

TITLE V

*ADMINISTRATIVE RULES AND REGULATIONS
FOR FINANCIAL ASSISTANCE FROM:*

1. Water Resources Development General Obligation Bond Program;
2. Water Development Fund Program;
3. Water, Sewer and Solid Waste Management Systems Program;
4. Waste Disposal and Pollution Abatement Facilities General Obligation Bond Program;
5. Water Resources Cost Share Revolving Fund Program; and
6. Water, Waste Disposal and Pollution Abatement Facilities General Obligation Bond Program

**ADMINISTRATIVE RULES AND REGULATIONS
FOR FINANCIAL ASSISTANCE
(September 2001)**

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INTRODUCTION

**WATER RESOURCES DEVELOPMENT GENERAL
OBLIGATION BOND PROGRAM**

The Water Resources Development General Obligation Bond Program (Ark. Code Ann. §15-22-601 *et seq.*) was established by Act 496 of 1981. The Act authorized the Arkansas Soil and Water Conservation Commission to apply bond proceeds for the purpose of providing or assisting in providing for the acquisition, development and utilization of surface and subsurface water resources, water storage, impoundment and control facilities and water treatment facilities for the use and benefit of the public and for the conservation and distribution of water for domestic, agricultural, industrial and other essential purposes in or from reservoirs, impoundments or other storage facilities.

WATER DEVELOPMENT FUND PROGRAM

The Water Development Fund (Ark. Code Ann. §15-22-507 *et seq.*) was established by Act 217 of 1969. The Act authorized the Arkansas Soil and Water Conservation Commission to engage in any water development project, or any phase thereof, in cooperation with any political subdivision or agency of the State of Arkansas; provided it be included in and made part of the State Water Plan.

**WATER, SEWER AND SOLID WASTE
MANAGEMENT SYSTEMS PROGRAM**

The Water, Sewer and Solid Waste Management Systems Program (Ark. Code Ann. §14-230-101 *et seq.*) was established by Act 274 of 1975 and was originally administered by the Department of Local Services. Act 764 of 1981 transferred the administration of the program to the Arkansas Soil and Water Conservation Commission effective July 1, 1981. Act 960 of 1997 amended the Act to increase the level of funding that can be provided under the Act, simplified and streamlined the application process and clarified the terms and conditions under which financial assistance can be provided. The Act authorizes the Arkansas Soil and Water Conservation Commission to assist cities, towns, improvement districts, water associations, regional wastewater treatment districts and counties in financing the construction of facilities for water, sewer and solid waste systems.

**WASTE DISPOSAL AND POLLUTION ABATEMENT
FACILITIES GENERAL OBLIGATION BOND PROGRAM**

The Waste Disposal and Pollution Abatement Facilities General Obligation Bond Program (Ark. Code Ann. §15-22-701 *et seq.*) was established by Act 686 of 1987. The Act authorized the Arkansas Soil and Water Conservation Commission to apply bond proceeds for the purpose of financing waste disposal and pollution abatement facilities to serve the inhabitants of the State of Arkansas.

WATER RESOURCES COST SHARE REVOLVING FUND PROGRAM

The Water Resources Cost Share Revolving Fund Program (Ark. Code Ann. §15-22-801 *et seq.*) was established by Act 257 of 1989. The Act authorized the Arkansas Soil and Water Conservation Commission to provide grants and loans to the State of Arkansas and its local political subdivisions for the purpose of funding the non-federal share of their financial obligations required under any local cooperative agreements entered into with the federal government in connection with financing a water resources development project.

WATER, WASTE DISPOSAL AND POLLUTION ABATEMENT FACILITIES GENERAL OBLIGATION BOND PROGRAM

The Water, Waste Disposal and Pollution Abatement Facilities General Obligation Bond Program was established by Act 607 of 1997. The Act authorized the Arkansas Soil and Water Conservation Commission to apply bond proceeds for the purpose of financing and refinancing the development of water, waste disposal, pollution control, abatement and prevention, drainage, irrigation, flood control and wetlands projects to serve the citizens of the State of Arkansas.

TITLE V

**ADMINISTRATIVE RULES AND REGULATIONS
FOR FINANCIAL ASSISTANCE
(September 2001)**

SUBTITLE I. INTRODUCTORY PROVISIONS

Section 501.1. AUTHORITY AND SCOPE.

These rules and regulations have been promulgated and adopted by the Arkansas Soil and Water Conservation Commission (the "Commission") pursuant to and as authorized by Act 217 of 1969, Act 274 of 1975, Act 496 of 1981, Act 686 of 1987, Act 257 of 1989, Act 698 of 1997, Act 960 of 1997, and Act 607 of 1997 (collectively, the "Acts"), and as otherwise authorized under the general laws of the State of Arkansas (the "State"). These rules and regulations have been enacted for the purpose of implementing and administering the powers, duties and responsibilities of the Commission as provided by the Acts, which provide generally for Commission approved financial assistance with respect to certain works and projects for the development and utilization of water resources, water, sewer and solid waste management systems, and waste disposal and pollution abatement facilities within the State.

Section 501.2. POLICY STATEMENT, INTERPRETATION AND
APPLICATION OF RULES AND REGULATIONS.

It is the duty and policy of the Commission to fully and expeditiously implement and administer the objectives, purposes and intent of the Water Resources Development General Obligation Bond Program, the Water Development Fund Program, the Water, Sewer and Solid Waste Management Systems Program, the Waste Disposal and Pollution Abatement Facilities General Obligation Bond Program, the Water Resources Cost Share Revolving Fund Program, and the Water, Waste Disposal and Pollution Abatement Facilities General Obligation Bond Program (collectively, the "Programs") authorized under the provisions of the Acts. The instant rules and regulations are accordingly adopted to assist in the effectuation and implementation of this duty and policy.

Due to the very specialized nature and complexity of administration of the financial assistance Programs, the rules, regulations, modes of procedure, Commission policies and guidelines herein provided shall, in all instances, be subject to and given a liberal, reasonable, fair and impartial construction, interpretation and application to the end that the intent and purposes hereof may be obtained in compliance with the laws of the State and the public purposes sought to be served thereby.

Section 501.3. DEFINITIONS.

Unless the context otherwise requires, the use of certain capitalized words and terms herein which are not otherwise defined shall refer to the meanings of such words and terms as provided in the applicable Act(s).

SUBTITLE II. PROCEDURE

Section 502.1. GENERAL PROCEDURE.

The general procedure to be followed in the financial assistance application, review and consideration process shall be as follows:

A. Pre-Application. While not specifically required, all potential applicants are encouraged to initially contact the Commission for purposes of making arrangements for participating in a pre-application conference between Commission staff, applicant (or representative), applicant's legal, financial and engineering advisors and such other persons whose attendance and participation may be deemed appropriate and beneficial. At the pre-application conference, preliminary matters respecting the applicant, the proposed Project and the application for assistance may be generally discussed in an effort to familiarize all concerned parties with the applicable Program and specific application requirements and procedures.

