

ARKANSAS REGISTER

Proposed Rule Cover Sheet



Secretary of State
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Little Rock, Arkansas 72201-1094
(501) 682-5070
www.sos.arkansas.gov



Name of Department _____

Agency or Division Name _____

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

Contact Person _____

Contact E-mail _____

Contact Phone _____

Name of Rule _____

Newspaper Name _____

Date of Publishing _____

Final Date for Public Comment _____

Location and Time of Public Meeting _____

RULE 2024-3
ACT 881 OF 2023 – IMPLEMENTATION RULE

Pursuant to the authority granted by Act 881 of 2023, and in compliance with the requirements thereof, the secretary of the Arkansas Department of Finance and Administration hereby promulgates the following rule.

Waterways Investment Income Tax Credit

This rule shall be cited as the “Arkansas Waterways Investment Tax Credit Rule.”

1. DEFINITIONS – As used in this rule:

- a. “Eligible costs” means costs of:
 - i. Construction of a new waterway facility;
 - ii. Improvement of an existing waterway facility or property;
 - iii. Capital facility rehabilitation of an existing waterway facility or property;
 - iv. Expansion of an existing waterway facility or property; or
 - v. Construction or improvement of rail or road access to a waterway facility.
- b. “Office” means the Office of Tax Credits/Special Refunds of the Department of Finance and Administration.
- c. “Secretary” means the Secretary of the Arkansas Department of Commerce.

2. TAX CREDIT - An income tax credit is allowed against the Arkansas income tax due from a taxpayer for eligible costs incurred by a taxpayer to make capital improvements to a waterway facility or property related to water transportation in Arkansas.

3. APPLICATION – A taxpayer may submit an application for a Waterways Investment Income Tax Credit to the Office of Tax Credits/Special Refunds of the Department of Finance and Administration at 1816 W. 7th Street (Suite 2370), Little Rock, Arkansas, 72203.

- a. The taxpayer’s application shall be on the form required by the Office.
- b. The taxpayer’s application shall include documentation of eligible costs incurred that:
 - i. The taxpayer’s capital investment is in a facility or property related to water transportation in Arkansas;
 - ii. The taxpayer’s capital investment will provide an economic benefit to the state;
 - and
 - iii. The capital investment was made between January 1, 2024 and December 31, 2025.
- c. The taxpayer’s documentation of eligible costs shall include construction contracts, purchase invoices, and receipts.

4. COST-BENEFIT ANALYSIS – The Office shall forward the application and documentation provided by the taxpayer to the Secretary of the Arkansas Department of Commerce.
 - a. The Secretary shall review the documentation provided by the taxpayer.
 - b. If the Secretary determines that the taxpayer's capital investment meets the eligibility requirements of Rule (I)(3)(b) of these Rules and will provide an economic benefit to the state that will be equal to or greater than the amount of the tax credit allowed, the Secretary shall issue a positive cost-benefit analysis and provide a copy to the taxpayer and the Office.
 - c. If the Secretary is unable to issue a positive cost-benefit analysis, the Secretary shall notify the taxpayer and the Office, who shall close the taxpayer's application.
5. ISSUANCE OF TAX CREDIT – The Office shall issue tax credits on a first-come, first-served basis, based on the date of receipt of the application by the Office.
6. LIMITATIONS – Income tax credits for eligible costs related to a waterway facility or property are allowed only if the eligible costs are incurred on or after January 1, 2024 and on or before December 31, 2025.
 - a. The total cumulative tax credits awarded in a calendar year for all taxpayers shall not exceed two million, five hundred thousand dollars (\$2,500,000.00).
 - b. A taxpayer may not claim an income tax credit in any one tax year in excess of ten percent (10%) of the total tax credit for which the taxpayer is eligible.
 - c. The maximum tax credit allowed by a taxpayer for eligible costs related to a waterway facility or property is three million dollars (\$3,000,000.00).
 - d. Unused tax credits may be carried forward for nine (9) consecutive years following the tax year in which the credit was earned.
 - e. A taxpayer who has received funds under the Arkansas Port, Intermodal, and Waterway Development Grant Program is not eligible for a Waterways Investment Income Tax Credit.
7. REVIEW – The Department of Finance and Administration shall review Waterways Investment Income Tax Credits to verify eligibility for the credit. The Department may disallow an income tax credit claimed in excess of the limitations described in Rule (I)(6) of these Rules or for which a taxpayer did not meet the eligibility requirements of Rule (I)(3)(b) of these Rules.

