

1 INTERIM STUDY PROPOSAL 2015-022

2 State of Arkansas
3 90th General Assembly
4 Regular Session, 2015

As Engrossed: H3/17/15

A Bill

HOUSE BILL 1900

5
6 By: Representative Sabin

7 Filed with: House Committee on Public Transportation
8 pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

9
10 AN ACT CONCERNING PUBLIC-PRIVATE PARTNERSHIPS FOR
11 TRANSPORTATION FACILITIES AND PROJECTS; TO CREATE THE
12 PUBLIC-PRIVATE TRANSPORTATION ACT; AND FOR OTHER
13 PURPOSES.

Subtitle

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17 TO PROVIDE FOR PUBLIC-PRIVATE
18 PARTNERSHIPS FOR TRANSPORTATION
19 FACILITIES AND PROJECTS; AND TO CREATE
20 THE PUBLIC-PRIVATE TRANSPORTATION ACT.

21
22
23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

24
25 *SECTION 1. Arkansas Code Title 27 is amended to add an additional*
26 *chapter to read as follows:*

CHAPTER 4

PUBLIC-PRIVATE TRANSPORTATION ACT

Subchapter 1 – General Provisions

27-4-101. Title.

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30
31
32 *This chapter shall be known and may be cited as the “Public-Private*
33 *Transportation Act”.*
34

27-4-102. Legislative findings and intent.

1 (a) The General Assembly finds that:

2 (1) There is a public need for the timely development and
3 operation of transportation facilities within the state that address the
4 needs of the state by improving safety, reducing congestion, increasing
5 capacity, and enhancing economic efficiency;

6 (2) The public need for the development and operation of
7 transportation facilities may not be wholly satisfied by existing methods of
8 procurement in which qualifying transportation facilities are developed and
9 operated;

10 (3) The public need for the development and operation of
11 transportation facilities may not be wholly satisfied by existing ways in
12 which transportation facilities are developed and operated; and

13 (4) Authorizing private entities to develop and operate one (1)
14 or more transportation facilities may result in the development and operation
15 of transportation facilities to the public in a more timely, more efficient,
16 or less costly fashion, thereby serving the public safety and welfare.

17 (b) It is the intent of this chapter to encourage investment in the
18 state by private entities that facilitates the development and operation of
19 transportation facilities by providing public entities and private entities
20 with the greatest possible flexibility in contracting with each other for the
21 provision of the public services that are the subject of this chapter.

22
23 27-4-103. Definitions.

24 As used in this chapter:

25 (1) "Comprehensive agreement" means a final written agreement
26 between a private entity and a public entity that is executed under § 27-4-
27 303, provides for the development of a qualifying transportation facility,
28 and addresses all issues related to the qualifying transportation facility;

29 (2) "Develop", "developed", and "development of" mean the
30 planning, designing, developing, ownership, financing, leasing, acquisition,
31 installation, construction, operation, maintenance, or expansion of a
32 qualifying transportation facility;

33 (3) "Interim agreement" means a preliminary written agreement
34 between a private entity and a public entity that is executed under § 27-4-
35 302, identifies the development, scope, and feasibility of a qualifying

1 transportation facility, and addresses all issues related to the qualifying
2 transportation facility;

3 (4) "Private entity" means a natural person, corporation,
4 general partnership, limited liability company, limited partnership, joint
5 venture, business trust, public benefit corporation, nonprofit entity, and
6 other business entity;

7 (5) "Public entity" means one (1) or more of the following:

8 (A) A department of the state;

9 (B) An agency of the state;

10 (C) A board or commission of the state;

11 (D) A federal governmental entity; and

12 (E) A political subdivision of the state, including
13 without limitation a city, county, school district, institution of higher
14 education, water authority, public facilities board, or other political
15 subdivision or affiliate of an entity listed in this subdivision (5)(E);

16 (6) "Publish" or "published" means the publication by a public
17 entity of a request for proposals one (1) time each week for three (3)
18 consecutive weeks in:

19 (A) A newspaper of statewide circulation; and

20 (B) Either:

21 (i) In a statewide construction industry trade
22 magazine; or

23 (ii) On a website approved by the public entity that
24 is regularly subscribed to by members of the construction and development
25 industry;

