ARKANSAS REGISTER

Proposed Rule Cover Sheet

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Name of Department Arkansas Department of Commerce

Agency or Division Name Arkansas Economic Development Commission

Other Subdivision or Department, If Applicable

Previous Agency Name, If Applicable

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Hugh McDonald
SECRETARY OF COMMERCE
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EXECUTIVE DIRECTOR,
ARKANSAS ECONOMIC
DEVELOPMENT COMMISSION

Arkansas Site Development Grant Program Rule

Executive Summary

Purpose

To promulgate a new administrative rule for the new Arkansas Site Development Grant Program to be administered by the Arkansas Economic Development Commission. The proposed grant program aims to enhance the state's economic competitiveness by upgrading the existing inventory of high-quality industrial development sites to increase attractiveness to prospective companies. Recognizing the importance of quick development to attract prospective companies, the program provides a matching grant for eligible applicants to leverage cost associated with site development improvements.

Background

Arkansas has a need to increase the inventory of high-quality industrial development sites that are prepared for quick development. The Arkansas Economic Development Commission received a planning grant through the U.S. Economic Development Administration to identify sites that have strong development potential. Communities in Arkansas submitted sites for evaluation and a recommendation of competitive improvements. Act 561 of 2023 appropriated $10 million in funding from restricted reserve for economic stimulus activities. The commission will utilize these funds to assists grant applicants to leverage matching funds for qualified activities related to site development and improvements.

Key Points

The proposed new rule:

- Requires an applicant to match at least 5% of total costs provided by cash or in-kind.
- Requires all matching funds to be available immediately if a grant is awarded.
- Defines eligible applicants, eligible activities, and eligible site parameters.
- Eligible activities include infrastructure extension, right-of-way acquisition, site due diligence studies, and other activities improving a site's competitiveness. Ineligible expenditures encompass property purchase, principal and interest on debt, and routine site repair and maintenance.
- An eligible site means a greenfield industrial site that is a minimum of 30 contiguous acres and is listed in the Arkansas Site Selection Center database.
- Outlines the application process including documents the agency shall need to determine eligibility.
- Sets a scoring rubric to guide the agency's grant review team to assess and score eligible applications.
- The amount of a grant award shall be at the discretion of the executive director of the Commission, based on the recommendations of the grant review team.
- All project expenditures must be completed within 24 months of the date of award.
- All grantees must execute a grant agreement specifying project details, eligible activities, repayment provisions, and the disbursement process.
- Projects must submit a final report to the Commission within sixty days of project completion.
- Any unused grant funds must be returned to the commission after the project is completed.
- Any funds determined to be used for ineligible expenditures or that are determined to be non-compliant with the executed grant agreement will be subject to repayment provisions.

Effective date

If approved by Arkansas Legislative Council, the new rule will be effective 10 days upon filing of the approved final rule with the Arkansas Secretary of State.

101. Overview.

(a)(1) In order to position Arkansas to compete for economic development projects more effectively, the state must have an inventory of high-quality industrial development sites that are prepared for quick development.

(2) Prospective companies are searching for sites that can meet fast development schedules to begin operations and create new jobs.

(3) Arkansas has a need to increase the inventory of shovel ready sites that could be marketed to prospective companies.

(b)(1) The goal of the Arkansas Site Development Program is to provide matching grant funds to eligible applicants for site development improvement activities that will enhance readiness and competitiveness.

(2) Grantees shall receive matching funds for eligible activities that will increase an eligible site's marketability and competitiveness for economic development recruitment projects.

(3) Arkansas Site Development Program grants are intended to leverage, not supplant, other funding sources.

102. Definitions.

(1) "Economic development organization" means a local or regional organization that is recognized by the local governing body to:

(A) Act as the primary point of contact for economic development projects with the Arkansas Economic Development Commission;

(B) Assist businesses to:

(i) Locate a business in their territory to create new jobs and investment;

(ii) Expand and grow a business;

(iii) Retain jobs and investment in a community that they represent; or

(iv) Communicate details about available real estate, taxes, available financing options, planning and zoning regulations, infrastructure, workforce, utilities, and incentives at the local level; or

(C) Market and promote a city, county, or region for economic development recruitment.

