

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

*As Engrossed: H3/17/15*

# A Bill

HOUSE BILL 1900

5 By: Representative Sabin  
6

## For An Act To Be Entitled

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

### Subtitle

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

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

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

#### CHAPTER 4

#### PUBLIC-PRIVATE TRANSPORTATION ACT

#### Subchapter 1 – General Provisions

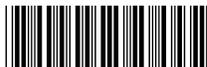
#### 27-4-101. Title.

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

#### 27-4-102. Legislative findings and intent.

33 *(a) The General Assembly finds that:*

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

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

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

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

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

20  
21 27-4-103. Definitions.

22 As used in this chapter:

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

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

31 (3) "Interim agreement" means a preliminary written agreement  
32 between a private entity and a public entity that is executed under § 27-4-  
33 302, identifies the development, scope, and feasibility of a qualifying  
34 transportation facility, and addresses all issues related to the qualifying  
35 transportation facility;

36 (4) "Private entity" means a natural person, corporation,

1 general partnership, limited liability company, limited partnership, joint  
2 venture, business trust, public benefit corporation, nonprofit entity, and  
3 other business entity;

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

5 (A) A department of the state;

6 (B) An agency of the state;

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

8 (D) A federal governmental entity; and

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

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

16 (A) A newspaper of statewide circulation; and

17 (B) Either:

18 (i) In a statewide construction industry trade  
19 magazine; or

20 (ii) On a website approved by the public entity that  
21 is regularly subscribed to by members of the construction and development  
22 industry;

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

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

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

33 (ii) Has one (1) or more of the following  
34 characteristics:

35 (a) It is developed using a long-term  
36 operations and maintenance agreement, management agreement, or services

1 agreement entered into with a private entity;

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

4 (c) It is a capital development or improvement  
5 in which a private entity:

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

8 (2) Sources or uses indebtedness,  
9 available funds, revenues, or financial or tax incentives to fund the  
10 project; or

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

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

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

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

20 (B) "Qualifying transportation facility" does not include  
21 a commercial or retail use or enterprise not essential to the transportation  
22 of persons or goods;

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

28 (A) The anticipated scope and purpose of the qualifying  
29 transportation facility;

30 (B) The financial and nonfinancial benefits related to the  
31 qualifying transportation facility;

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

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

36 (10) "Revenues" means the rates, revenues, income, earnings,

1 user fees, tolls, lease payments, service payments, other available funds,  
2 and other revenue and cash flow of any nature arising out of or in connection  
3 with the development of a qualifying transportation facility, including  
4 without limitation the funds derived from the operation of a qualifying  
5 transportation facility or otherwise provided by the parties as stated in the  
6 comprehensive agreement.

7  
8 27-4-104. Construction.

9 (a) This chapter shall be liberally construed to effectuate its  
10 purpose.

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

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

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

22  
23 Subchapter 2 – Proposals for Qualifying transportation facilities

24  
25 27-4-201. Requests for proposals.

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

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

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

34 (b)(1) If a proposed qualifying transportation facility may materially  
35 affect the governmental operations of another public entity, then the public  
36 entity proposing the qualifying transportation facility shall provide written

1 notice to each potentially affected public entity before the request for  
2 proposals is published.

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

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

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

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

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

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

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

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

25 (5) Local citizens' comments;

26 (6) Comments from other public entities;

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

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

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

33 (10) Any other factor that the public entity determines would be  
34 useful in assessing the proposals submitted in response to the request for  
35 proposals.

36 (e)(1) A public entity is not required to determine or select the

1 qualified respondent based on the lowest project development cost or life  
2 cycle cost submitted by a private entity.

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

5 (f) A public entity may:

6 (1) Reject all proposals submitted in response to a request for  
7 proposals;

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

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

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

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

19  
20 27-4-202. Unsolicited proposals.

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

24 (b)(1) However, a public entity may receive and consider unsolicited  
25 ideas and development concepts from a private entity or another public  
26 entity.

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

30  
31 Subchapter 3 – Contracts Between Public Entity and Private Entity

32  
33 27-4-301. Procurement requirements.

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

36

1 27-4-302. Interim agreement.

2 (a)(1) Except as otherwise provided in this subsection, after a public  
3 entity has selected the qualified respondent to a request for proposals, the  
4 public entity and the qualified respondent shall negotiate an interim  
5 agreement.

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

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

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

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

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

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

35 (C) A written evaluation provided by an attorney under  
36 subdivision (a)(4)(A) of this section shall include the attorney's

1 independent assessment of the terms and conditions under which the proposed  
2 qualifying transportation facility will be developed.

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

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

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

16 (2) Establish the process and timing of the negotiation of the  
17 comprehensive agreement; and

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

21  
22 27-4-303. Comprehensive agreement.

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

28 (2) If it is unnecessary for a public entity and the qualified  
29 respondent to enter into an interim agreement, the public entity and the  
30 qualified respondent shall negotiate and enter into a comprehensive agreement  
31 following selection of the qualified respondent.