26 (7) "Qualified respondent" means the private entity selected as
27 the most qualified entity to undertake a qualifying transportation facility
28 that is the subject of a request for proposals issued under this chapter;

29 (8)(A) "Qualifying transportation facility" means a road,
30 bridge, tunnel, overpass, ferry, airport, mass transit facility, vehicle
31 parking facility, port facility, multimodal transportation facility, or
32 similar commercial facility that:

33 (i) Is used for the transportation of persons or
34 goods, together with any buildings, structures, parking areas, appurtenances,
35 and other property needed to operate the facility; and

36 (ii) Has one (1) or more of the following

1 characteristics:

2 (a) It is developed using a long-term
3 operations and maintenance agreement, management agreement, or services
4 agreement entered into with a private entity;

5 (b) It is designed and built in whole or in
6 part by a private entity;

7 (c) It is a capital development or improvement
8 in which a private entity:

9 (1) Invests its own capital or third-
10 party capital arranged by the private entity;

11 (2) Sources or uses indebtedness,
12 available funds, revenues, or financial or tax incentives to fund the
13 project; or

14 (3) Provides other consideration in the
15 form of goods or services to the public entity to fund the project;

16 (d) It is owned in whole or in part by a
17 private entity for the benefit of the public entity;

18 (e) It involves real or personal property
19 owned by a public entity that is sold, leased, or exchanged with a private
20 entity for leaseback or for use by the public entity; or

21 (f) It is a project as defined by the Office
22 of State Procurement.

23 (B) "Qualifying transportation facility" does not include
24 a commercial or retail use or enterprise not essential to the transportation
25 of persons or goods;

26 (9) "Request for proposals" means a notice that is issued by a
27 public entity announcing the public entity's interest in developing a
28 qualifying transportation facility and seeking proposals from private
29 entities to develop the qualifying transportation facility that identifies
30 without limitation the following:

31 (A) The anticipated scope and purpose of the qualifying
32 transportation facility;

33 (B) The financial and nonfinancial benefits related to the
34 qualifying transportation facility;

35 (C) The proposed timeline under which the qualifying
36 transportation facility is to be completed; and

1 (D) All other issues that the public entity determines are
2 necessary to accomplish the qualifying transportation facility; and

3 (10) "Revenues" means the rates, revenues, income, earnings,
4 user fees, tolls, lease payments, service payments, other available funds,
5 and other revenue and cash flow of any nature arising out of or in connection
6 with the development of a qualifying transportation facility, including
7 without limitation the funds derived from the operation of a qualifying
8 transportation facility or otherwise provided by the parties as stated in the
9 comprehensive agreement.

10
11 27-4-104. Construction.

12 (a) This chapter shall be liberally construed to effectuate its
13 purpose.

14 (b)(1) Except as limited by the Arkansas Constitution, this chapter
15 exclusively governs the manner and procedures by which a qualifying
16 transportation facility may be developed by and between a public entity and a
17 private entity.

18 (2) If this chapter conflicts with any other state law, then
19 this chapter governs with respect to the manner and procedures by which a
20 qualifying transportation facility may be developed by and between a public
21 entity and a private entity.

22 (c) An action taken by a public entity under this chapter shall serve
23 the public purpose of this chapter if the action facilitates the timely
24 development or operation, or both, of a qualifying transportation facility.

25
26 Subchapter 2 – Proposals for Qualifying transportation facilities

27
28 27-4-201. Requests for proposals.

29 (a)(1) A public entity considering the development of a qualifying
30 transportation facility shall prepare and publish a request for proposals.

31 (2)(A) The public entity may specify a period of time during
32 which responses to the request for proposals may be submitted by private
33 entities.

34 (B) However, the time allowed for responses to a request
35 for proposals under this chapter shall be at least ninety (90) days from the
36 date the request for proposals is published.

1 (b)(1) If a proposed qualifying transportation facility may materially
2 affect the governmental operations of another public entity, then the public
3 entity proposing the qualifying transportation facility shall provide written
4 notice to each potentially affected public entity before the request for
5 proposals is published.

6 (2) If the public entity and the other affected public entities
7 agree to pursue a qualifying transportation facility, the public entities may
8 jointly issue the request for proposals and undertake the qualifying
9 transportation facility.

10 (c)(1) A public entity shall review each proposal submitted in
11 response to a request for proposals to determine whether the proposal
12 fulfills the goals and purposes of the public entity and the proposed
13 qualifying transportation facility.