B. Water and Wastewater Projects. Prior to submission of a formal application for water and wastewater projects, the applicant must comply with the procedures established by the Arkansas Water/Wastewater Advisory Committee (WWAC), including submission of seven (7) copies of a preapplication to the WWAC. This procedure is not required for emergency projects as defined in Section 502.2B.

C. Application. Applicant shall initiate application review and consideration by submission to the Commission of an application for financial assistance. In all instances, applications must be written in the form and must include substantive content meeting the requirements of Title V, Subtitle III. If the applicant is requesting Commission funds from more than one Program, separate applications must be made with respect to the funds requested from each Program. However, every application for funds under a particular Program may be considered by the Commission at its discretion as a request for financial assistance under any other available Program.

D. Preliminary Review. Upon receipt of the application by the Commission, the application shall be given preliminary review by Commission staff for an initial determination of Project eligibility, applicant eligibility and for completeness and accuracy of all required and necessary information.

E. Final Review. Subsequent to preliminary review and based upon the determination of eligibility and adequacy of

information submitted, the application shall thereafter be reviewed by Commission staff for recommendation to the Commission. In this endeavor, Commission staff shall review and investigate the application for the purpose of determining Project compliance with the approval criteria set forth in Subtitle IV of this title and compliance with such other considerations and factors deemed relevant and necessary for staff recommendation purposes. In addition, the history of the applicant with respect to the achievement of objectives in previous Commission grants, loans and leases may be examined. Where applicable, Commission staff may contact state and federal government entities who have responsibilities associated with the Project.

F. Public Hearing. If the Executive Director determines that a public hearing would be beneficial in considering an application, he may schedule and conduct a hearing in the locality to be served by the project proposed in the application. The purpose of the public hearing is to obtain written and/or oral statements expressing public views concerning the applicant's request for financial assistance. Verbatim transcripts of such hearings will not be made. Persons wishing to make extensive comments should provide a written copy thereof to the Commission. The date, time and place of the public hearing will be furnished to all concerned parties and will also be published in a newspaper of statewide circulation for a reasonable amount of time. It is the policy of the Commission that a "reasonable amount of time" shall normally mean that the publication of the notice of public hearing shall be for two consecutive weeks by two insertions seven days apart before the date of the hearing.

G. Commission Review and Consideration. Upon completion of staff review, the submitted application with staff recommendations, if any, shall be placed upon the Commission's meeting agenda as promptly as practicable, and shall be thereby submitted to the Commission for Commission review, consideration and action.

H. Memorandum of Agreement. The applicant funded by the Water, Waste Disposal and Pollution Abatement Facilities General Obligation Bond Program will enter into a joint Memorandum of Agreement (MOA) with the Commission for scheduling the financial assistance, planning and design, and construction phases.

Section 502.2. COMMISSION ACTION.

A. After reviewing and considering the submitted application, the Commission may proceed to take one of the following alternative forms of Commission action on the application:

1. The Commission may approve and grant the application as submitted, in whole or in part, and thereby authorize such further action as may be

necessary to effectuate Project closing and/or the disbursement of funds.

2. The Commission may retain the application under advisement for further consideration or continue the hearing on the same for later ruling and disposition; and, the Commission may withhold ruling on the application pending a further hearing and/or submission to the Commission of such further or additional information as the Commission may require for application consideration purposes.

3. The Commission may reject and deny the application, in whole or in part.

4. The Commission may approve and grant the application, in whole or in part, contingent upon:

(a) the applicant taking certain actions;

(b) the existence of adequate and available Program funds; or

(c) the receipt and approval by Commission staff of any outstanding and necessary material, information, documents, verifications or other authorization.

5. The Commission may place an application on a priority list pending the availability of Program funds. Applications on a priority list will be given further consideration regarding approval or denial when adequate funds become available.

6. The Commission will act on an application based on the information contained therein, testimony given at the public hearing, and the staff's recommendations.

7. Action will normally be taken by the Commission within one calendar year of the time application for financial assistance is made. Action may be delayed on certain applications for Projects dependent on other financing sources.

8. The Executive Director of the Commission shall, within ten (10) days, notify the applicant of the final action of the Commission in accepting, modifying, or rejecting the application.

B. Emergency applications may be submitted at any time. An "emergency" exists when there is an interruption of normal service, which threatens life or health and cannot be resolved within a reasonable period of time. The Commission or Executive Director may require documentation of such "emergency" by the Department of Health, Division of Engineering, the Department of Environmental Quality, or other appropriate State and Federal agencies. The Executive Director of the Commission shall have the discretionary authority to disburse up to \$100,000 in Program funds in an "emergency" situation without requiring the applicant to follow the normal application review and consideration process. Such disbursement shall be made only after consultation with and concurrence of the Commission chairman. Any emergency disbursements made pursuant to this

provision shall be reported to the Commission as a whole at its next regularly scheduled meeting.

C. Upon approval and grant of an application, the Commission may authorize Loan closing and the execution of all necessary closing documents and instruments by the Chairman of the Commission or other designated Commission representative(s), and may accordingly authorize and provide for disbursements and may authorize such further or additional action as may be necessary to complete and implement the approved transaction, including the imposition and collection of such fees and charges as may be fixed by the Commission to be paid by an applicant with respect to the Commission's assistance for a specific Project.

D. The Executive Director of the Commission shall have the discretionary authority to extend the time granted by the Commission to an applicant to comply with specific terms and conditions when, in the Executive Director's judgment, substantial compliance has been achieved by the applicant. Any such extension granted pursuant to this provision shall not exceed ninety (90) days and shall be granted only after consultation with the Commission chairman. Any extensions granted pursuant to this section shall be reported to the Commission as a whole at its next regularly scheduled meeting.

SUBTITLE III. APPLICATIONS FOR FINANCIAL ASSISTANCE

Section 503.1. APPLICATION CONTENT.

The Commission provides application forms for financial assistance except for the Water Resources Cost Share Revolving Fund Program. All applications must be written and consistent with the requirements stated under this Subtitle. One (1) copy of the application must be submitted to the Commission for water and wastewater projects. Four (4) copies of the application are required for types of projects other than water or wastewater.

Section 503.2. REQUIRED GENERAL INFORMATION.

The following general information, where deemed by the Commission to be applicable to the applicant and Project under consideration, or where required with respect to the specific Program funds for which application is made, must be submitted by applicant within each application:

A. Applicant's full, true and correct legal name, office address, mailing address if different from office address, telephone number, fax number, and E-mail address, if available.

B. Authority of law under which applicant was created and established and the independent legal authority, including supporting documentary evidence as requested by the Commission, under which application is made. Applicant must identify and describe the nature of its legal identity. (See Subtitle VII)

C. Certified copy of the ordinance, resolution or other specific authorizing instrument or action reflecting applicant's authority for making application to the Commission.