(2) "Eligible applicant" means:

(A) A city of the first class, city of the second class, incorporated town, unincorporated community, or county in the state of Arkansas;

(B) An economic development organization; or

(C) A Chamber of Commerce.

(3) "Eligible project" means a project to improve, upgrade, rehabilitate, or conduct necessary due diligence on industrial property that will increase the site's competitiveness for economic development recruitment;

(4) "Eligible site" means a greenfield industrial site that is:

(A) A minimum of thirty (30) contiguous acres of land;

(B) Owned or optioned by an eligible applicant.

(i) Optioned land must be owned by the applicant by the time the grant agreement is executed,

(C) Listed on the Arkansas Site Selection Center database at the time of application.

(5) "Matching funds" means a combination of donated labor, donated materials, donated land, or cash to comprise five percent (5%) of the total project cost estimate provided to the Arkansas Economic Development Commission.

(A) All matching funds must be:

(i) Pledged at the time the application is submitted;

(ii) Related to the eligible project;

(iii) Included in the project cost section of the application;

(iv) Estimated at current fair market value; and

(v) Available immediately at the time the grant is awarded.

(6) "Option" means a contract for sale of property made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.

103. Arkansas Site Development Grant Program Funding.

(a) The Arkansas Economic Development Commission may utilize any funds appropriated and available to provide Arkansas Site Development Program to fund grants to eligible applicants.

(b)(1) Program grants may be awarded, pending availability of funds, at the discretion of the director of the Commission.

(2) Depending on the volume of grant applications and the discretion of the director, applicants may not receive the entire amount of grant funding requested.

(3) An eligible applicant may only request funds for one (1) eligible site per funding cycle.

(4) The amount of the grant award shall be determined by the Commission based upon costs of eligible activities in a proposed project, availability of funding, and overall demand for funds.

104. Eligibility criteria.

(a) All grant applicants must meet the definition of an eligible applicant in section 102(2).

(b) If the eligible applicant has an option on an eligible site, the applicant must own the property by the time the grant agreement is executed.

(c) Eligible activities for funding through the Arkansas Site Development Grant Program include but are not limited to:

(1) Extension and improvement of public infrastructure to a site;

(2) Right of way acquisition necessary for the eligible project,

(3) Easements acquisition;

(4) Soil borings and analysis;

(5) Construction costs for site improvements including but not limited to:

(A) Drainage improvements;

(B) Easements;

(C) Dozer or dirt work;

(D) Grading;

(E) Site mitigation;

(F) Site rehabilitation; and

(G) Other site upgrades and improvements as determined by the Arkansas Economic Development Commission;

(6) Costs associated with site due diligence studies the Commission deems appropriate; and

(7) Other site related activities deemed necessary by the Commission to improve a site's overall competitiveness for economic development recruitment.

(d) Ineligible program expenditures include but are not limited to:

(1) Purchase of property, except for the purchase of a right-of-way or easement necessary for the eligible project;

(2) Principal and interest on any financed debt;

(3) Lease payments;

(4) Salaries or benefits for applicant's employees;

(5) Marketing or advertising for the site;

(6) Lobbying expenses;

(7) Routine site repair and maintenance;

(8) Purchases of alcohol;

(9) Entertainment expenses, including meals and activity fees;

(10) Eligible activity expenditures incurred prior to a grant award;

(11) Expenditures that are unsupported by documentation;

(12) Other expenses specified as ineligible at the discretion of the Commission; and

(13) Any political activities.

105. Matching funds requirements.

(a) The Arkansas Site Development Grant requires an eligible applicant to invest a minimum funding match of five percent (5%) of the overall project cost estimate, as stated in the application.

(b)(1) An eligible applicant's five percent (5%) match for the grant award may be in the form of cash, in-kind donations, or a combination of both.

(2) Matching funds may be in the following forms:

(A) Cash matches including but are not limited to:

(i) Funds appropriated in full by the local governing body;

(ii) Funds invested by an economic development organization, or chamber of commerce; or

(iii) Funds invested from a non-profit or for-profit entity;

(B) An in-kind match must be based on fair market appraisal value estimates that are documented and provided by the applicant for verification, including but not limited to:

(i) Professional or skilled labor donated at a rate estimate provided by an entity or individual if the individual is licensed or considered a professional in the field for which the donation is being made and approved by the commission.