14 (2) In assessing the proposals submitted in response to the
15 request for proposals, a public entity may interview one (1) or more of the
16 private entities submitting a response to determine which entity is the
17 qualified respondent.

18 (d) A public entity may select the qualified respondent to undertake a
19 qualifying transportation facility based on a variety of factors, including
20 without limitation:

21 (1) The cost of the potential qualifying transportation facility
22 as proposed by the private entity;

23 (2) The general reputation, industry experience, and financial
24 capacity of the private entity;

25 (3) The design of the qualifying transportation facility as
26 proposed by the private entity;

27 (4) The plan of finance proposed by the private entity;

28 (5) Local citizens' comments;

29 (6) Comments from other public entities;

30 (7) The benefits to the public of the qualifying transportation
31 facility as proposed by the private entity;

32 (8) The public entity's participation in a minority business
33 enterprise plan adopted by the public entity;

34 (9) The private entity's plan to employ local contractors and
35 residents; and

1 (10) Any other factor that the public entity determines would be
2 useful in assessing the proposals submitted in response to the request for
3 proposals.

4 (e)(1) A public entity is not required to determine or select the
5 qualified respondent based on the lowest project development cost or life
6 cycle cost submitted by a private entity.

7 (2) However, a public entity may consider cost as one (1) factor
8 in evaluating the submitted proposals and selecting the qualified respondent.

9 (f) A public entity may:

10 (1) Reject all proposals submitted in response to a request for
11 proposals;

12 (2) Amend or modify the public entity's request for proposals;

13 (3) Publish an amended request for proposals; and

14 (4) Cease further development of a qualifying transportation
15 facility any time before entering into an interim agreement with the
16 qualified respondent.

17 (g) After selecting the qualifying respondent and sending written
18 notice to the qualified respondent of its selection, a public entity shall
19 provide written notice to all private entities that submitted a proposal in
20 response to the public entity's request for proposals within ten (10) days of
21 notifying the qualified respondent of its selection as the qualified
22 respondent.

23
24 27-4-202. Unsolicited proposals.

25 (a) A public entity shall not solicit or request a proposal from a
26 private entity to develop a qualifying transportation facility that is not
27 procured under § 27-4-201.

28 (b)(1) However, a public entity may receive and consider unsolicited
29 ideas and development concepts from a private entity or another public
30 entity.

31 (2) If a public entity decides to pursue an unsolicited idea or
32 development concept, the public entity shall publish a request for proposals
33 under § 27-4-201.

34
35 Subchapter 3 – Contracts Between Public Entity and Private Entity
36

1 27-4-301. Procurement requirements.

2 A public entity may enter into an interim agreement or a comprehensive
3 agreement only in accordance with this subchapter.

4
5 27-4-302. Interim agreement.

6 (a)(1) Except as otherwise provided in this subsection, after a public
7 entity has selected the qualified respondent to a request for proposals, the
8 public entity and the qualified respondent shall negotiate an interim
9 agreement.

10 (2) A public entity may enter into an interim agreement with the
11 qualified respondent either before or in connection with the negotiation of a
12 comprehensive agreement under § 27-4-303.

13 (3)(A)(i) If an interim agreement is necessary to develop a
14 qualifying transportation facility and an interim agreement cannot be
15 negotiated and executed within sixty (60) days after the selection of the
16 qualified respondent or within the time period mutually agreed to by the
17 public entity and the qualified respondent, the public entity may begin
18 negotiations with the next most qualified private entity that submitted a
19 proposal in response to the request for proposals.

20 (ii) A public entity is not required to republish
21 the request for proposals before beginning negotiations with the next most
22 qualified private entity under subdivision (a)(3)(A)(i) of this section.

23 (B) If an interim agreement is not necessary to develop a
24 qualifying transportation facility, the public entity and the qualified
25 respondent shall negotiate a comprehensive agreement under § 27-4-303.

26 (4)(A) Before a public entity may enter into an interim
27 agreement under this section, the public entity shall contract with an
28 attorney and a certified public accountant or other financial or economics
29 professional to provide a written evaluation of the proposed qualifying
30 transportation facility.