D. Name, address, telephone number, fax number, and E-mail address, if available, of Project engineer.

E. Name, address, telephone number, fax number, and E-mail address, if available, of Project legal counsel and, if applicable, name, address, telephone number, fax number, and E-mail address, if available, of financial consultant or if assessment based repayment proposed, assessor.

F. Total amount of funds requested for Project assistance from the Commission, including a statement of the specific uses and purposes for which such funds are intended to be applied and the Program under which financial assistance from the Commission is sought.

G. A brief but adequate description of the proposed Project for which application is made, including but not limited to the following:

1. Project location.
2. Nature of Project.
3. Comprehensive statement clearly delineating the customer service area, demonstrating Project need and the degree and extent of local support for the Project. Such statement must be in sufficient detail to support and justify the Project and should describe all aspects of present local support and approval for the Project. Applicant may include letters or statements of support from any interested persons or agencies.
4. Anticipated total Project cost.
5. Listing of all financing institutions, lenders or other funding sources, if any, participating in financing the Project or other projects related to the Project, including, where applicable, the following information:
 - (a) Statement by each such participating entity reflecting the relative interest, support and commitment of the participating lender or other funding source in and to the Project.
 - (b) Statement reflecting total Project cost allocation between lenders or other funding sources.
 - (c) Statement and description of all Project Service Areas, Project security or Project revenues already pledged or to be pledged to other participating lenders or fund sources.
 - (d) Statement and description of other projects or Service Areas, if any, related to the Project, and information satisfying the requirements of Subsections 5a-5c above with respect to each such other related project, if any.
6. Preliminary Project plans and specifications as may be necessary to reflect general engineering feasibility of the Project.

H. Anticipated Project timetable, including anticipated dates for completion of plans and specifications, Arkansas Water Plan compliance review, if required, Department of Health and/or Department of Environmental Quality approvals, expected award of bids and Project construction commencement and completion dates.

I. Nature and amount of security to be pledged to secure the applicant's repayment obligations to the Commission for the financial assistance requested. If real or personal property, or any interest therein, other than or in addition to the Project itself is to be pledged by applicant to secure the applicant's repayment obligations, applicant must submit a current statement of the nature and extent of all outstanding liabilities or indebtedness against such property, if any. If applicant is not the owner of such real or personal property to be pledged, applicant must state and describe the nature and extent of applicant's legal or equitable interest in such property and provide a statement setting forth who or what entity owns such property including details of all outstanding liabilities or indebtedness against such property.

J. A firm estimate of annual (or other interval) revenues to be derived from the Project or other sources of revenue available to be paid to the Commission for Project cost repayment, with supporting detail and assumptions expressed, and such additional financial information as may be necessary to evaluate general economic feasibility of the Project, including the ability of the Project to generate sufficient revenues to repay the Commission the cost of providing financial assistance for the Project, together with such fees and charges as may be imposed by the Commission.

K. A statement of the specific manner and means and projected timetable within which applicant proposes to finance the Project, considering all sources of financing, and the timetable to commence making repayments to the Commission.

L. Information reflecting the availability to applicant of reserve or contingency funds which could and, if necessary, would be used to meet actual Project costs which exceed applicant's original total estimated cost of the Project. Such information should include the nature, source, amount and liquidity of such reserve or contingency fund and applicant's commitment and ability to utilize such funds when and if necessary for such purposes.

M. Certified copy of applicant's previous three (3) years annual audited financial statements, if available, and a statement of applicant's financial condition, including a current statement of all outstanding indebtedness of applicant or related entities, including but not limited to all outstanding general obligation or revenue debt which might affect applicant's overall financial condition. In connection with such statement of indebtedness, applicant must list the security given for all such indebtedness.

N. Description of the nature and division of all applicants' equitable interests in the Project if more than one Eligible Entity will participate in the Project.

O. A statement reflecting the relevant history or current status of applicant's efforts toward obtaining all necessary and incidental rights and privileges needed for Project commencement, completion and operation. This requirement includes, but is not limited to, all necessary legal rights, including water rights, licenses, easements or permits, whether existing under federal, state or local law or regulation, the relative status of secured or outstanding contracting arrangements, and the status of any incidental legal or governmental proceedings, including, but not limited to, the need for environmental impact studies, if not already prepared, and any future authorizations or approvals required by electors, residents, members and/or the governing body of the applicant.

P. All applicants should submit future capital improvement plans as they may relate to the proposed Project or the applicant generally.

Q. Copy of the current User Charge (rate) Ordinance/Resolution and Sewer Use Ordinance (sewer only), as applicable.

R. Any other information required by law or regulation including without limitation disclosures required by Executive Order 9804.

Section 503.3. ADDITIONAL INFORMATION FOR RESERVOIR PROJECTS.

Where financial assistance is sought in connection with an existing or proposed reservoir, the following additional information must be submitted with the application:

A. The application should contain a description of all estimated firm annual yields and proposed reservoir storage capacities.

B. A statement containing the proposed purposes for which water will be stored or used and places of use or potential use for such water.

C. A statement of the relative allocation of Project costs to each Project purpose if for more than one purpose.

D. A brief description of existing or proposed improvements in the Project or Project area and a description of all such improvements which may require relocation.

Section 503.4. SUPPLEMENTAL INFORMATION.

The Commission reserves the right to require the applicant to submit such further or additional Project information as may be deemed necessary for Project review under the particular facts and circumstances of any specific Project proposal.

Section 503.5. APPLICATION VERIFICATION AND APPROVAL AS TO LEGALITY.

All applications for financial assistance shall contain the following statement signed by the chief executive officer of the applicant: "To the best of my knowledge, all statements of fact contained herein are true and correct as of the date hereof." Additionally, each application shall, at the time of submission, be approved as to legality by applicant's legal counsel. Such opinion shall normally reflect the valid formation and existence of the applicant, the due authority of the person(s) signing the application and the legality of the means proposed to finance the Project. In addition, the application shall be subject to approval by the Commission's legal counsel, if deemed advisable.

SUBTITLE IV. APPROVAL STANDARDS AND CRITERIA.

Section 504.1. GENERAL APPROVAL STANDARDS AND CRITERIA.

In the review and consideration of applications for financial assistance, the Commission shall give consideration to the following general and non-exclusive criteria for application approval:

A. Compliance with Laws. The applicant and proposed Project must be found to be in compliance with all applicable and relevant federal, state and local laws and regulations (including the Arkansas Water Plan, where applicable), and applicant must possess all necessary and incidental legal rights and privileges necessary to Project commencement and operation. The appropriate state agencies must have had adequate opportunity to review and comment on the proposed Project.

