and Commerce

Since the passage of Act 1430, the Task Force has met several times, each time hearing from transportation authorities and members of various intermodal authorities in order to develop a clear understanding of issues and concerns that are particular to each, as well as those that are shared. Over the course of those meetings, the Task Force received testimony on the following primary areas:

1. Issues facing intermodal transportation authorities;
2. Obstacles and hurdles in the formation of new intermodal facility authorities;
and
3. Other departments of transportation in surrounding states.

These information-gathering opportunities have resulted in the following findings:

- Significant economic opportunity exists within the state in the form of benefits arising from consolidation and efficient utilization of modal assets.
- The expansion of the Panama Canal is expected to provide economic growth within the state provided sufficient intermodal infrastructure is in place.
- Modal assets, such as abandoned or discontinued rail lines, are being lost due to a lack of adequately funded centralized administration, resulting in lost economic opportunity.
- Communities often lack the funding, skills, or both, needed to establish regional intermodal transportation authorities.
- Existing incentives do not adequately support intermodal enhancement.
- Regional intermodal authorities provide executive level insight and guidance into the transportation issues facing a region, and remain an invaluable asset in the development of transportation plans.
- In addition to highways, other states include within their Departments of Transportation responsibility for rail, waterways and ports, and aviation.
- Arkansas lacks a true Department of Transportation.
- Unified oversight of all modes of transport would help to create a more efficient and productive intermodal system.

II. Develop Specific Recommendations Relating to Intermodal Transportation and Commerce

Over the course of several meetings, the Task Force has discussed the above findings and worked to identify recommendations that respond to the needs identified. It has become apparent that additional time is needed to provide recommendations and guidance based upon those findings. As a result, the primary recommendation of the Task Force would be that the Task Force be re-established by act of the 90th General Assembly in order to more fully explore the establishment of an Arkansas Department of Transportation with combined responsibility for highways, waterways and ports, rail, and aeronautics. As part of that charge, this Task Force would recommend that the following be considered:

- The structure of any newly formed Department of Transportation, taking into account the constitutional nature of the Arkansas State Highway Commission, the existing legislatively created Arkansas Waterways Commission and Arkansas Department of Aeronautics, and the possibility of modal divisions.
- Identify funding sources for the new Department of Transportation to promote and develop a coordinated multimodal transportation system.
- Development of a plan for a seamless and cost-effective transition into the newly formed Department of Transportation.
- Determine the division or agency responsible for intermodal development and oversight.
- Establishment of a Coordinating Council for regional intermodal transportation authorities in order to provide guidance, oversight, and coordination, and promote multimodal collaboration.
- Explore options to leverage existing modal assets for development of economic opportunities, including the further extension of intermodal authority tax benefits to industry engaged in intermodal activities.

In order to fully support the above recommendations, the Task Force would add the following:

- In addition to the current makeup of members currently appointed to the Task Force, expansion of the membership to include a representative from the Arkansas Department of Aeronautics, a representative from a Metropolitan Planning Organization in the state, a representative of the Arkansas Economic Development Commission, and a representative from industry with ties to the global marketplace.

- Regular meetings held monthly through the term of the existence of the Task Force.
- A deadline of June 30, 2016, for submission of the Report from the newly created Task Force, with the Task Force to expire the following day.

III. Conclusion

While much work was completed, much remains to be done. Continued consideration of issues facing the state across transportation modes is vital to the continued economic sustainability and expansion of industry in the state. The Task Force wishes to thank its members and those who provided testimony and guidance throughout the course of its tenure.

Appendix 1

Act 1430 of 2013

Stricken language would be deleted from and underlined language would be added to present law.
Act 1430 of the Regular Session

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013

As Engrossed: S4/8/13

A Bill

SENATE BILL 1108

4
5 By: Senator Rapert
6

7 **For An Act To Be Entitled**

8 AN ACT TO CREATE A TASK FORCE CONCERNING INTERMODAL
9 TRANSPORTATION AND COMMERCE AND RELATED ISSUES; TO
10 CREATE THE INTERMODAL TRANSPORTATION AND COMMERCE
11 TASK FORCE; AND FOR OTHER PURPOSES.
12
13

14 **Subtitle**

15 TO CREATE A TASK FORCE CONCERNING
16 INTERMODAL TRANSPORTATION AND COMMERCE
17 AND RELATED ISSUES; AND TO CREATE THE
18 INTERMODAL TRANSPORTATION AND COMMERCE
19 TASK FORCE.
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 *SECTION 1. TEMPORARY LANGUAGE. DO NOT CODIFY. Legislative Task Force*
25 *on Intermodal Transportation and Commerce.*

26 *(a) The Legislative Task Force on Intermodal Transportation and*
27 *Commerce is created.*

