

**MARKUP**

**ARKANSAS PORT, INTERMODAL, AND WATERWAY DEVELOPMENT  
PROGRAM ~~RULES~~**

~~ARKANSAS WATERWAYS COMMISSION ARKANSAS DEPARTMENT  
OF COMMERCE - Agency 9902~~

**RECEIVED  
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BLR**

~~1.0 GENERAL INFORMATION~~

~~1.1 PROGRAM NAME~~

~~1.2 AUTHORIZATION~~

~~2.0 PROGRAM DESCRIPTION~~

~~3.0 TYPE OF AWARD~~

~~4.0 ELIGIBILITY~~

~~4.1 ELIGIBILITY CRITERIA~~

~~4.2 CONFLICT OF INTEREST~~

~~5.0 APPLICATION PROCESS~~

~~6.0 EVALUATION~~

~~6.1 EVALUATION CRITERIA~~

~~6.2 APPLICATION REVIEW~~

~~7.0 GRANT AWARDS~~

~~8.0 GRANT REPORTING~~

~~9.0 FREEDOM OF INFORMATION~~

## 1.0 GENERAL INFORMATION

The Arkansas Waterways Commission was established by Act 242 of 1967 and its powers and duties were amended by Act 414 of 1973. The Commission's general authority is codified at ~~Ark. Code Ann.~~ [Arkansas Code](#) § 15-23-201. The Arkansas Waterways Commission is the sole state agency responsible for developing, promoting and protecting waterborne transportation in Arkansas. The Commission also promotes economic development for ports on the five (5) commercially navigable rivers of the state: the Arkansas, Mississippi, Ouachita, Red, and White Rivers.

### 1.1 PROGRAM NAME

These rules govern the Arkansas Port, Intermodal, and Waterway Development Grant Program.

### 1.2 AUTHORIZATION

~~The Arkansas Port, Intermodal, and Waterway Development Grant Program is authorized by Ark. Code Ann. § 15-23-305 and § 19-5-1253.~~

## 2.0 PROGRAM DESCRIPTION

The Arkansas Port, Intermodal, and Waterway Development Grant Program provides financial assistance to port authorities and intermodal authorities for the purpose of funding port development projects. The goals of the program are to provide public funds to build land-side infrastructure and to dredge ports and waterways. Funding this infrastructure will provide jobs and competitive transportation costs for moving cargo, thereby minimizing highway congestion, improving safety, and reducing maintenance costs related to Arkansas's highways. This program will also allow Arkansas products to reach additional markets.

## 3.0 TYPE OF AWARD

- 3.1 The total maximum funding will be limited to the amount of money made available to the [Arkansas Waterways](#) Commission for the program.
- 3.2 There is no minimum amount of funding that may be applied for by an eligible applicant. The maximum amount that may be applied for by an eligible applicant is the maximum amount of funds available.

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- 3.3 There is no maximum of number of awards that can be received for an eligible applicant in one state fiscal year.
- 3.4 Funds granted may not exceed ninety percent (90%) of construction costs or fifty percent (50%) of dredging costs.

### 4.0 ELIGIBILITY

#### 4.1 ELIGIBILITY CRITERIA

- 4.1.1 Eligible applicants are an Arkansas public port authority or public intermodal authority ~~to exclude ports, intermodal authorities, or any other public entity located along the McClellan-Kerr Arkansas River Navigation System (MKARNS) due to the Arkansas River Navigation Fund established by Act 561 § 19-5-1264~~ with facilities located on the Arkansas, Mississippi, Ouachita, White, or Red Rivers. A port facility can include an intermodal facility and maritime-related industrial park infrastructure development.
- 4.1.2 Eligible projects are construction, improvement, capital facility rehabilitation, and expansion of a public port facility. Dredging projects are also eligible.
- 4.1.3 Planning projects and feasibility studies shall not be eligible.
- 4.1.4 Funds granted may not exceed ninety percent (90%) of the cost of construction or fifty percent (50%) of dredging costs.
- 4.1.5 Eligible projects may be projects that were completed within a year prior to the grant application.