B. Eligibility. The applicant and proposed Project must be determined to be eligible for the assistance sought.

C. Local Need, Support and Priority. The Project must be found to be needed in the area to be served and must be found to be sufficient, as proposed, or reflect satisfactory progress toward serving such needs. The Commission shall additionally consider the Project's relative benefit and priority in relation to the needs of other proposed projects and applicants, including whether the Project is meeting known health needs, and whether the Project is in an economically depressed or disadvantaged area. The Commission shall also consider the extent and degree of local support, interest and commitment in and to the proposed Project. No financial assistance will be given to an applicant for use in funding a Project that would constitute a duplication of services, where adequate services are currently being provided unless approval for such activity has been given by the Commission. As a condition of its approval, the Commission may require the payment of an equitable portion of the outstanding financial assistance provided.

D. Availability of or Combination with Other Assistance. The Commission shall consider the feasibility and availability of alternative or additional sources of revenue, which could be obtained and utilized by applicant for Project financing either apart from or in conjunction with Commission financial assistance. In particular, with respect to the following types of projects, the following special actions must have been accomplished:

1. Municipal and Industrial Water Supply or Sewer Systems. Applicant must have used or be prepared to use as much of the allotted ten (10) mills for municipal improvements as deemed necessary or feasible. (This requirement is not applicable to regional water districts, associations or counties.)

2. Flood Control and Drainage Projects. Applicant must have taxed the benefited area to the maximum practical amount to pay the local share based on comparison with other similar projects.

3. Engineering Feasibility Studies. Local interest should be adequate to insure that the Project will be constructed, providing the feasibility study points out a need and that the Project is feasible.

E. Project Capacity Development Feasibility. The Commission shall consider the Project's capacity to meet financial, managerial, and technical standards. The Project's technical feasibility will be addressed in the engineering data submitted. New water systems must comply with the capacity development requirements of the Safe Drinking Water Act.

F. Economic Feasibility. The Commission shall consider the apparent economic viability and feasibility of the Project as a whole, including proposed or projected costs per customer, estimated revenues from the Project, and the adequacy and reliability of estimated revenues necessary for Project cost repayment when indicated.

G. State and Regional Needs and Public Interest. The Commission shall give consideration to the relationship between the proposed Project and the State and Regional water resource development needs, as well as to whether the proposed Project, if constructed, will serve the public interest and welfare. In particular, such review will take into account whether a Project encourages conservation of water resources, encompasses use of less stressed water resources, seeks a more efficient use of existing resources or possesses similar features providing a benefit to the public interest in the State as a whole.

H. Availability of Funds. The Commission shall take into consideration the current and anticipated availability of assistance funds needed to provide the financial assistance requested.

Section 504.2. CRITERIA APPLICABILITY.

The general criteria set forth in this subtitle are intended to constitute and shall constitute general guidelines and standards for application review and consideration by the Commission. Such criteria shall not be deemed appropriate for strict application or interpretation, nor shall such criteria be deemed exclusive. In all instances, each individual application and Project must be reviewed and considered on its own individual merits. The criteria and standards set forth above shall accordingly be interpreted and applied so as to allow sufficient flexibility in the ultimate exercise of the Commission's judgment and discretion.

Section 504.3. SPECIFIC CRITERIA APPLICABLE TO WATER RESOURCES DEVELOPMENT GENERAL OBLIGATION BOND PROGRAM APPLICATIONS. [R E S E R V E D]

Section 504.4. SPECIFIC CRITERIA APPLICABLE TO WATER DEVELOPMENT FUND APPLICATIONS.

A. In addition to the approval standards and criteria set out in Section 504.1 above, the Commission has established the following rankings for prioritizing Water Development Fund applications:

<u>TYPE PROJECT</u>	<u>RANKING</u>
Public Water Supply	1
Irrigation (water conservation)	2
Flood Control and/or Drainage	3
Erosion and Sediment Control	4
Streambank Stabilization	5
Recreation and/or Fish and Wildlife	6
Hydro-electric Power	7
Navigation	8

The above rankings will be used as a general guide and priority will be based on individual Project merits.

B. Eligible applicants with special needs as determined by the Commission will receive priority consideration.

"Special Needs" are defined as:

1. Elderly - The applicant has a percentage of elderly residents higher than the average of all Arkansas counties for the 65 and over age category as reported in the latest census data.
2. Low Income - The applicant's residents' per capita income is less than the State's per capita income as reported in the most current census data.
3. Unemployed - The applicant has a percentage of unemployed residents higher than the average percentage for all Arkansas counties according to the latest data published by the Arkansas Employment Securities Division.

Section 504.5. SPECIFIC CRITERIA APPLICABLE TO WATER, SEWER AND SOLID WASTE MANAGEMENT SYSTEMS FUND APPLICATIONS.

A. In addition to the approval standards and criteria set out in Section 504.1 above; the Commission has established the following rankings for prioritizing Water, Sewer and Solid Waste Management Systems Fund applications:

<u>TYPE PROJECT</u>	<u>RANKING</u>
Public Water Supply	1
Sewage Systems	2
Solid Waste Collection/Disposal	3

The above rankings will be used as a general guide and priority will be based on individual Project merits.

B. Solid waste collection and disposal system applications will be judged individually based on the highest potential for protection of the public health and environment. Such judgment will not exclude lightly populated areas having solid waste problems without the necessary funds to begin a collection and disposal system.

Section 504.6. SPECIFIC CRITERIA APPLICABLE TO WASTE DISPOSAL AND POLLUTION ABATEMENT FACILITIES GENERAL OBLIGATION BOND PROGRAM APPLICATIONS.
[R E S E R V E D]

Section 504.7. SPECIFIC CRITERIA APPLICABLE TO WATER RESOURCES COST SHARE REVOLVING FUND PROGRAM APPLICATIONS.

A. From each year's applications for grants and loans, the Commission shall develop a list of water resources development projects, which ranks each project in order of its priority. The priority ranking of water resources development projects shall be based generally on the approval standards set out in Section 504.1 above and specifically on the following factors:

1. The overall cost of the Project compared to its potential or predicted benefits.
2. The potential for the Project to provide economic development in the area.
3. The commitment of any state or local government funds to the Project to contribute to the applicant's non-federal share of the cost of the overall Project.

B. In selecting the applicants to receive grants under the Water Resources Cost Share Revolving Fund Program, the following factors shall be taken into consideration by the Commission:

1. The financial ability of the local government applicant to provide the cost sharing funds for the proposed water resources development project including all available tax sources or assessments.

2. The burden placed on low income, elderly and unemployed persons if the local government applicant participates in a cost-sharing project and pays for the non-federal share through a user fee or property tax.

3. The amount of fair user fees or other revenues which the proposed water resources development project may reasonably be expected to generate in excess of those which would amortize the local share of the initial cost and provide for its successful operation and maintenance, including depreciation.

No grant under the Water Resources Cost Share Revolving Fund Program shall be awarded until the local government applicant has furnished the Commission with sufficient proof of the exhaustion of all other funding sources and has established that a deficiency exists in the amount of local funds available to finance the non-federal share of the Project.