(ii) In-kind donations must be a part of the project and included on the cost estimate section of the grant application to be eligible as a match.

(3)(A) All cash matching funds must be available immediately at the time a grant agreement is executed as documented through bank statements.

. (B)(i) In-kind donations must be supported by a notarized affidavit executed by the donor attesting to the donor's intent to provide the in-kind donation and describing the form of the in-kind donation.

(ii) The affidavits described in section 105(b)(3)(B)(i) must be submitted with the application.

106. Application process.

(a)(1) An Arkansas Site Development Grant application shall be submitted to the Arkansas Economic Development Commission on forms provided by the Commission.

(2) All applications and supporting documentation must be complete and submitted by the deadline specified by the Commission.

(3) Incomplete application or applications submitted after the deadline will not be reviewed.

(b) Each application should be signed by the chief executive or elected official of the applicant's organization.

(c) Each application packet shall contain pertinent supporting documentation and information, including but not limited to:

(1) Documentation stating that the applicant is the entity recognized by the local governmental authority to be the point of contact for the Commission for economic development projects;

(2) Scope of the project;

(3) Deed of current ownership of the property;

(4) Option to purchase the property, if applicable;

(5) Aerial photographs with property boundaries clearly identified;

(6) Maps of the eligible property that include the following:

(A) Site boundaries,

(B) Identification of all current infrastructure;

(C) Zoning maps;

(D) Flood plain maps; and

(E) Maps showing all existing available utilities.

(8) Copies of all due diligence that has been completed on the property including but not limited to:

(A) Phase 1 environmental evaluation;

(B) Wetlands delineation;

(C) Threatened and endangered species evaluation;

(D) Archaeological and historical investigation; and

(E) Geotechnical assessment.

(9) Project budget;

(10) Project timeline with milestones;

(11) Amount of funding requested;

(12) Total project costs,

(13) Source and amounts of all matching funds;

(14) List of all eligible activities;

(15) Estimate of all eligible project costs;

(16) Current feasibility studies or master plans that have been conducted on the property; and

(17) Any other documents and information the commission deems necessary to determine eligibility.

107. Application review and approval process.

(a) Arkansas Site Development Grant applications will be date stamped and reviewed in order of receipt. A review team shall be designated by the director of the Arkansas Economic Development Commission.

(b) Eligible and complete applications will undergo a four (4) step review process:

(1) Each grant application received will undergo an initial eligibility review to determine that:

(A) The applicant and scope of project both meet eligibility requirements;

(B) The application is complete, signed, and includes all supporting documents;

(C) The sources and use of funds are sufficient to ensure the successful completion of the project; and

(D) All project costs submitted are eligible for funding.

(2) For each application deemed complete and eligible, the review team will conduct a project review and assessment. Each application will be scored, using the following rubric:

Maximum Points	**Category**	**Factors to consider**
30	Site Conditions	The applicant's site has favorable site conditions including but not limited to adequate size, favorable slope, minimal wetlands, outside of the 100-year floodplain, industrial zoning, compatible neighboring land use, and controlled access to the site.
25	Utilities	The applicant's site has proximity and capacity for: electricity, natural gas, water, sewer, and telecommunications.
20	Transportation Infrastructure	The applicant's site has proximity to paved roads, rail infrastructure, intermodal facilities, ports, or commercial airports.
10	Site Due Diligence	The applicant's site has undergone site due diligence studies in the last 5 years including but not limited to: geotechnical survey, environmental studies, endangered species survey, archeological survey, wetlands delineation, and soil borings.
5	Current Marketing Efforts	The applicant's site is actively being marketed for industrial use, the site has hosted prospects for site visits, the site is currently under consideration for an active economic development project, or both.
5	Local Match	The applicant's match is above the minimum 5% required for eligibility.
5	Site Certification	The applicant's site is currently a certified site or Competitive Communities Initiative (CCI) designated site.
100 Total Maximum Points Possible		

(3) The review team will provide a summary of each reviewed application and the application's score to the director, or his or her designee, along with funding recommendations.

(4) The director, or his or her designee, will review the recommendations and specify which applicants may receive funding.