#### 4.2 CONFLICT OF INTEREST

- 4.2.1 No Director, officer or employee of the Arkansas Waterways Commission, for purpose of personal gain, shall have or attempt to have, directly or indirectly, any interest in any contract or agreement of the Commission in connection with the Arkansas Port, Intermodal, and Waterway Development Grant Program.
- 4.2.2 It shall not be a conflict of interest for the Commission to permit any port, intermodal or waterway with which a Director of the Commission is affiliated to participate in any program of the Commission, provided that such Director

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shall promptly disclose the nature of the affiliation to the Commission.

### 5.0 APPLICATION PROCESS

- 5.1 Applications for the Arkansas Port, Intermodal, and Waterways Development Grant shall be submitted on the form prescribed by the [Arkansas Waterways](#) Commission.
- 5.2 A Resolution passed by the board of the grant applicant must be enclosed with the application. The Resolution must have the signature of the Chair of the board.
- 5.3 The Commission reserves the right to request additional information as required for evaluation.
- 5.4 Cost estimate submitted with application must come from a certified engineer, construction company, or manufacturer with vendor's logo and contact information on the documentation submitted.

### 6.0 EVALUATION

Projects will be evaluated by the [Arkansas Waterways](#) Commission, which may request the assistance of appropriate representatives from academia, private enterprise, or the public sector. Applications meeting the eligibility requirements will be evaluated on the basis of the evaluation criteria outlined below.

#### 6.1 EVALUATION CRITERIA

- 6.1.1 The qualified applicant and the associated enterprise must have the support and resources available to ensure a reasonable probability of project success if a development grant is awarded.
- 6.1.2 The proposed development project must have commercial ~~Feasibility~~ [feasibility](#) and positively impact a commercially navigable waterway in the State of Arkansas. The development should provide the port, intermodal or waterway with the ability to compete more effectively in the marketplace.

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### 7.0 GRANT AWARDS

- 7.1 The Arkansas Waterways Commission shall make the final decision to select recipients of funding from the Arkansas Port, Intermodal, and Waterway Development Grant Program. Funding decisions will be based on information derived from the Program review.
- 7.2 The ~~Arkansas Waterways~~ Commission will notify all applicants, selected or not, within fifteen (15) business days of the Commission's decision.
- 7.3 The ~~Arkansas Waterways~~ Commission will notify the office of the State Treasurer, and the office of the State Treasurer~~state-Treasurer's office and the Treasurer's office~~ will mail or direct deposit funds for approved projects.
- 7.4 Grant recipients shall designate a bank account with routing information for grant funds and matching funds. Before grant award is remitted, grant recipient must demonstrate that the cash match is in this account within sixty (60) days of notice of award to recipient, or forfeiture of grant award will occur.
- 7.5 Grant recipients must expend grant funds within a year from award date or the ~~Arkansas Waterways~~ Commission must grant an extension upon proof that all reasonable efforts have been made to comply. Grant funds shall be utilized and expended by the applicant solely and exclusively for the payment of authorized and allowable costs and expenses of the project for which assistance was approved.
- 7.6 If all grant funds are not utilized and expended by the applicant for the specific project ~~Project~~ for which such funds were furnished within one (1) year, the grant recipient shall return or otherwise pay or reimburse to the Commission any and all such unused funds or any amounts of funds used and expended for unauthorized or unallowable purposes; or the applicant may submit a request to the Director of the Arkansas Waterways Commission to use leftover funds for another project. The Commissioners of the Arkansas Waterways Commission shall approve or disapprove the request.
- 7.7 The grant award recipient must deposit the exact amount applicant stated in the grant application if awarded the full amount requested. If the full amount requested is not awarded, the applicant will

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deposit ten percent (10%) of the awarded amount, unless it is a dredge project, in which case fifty percent (50%) must be deposited.