C. The final award of a loan or grant for cost sharing purposes shall be made contingent upon actual receipt of federal funding for the federal share of the water resources development project.

Section 504.8 CRITERIA APPLICABLE TO ESTABLISHMENT OF TERMS AND CONDITIONS FOR FINANCIAL ASSISTANCE.

In establishing the debt service reserve fund, depreciation reserve fund or other terms and conditions, the Commission may consider the following:

- A. Health, Safety, Environmental and other special needs;
- B. Overall financial burden on applicant;
- C. Type of system and system's operation and maintenance costs;
- D. Applicant's legal, organizational, management and financial history;
- E. Type of dedicated revenue(s) to be used for repayment;
- F. Debt service coverage from dedicated revenues;
- G. History of revenue collections and past due accounts; and
- H. Other criteria, as applicable.

Section 504.9. SPECIFIC CRITERIA APPLICABLE TO WATER, WASTE DISPOSAL AND POLLUTION ABATEMENT FACILITIES GENERAL OBLIGATION BOND PROGRAM APPLICATIONS.
[R E S E R V E D]

SUBTITLE V. DISBURSEMENT OF FUNDS

Section 505.1. CONDITIONS FOR DISBURSEMENTS.

A. After an application for assistance has been approved by the Commission, the following conditions and requirements shall be met prior to the release and disbursement of any assistance funds:

- 1. Unless otherwise provided and approved by the Executive Director, applicant must submit to the

Commission all plans, specifications and engineering reports for the Project, all of which shall be complete and in sufficient detail as would be required for submission of the Project to a contractor for bidding or contracting the Project.

2. Applicant, Commission and all other necessary parties, shall have executed all instruments and documents, in form and content acceptable to the Commission, necessary for closing including, but not limited to, loan documents, ordinances or resolutions, construction contracts, closing certificates, legal opinions, corresponding pledges of Project security and revenues where appropriate and all other relevant documents (herein collectively referred to as "Project Documents"). Closing procedures and schedule shall conform to the requirements of the Commission, including without limitation, execution and delivery of the specific Project Documents, with such insertions, corrections, modifications or amendments as may be approved by the Commission in a specific instance.

3. If not previously provided, applicant shall provide the Commission with written and verified statements setting forth:

(a) Information reflecting the reasonable availability of and/or a commitment from all other revenue or funding sources needed to finance and complete the Project; and

(b) A timetable for transfer of funds from Commission to Applicant.

4. Applicant shall have complied with all other applicable requirements of Title V.

B. At the time of and upon compliance with the above requirements, the Commission may release, advance and disburse financial assistance funds to the applicant for the approved Project.

Section 505.2. DISBURSEMENT PROCEDURES FOR WATER RESOURCES DEVELOPMENT GENERAL OBLIGATION BOND PROGRAM.

A. Unless otherwise provided and approved by the Executive Director, the total amount of financial assistance funds authorized for disbursement to the applicant shall not be released and disbursed to applicant in a total lump sum but instead shall be disbursed to applicant in partial amounts at agreed-upon intervals and stages of construction, all as provided within the Contract Documents and the drawdown schedule approved by the Commission.

B. The Executive Director may require the applicant to submit to the Commission prior to any release or disbursement of funds such invoices, receipts, contracts, lien waivers, verifications, evidence of expenditures or encumbrances, construction status and progress reports or other information as the Executive Director may require.

Section 505.3. DISBURSEMENT PROCEDURES FOR WASTE DISPOSAL AND POLLUTION ABATEMENT FACILITIES GENERAL OBLIGATION BOND PROGRAM.

A. Unless otherwise provided and approved by the Executive Director, the total amount of financial assistance funds authorized for disbursement to the applicant shall be released and disbursed to the Trustee upon "Loan Closing."

B. The Executive Director may require the applicant to submit to the Commission prior to any release or disbursement of funds by the Trustee such invoices, receipts, contracts, lien waivers, verifications, requisitions, evidence of expenditures or encumbrances, construction status and progress reports or other information as the Executive Director may require.

Section 505.4. DISBURSEMENT PROCEDURES FOR WATER, WASTE DISPOSAL AND POLLUTION ABATEMENT FACILITIES GENERAL OBLIGATION BOND PROGRAM.

A. Unless otherwise provided and approved by the Executive Director, the total amount of financial assistance funds authorized for disbursement to the applicant shall be released and disbursed to the Trustee upon "Loan Closing."

B. The Executive Director may require the applicant to submit to the Commission prior to any release or disbursement of funds by the Trustee such invoices, receipts, contracts, lien waivers, verifications, requisitions, evidence of expenditures or encumbrances, construction status and progress reports or other information as the Executive Director may require.

Section 505.5. INCREASES IN FINANCIAL ASSISTANCE.

With respect to approved applications for financial assistance under Title V of the Commission's Rules, the Executive Director of the Commission shall have the discretionary authority to increase the amount of financial assistance to the applicant for bid overruns without returning to the Commission for approval. Such increase in financial assistance shall be granted only after consultation with the Commission Chairman. Any financial assistance increases pursuant to this section shall be reported to the Commission as a whole at the next regularly scheduled Commission meeting.

Section 505.6. DEOBLIGATION.

A. The Executive Director of the Commission shall have the discretionary authority to deobligate funds approved by the Commission for financial assistance to an applicant without returning to the Commission for its approval in the following cases:

1. Financial assistance was approved by the Commission in an amount in excess of that needed for completion of a Project.
2. An applicant requests that funds be deobligated.

3. In the judgment of the Executive Director an applicant has failed to comply with the requirements of these rules and regulations.

B. Deobligations, if made under Subsection 3. above, shall be made only after consultation with and concurrence of the Commission Chairman. Any deobligations pursuant to this section shall be reported to the Commission as a whole at the next regularly scheduled Commission meeting.

SUBTITLE VI. MISCELLANEOUS PROVISIONS

Section 506.1. INSPECTION OF WORKS, TECHNICAL AND FINANCIAL RECORDS.

By making application to the Commission, the applicant will be deemed to consent and agree to the following:

A. Facility Inspection. From time of application throughout construction and at all times while any assistance from the Commission to the applicant is outstanding, the Commission shall have the right to inspect any and all of the Project(s) and all incidental works, areas, facilities and premises otherwise pertaining thereto.

B. Record Inspection. From time of application throughout construction and at all times while any assistance from the Commission to the applicant is outstanding, the Commission shall at all reasonable times have the right to inspect, review, or copy all contracts, documents, records or other information related to the application, the Project(s) and the operation of the applicant's system, including financial records possessed by the applicant or its contractors, agents, employees or representatives.