32 (3) Before developing or operating the qualifying transportation  
33 facility, the qualified respondent shall enter into a comprehensive agreement  
34 with the public entity.

35 (b)(1) Before a public entity may enter into a comprehensive agreement  
36 under this section, the public entity shall contract with an attorney to

1 negotiate the relevant agreements and a certified public accountant or other  
2 financial or economics professional to provide a written evaluation of the  
3 proposed comprehensive agreement.

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

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

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

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

26 (c) The comprehensive agreement shall include without limitation the  
27 following:

28 (1) A thorough description of the duties of the public entity  
29 and the qualified respondent in relation to the development and operation of  
30 the qualifying transportation facility;

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

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

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

4           (5) Financing and funding sources for the qualifying  
5 transportation facility and any contractual provisions related to the  
6 financing and funding sources for the qualifying transportation facility;

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

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

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

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

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

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

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

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

31           (12) A process for the public entity's monitoring of the  
32 practices of the qualified respondent to ensure that the qualifying  
33 transportation facility is properly developed, constructed, operated, and  
34 maintained;

35           (13) The filing by the qualified respondent of appropriate  
36 financial statements with the public entity related to the operations of the

1 qualifying transportation facility within the timeframes established in the  
2 comprehensive agreement; and

3 (14) Policies and procedures governing the rights and  
4 responsibilities of the public entity and the qualified respondent if the  
5 comprehensive agreement is terminated according to the terms of the  
6 comprehensive agreement or as the result of a default under the terms of the  
7 comprehensive agreement.

8 (d) A comprehensive agreement may provide for the development or  
9 operation, or both, of phases or segments of a qualifying transportation  
10 facility.

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

13 (1) Agreed upon by the public entity and the qualified  
14 respondent; and

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

16  
17 27-4-304. Financing of a qualifying transportation facility.

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

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

28 (B) Debt issued for the development of a qualifying  
29 transportation facility may be evidenced by the issuance of taxable or tax-  
30 exempt bonds, promissory notes, lease purchase agreements, or other evidences  
31 of indebtedness that are specified in the comprehensive agreement.

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

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

5 (2) All or any portion of the costs of a qualifying  
6 transportation facility may be paid, directly or indirectly, from the  
7 proceeds of a grant or loan made by a local government, the state government,  
8 the federal government, or an agency or instrumentality of a local  
9 government, the state government, or the federal government if it would serve  
10 the public purpose of this chapter.

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

14 (1) Capital provided by either the public entity or the  
15 qualified respondent;

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

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

18 (4) Revenues of the qualifying transportation facility;

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

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

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

24  
25 27-4-305. Service contracts.

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

30  
31 27-4-306. Powers and duties of qualified respondent – Termination.

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

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

1 (c) In operating a qualifying transportation facility, the qualified  
2 respondent may:

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

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

10 (d) The private entity shall:

11 (1) Develop and operate the qualifying transportation facility  
12 in a manner that meets the standards of the public entity for transportation  
13 facilities operated and maintained by the public entity and that complies  
14 with the interim agreement or the comprehensive agreement;

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

20 (B) However, the qualifying transportation facility may be  
21 closed temporarily because of emergencies or, with the consent of the public  
22 entity, to protect the safety of the public or for reasonable construction or  
23 maintenance procedures;

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

26 (4) Cooperate with the public entity in establishing any  
27 interconnection with the qualifying transportation facility requested by the  
28 public entity; and

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

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

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

1  
2 Subchapter 4 – Other Powers and Responsibilities

3  
4 27-4-401. Eminent domain – Dedication.

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

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

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

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

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

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

28  
29 27-4-402. Utility crossings.

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

35 (b)(1) A public entity that has the power of condemnation may exercise  
36 the power of condemnation in connection with the moving or relocation of

1 utility facilities that will be crossed by a qualifying transportation  
2 facility or that must be relocated to the extent that the moving or  
3 relocation is necessary or desirable as the result of the construction of or  
4 improvements to the qualifying transportation facility, including the  
5 construction of or improvements to temporary facilities for the purpose of  
6 providing service during the period of construction or improvement of a  
7 qualifying transportation facility.

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

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

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

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

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

28  
29 27-4-403. Sovereign immunity.

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

32  
33 27-4-404. Open meetings – Disclosure of records.

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

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

4  
5 27-4-405. Transparency.

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

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

10 (A) Shall be for a period of at least thirty (30) days;

11 and

12 (B) May include a public hearing.

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

14 (1) A description of each proposed qualifying transportation  
15 facility, the intended benefits of each proposed qualifying transportation  
16 facility, a proposed schedule for each qualifying transportation facility,  
17 and any other information that is essential to allow a public review of each  
18 proposed qualifying transportation facility;

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

20 (3) A copy of each negotiated interim agreement and  
21 comprehensive agreement before the interim agreement or comprehensive  
22 agreement has been executed.

23  
24 27-4-406. Limitation on local fees and taxes.

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

28  
29 Subchapter 5 – Administration by the Arkansas State Highway and  
30 Transportation Department

31  
32 27-4-501. Review and approval.

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

36