108. Notice of approval.

(a)(1) Arkansas Site Development Grants amounts shall be awarded at the discretion of the director of the Arkansas Economic Development Commission based on the recommendations of the review team and may be for amounts less than requested and subject to funding availability;

(2)(A) Approved applicants will receive a grant award notification letter outlining the amount, terms, and conditions of the funding;

(B) If an approved applicant is a city our county, within ninety (90) days of receiving the award notification letter the city or county must provide to the Commission:

(i) A copy of a signed resolution passed by the city council or quorum court authorizing the governmental entity to:

(*a)* Receive the grant funds from the Commission for the purposes stated in the application;

(*b*) Expend any cash matching funds pledged by the governmental entity in the application; and

(*c*) Provide eligible in-kind matching funds pledged by the governmental entity in the application.

(ii) The resolution must be provided before any grant funds are disbursed by the Commission.

(3) Unsuccessful applicants will be notified in writing by the director or his or her designee.

109. Grant agreement.

(a) After receiving a grant award notification letter each applicant shall execute a grant agreement with the Arkansas Economic Development Commission.

(b) The grant agreement shall specify:

(1) The eligibility date for incurring project costs;

(2) The date by which the grantee shall complete the Arkansas Site Development Grant funded portion of the project;

(3) The amount of approved costs determined by the Commission;

(4) The eligible activities that may receive funding;

(5) Repayment provisions for non-compliance of conditions set in the grant agreement; and

(6) The process by which grant funds shall be disbursed to the grantee.

(c)(1) A grantee may begin to incur eligible expenditures for reimbursement after a grant agreement has been completed;

(2) Invoices and documentation of the purchase of eligible expenditures must be submitted to the Commission before reimbursement will occur;

(3) Any expenditures related to the completion of the project that were made before the completion of the grant agreement will be deemed ineligible expenses.

110. Grantee responsibilities and reporting requirements.

(a) Project funds will be expended through a fund established on the books of the grantee;

(b) The grantee retains the following documents on file for three (3) years or until audited, whichever is later:

(1) A copy of the original grant agreement;

(2) A list of all project expenditures;

(3) All project expenditure invoices; and

(4) All documentation of receipt and expenditure of matching funds.

(c) All project expenditures must be completed within twenty-four (24) months after the date of the award.

(d)(1) The grantee shall submit a final report to the Arkansas Economic Development Commission at the completion of the project to close out the grant. This report shall:

(A) Be submitted to the Commission no more than sixty (60) days following the project's completion or within the twenty-four (24) month period of the grant award, whichever comes first;

(B) Include canceled checks and receipts of all funds expended;

(C) Document all received and expended cash matching funds;

(D) Include Invoices for all professional in-kind labor donations; and

(E) Include the state's portion of any unspent or improperly expended grant funds.

(F) All expenditures will be subject to audit by the State of Arkansas.

(2) A grantee may be subject to an on-site review of the final project by the Commission to close out the grant.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY.

DEPARTMENT Arkansas Economic Development Commission
BOARD/COMMISSION _____
PERSON COMPLETING THIS STATEMENT Renee Doty
TELEPHONE NO. (501) 682-1121 **EMAIL** rdoty@arkansasedc.com

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 Arkansas Site Development Grant Program

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		**Next Fiscal Year**	
General Revenue	$0.00	General Revenue	$0.00
Federal Funds	$0.00	Federal Funds	$0.00
Cash Funds	$0.00	Cash Funds	$0.00
Special Revenue	$0.00	Special Revenue	$0.00
Other (Identify)	$0.00	Other (Identify)	$0.00
Total	$0.00	Total	$0.00

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

Current Fiscal Year		**Next Fiscal Year**	
General Revenue	$0.00	General Revenue	$0.00
Federal Funds	$0.00	Federal Funds	$0.00
Cash Funds	$0.00	Cash Funds	$0.00
Special Revenue	$0.00	Special Revenue	$0.00
Other (Identify)	$10,000,000.00 Restricted Reserve	Other (Identify)	$0.00
Total	$10,000,000.00	Total	$0.00

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**
$ 0.00	$ 0.00

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**
$ 0.00	$ 0.00

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.