C. Audits. From time of application throughout construction and at all times while any assistance from the Commission to the applicant is outstanding, the applicant shall, unless otherwise agreed to by the Executive Director, provide the following:

1. Construction Audit. Upon completion of the Project, the applicant shall provide an audit by an independent certified public accountant of the expenditure of construction funds, including the financial assistance provided by the Commission.

2. Annual Audit. The applicant shall furnish to the Commission annually, within one hundred twenty (120) days after close of applicant's fiscal year, audited financial statements prepared by an independent certified public accountant, accompanied by such accountant's report thereon, reflecting the financial condition of applicant at the end of such fiscal year, the results of operations and changes in fund balances with respect to applicant, applicant's compliance with the terms and conditions of financial assistance documents and the Commission's Administrative Rules for Financial Assistance, and other management or financial criteria established by the Executive Director.

D. In addition, all federal and state reviews and/or audits of Project funds must be forwarded to the Commission as long as the applicant has an outstanding loan. Applicants receiving grants from the Commission must submit an annual audit if requested by the Executive Director.

Section 506.2. PROJECT MODIFICATIONS.

A. After an application for financial assistance has been approved by the Commission and after the Executive Director has reviewed and approved an applicant's plans and specifications for the Project, no change, modification, amendments, or departure otherwise to or from the approved plans and specifications which would materially or significantly affect total Project cost, estimated revenues, or design shall be made, allowed or authorized without the prior written approval thereof by the Executive Director.

B. During the period of construction, all material changes of any nature, delays in construction, and changes in contract times must be reported to the Commission.

Section 506.3. RECORDS PUBLIC.

All records of the Commission relating to the financial assistance programs contemplated within these rules and regulations shall be public records available for public inspection by any interested person at reasonable times and in a reasonable manner.

Section 506.4. CONTINUING RESPONSIBILITIES: REPAYMENTS AND OTHER RESPONSIBILITIES.

A. Unless otherwise provided or approved by the Commission, or unless reduced or waived in whole or part by the Commission for cause, each applicant will be expected to repay and reimburse to the Commission over a period not in excess of the expected useful life of the Project, and the Project agreements will provide for repayment of, all amounts of financial assistance provided by the Commission, including the Commission's cost of funds provided and a proportionate and equitable share of the expense of administration of the applicable Commission Program.

B. Each applicant shall comply with the terms and conditions established by the Commission or Executive Director prior to disbursements and during the time period when the financial assistance provided by the Commission is outstanding including without limitation the following: amount of financial assistance, source, type and form of funding, interest rate, revenues, debt service reserve, depreciation reserve, audits, financial statements, management letters, letters of conditions or notification, and applicable State and Federal laws.

Section 506.5. FEES FOR GENERAL OBLIGATION BOND PROGRAMS.

A. APPLICATION FEES:

1. Upon the Commission approving a Project's funding from the General Obligation Bond Program funds, the applicant shall be obligated to pay an application fee as determined by the Commission, up to three percent (3.0%) of the total amount of financial assistance requested under these Programs.
2. The application fee will immediately be due and payable, when and if:
 - a. The applicant has secured other funding to replace the Commission's obligated funds, or
 - b. The applicant fails to proceed in a timely manner through project completion, after the Commission has obligated the project's funds, or
 - c. The applicant is not in compliance with all of the Commission's rules and regulations, or
 - d. Directed by the Commission in the terms and conditions.
3. The application fee shall automatically be part of the servicing fees collected at loan closing, unless previously due and payable per Section 506.5, paragraph A., sub-paragraph 2.
4. The Commission may waive the application fee to an applicant that for reasons outside the applicant's control cannot undertake the approved Project.

B. SERVICING FEES.

1. All applicants for the Water, Waste Disposal and Pollution Abatement Facilities General Obligation Bond Program, the Water Resources Development General Obligation Bond Program and the Waste Disposal and Pollution Abatement Facilities General Obligation Bond Program shall pay a servicing fee at loan closing, of up to three percent (3.0%), of the total amount of the financial assistance provided under these Programs, for application, issuance and administrative costs of the Programs as determined by the Commission.
2. A loan servicing fee rate may be charged to the borrower's loan repayments. The servicing fee rate is part of the combined loan rate. The servicing fee rate and the combined loan rate will be determined by the Commission.
3. These servicing fees will be deposited in the accounts of the Commission and applied to defray the cost of the applicable Programs. Upon return of any unneeded funds, the servicing fee associated with those funds will not be refunded.

Section 506.6. SERVICING FEES FOR WATER DEVELOPMENT FUND, WATER, SEWER AND SOLID WASTE FUND, AND WATER RESOURCES COST SHARE REVOLVING FUND.

A. Applicants for financial assistance under the Water Development Fund Program, Water Resources Cost Share Revolving Fund Program, or the Water, Sewer and Solid Waste Management Systems Program shall pay to the Commission a servicing fee of three percent (3.0%) of the total amount of financial assistance provided under these Programs.

B. This fee shall be paid at the time the funds are disbursed unless otherwise approved by the Executive Director.

C. This fee shall be deposited into the Water Development Fund and used for the general operation of the Commission.

D. Upon return of any unneeded funds, the servicing fee associated with those funds will not be refunded.

Section 506.7. SANCTIONS.

The Commission may, upon written recommendation of the Executive Director, penalize applicants who voluntarily withdraw from either the Water, Waste Disposal and Pollution Abatement Facilities General Obligation Bond Program, the Water Resources Development General Obligation Bond Program, or the Waste Disposal and Pollution Abatement Facilities General Obligation Bond Program subsequent to Commission review and approval of an application, or otherwise fail to demonstrate good faith in dealing with the Commission and its staff. Sanctions may include a prohibition from participation in any Commission Financial Assistance Program.

Section 506.8. PROJECT COMPLETION, INSPECTION AND AUDIT.

Upon completion of any Project for which financial assistance has been provided, the applicant or its engineer shall furnish to the Commission written notification of completion. Upon receipt of such notification, or upon Project completion should notification not be furnished as required herein, the Commission may conduct a final on-site inspection of the Project and an audit of any and all financial assistance funds furnished to the applicant may be required as contained in Section 506.1 above.

Section 506.9. RETURN OF FUNDS TO COMMISSION.

A. Financial assistance funds made available to an applicant by the Commission 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. Any remaining funds shall be promptly returned to the Commission upon request.

B. In the event funds furnished to an applicant by the Commission are not utilized and expended by the applicant for the specific Project for which such funds were furnished within a reasonable period of time after disbursement to the applicant, or in the event the Commission determines, at any time, that funds furnished were utilized and expended for

any unauthorized or unallowable purpose, the applicant shall upon demand 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.

Section 506.10. LATE PAYMENTS.

A. Loans from the Water Development Fund, the Water Resources Cost Share Revolving Fund, and the Water, Sewer and Solid Waste Management Systems Fund will be given a seven (7) day grace period after the date a loan payment is due. After the expiration of the grace period, interest at a rate of five percent (5%) of the payment due will be charged on the amount due from the due date until the date payment is received.

