

**QUESTIONNAIRE FOR FILING PROPOSED RULES WITH
THE ARKANSAS LEGISLATIVE COUNCIL**

DEPARTMENT _____
 BOARD/COMMISSION _____
 BOARD/COMMISSION DIRECTOR _____
 CONTACT PERSON _____
 ADDRESS _____
 PHONE NO. _____ EMAIL _____
 NAME OF PRESENTER(S) AT SUBCOMMITTEE MEETING _____
 PRESENTER EMAIL(S) _____

INSTRUCTIONS

In order to file a proposed rule for legislative review and approval, please submit this Legislative Questionnaire and Financial Impact Statement, and attach (1) a summary of the rule, describing what the rule does, the rule changes being proposed, and the reason for those changes; (2) both a markup and clean copy of the rule; and (3) all documents required by the Questionnaire.

If the rule is being filed for permanent promulgation, please email these items to the attention of Rebecca Miller-Rice, miller-ricer@blr.arkansas.gov, for submission to the Administrative Rules Subcommittee.

If the rule is being filed for emergency promulgation, please email these items to the attention of Director Marty Garrity, garritym@blr.arkansas.gov, for submission to the Executive Subcommittee.

Please answer each question completely using layman terms.

1. What is the official title of this rule?

2. What is the subject of the proposed rule? _____
3. Is this rule being filed under the emergency provisions of the Arkansas Administrative Procedure Act? Yes No

If yes, please attach the statement required by Ark. Code Ann. § 25-15-204(c)(1).

If yes, will this emergency rule be promulgated under the permanent provisions of the Arkansas Administrative Procedure Act? Yes No

4. Is this rule being filed for permanent promulgation? Yes No

If yes, was this rule previously reviewed and approved under the emergency provisions of the Arkansas Administrative Procedure Act? Yes No

If yes, what was the effective date of the emergency rule? _____

On what date does the emergency rule expire? _____

5. Is this rule required to comply with a *federal* statute, rule, or regulation? Yes No

If yes, please provide the federal statute, rule, and/or regulation citation.

6. Is this rule required to comply with a *state* statute or rule? Yes No

If yes, please provide the state statute and/or rule citation.

7. Are two (2) rules being repealed in accord with Executive Order 23-02? Yes No

If yes, please list the rules being repealed.

If no, please explain.

8. Is this a new rule? Yes No

Does this repeal an existing rule? Yes No

If yes, the proposed repeal should be designated by strikethrough. If it is being replaced with a new rule, please attach both the proposed rule to be repealed and the replacement rule.

Is this an amendment to an existing rule? Yes No

If yes, all changes should be indicated by strikethrough and underline. In addition, please be sure to label the markup copy clearly as the markup.

9. What is the state law that grants the agency its rulemaking authority for the proposed rule, outside of the Arkansas Administrative Procedure Act? Please provide the specific Arkansas Code citation(s), including subsection(s).

10. Is the proposed rule the result of any recent legislation by the Arkansas General Assembly?
Yes No

If yes, please provide the year of the act(s) and act number(s).

11. What is the reason for this proposed rule? Why is it necessary?

12. Please provide the web address by which the proposed rule can be accessed by the public as provided in Ark. Code Ann. § 25-19-108(b)(1).

13. Will a public hearing be held on this proposed rule? Yes No

If yes, please complete the following:

Date: _____

Time: _____

Place: _____

Please be sure to advise Bureau Staff if this information changes for any reason.

14. On what date does the public comment period expire for the permanent promulgation of the rule? Please provide the specific date. _____

15. What is the proposed effective date for this rule? _____

16. Please attach (1) a copy of the notice required under Ark. Code Ann. § 25-15-204(a)(1) and (2) proof of the publication of that notice.

17. Please attach proof of filing the rule with the Secretary of State, as required by Ark. Code Ann. § 25-15-204(e)(1)(A).

18. Please give the names of persons, groups, or organizations that you anticipate will comment on these rules. Please also provide their position (for or against), if known.

19. Is the rule expected to be controversial? Yes No

If yes, please explain.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY.

DEPARTMENT _____
BOARD/COMMISSION _____
PERSON COMPLETING THIS STATEMENT _____
TELEPHONE NO. _____ **EMAIL** _____

To comply with Ark. Code Ann. § 25-15-204(e), please complete the Financial Impact Statement and email it with the questionnaire, summary, markup and clean copy of the rule, and other documents. Please attach additional pages, if necessary.

TITLE OF THIS RULE _____

1. Does this proposed, amended, or repealed rule have a financial impact?
 Yes No

2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
 Yes No

3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes No

If no, please explain:

(a) how the additional benefits of the more costly rule justify its additional cost;

(b) the reason for adoption of the more costly rule;

(c) whether the reason for adoption of the more costly rule is based on the interests of public health, safety, or welfare, and if so, how; and

(d) whether the reason for adoption of the more costly rule is within the scope of the agency’s statutory authority, and if so, how.

4. If the purpose of this rule is to implement a *federal* rule or regulation, please state the following:
 - (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

5. What is the total estimated cost by fiscal year to any private individual, private entity, or private business subject to the proposed, amended, or repealed rule? Please identify those subject to the rule, and explain how they are affected.

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

6. What is the total estimated cost by fiscal year to a state, county, or municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes No

If yes, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

ARKANSAS PORT, INTERMODAL, AND WATERWAY DEVELOPMENT PROGRAM

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 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.

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.

- 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 with facilities located on the Arkansas, 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

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 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.

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 Commission will notify all applicants, selected or not, within fifteen (15) business days of the Commission's decision.
- 7.3** The Commission will notify the office of the State Treasurer, and the office of the State Treasurer 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 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 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

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 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 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.

MARKUP

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

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

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

MARKUP

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, 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

18
19
20
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**



**STATE OF ARKANSAS
BUREAU OF
LEGISLATIVE RESEARCH**

Marty Garrity, Director
Kevin Anderson, Assistant Director
for Fiscal Services
Matthew Miller, Assistant Director
for Legal Services
Jessica Whittaker, Assistant Director
for Research Services
Eric Sanders, Assistant Director
for Information Technology Services

Memorandum

TO: Members, ALC – Executive Subcommittee

CC: Marty Garrity, Director, Bureau of Legislative Research;
Rebecca Miller-Rice, Administrator, Administrative Rules Review Section,
Legal Services Division

FROM: Jason Kearney, Legislative Attorney, Administrative Rules Review Section,
Legal Services Division

DATE: April 9, 2024

SUBJECT: Legal Authorization for the Emergency Promulgation of Proposed Arkansas
Port, Intermodal, and Waterway Development Program Rules

The Arkansas Department of Commerce, Arkansas Waterways Commission seeks legislative review and approval of the emergency promulgation of its amended Arkansas Port, Intermodal, and Waterway Development Program Rules. The amended rules implement Act 881 of 2023, sponsored by Senator Jonathan Dismang, which concerned funding and incentives for certain waterways systems, programs and investments; amended the Arkansas Port, Intermodal, and Waterway Development Grant Program; provided additional funding for the Arkansas Port, Intermodal, and Waterway Development Grant Program Fund; and created an investment tax credit for capital improvements relating to water transportation in the state. Pursuant to Arkansas Code Annotated § 15-23-205(f), the Commission shall promulgate rules to implement the Arkansas Port, Intermodal, and Waterway Development Grant Program, codified in Ark. Code Ann. § 15-23-205. Per the Commission, the amended rules will enable Arkansas public port and intermodal authorities located along the Arkansas River to be eligible for the Arkansas, Port, Intermodal, and Waterway Development Grant Program.