28 *(b) The task force shall consist of the following members who shall be*
29 *appointed by December 1, 2013:*

30 *(1) One (1) member of the Senate to be appointed as co-chair of*
31 *the task force by the President Pro Tempore of the Senate;*

32 *(2) One (1) member of the House of Representatives to be*
33 *appointed as co-chair of the task force by the Speaker of the House of*
34 *Representatives;*

35 *(3) Two (2) members of the House Committee on Public*
36 *Transportation to be appointed by the Chair of the House Committee on Public*



1 Transportation;

2 (4) Two (2) members of the Senate Committee on Public
3 Transportation, Technology, and Legislative Affairs to be appointed by the
4 Chair of the Senate Committee on Public Transportation, Technology, and
5 Legislative Affairs;

6 (5) Two (2) members of the Arkansas-Oklahoma Port Operators
7 Association, one (1) to be appointed by the Speaker of the House of
8 Representatives and one (1) by the President Pro Tempore of the Senate;

9 (6) The Executive Director of the Arkansas Waterways Commission; ✓

10 (7) The Director of State Highways and Transportation of the
11 Arkansas State Highway and Transportation Department or his or her designee; ✓

12 (8) The Commissioner of State Lands or his or her or her
13 designee;

14 (9) A representative of the Arkansas Trucking Association to be
15 appointed by the President Pro Tempore of the Senate; ✓

16 (10) A representative of the railroad industry to be appointed
17 by the Speaker of the House of Representatives; and ✓

18 (11) Two (2) representatives of a local regional intermodal
19 transportation authority to be appointed by the commissioner of state lands. ✓

20 (c) A vacancy on the task force shall be filled in the same manner as
21 the initial appointment.

22 (d) The Bureau of Legislative Research shall provide staff support for
23 the task force.

24 (e) The task force shall:

25 (1) Study issues relating to intermodal transportation and
26 commerce policy for review, consideration, and implementation by the General
27 Assembly.

28 (2) Develop specific recommendations relating to intermodal
29 transportation and commerce for review, consideration, and implementation by
30 the General Assembly; and

31 (3) Report its findings and recommendations between November 15,
32 2014 and December 15, 2014, to the House Committee on Public Transportation
33 and the Senate Committee on Public Transportation, Technology, and
34 Legislative Affairs.

35 (f) Legislative members of the task force shall be paid per diem and
36 mileage in the manner authorized by law for attendance at meetings of interim

1 committees of the General Assembly.

2 (g) The task force shall expire on the earlier of:

3 (1) The day after reporting its findings and recommendations
4 under subdivision (e)(3) of this section; or

5 (2) December 16, 2014.

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/s/Rapert

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APPROVED: 04/22/2013

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Appendix 2
Intermodal Transportation
and Commerce
Task Force Members

**Intermodal Transportation and Commerce
Task Force Members**

Members	Affiliation
Senator Bruce Holland, Chair	Arkansas State Senate
Senator Jake Fites	Arkansas State Senate
Senator Bobby J. Pierce	Arkansas State Senate
Representative Jonathan Barnett, Chair	Arkansas State House of Representatives
Representative John Payton	Arkansas State House of Representatives
Representative Dan M. Douglas	Arkansas State House of Representatives
Scott Bennett	Director of Arkansas State Highway and Transportation Department
Kenneth Burleson	Commissioner of State Lands
Gene Higginbotham	Executive Director of Arkansas Waterways Commission
John Lipton	Chairman of Southeast Arkansas Regional Intermodal Facility Authority
Lou Ann Nisbett	President of Arkansas-Oklahoma Port Operators Association
Mathew Pitsch	Executive Director of Western Arkansas Regional Intermodal Transportation Authority
Daniel Robbins	Vice President and General Manager of Dardanelle and Russellville Railroad Company
Marty Shell	Secretary of Arkansas-Oklahoma Port Operators Association
Bill Vickery	Arkansas Trucking Association

Appendix 3
Meeting Information
And
Related Documents

AGENDA
Legislative Task Force on Intermodal Transportation and Commerce

Tuesday, February 18, 2014
UPON ADJOURNMENT OF BOTH CHAMBERS
Room B, MAC
Little Rock, Arkansas