31 (B) A written evaluation provided by a certified public
32 accountant or other financial or economics professional under subdivision
33 (a)(4)(A) of this section shall include without limitation the independent
34 assessment of the certified public accountant or other financial or economics
35 professional of the financial viability of the proposed qualifying
36 transportation facility, identifying all preliminary costs, financial

1 liabilities, advantages, and disadvantages of the qualifying transportation
2 facility.

3 (C) A written evaluation provided by an attorney under
4 subdivision (a)(4)(A) of this section shall include the attorney's
5 independent assessment of the terms and conditions under which the proposed
6 qualifying transportation facility will be developed.

7 (D) An attorney, certified public accountant, or other
8 financial or economics professional providing a written evaluation under this
9 subsection may be an employee of the public entity undertaking the qualifying
10 transportation facility or a private person who has current professional
11 liability insurance in an amount determined to be necessary by the public
12 entity.

13 (b) An interim agreement entered into under this section may:

14 (1) Allow the qualified respondent to commence activities and
15 perform tasks for which it shall be compensated relating to the proposed
16 qualifying transportation facility, including without limitation project
17 planning and developing, design and engineering, environmental analysis and
18 mitigation, surveying, and ascertaining the availability of financing for the
19 proposed qualifying transportation facility;

20 (2) Establish the process and timing of the negotiation of the
21 comprehensive agreement; and

22 (3) Contain any other provisions related to the development of
23 the proposed qualifying transportation facility that are agreed upon by the
24 public entity and the qualified respondent.

25
26 27-4-303. Comprehensive agreement.

27 (a)(1) If a public entity and the qualified respondent have entered
28 into an interim agreement, agree on the findings and conclusions stated in
29 the interim agreement, and desire to proceed with the development of the
30 qualifying transportation facility, the public entity and qualified
31 respondent shall negotiate and enter into a comprehensive agreement.

32 (2) If it is unnecessary for a public entity and the qualified
33 respondent to enter into an interim agreement, the public entity and the
34 qualified respondent shall negotiate and enter into a comprehensive agreement
35 following selection of the qualified respondent.

36 (3) Before developing or operating the qualifying transportation

1 facility, the qualified respondent shall enter into a comprehensive agreement
2 with the public entity.

3 (b)(1) Before a public entity may enter into a comprehensive agreement
4 under this section, the public entity shall contract with an attorney to
5 negotiate the relevant agreements and a certified public accountant or other
6 financial or economics professional to provide a written evaluation of the
7 proposed comprehensive agreement.

8 (2) The attorney with whom the public entity contracts under
9 subdivision (b)(1) of this section shall negotiate the contracts and
10 agreement related to the development of the qualifying transportation
11 facility, including without limitation the revenue contracts, construction
12 contracts, management contracts, services contracts, and other agreements
13 related to the qualifying transportation facility.

14 (3) The written evaluation required under subdivision (b)(1) of
15 this section shall include the independent assessment of the certified public
16 accountant or other financial or economics professional of the costs of the
17 qualifying transportation facility, the financial viability of the qualifying
18 transportation facility, and all other financial and operating assumptions
19 related to the qualifying transportation facility.

20 (4) A certified public accountant or other financial or
21 economics professional providing a written evaluation under this subsection
22 may be a public employee of the public entity undertaking the qualifying
23 transportation facility or a private person who has current professional
24 liability insurance in an amount determined to be necessary by the public
25 entity.

26 (5) The fees and expenses associated with engaging an attorney,
27 certified public accountant, or other financial or economics professional
28 under this section may be included in the costs of the qualifying
29 transportation facility.

30 (c) The comprehensive agreement shall include without limitation the
31 following:

32 (1) A thorough description of the duties of the public entity
33 and the qualified respondent in relation to the development and operation of
34 the qualifying transportation facility;

1 (2) Dates and schedules for the completion of the qualifying
2 transportation facility, including any available extensions or renewals of
3 the qualifying transportation facility;

4 (3) A pro forma analysis or budget under which the qualifying
5 transportation facility shall be developed, financed, constructed, operated,
6 and maintained;

7 (4) The source of all revenues derived from the operation and
8 maintenance of the qualifying transportation facility and any process for
9 modifying the revenues during the term of the comprehensive agreement;

10 (5) Financing and funding sources for the qualifying
11 transportation facility and any contractual provisions related to the
12 financing and funding sources for the qualifying transportation facility;