### 8.0 GRANT REPORTING

- 8.1 Grantees shall complete a quarterly, signed expenditure report and submit it to the Arkansas Waterways Commission within thirty (30) days of report being due, certifying the accurate expenditure of funds, to remain in compliance and be eligible for the next year's program.
- 8.2 Grantees shall complete a final, signed expenditure report and submit it to the ~~Arkansas Waterways~~ Commission within thirty (30) days of the final expenditure, certifying the accurate expenditure of funds, to remain in compliance and be eligible for the next year's program.
- 8.3 All reports shall be subject to review by the ~~state~~Arkansas Legislative Audit.

### 9.0 FREEDOM OF INFORMATION

All information submitted in applications is subject to the provisions of the Freedom of Information Act of 1967, Arkansas Code § 25-19-101 et seq.

1 State of Arkansas  
2 94th General Assembly  
3 Regular Session, 2023  
4

As Engrossed: S3/29/23

# A Bill

SENATE BILL 478

5 By: Senator J. Dismang  
6 By: Representative Eaves  
7

## For An Act To Be Entitled

9 AN ACT CONCERNING FUNDING AND INCENTIVES FOR CERTAIN  
10 WATERWAYS SYSTEMS, PROGRAMS, AND INVESTMENTS; TO  
11 AMEND THE ARKANSAS PORT, INTERMODAL, AND WATERWAY  
12 DEVELOPMENT GRANT PROGRAM; TO PROVIDE ADDITIONAL  
13 FUNDING FOR THE ARKANSAS PORT, INTERMODAL, AND  
14 WATERWAY DEVELOPMENT GRANT PROGRAM FUND; TO CREATE IN  
15 INVESTMENT TAX CREDIT FOR CAPITAL IMPROVEMENTS  
16 RELATING TO WATER TRANSPORTATION IN THE STATE; AND  
17 FOR OTHER PURPOSES.

## Subtitle

21 TO PROVIDE ADDITIONAL FUNDING FOR THE  
22 ARKANSAS PORT, INTERMODAL, AND WATERWAY  
23 DEVELOPMENT GRANT PROGRAM FUND; AND TO  
24 CREATE A WATERWAYS INVESTMENT INCOME TAX  
25 CREDIT.

26  
27  
28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
29

30 SECTION 1. Arkansas Code § 15-23-205(a), concerning the Arkansas Port,  
31 Intermodal, and Waterway Development Grant Program, is amended to read as  
32 follows:

33 (a)~~(1)~~ The Arkansas Waterways Commission shall establish and  
34 administer the Arkansas Port, Intermodal, and Waterway Development Grant  
35 Program that shall be used for one (1) or more of the following purposes: ~~to~~  
36 (1) To provide financial assistance to port authorities and



1 intermodal authorities for the purpose of funding port development projects,  
2 including without limitation the construction, improvement, capital facility  
3 rehabilitation, and expansion of a public port facility, including without  
4 limitation an intermodal facility and a maritime-related industrial park  
5 infrastructure development-;

6 (2) ~~Wharves~~ To construct, install, or repair wharves, cargo  
7 handling equipment, utilities, railroads, primary access roads, and buildings  
8 that are an integral part of a port development project ~~are also eligible for~~  
9 ~~funding under this section-;~~ and

10 (3) To share in the expense of United States Army Corps of  
11 Engineers navigation enhancements, improvements, and emergency assistance  
12 projects.

13  
14 SECTION 2. Arkansas Code § 15-23-205(c), concerning the Arkansas Port,  
15 Intermodal, and Waterway Development Grant Program, is amended to read as  
16 follows:

17 (c)(1) An Arkansas public port authority or intermodal authority may  
18 apply for funding of a port development project under the program.

19 (2) The Director of the Arkansas Waterways Commission shall  
20 provide the commission with the following information for any proposed  
21 projects under subdivision (a)(3) of this section:

22 (A) A description;

23 (B) Preliminary designs;

24 (C) Cost estimates;

25 (D) Cost-sharing percentages between the program and the  
26 United State Army Corps of Engineers; and

27 (E) Any other information or documentation required by the  
28 commission.