Legislative Members

Sen. Bruce Holland, Chair
Sen. Jake Files
Sen. Bobby J. Pierce

Rep. Jonathan Barnett, Chair
Rep. John Payton
Rep. Dan M. Douglas

Non-Legislative Members

Lou Ann Nisbett
Marty Shell
Gene Higginbotham
Scott Bennett

Cory Allen Cox
Bill Vickery
Daniel Robbins
Mathew Pitsch
John Lipton

- A. Call to Order
- B. Comments from Co-Chairs: Senator Bruce Holland and Representative Jonathan Barnett
- C. Introduction of Task Force Members
- D. Task Force Charge and Mission pursuant to Act 1430 of 2013 (Exhibit D)
- E. Adoption of Task Force Rules (Exhibit E)
- F. Discussion of Issues facing Intermodal Transportation Authorities
 - 1. Mathew Pitsch, Executive Director, Western Arkansas Regional Intermodal Transportation Authority
 - 2. John Lipton, Chairman, Southeast Arkansas Regional Intermodal Facility Authority
- G. Obstacles and Hurdles in the formation of new Intermodal Transportation Authorities
 - Dr. Don Bradley, III, Executive Director, Small Business Advancement National Center, University of Central Arkansas
- H. Other Business
- I. Set next meeting date
- J. Adjournment

NOTE: All exhibits for this meeting are available by electronic means only and are accessible on the General Assembly's website at www.arkleg.state.ar.us

Notice: Silence your cell phones. Keep your personal conversations to a minimum. Observe restrictions designating areas as "*Members and Staff Only*"

EXHIBIT D

Stricken language would be deleted from and underlined language would be added to present law,
Act 1430 of the Regular Session

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013

As Engrossed: 5/4/8/13

A Bill

SENATE BILL 1108

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For An Act To Be Entitled

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9 TRANSPORTATION AND COMMERCE AND RELATED ISSUES; TO
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29 appointed by December 1, 2013:

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31 the task force by the President Pro Tempore of the Senate;

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36 Transportation to be appointed by the Chair of the House Committee on Public



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7 Association, one (1) to be appointed by the Speaker of the House of
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10 (7) The Director of State Highways and Transportation of the
11 Arkansas State Highway and Transportation Department or his or her designee;

12 (8) The Commissioner of State Lands or his or her or her
13 designee;

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19 transportation authority to be appointed by the commissioner of state lands.

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23 the task force.

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1 committees of the General Assembly.

2 (g) The task force shall expire on the earlier of:

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4 under subdivision (e)(3) of this section; or

5 (2) December 16, 2014.

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/s/Rapert

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APPROVED: 04/22/2013

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EXHIBIT E

INTERMODAL TRANSPORTATION AND COMMERCE LEGISLATIVE TASK FORCE RULES

PURPOSE

The purpose of these rules is to establish rules and procedures for conducting the business of the Intermodal Transportation and Commerce Legislative Task Force and to inform members of the General Assembly and the public of the procedures and rules of the task force.

DUTIES

The task force is required by Act 1430 of 2013 to:

1. Study issues relating to intermodal transportation and commerce policy for review, consideration, and implementation by the General Assembly.
2. Develop specific recommendations relating to intermodal transportation and commerce for review, consideration, and implementation by the General Assembly.
3. Prepare and file a written report of the task force's findings and recommendations between November 15, 2014, and December 15, 2014, to the House Committee on Public Transportation and the Senate Committee on Public Transportation, Technology, and Legislative Affairs.
4. The task force shall expire on the earlier of the day after reporting of December 16, 2014.

PARLIAMENTARY PROCEDURE

Except as otherwise specified in these rules, the rules of the Arkansas House of Representatives and the Arkansas Senate shall be observed by the task force, insofar as they are applicable. If an applicable rule does not exist or the House and Senate rules are incompatible, the chair shall decide the issue.

1. The task force is made up of fifteen (15) members. Eight (8) task force members constitute a quorum. Action by the task force requires a majority vote of the members present at a meeting in which a quorum is present.
2. Minutes of each task force meeting shall be produced and presented for adoption at the subsequent scheduled meeting.
3. The chair may provide the public an opportunity to speak during task force meetings to allow for public comment on issues before the task force.
4. A motion shall receive a second to be considered for action by the task force.
5. The task force shall vote by voice vote unless a roll call is requested by two (2) or more task force members. Roll call votes shall be recorded in the meeting minutes.

AGENDA
Legislative Task Force on Intermodal Transportation and Commerce

Tuesday, June 24, 2014

10:00 AM

Room B, MAC

Little Rock, Arkansas

Legislative Members

Sen. Bruce Holland, Chair
Sen. Jake Files
Sen. Bobby J. Pierce

Rep. Jonathan Barnett, Chair
Rep. John Payton
Rep. Dan M. Douglas

Non-Legislative Members

Lou Ann Nisbett
Marty Shell
Gene Higginbotham
Scott Bennett

Bill Vickery
Daniel Robbins
Mathew Pitsch
John Lipton
Kenneth Burleson

- A. Call to Order
- B. Comments from Co-Chairs: Senator Bruce Holland and Representative Jonathan Barnett
- C. Consideration to approve Minutes of February 18, 2014
- D. Discussion of Issues facing Intermodal Transportation Authorities
 - 1. Wayne Gearheart, Executive Director, Northeast Arkansas Intermodal Authority
 - 2. Lewis Diggs, Board Member, Southwest Arkansas Regional Intermodal Authority
- E. Report on Departments of Transportation in Surrounding States
 - Scott Bennett, Director, Arkansas Highway and Transportation Department
- F. Other Business
- G. Set next meeting date(s)
- H. Adjournment