13 (6) A copy of each contract related to the development of the
14 qualifying transportation facility;

15 (7) Reimbursements to be paid to the public entity for services
16 provided by the qualified respondent, if any;

17 (8) A process for the review of plans and specifications for the
18 qualifying transportation facility by the public entity and the engineering
19 and architectural consultants of the public entity, if any;

20 (9) A process for the periodic and final inspection of the
21 qualifying transportation facility by the public entity or its designee to
22 ensure that the qualified respondent's development activities comply with the
23 comprehensive agreement;

24 (10) For the components of the qualifying transportation
25 facility that involve construction, provisions for the:

26 (A) Delivery of maintenance, payment, and performance
27 bonds in the amounts that may be specified by the public entity in the
28 comprehensive agreement; and

29 (B) Posting and delivery of all other bonds, letters of
30 credit, or other forms of security acceptable to the public entity in
31 connection with the development of the qualifying transportation facility;

32 (11) Submission to the public entity by the qualified respondent
33 of proof of workers compensation, property casualty, general liability, and
34 other policies of insurance related to the development and operation of the
35 qualifying transportation facility in the amounts and subject to the terms
36 that may be specified by the public entity in the comprehensive agreement;

1 (12) A process for the public entity's monitoring of the
2 practices of the qualified respondent to ensure that the qualifying
3 transportation facility is properly developed, constructed, operated, and
4 maintained;

5 (13) The filing by the qualified respondent of appropriate
6 financial statements with the public entity related to the operations of the
7 qualifying transportation facility within the timeframes established in the
8 comprehensive agreement; and

9 (14) Policies and procedures governing the rights and
10 responsibilities of the public entity and the qualified respondent if the
11 comprehensive agreement is terminated according to the terms of the
12 comprehensive agreement or as the result of a default under the terms of the
13 comprehensive agreement.

14 (d) A comprehensive agreement may provide for the development or
15 operation, or both, of phases or segments of a qualifying transportation
16 facility.

17 (e) A modification of or an amendment to the terms of the
18 comprehensive agreement shall be:

19 (1) Agreed upon by the public entity and the qualified
20 respondent; and

21 (2) Added to the comprehensive agreement by written amendment.

22
23 27-4-304. Financing of a qualifying transportation facility.

24 (a)(1) Financing of a qualifying transportation facility may be in the
25 amounts and upon the terms and conditions stated in the interim agreement or
26 the comprehensive agreement.

27 (2)(A) A qualifying transportation facility may be financed by
28 the qualified respondent or the public entity, or both, and the qualified
29 respondent and public entity may utilize any funding resources available to
30 them, including without limitation to the fullest extent permitted by
31 applicable law, issuing debt, equity, or other securities or obligations,
32 entering into leases, accessing designated trust funds, and borrowing or
33 accepting grants from a state infrastructure bank.

34 (B) Debt issued for the development of a qualifying
35 transportation facility may be evidenced by the issuance of taxable or tax-

1 exempt bonds, promissory notes, lease purchase agreements, or other evidences
 2 of indebtedness that are specified in the comprehensive agreement.

3 (3) Financing for a qualifying transportation facility may be
 4 secured by a pledge of, security interest in, or lien on the real or personal
 5 property of the public entity or the qualified respondent, including without
 6 limitation any property interests in the qualifying transportation facility
 7 or the qualifying transportation facility revenues.

8 (b)(1) The public entity may take action to obtain federal, state, or
 9 local assistance for a qualifying transportation facility that serves the
 10 public purpose of this chapter, including without limitation entering into
 11 any contracts required to receive such assistance.

12 (2) All or any portion of the costs of a qualifying
 13 transportation facility may be paid, directly or indirectly, from the
 14 proceeds of a grant or loan made by a local government, the state government,
 15 the federal government, or an agency or instrumentality of a local
 16 government, the state government, or the federal government if it would serve
 17 the public purpose of this chapter.

18 (c) In addition to the financing methods allowed under subsection (a)
 19 of this section, a qualifying transportation facility may be financed
 20 through:

21 (1) Capital provided by either the public entity or the
 22 qualified respondent;

23 (2) The available funds of the public entity;

24 (3) The operating expenses of the public entity;

25 (4) Revenues of the qualifying transportation facility;

26 (5) Any tax credits or other incentives for which the qualifying
 27 transportation facility or the qualified respondent may qualify;

28 (6) Governmental or third-party grants; and

29 (7) Any other available capital or funding sources of the public
 30 entity or the qualified respondent.