29 (3) The Chief Fiscal Officer of the State shall notify the  
30 commission when funding is available for the program.

31  
32 SECTION 3. Arkansas Code § 26-26-1616(d)(2), concerning the  
33 disposition of ad valorem taxes and penalties collected from water  
34 transportation companies, is amended to read as follows:

35 (2) Any taxes and penalties collected in excess of two million  
36 five hundred fifty thousand dollars (\$2,550,000) each calendar year shall be

1 ~~deposited as follows:~~

2 ~~(A) Seventy percent (70%) shall be credited to the~~  
3 ~~Arkansas River Navigation System Fund; and~~

4 ~~(B) Thirty percent (30%) shall be credited to the Arkansas~~  
5 ~~Port, Intermodal, and Waterway Development Grant Program Fund to be used~~  
6 ~~exclusively for the purposes stated in § 15-23-205.~~

7

8 SECTION 4. Arkansas Code Title 26, Chapter 51, Subchapter 5, is  
9 amended to add an additional section to read as follows:

10 26-51-517. Waterways investment tax credit.

11 (a) There is allowed an income tax credit against the income tax  
12 imposed by this chapter in the amount stated in subsection (b) of this  
13 section for the cost of making capital improvements to a facility or property  
14 related to using water transportation in the state, including without  
15 limitation the construction, improvement, capital facility rehabilitation,  
16 and expansion of a waterway facility and the construction or improvement of  
17 rail or road access to a waterway facility, on or after January 1, 2024, and  
18 on or before December 31, 2025.

19 (b)(1) Except as otherwise provided in this subsection, the tax credit  
20 allowed under subsection (a) of this section shall not exceed three million  
21 dollars (\$3,000,000) for a taxpayer that makes the capital improvements to a  
22 facility or property related to using water transportation in the state.

23 (2) The amount of the tax credit that a taxpayer may claim each  
24 year is limited to a maximum of ten percent (10%) of the total tax credit for  
25 which the taxpayer is eligible.

26 (3) The total cumulative amount of tax credits for all taxpayers  
27 under this section in a tax year shall:

28 (A) Not exceed two million five hundred thousand dollars  
29 (\$2,500,000); and

30 (B) Be issued on a first-come, first served basis.

31 (4) A tax credit allowed under this section shall be issued only  
32 after the Secretary of the Department of Commerce has determined, based on  
33 the information provided by the applicant for a tax credit under this  
34 section, that the taxpayer's capital investment in a facility or property  
35 related to using water transportation in the state will provide an economic  
36 benefit to the state that will likely be equal to or greater than the amount

1 of the tax credit allowed under this section.

2 (c) Any unused income tax credit that cannot be claimed in a tax year  
3 because of the limit stated in subdivision (b)(2) of this section may be  
4 carried forward for nine (9) consecutive tax years following the tax year in  
5 which the income tax credit was earned.

6 (d) A taxpayer is not eligible for the credit allowed under this  
7 section if the taxpayer has received funds under the Arkansas Port,  
8 Intermodal, and Waterway Development Grant Program.

9 (e) The Secretary of the Department of Finance and Administration  
10 shall:

11 (1) Promulgate rules to implement this section;

12 (2) Review the overall economic impact of this section on or  
13 before December 31, 2030, and again on or before December 31, 2035; and

14 (3) Report his or her findings under subdivision (e)(2) of this  
15 section to the Legislative Council or, if the General Assembly is in session,  
16 to the Joint Budget Committee within thirty (30) days of completing the  
17 required review.

18  
19 SECTION 5. EFFECTIVE DATE. Section 4 of this act is effective for tax  
20 years beginning on or after January 1, 2024.

21  
22 */s/J. Dismang*

23  
24  
25 **APPROVED: 4/13/23**