Notice: Silence your cell phones. Keep your personal conversations to a minimum. Observe restrictions designating areas as "*Members and Staff Only*"

**DRAFT MINUTES
LEGISLATIVE TASK FORCE ON INTERMODAL
TRANSPORTATION AND COMMERCE
Tuesday, February 18, 2014**

The Legislative Task Force on Intermodal Transportation and Commerce met upon adjournment of both chambers on Tuesday, February 18, 2014, in Room B, MAC, at Little Rock, Arkansas.

Task Force members in attendance: Senators Bruce Holland, Senate Chair, and Jake Files; Representatives Jonathan Barnett, House Chair; Dan M. Douglas and John Payton; Scott Bennett, Cory Allen Cox, Gene Higginbotham, John Lipton, Lou Ann Nisbett, Mathew Pitsch, Daniel Robbins, Marty Shell and Bill Vickery

Other legislators in attendance: Senator Jason Rapert; Representatives George McGill, Terry Rice and David Whitaker

Comments from Co-Chairs of the Task Force

Representative Barnett, Co-Chair, welcomed members of the task force and called the meeting to order.

Senator Holland, Co-Chair, recognized Senator Rapert and thanked him for sponsoring the legislation that created the task force. The task force will play an important role in going forward with economic development by supporting the industry already in Arkansas. The task force will also benefit taxpayers by looking at ways to relieve highway congestion through use of rail or barge.

Representative Barnett called for the introduction of members of the task force.

Task Force Charge and Mission pursuant to Act 1430 of 2013 (Exhibit D)

Representative Barnett gave a brief overview of the Task Force Charge and Mission.

Consideration to Adopt Task Force Rules (Exhibit E)

Upon motion of Scott Bennett and a second by Mathew Pitsch, the rules were adopted.

Discussion of Issues facing Intermodal Transportation Authorities

Mathew Pitsch, Executive Director, Western Arkansas Regional Intermodal Transportation Authority, gave a brief description of the Western Arkansas Regional Intermodal Transportation Authority. He identified the benefit of a regional intermodal transportation authority (RITA) as the coalition of people coming together to discuss transportation and infrastructure for economic development needs. He cited Act 690 of 1997 as a tremendous tool for Arkansas communities, for whom it has meant the building of infrastructure for economic development. Mr. Pitsch addressed concern for communities that lack funding revenue to establish a regional intermodal transportation authority.

John Lipton, Chairman, Southeast Arkansas Regional Intermodal Facility Authority, provided a brief history of Act 690 of 1997 and described the Southeast Arkansas Regional Intermodal Facility Authority. He advised there was a need for clarification of Act 690 of 1997, i.e., were the provisions of the act applicable not only to the authority, but also to a tenant that chooses to lease rather than purchase within the authority. Mr. Lipton addressed the loss of rural railroads in Arkansas as well as promoting expansion of the interstate, short line railroads, and interconnection to waterways.

Scott Bennett, Director, Arkansas Transportation and Highway Department (AHTD), advised AHTD is the designated rail planning agency but has no authority beyond planning. He added no one has authority to make improvements or purchase a rail line scheduled to be abandoned; thus, it has been left up to the regional intermodal authorities. He added there are states whose port authorities and railroads are under the umbrella of their state department of transportation. We are one of a few states that does not have a true

department of transportation. Representative Barnett asked Mr. Bennett to prepare a presentation, with input from the task force, on various possibilities.

At the request of Representative Barnett, Senator Files will review the tax free zone issue and ask the Bureau of Legislative Research for a clarification and summary of Act 690 of 1997. Representatives Payton and Douglas will then seek an Attorney General's Opinion. Mr. Lipton was also asked to assist with this request.

Obstacles and Hurdles in the formation of new Intermodal Transportation Authorities

Dr. Don Bradley, III, Executive Director, Small Business Advancement National Center, University of Central Arkansas, gave a brief description of the Central Arkansas Intermodal Authority and discussed some of the issues related to Act 690, as follows:

- question of tax exemption for businesses
- quorum courts and city councils have no authority to appoint or recommend to the county judge/mayor an appointment to a RITA – this is the biggest stumbling block
- only the county judge/mayor may appoint board members
- counties cannot exit a RITA or dissolve until everything is paid for
- need for seed money where there is proof of a viable option in the transportation area
- making it easier for public/private entities under the RITA act

Mr. Bradley suggested the state approach Walmart, the largest retailer in the world, which is building huge ships that will go through the Panama Canal. He added that the state should start including our major retailers and ask what the state can do to assist them with transportation expansion. He cited a need for a more seamless way for job creation.