31
 32 27-4-305. Service contracts.

33 A public entity may contract with the qualified respondent for the
 34 delivery of services to be provided as part of a qualifying transportation
 35 facility in exchange for service payments or other consideration that the
 36 public entity deems appropriate.

1
2 27-4-306. Powers and duties of qualified respondent – Termination.

3 (a) A qualified respondent may own, lease, or acquire any other right
4 to use, develop, or operate a qualifying transportation facility.

5 (b) Subject to applicable permit requirements, a qualified respondent
6 may cross a navigable watercourse if the crossing does not unreasonably
7 interfere with the current navigation and use of the waterway.

8 (c) In operating a qualifying transportation facility, the qualified
9 respondent may:

10 (1) Make classifications according to reasonable categories for
11 assessment of any rates, fees, or other charges imposed by the qualified
12 respondent for use of all or a portion of a qualifying transportation
13 facility; and

14 (2) With the consent of the public entity, make and enforce
15 reasonable rules to the same extent that the public entity may make and
16 enforce rules with respect to a similar transportation facility.

17 (d) The private entity shall:

18 (1) Develop and operate the qualifying transportation facility
19 in a manner that meets the standards of the public entity for transportation
20 facilities operated and maintained by the public entity and that complies
21 with the interim agreement or the comprehensive agreement;

22 (2)(A) Keep the qualifying transportation facility open for use
23 by the members of the public in accordance with the terms and conditions of
24 the interim agreement and comprehensive agreement after the initial opening
25 of the qualifying transportation facility and upon payment of any applicable
26 rates, fees, charges, or service payments.

27 (B) However, the qualifying transportation facility may be
28 closed temporarily because of emergencies or, with the consent of the public
29 entity, to protect the safety of the public or for reasonable construction or
30 maintenance procedures;

31 (3) Maintain, or provide by contract for the maintenance of, the
32 qualifying transportation facility;

33 (4) Cooperate with the public entity in establishing any
34 interconnection with the qualifying transportation facility requested by the
35 public entity; and

1 (5) Comply with the interim agreement, the comprehensive
2 agreement, and any applicable service contract.

3 (e)(1) A public entity shall terminate the qualified respondent's
4 authority and duties under this chapter on the date stated in the interim
5 agreement or comprehensive agreement.

6 (2) Upon termination, the powers and duties of the qualified
7 respondent under this chapter cease, and the qualifying transportation
8 facility shall be dedicated to the public entity for public use.

9
10 Subchapter 4 – Other Powers and Responsibilities

11
12 27-4-401. Eminent domain – Dedication.

13 (a)(1) A public entity may exercise its right of eminent domain under
14 applicable law in connection with the development of a qualifying
15 transportation facility.

16 (2) The power of eminent domain shall not be delegated to a
17 private entity with respect to a qualifying transportation facility commenced
18 or proposed under this chapter.

19 (3) Damages awarded to a third party in an eminent domain action
20 may be included in the development budget for the qualifying transportation
21 facility.

22 (b)(1) A public entity may dedicate any real or personal property
23 interest, including land, improvements, and tangible personal property,
24 through lease, sale, or otherwise, to the qualified respondent to facilitate
25 a qualifying transportation facility if so doing will serve the public
26 purpose of this chapter.

27 (2) The consideration for the dedication, lease, sale, or
28 exchange of any real or personal property interest under subdivision (b)(1)
29 of this section may include an agreement by the qualified respondent to
30 operate or develop the qualifying transportation facility or provide other
31 services to the public entity.

32 (3) The property interests that a responsible public entity may
33 convey to the qualified respondent in connection with a dedication under this
34 section may include licenses, franchises, easements, or other rights or
35 interests that the public entity deems appropriate.

36

1 27-4-402. Utility crossings.

2 (a) A public entity, qualified respondent, and each public service
3 company, public utility, railroad, or cable television provider whose utility
4 facilities are to be crossed or affected by a qualifying transportation
5 facility shall cooperate fully with each other in planning and arranging the
6 manner of the crossing or relocation of the utility facilities.