B. As provided in all loan and lease-purchase agreements entered into with respect to financial assistance from the Water, Waste Disposal and Pollution Abatement Facilities General Obligation Bond Program, the Water Resources Development General Obligation Bond Program, and Waste Disposal and Pollution Abatement Facilities General Obligation Bond Fund Program, there is a seven (7) day grace period for lease or loan payments due. After the expiration of the grace period, interest at the rate stated in the Project Documents will be charged on the amount due from the due date until the date payment is received.

Section 506.11. CONVEYANCE TO ELIGIBLE ENTITY WHEN PROJECT COSTS REPAID.

Upon repayment to the Commission of all Project costs and/or such other payments, fees and charges as may be required to be paid to the Commission pursuant to the Project agreements in full satisfaction of the applicant's obligations, the Commission will convey any ownership interest it has in the Project or cause such interest to be conveyed to the proper applicant, or if applicable, to a group of applicants as their interests may appear, and the Commission shall return control over the operation and maintenance of the Project to the applicant or applicants, as the case may be.

Section 506.12 DEBT SERVICE RESERVE FUND, WHEN REQUIRED.

A. A Debt Service Reserve Fund, when required to be funded by the Commission, will be a restricted account, established and maintained by a third party trustee or the applicant, as approved by the Executive Director. This reserve fund is solely for the benefit and protection of the Commission and shall not be used or pledged for any other purpose without prior written approval of the Executive Director.

B. Debt Service Reserve Fund will be funded in whole at closing of the financing of the Project, unless otherwise approved by the Commission.

C. Debt Service Reserve Fund may be funded from the amounts financed by the Commission as part of the overall Project cost.

Section 506.13 DEPRECIATION RESERVE FUND.

The Depreciation Reserve Fund will be a restricted account, established and maintained by a third party trustee or by the applicant, as approved by the Executive Director. This reserve fund is for the replacement of the financed Project and shall not be used for any other purpose without the written approval of the Commission. It will be accumulated at a rate and amount established by the Executive Director.

SUBTITLE VII. ELIGIBLE ENTITIES

All of the entities set out below are collectively referred to in these rules and regulations as "Eligible Entities."

Section 507.1. ENTITIES ELIGIBLE FOR ASSISTANCE UNDER THE WATER RESOURCES DEVELOPMENT GENERAL OBLIGATION BOND PROGRAM.

The financial assistance made available under the Commission's Water Resources Development General Obligation Bond Program may be obtained for an eligible Project by any duly constituted and existing political subdivision of the State, including but not limited to counties, cities, towns and municipalities, and by any duly constituted special purpose improvement district, rural development authority, public facilities board, irrigation district, regional water distribution district, and by any duly qualified and existing public trust or authority, rural waterworks facilities boards, individually or as agent, representative or instrumentality of any political subdivision or other eligible entity described above.

Section 507.2. ENTITIES ELIGIBLE FOR ASSISTANCE UNDER THE WATER DEVELOPMENT FUND PROGRAM.

The financial assistance made available under the Commission's Water Development Fund Program may be obtained for an eligible project by any duly constituted entity listed in Section 507.1 above that is engaged as a local sponsor of any water development project which is an integral part of the Arkansas Water Plan and by any non-profit corporation which was in existence before August 1, 1997, with sponsorship of such an entity.

Section 507.3. ENTITIES ELIGIBLE FOR ASSISTANCE UNDER THE WATER, SEWER AND SOLID WASTE MANAGEMENT SYSTEMS PROGRAM.

The financial assistance made available under the Commission's Water, Sewer and Solid Waste Management Systems Program may be obtained for an eligible Project by any duly constituted entity listed in Section 507.1 above, and by non-profit corporations which were in existence before August 1, 1997, and which provide

water, sewer or solid waste services to one (1) or more cities, towns or counties.

Section 507.4. ENTITIES ELIGIBLE FOR ASSISTANCE UNDER THE WASTE DISPOSAL AND POLLUTION ABATEMENT FACILITIES GENERAL OBLIGATION BOND PROGRAM.

The financial assistance made available under the Commission's Waste Disposal and Pollution Abatement Facilities General Obligation Bond Program may be obtained for an eligible Project by any duly constituted entity listed in Section 507.1 above.

Section 507.5. ENTITIES ELIGIBLE FOR ASSISTANCE UNDER THE WATER RESOURCES COST SHARE REVOLVING FUND PROGRAM.

The financial assistance made available under the Commission's Water Resources Cost Share Revolving Fund Program may be obtained for an eligible Project by any duly constituted entity listed in Section 507.1 above, which has entered into or which is attempting to enter into a cooperative agreement for cost sharing with the federal government to finance a water resource development project.

Section 507.6. ENTITIES ELIGIBLE FOR ASSISTANCE UNDER THE WATER, WASTE DISPOSAL AND POLLUTION ABATEMENT FACILITIES GENERAL OBLIGATION BOND PROGRAM.

The financial assistance made available under the Commission's Water, Waste Disposal and Pollution Abatement Facilities General Obligation Bond Program may be obtained for an eligible Project by any duly constituted entity listed in Section 507.1 above.

Section 507.7. COMBINATION OF ELIGIBLE ENTITIES.

For purposes of qualifying for and obtaining the financial assistance contemplated herein, any group of Eligible Entities may combine and join in making application for Project assistance, provided each separate entity within the group is an Eligible Entity with respect to the particular Program for which such application is made.

SUBTITLE VIII. SPECIAL REGULATIONS APPLICABLE TO THE WATER RESOURCES DEVELOPMENT GENERAL OBLIGATION BOND PROGRAM

Section 508.1. PROJECTS FOR WHICH ASSISTANCE MAY BE OBTAINED.

In keeping with the purposes of the Water Resources Development General Obligation Bond Program described in the Introduction, financial assistance may be obtained for any Project within the State in whole or part, where benefits of the Project may be expected to accrue to the inhabitants and residents of the State, which Project qualifies as any undertaking or work to conserve and develop surface or subsurface water resources or to control or develop water treatment facilities of the State for domestic, agricultural, industrial or other essential purposes by the

acquisition, improvement, extension, or construction of dams, reservoirs, and other water storage projects, including but not limited to underground storage projects, filtration and water treatment plants, including any system necessary to distribute water from storage or filtration plants to points of distribution, or from storage to filtration and treatment plants, facilities for distributing water therefrom to wholesale or retail purchasers and any system necessary to improve, develop or extend water storage, treatment or distribution capabilities of any area of the State. Such qualified projects are additionally understood to include financial assistance to acquire and own the lands required for the Project, and to obtain the water supply and to construct appropriate treatment facilities. As more specifically provided in Section 508.2, in order for Projects to be qualified for participation in the Water Resources Development General Obligation Bond Program, all interests in land, buildings, equipment and other facilities being financed with State assistance under Ark. Code Ann. §15-22-601 *et. seq.* must be capable of being conveyed to the State for the duration of the period of financial assistance.