Representative Douglas thanked Mr. Bradley for his insightful idea and thought process that must be explored. He discussed working closely with Walmart on some projects, adding that they have committed to \$50 billion in contracts over the next 10 years to help bring manufacturing back to the United States. There is a tremendous opportunity to do assembly here and bring in raw materials that we do not have locally. Representative Douglas cited a recent announcement regarding toy manufacturing returning to Rogers. Since then, 30 manufacturers have expressed interest in bringing their manufacturing companies back to Arkansas. He added that this is an untapped potential and agreed that the state reach out to retailers.

Representative Barnett asked Mr. Bradley to make some suggestions by working with Senator Rapert and John Lipton to bring the appropriate entities to the table for discussions. Mr. Bradley stated that the University of Arkansas has outstanding transportation departments but the state has rarely utilized the universities in feasibility studies. He discussed the Arkansas River as a major player in transportation and there is an opportunity to go back to the waterways.

Senator Rapert was recognized for comment. He stated as the Panama Canal was invoked in the conversation today, he will report that the chairmen of the Joint Energy Committee and the Oil and Natural Gas Caucus met today with the Consul General of Canada. The Consul General asked what Arkansas is doing to prepare and develop infrastructure to handle the capacity when the Panama Canal is opened. Senator Rapert suggested that the task force invite the Consul General to come speak about the capabilities and needs and how that relates to the I-49 corridor as well as rail and river.

Other Business

Representative Barnett announced March 12, 2014, meeting of the Transportation Committees.

Next Meeting

The next Task Force meeting will be held March 13, 2014, at 10:00 a.m., in Room B, MAC.

There being no further business, the meeting adjourned at 4:27 p.m.

AGENDA
Legislative Task Force on Intermodal Transportation and Commerce

Thursday, November 13, 2014

03:00 PM

Room 130, State Capitol
Little Rock, Arkansas

Legislative Members

Sen. Bruce Holland, Chair
Sen. Jake Files
Sen. Bobby J. Pierce

Rep. Jonathan Barnett, Chair
Rep. John Payton
Rep. Dan M. Douglas

Non-Legislative Members

Lou Ann Nisbett
Marty Shell
Gene Higginbotham
Scott Bennett

Bill Vickery
Daniel Robbins
Mathew Pitsch
John Lipton
Kenneth Burleson

- A. Call to Order
- B. Comments from Co-Chairs:
 - Senator Bruce Holland, Senate Chair
 - Representative Jonathan Barnett, House Chair
- C. Consideration to approve Minutes of the June 24, 2014, Meeting **[Exhibit C]**
- D. Attorney General Opinion 2014-067 concerning Tax Exemptions under the Regional Intermodal Facilities Act **[Exhibit D]**
- E. Discussion of Findings and Recommendations for Inclusion in the Task Force Report to the House Public Transportation and the Senate Public Transportation, Technology, and Legislative Affairs Committees **[Exhibit E]**
- F. Other Business
- G. Set next meeting date
- H. Adjournment

Notice: Silence your cell phones. Keep your personal conversations to a minimum. Observe restrictions designating areas as "*Members and Staff Only*"

EXHIBIT C

MINUTES LEGISLATIVE TASK FORCE ON INTERMODAL TRANSPORTATION AND COMMERCE Tuesday, June 24, 2014

The Legislative Task Force on Intermodal Transportation and Commerce met on Tuesday, June 24, 2014, at 10:00 a.m., in Room B, MAC, in Little Rock, Arkansas.

Task Force members in attendance: Senators Bruce Holland, Senate Chair, and Bobby J. Pierce; Representatives Dan M. Douglas and John Payton; Scott Bennett, Kenneth Burleson, Gene Higginbotham, Lou Ann Nisbett, Mathew Pitsch, and Daniel Robbins

Other legislators in attendance: Representative Scott Baltz, Joe Farrer, John K. Hutchison, Homer Lenderman, Terry Rice, and Tommy Thompson

The meeting was called to order by Representative Douglas.

Consideration to Approve Minutes of the February 18, 2014, Meeting

Senator Pierce made a motion to approve the February 18, 2014, meeting minutes and Mr. Higginbotham seconded the motion. The motion passed without objection.