7 (b)(1) A public entity that has the power of condemnation may exercise
8 the power of condemnation in connection with the moving or relocation of
9 utility facilities that will be crossed by a qualifying transportation
10 facility or that must be relocated to the extent that the moving or
11 relocation is necessary or desirable as the result of the construction of or
12 improvements to the qualifying transportation facility, including the
13 construction of or improvements to temporary facilities for the purpose of
14 providing service during the period of construction or improvement of a
15 qualifying transportation facility.

16 (2)(A) If a public entity, qualified respondent, and a public
17 service company, public utility, railroad, or cable television provider are
18 not able to agree on a plan for the crossing or relocation of the utility
19 facilities, the Arkansas Public Service Commission may determine the manner
20 in which the crossing or relocation is to be accomplished and any damages
21 arising out of the crossing or relocation.

22 (B)(i) The commission may employ expert engineers who
23 shall examine the location and plans for the crossing or relocation, hear any
24 objections, consider modifications, and make a recommendation to the
25 commission.

26 (ii) In a case arising under this section, the
27 public entity or qualified respondent shall pay the cost of the experts.

28 (c) Any amount to be paid for the crossing, construction, moving, or
29 relocating of utility facilities shall be paid for by the public entity or
30 qualified respondent as provided under the interim agreement, the
31 comprehensive agreement, or any other contract, license, or permit.

32 (d) The commission shall make a determination within ninety (90) days
33 of notification by the public entity or qualified respondent that the
34 qualifying transportation facility will cross utilities subject to the
35 commission's jurisdiction.

36

1 27-4-403. Sovereign immunity.

2 This chapter does not waive the sovereign immunity of the public entity
3 or the officers or employees of the public entity under state law.

4
5 27-4-404. Open meetings – Disclosure of records.

6 (a) This chapter does not abrogate the obligation of a public entity
7 or the Office of State Procurement to comply with the Freedom of Information
8 Act of 1967, § 25-19-101 et seq.

9 (b) However, records that would otherwise be exempt from disclosure
10 under the Freedom of Information Act of 1967, § 25-19-101 et seq., remain
11 exempt when in the custody or control of a public entity or the office.

12
13 27-4-405. Transparency.

14 (a)(1) A public entity shall provide an opportunity for public comment
15 on the proposals submitted in response to a request for proposals under this
16 chapter.

17 (2) The public comment period required under this subsection:

18 (A) Shall be for a period of at least thirty (30) days;
19 and

20 (B) May include a public hearing.

21 (b) A public entity shall publish on its website:

22 (1) A description of each proposed qualifying transportation
23 facility, the intended benefits of each proposed qualifying transportation
24 facility, a proposed schedule for each qualifying transportation facility,
25 and any other information that is essential to allow a public review of each
26 proposed qualifying transportation facility;

27 (2) Each request for proposals published by a public entity; and

28 (3) A copy of each negotiated interim agreement and
29 comprehensive agreement before the interim agreement or comprehensive
30 agreement has been executed.

31
32 27-4-406. Limitation on local fees and taxes.

33 A local government shall not impose a fee or tax on or measured by the
34 receipts of a qualifying transportation facility that is owned by a public
35 entity.

Subchapter 5 – Administration by the Arkansas State Highway and
Transportation Department

27-4-501. Review and approval.

The Arkansas State Highway and Transportation Department shall review
and approve each qualifying transportation facility before the public entity
and qualified respondent execute the comprehensive agreement.

27-4-502. Powers and duties.

(a) The Arkansas State Highway and Transportation Department shall
promulgate rules regarding the definitions and guidelines related to the
development of qualifying transportation facilities under this chapter within
one hundred eighty days (180) of the effective date of this chapter.

(b) The guidelines promulgated under this section shall include
without limitation the following:

(1) Criteria for selecting qualifying transportation facilities
to be undertaken by a public entity;

(2) Criteria for selecting among competing proposals submitted
according to a request for proposals under § 27-4-201;

(3) Time lines for selecting a qualified respondent under the
process for requests for proposals under § 27-4-201;

(4) Guidelines for negotiating a comprehensive agreement; and

(5) Guidelines for allowing the accelerated selection of a
qualified respondent and the review and approval of a qualifying
transportation facility that is determined to be a priority by the Governor
and is funded in whole or substantial part by dedicated revenues.

/s/Sabin

Referred by the Arkansas House of Representatives

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