Issued this 25th day of November in the City of Little Rock, Pulaski County, Arkansas.

A handwritten signature in black ink, appearing to read 'J. Hudson', written over a horizontal line.

Jim Hudson, Secretary
Department of Finance and Administration

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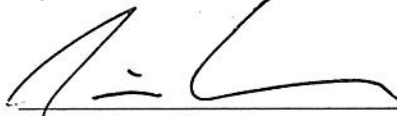
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Issued this 25th day of November in the City of Little Rock, Pulaski County, Arkansas.

A handwritten signature in black ink, appearing to read 'Jim Hudson', written over a horizontal line.

Jim Hudson, Secretary
Department of Finance and Administration

**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.

September 27, 2024

EXECUTIVE SUMMARY

PROPOSED RULE REGARDING THE WATERWAYS INVESTMENT INCOME TAX CREDIT

The Department of Finance and Administration (the “Department”) is requesting the Governor’s review of the proposed new rule regarding the administration of a new income tax credit created under Act 881 of 2023.

1. Background

Pursuant to Act 881 of 2023, the Department is mandated to promulgate rules to administer the Waterways Investment Income Tax Credit. Under Act 881, an income tax credit is allowed against the Arkansas income tax due from a taxpayer for eligible costs incurred by a taxpayer to make capital improvements to a waterway facility or property related to water transportation in Arkansas.

2. Key Points

The proposed rule:

- Adds necessary definitions;
- Provides clarification on the procedure a taxpayer shall follow to apply for the income tax credit;
- Provides clarification on the issuance of a cost-benefit analysis by the Department of Commerce; and
- Provides clarification on the procedure the Department shall follow to issue the tax credit.

3. Discussion

Act 881 of 2023 created a Waterways Investment Tax Credit. The Waterways Investment Tax Credit is an income tax credit for the cost of making capital improvements to a facility or property related to using water transportation. A taxpayer who applies for the tax credit must demonstrate that:

- It has invested in a facility or property related to using water transportation in the state that will provide an economic benefit to the state and will likely be equal to or greater than the amount of the tax credit allowed, and
- The capital improvements, including without limitation, construction, improvement, capital facility rehabilitation, and expansion of a waterway facility, and the construction or improvement of rail or road access to a waterway facility, occurred on or after January 1, 2024 and on or before December 31, 2025.

The taxpayer's application must be submitted to the Office of Tax Credits/Special Refunds of the Department. The application must include documentation supporting: (1) the eligible costs, such as construction contracts, purchase invoices, and receipts, (2) that the capital improvement is in a facility or property related to water transportation in Arkansas and will provide an economic benefit to the state; and (3) that the improvements were made during the required period.

After collecting the application and the supporting documentation, the Department will forward the application to the Secretary of the Department of Commerce who shall ensure that the improvement will provide an economic benefit to the state equal to or greater than the amount of the credit allowed. The rule authorizes the Department to close an application that does not receive a positive cost-benefit analysis from the Department of Commerce.

4. Recommendation

The Department recommends the proposed rule be approved.

Legal Notice

In compliance with Act 434 of 1967, the Arkansas Administrative Procedure Act, as amended, notice is hereby given that the Department of Finance and Administration intends to adopt Rule 2024-3, titled “Arkansas Waterways Investment Tax Credit Rule.” The purpose of this rule is to provide the procedures a taxpayer must follow to apply for the Waterways Investment Income Tax Credit. The rule also provides the procedures the Department of Finance must follow in issuing the credit.

The public hearing will be held December 17, 2024, at 9:00 a.m. in the media conference room 2450 of the Joel Y Ledbetter Building, 1816 West 7th Street, Little Rock, Arkansas. All interested parties may attend and present their views on the proposed rule. Written comments may be mailed to the Department of Finance and Administration, P.O. Box 1272, Room 2380, Little Rock, Arkansas 72203. Additionally, comments may be submitted at public.comment@dfa.arkansas.gov.