Representative Douglas introduced Kenneth Burleson who was appointed by the Commissioner of State Lands to replace Cory Cox.

Discussion of Issues facing Intermodal Transportation Authorities

Wayne Gearheart, Executive Director, Northeast Arkansas Regional Intermodal Facilities Authority (NEARIFA), gave a brief description of NEARIFA and cited funding as one of its main challenges. NEARIFA is a six-member organization with membership fees of \$1,000 annually. NEARIFA serves two counties: Randolph and Lawrence, and four cities: Corning, Pochontas, Walnut Ridge, and Hoxie. Mr. Gearheart discussed Peco Foods' announced plans to build a fully integrated poultry complex in Randolph and Clay Counties which will include a hatchery, feed mill, and processing plant. Peco Foods plans to invest an estimated \$165 million and create 1,000 new jobs.

Milton Smith, Treasurer, Northeast Arkansas Regional Intermodal Facilities Authority (NEARIFA), advised that Randolph County does not have a rail system. However, there are two major rails in Walnut Ridge and Hoxie and one in Corning County. Representative Lenderman asked if any discussions with Peco Foods included byproduct plants. Mr. Gearheart replied other companies are expected to come in the area and bring 1,100 new jobs. It is anticipated that 400 new poultry houses will be built in Randolph, Clay, and Lawrence Counties to support the processing plants.

Ms. Nisbett asked whether there has been an economic development sales tax to help grow funds for infrastructure, rail, and transportation. Mr. Gearheart stated the city of Pochontas has a 1½ cent sales tax for economic development and streets, which has been a big help.

Representative Douglas inquired about the importance of rail. Mr. Gearheart stated it is absolutely necessary and is why the feed mill is located 27 miles north of the processing plant. He added that rail into Randolph County would be a tremendous advantage. Mr. Smith added that some companies would like to spur off the existing rail.

Representative Baltz discussed several industrial businesses that could use the rail: two salvage yards, a peanut plant, fertilizers, and now Peco Foods with several other spin-offs.

Lewis Diggs, President, Southwest Arkansas Regional Intermodal Authority (SWARIA), advised SWARIA is made up of four counties: Clark, Dallas, Pike, and Montgomery; with two members from each county, a county judge, and his/her appointee. Annual membership fees are \$1,000 and are determined by county population. The executive board consists of one person from each county. Mr. Diggs stated that funding is SWARIA's main challenge and discussed several issues and current projects. The mill has been sold twice and is currently under letter of intent. The opportunity to purchase a 53-mile railroad for \$50,000 was declined due to the extensive work to repair it. Caddo Valley later sold the railroad for \$1 million. A budget of \$3.5 million is projected but, with the request of three switches, the budget increased to \$5 million. Arkadelphia Alliance agreed to loan SWARIA the funds for the project. Any profits generated in the next 10-15 years will go towards the loan repayment. Mr. Diggs stressed the need for the addition of a line item for intermodal by population and county for research and advertisement.

Report on Departments of Transportation in Surrounding States (Handout #1)

Scott Bennett, Director, Arkansas Highway and Transportation Department, discussed his handout "State Transportation Department Modal Responsibilities". Mr. Bennett pointed out the responsibilities of Transportation Departments in all states. In most states, transit responsibilities fall under the Department of Transportation. The Department of Transportation is a pass thru for federal funds from the Federal Transit Administration to transit agencies. For any state that reaches 500,000 in population, the funds go directly from the Federal Transit Administration to the transit agency. In 1991 the Intermodal Surface Transportation Efficiency Act was passed, making transportation more seamless and placing more emphasis on freight. Arkansas is responsible for 90% of transportation and freight, network, bicycle, and pedestrian plans, as well as coordinating with all intermodal affairs.

Other Business

Representative Payton discussed the tax free zone issue from the last meeting and how this conveys with activities and other businesses or companies. He advised that a request has been made for an Attorney General's opinion.

Without any further business, the meeting adjourned at 10:45 a.m.

EXHIBIT D

Opinion No. 2014-067

August 8, 2014

The Honorable John Payton
State Representative
Post Office Box 181
Wilburn, Arkansas 72179-0181

Dear Representative Payton:

This is in response to your request for my opinion on the following questions concerning tax exemptions under the Regional Intermodal Facilities Act, A.C.A. § 14-143-101 *et seq.*:

1. If an authority enters into a lease with a private entity under the Regional Intermodal Facilities Act, is the entity exempt from taxes as described in § 14-143-121?
2. If the answer to Question (1) depends on the particular facts related to the lease relationship, are there any guidelines to consider in determining whether the statutory tax exemptions may apply to the lessee?
3. Is there any type of contractual relationship that an authority may enter into with a private entity that would result in the entity being exempt from taxes as described in § 14-143-121?

RESPONSE

The tax exemptions under A.C.A. § 14-143-121 extend only to an "authority" created under the provisions of the Regional Intermodal Facilities Act. The answer to your first question is therefore "no," in my opinion. An entity that enters into a lease with a regional intermodal authority enjoys no tax exemption pursuant to this statute. The answer to this question is not dependent upon or in any way affected by the facts related to any such lease. Consequently, in response

to your second question, it is my opinion that there are no guidelines to consider. These statutory tax exemptions do not apply to any entity other than a regional intermodal authority, irrespective of any lease or other contractual arrangement that an authority may enter. The answer to your third question is necessarily "no," in my opinion.

Question 1 - If an authority enters into a lease with a private entity under the Regional Intermodal Facilities Act, is the entity exempt from taxes as described in § 14-143-121?

Section 14-143-121, in relevant part, extends a tax exemption to an "authority"¹ under the Regional Intermodal Facilities Act ("the Act") as follows:

(a) *Each authority* shall be exempt from the payment of any taxes or fees to the state, or any subdivision thereof, or to any office or employee of the state, or of any subdivision thereof; however, each authority shall withhold and remit state income taxes as prescribed by § 26-51-901 et seq.

(b)(1) *The property of each authority* shall be exempt from all local and municipal taxes.²

As you can see, the exemptions under this statute extend to an "authority" and its property. There is no suggestion on the face of this statute that the exemptions apply to any other entity. In response to your specific question, therefore, a private entity that enters into a lease with an authority enjoys no tax exemption pursuant to this statute.

I note that in presenting your questions you refer to A.C.A. § 14-143-126(b), which requires that leases entered by an authority "shall be for some purpose associated with intermodal transportation activities." Although you have not stated as much, you may be speculating that a private lessee benefits from the statutory tax exemptions, given that the lessee must, according to this subsection,

¹ An "authority" is a public corporation created jointly by municipalities and/or counties "for the purpose of acquiring, equipping, constructing, maintaining, and operating regional intermodal facilities." A.C.A. §§ 14-143-103, -104 (Repl. 1998). For the definition of "facilities," see A.C.A. § 14-43-102(6) (Supp. 2013). The term "intermodal" means "more than one (1) mode of interconnected movement of freight, commerce, or passengers." *Id.* at (8).

² A.C.A. § 14-43-121 (Repl. 1998) (emphasis added).

be engaged in a purpose associated with intermodal transportation activities. In my opinion, however, there is no legal basis for such speculation. The Arkansas Supreme Court has consistently held that there is no implied exemption from a tax, but rather a claimant must clearly establish entitlement to an exemption:

The taxpayer carries a rather heavy burden to establish a right to the claimed exemption. "[T]his court has consistently held that the burden is on the taxpayer to establish clearly that the legislature intended the claimed exemption since taxation is the rule and exemption is the exception. An exemption cannot be implied." [T]he burden is on the claimant "to establish clearly his right to exemption." "Let it also be remembered that a tax exemption must be strictly construed, 'and to doubt is to deny exemption.'"³

It must be concluded in light of these interpretive rules that the exemptions under A.C.A. § 14-143-121 extend exclusively to the authority. More specific to your question, any taxes a lessee might incur in the course of its operations are unaffected by this statute, in my opinion.⁴

³ *Heath v. Mideo Equipment Co.*, 256 Ark. 14, 16, 505 S.W.2d 739 (1974) (citations omitted). See also *Arkansas Teacher Retirement System v. Short*, 2011 Ark. 263, 6, 381 S.W.3d 834, 838 ("It is settled that a taxpayer must establish an entitlement to an exemption beyond a reasonable doubt.").

⁴ It perhaps bears noting regarding these statutory tax exemptions that any such legislative grant of an exemption from ad valorem taxation is qualified by the constitutional requirement that the exempted public property must be put to an exclusively public use. Article 16, § 5 of the Arkansas Constitution exempts from property taxation "public property used exclusively for public purposes." Section 6 of Article 16 provides that "[a]ll laws exempting property from taxation, other than as provided in this Constitution shall be void." The Arkansas Supreme Court, in interpreting art. 16, § 5's exemption for public property, has consistently held that in order for the property to be exempt from taxation two elements must be present: 1) the property must in fact be "public property," that is it must be owned by a public entity; and 2) it must be used exclusively for public purposes. See *City of Little Rock v. McIntosh*, 319 Ark. 423, 892 S.W.2d 462 (1995); *Phillips v. City of Fayetteville*, 306 Ark. 87, 811 S.W.2d 308 (1991); *Wayland v. Snapp*, 232 Ark. 57, 334 S.W.2d 663 (1960). Both elements must be satisfied to meet the constitutional test. It is not the ownership of the property that entirely determines the matter. See *McIntosh*, 319 Ark. at 428 (stating with regard to A.C.A. § 14-362-121(b)(1) – which provides that "the property of each [regional airport] authority shall be exempt from all local and municipal taxes" – that "the statute must be read in light of the constitution, and that means that an airport authority will be exempt from paying ad valorem taxes when the land is used solely for public purposes."). See also *Arkansas Teacher Retirement System v. Short*, 2011 Ark. 263, 381 S.W.3d 834, 840 ("[U]nless the property utilized by an agency is actually and exclusively used for a public purpose, it is not entitled to an exemption under the constitution."); *Hilger v. Harding College*, 231 Ark. 686, 694, 331 S.W.2d 851 (1960) ("The property under our constitution must be actually occupied or made use of for a public purpose....").

Of course, determining the taxable status of particular property is a matter for the local tax assessor, subject to judicial review. See *Pulaski County v. Jacuzzi Bros.*, 317 Ark. 10, 875 S.W.2d 296 (1994).

The Honorable John Payton
State Representative
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Question 2 - If the answer to Question (1) depends on the particular facts related to the lease relationship, are there any guidelines to consider in determining whether the statutory tax exemptions may apply to the lessee?

The answer to Question (1) is "no," in my opinion, irrespective of the particular facts related to a lease. As explained above, the exemptions under A.C.A. § 14-143-121 apply solely to the authority, and no other entity. In response to your specific question, there are no guidelines to consider because the facts related to a lease relationship cannot conceivably make a lessee eligible for these tax exemptions.

Question 3 - Is there any type of contractual relationship that an authority may enter into with a private entity that would result in the entity being exempt from taxes as described in § 14-143-121?

No. See responses above.

Deputy Attorney General Elisabeth A. Walker prepared the foregoing opinion, which I hereby approve.

Sincerely,

DUSTIN MCDANIEL
Attorney General

DM/EAW:cyh

EXHIBIT E

LEGISLATIVE TASK FORCE ON INTERMODAL TRANSPORTATION AND COMMERCE

The Legislative Task Force on Intermodal Transportation and Commerce was created by Act 1430 of 2013. The 15-member task force consists of six (6) legislators and nine (9) non-legislative members representing port operators, waterways, highways, state lands, trucking, rail, and intermodal transportation authorities. The charge of the task force is to:

- Study issues relating to intermodal transportation and commerce policy for review, consideration, and implementation by the General Assembly; and
- Develop specific recommendations relating to intermodal transportation and commerce for review, consideration, and implementation by the General Assembly

The task force has held several information gathering meetings and heard presentations from various intermodal authorities. An Attorney General's opinion was requested to ascertain if a regional intermodal authority enters into a lease with a private entity under the Regional Intermodal Facilities Act, if the entity is exempt from taxes as described in A.C.A. 14-143-21. In Attorney General Opinion 2014-067, the Attorney General opined that the statutory tax exemptions under 14-143-21 do not apply to any entity other than a regional intermodal authority, irrespective of any lease or other contractual arrangement.

Discussion of issues facing intermodal transportation authorities resulted in the following findings and recommendations:

Findings:

- Communities lacking funding revenue are unable to establish a regional intermodal transportation authority
- There is no entity authorized to make improvements to, or purchase, a rail line that is scheduled to be abandoned
- Port authorities and railroads are under the State Department of Transportation in some states
- Arkansas lacks a true department of transportation
- Loss of rural railroads in Arkansas greatly impacts economic development

Recommendations:

A budget line item for intermodal for research and advertisement
Explore the possibility of an economic development sales tax

APPENDIX

Intermodal Authorities in Arkansas

Intermodal Authority	Participants
Southeast Arkansas Regional Intermodal Facilities Authority	Bradley and Drew Counties Cities of Monticello and Warren
Northeast Arkansas Regional Intermodal Facilities Authority	Lawrence and Randolph Counties Cities of Corning, Hoxie, Pocahontas and Walnut Ridge
Western Arkansas Regional Intermodal Authority	Crawford and Sebastian Counties Cities of Fort Smith and Van Buren
Southwest Arkansas Regional Intermodal Authority	Clark, Montgomery, Nevada, Pike and Dallas Counties Cities of Gurdon, Prescott, Glenwood, Caddo Valley, Murfreesboro, Arkadelphia, Amity and Fordyce
River Valley Regional Intermodal Facilities Authority	Pope County City of Russellville
Blytheville/Mississippi County Regional Intermodal Facilities Authority	Mississippi County City of Blytheville
Arkansas River Regional Intermodal Facilities Authority	Jefferson County City of Pine Bluff