Section 508.2. NATURE OF PROJECT OWNERSHIP.

Under Ark. Code Ann. §15-22-601 *et seq.*, the Commission is required to own all Projects developed pursuant to the Water Resources Development General Obligation Bond Program. Accordingly, and as more specifically provided in Section 508.4, as a condition of obtaining financial assistance in connection with any Project, the applicant will be required to convey to the Commission legal title to all interests in land, buildings, improvements, equipment and other facilities which are financially assisted by the Commission's Water Resources Development General Obligation Bond Program, and which will comprise a Project, and the Commission must be the lawful owner of all facilities constituting the Project until all Project costs and other fees and charges as may be imposed by the Commission have been paid or reimbursed to the Commission.

Section 508.3. PROJECT COSTS FOR WHICH ASSISTANCE FUNDS MAY BE EXPENDED.

Funds made available by the Commission to an applicant for an approved Project shall be utilized and expended only toward payment and financing of Project costs, as approved by the Commission. For purposes of this rule, Project costs include the following items:

- A. Costs of acquiring the facilities comprising the Project.
- B. Costs of acquiring and constructing other items included in the facilities, including obligations incurred for labor and materials by contractors, builders and material suppliers.
- C. Costs of restoration or relocation of property damaged or destroyed in connection with any construction.

- D. Contractors' performance, payment and completion bond premiums.
- E. Title insurance premiums.
- F. Costs of machinery, equipment and related facilities acquired or purchased for inclusion in the facilities and the cost of shipping, transportation and installation thereof.
- G. Taxes or other municipal or governmental charges levied or lawfully assessed against the facilities acquired during the period of acquisition.
- H. Insurance premiums in connection with acquisition of the facilities.
- I. Architectural and engineering fees for services related to the Project prior to and during the period of acquisition.
- J. Payment or reimbursement to the applicant for interim financing and advances and all costs thereof.
- K. Abstract and title opinion costs.
- L. Reasonable project legal fees and expenses of counsel for the applicant.
- M. Costs of fees of other consultants of the applicant.
- N. Recording fees.
- O. Costs of publishing and printing proceedings incident to the project and any local hearings or approvals required in connection therewith.
- P. Such other reasonable and necessary expenses as may be required to complete the Project, and as may be approved by the Commission.

Section 508.4. TRANSFER OF OWNERSHIP.

For an approved application and Project, the Commission is authorized to advance funds in the form of purchase payments for the Project. Payment requests must be accompanied by appropriate documentation from Project applicants satisfying the conditions for disbursements set forth in Subtitle V of these rules and regulations.

Section 508.5. ASSETS TO BE CONVEYED.

All assets constituting part of a water resource Project financed with Commission Water Resources Development General Obligation Bond Program funds must be transferred and assigned to the Commission at the time of disbursement of such funds. In addition, an applicant may be required, in the sole discretion of the Commission, to enter into a ground lease with the Commission covering any real property owned by the applicant but not conveyed to the Commission in relation to which the Commission is required to have access or control in order to effect the intents and purposes of Act 496 of 1981. A Project may be transferred to the Commission in whole or in part from time to time as portions of the Project are completed and become the subject of requests for disbursement of funds.

Section 508.6. APPLICANT TO ACT AS COMMISSION AGENT.

At all times during Project construction and operation and in the absence of default by a Project applicant, the applicant will be required, pursuant to the Project Documents, to function and act as the contracting and operating agent of the Commission. The Commission will appoint the applicant to serve in such agency capacity during the term of financial assistance, and will require the applicant to indemnify and hold the Commission, its members, officers, agents, employees and consultants harmless against loss or damage in connection with the construction and operation of the Project during such term of financial assistance.

Section 508.7. COMMISSION CONTROL OVER PROJECT.

During any time that the Eligible Entity is in default of the terms of any Project Document, the Commission may, if it so chooses, take control of the project, including but not limited to, management and operation of the project, establishment of user rates, or any similar function. Control will generally be returned to the applicant upon cure of defaults unless such defaults are repeated and form a pattern of consistent failure to adhere to Project Documents.

SUBTITLE IX. SPECIAL REGULATIONS APPLICABLE TO
THE WATER, WASTE DISPOSAL AND POLLUTION ABATEMENT FACILITIES
GENERAL OBLIGATION BOND PROGRAM [R E S E R V E D]

SUBTITLE X. SPECIAL REGULATIONS APPLICABLE TO
THE WATER DEVELOPMENT PROGRAM AND
THE WATER, SEWER AND SOLID WASTE
MANAGEMENT SYSTEMS PROGRAM

Section 510.1. FORMS OF ASSISTANCE.

A. The Commission, after duly acting upon an application, may decide to participate in a qualifying water development Project or water, sewer or solid waste management systems Project in any of the following ways:

1. Loans. The Commission will, for those Projects in need of urgent financing, make temporary, short-term or long-term loans at low interest rates. Short-term loans may be made pending acquisition of long-term financing by the applicant. The applicant will enter into loan documents with the Commission setting forth the terms of the loan.

(a) The interest rate for long or short-term loans by the Commission shall not exceed five (5) percent per annum. If the Commission is convinced that an applicant is financially unable to pay any interest, then the Commission may approve a loan with no interest charge.

(b) The date that interest will begin to accrue on the unpaid balance of a loan will be set by the Commission.

(c) The loan documents will provide the terms and conditions of the loan including, but not limited to, the rate, the principal amount of the loan, and the dates and amounts of payments.

2. Grant-in-aid. The Commission will, for those Projects demonstrating an exceptional benefit to the State so general in nature that any method of payment of Project costs by the local people would prove inequitable, make a grant to the Eligible Entity for the payment of such costs. Grants may also be approved when the Eligible Entity cannot, in the Commission's judgment, repay a loan.

3. Joint Venture (water development fund projects, only). For any Project which would provide exceptional benefits, or when it is determined to be in the best interests of the State, the Commission may join with the applicant as a co-owner and sponsor in order to provide for that purpose. This action may consist of purchases of land or joint ownership of the entire Project. Execution of a joint venture agreement between the applicant and the Commission will be required.

B. Decisions on the type of financial assistance to be conferred by the Commission for water or wastewater projects will be based upon the system's Rate Burden Factor (RBF). The RBF is the cost of 4,000 gallons per month for one year, assuming proposed rates, expressed as a percentage of annual Median Household Income (MHI) in the applicant's locality. In addition, consideration will be given to applicants with percentages of low income, elderly or unemployed residents higher than the average State incidence of such persons. The example and table set out below indicate the manner in which the above SRB factor criteria will be utilized.

System's Rate Burden Factor (RBF) EXAMPLE:

MHI from the most recent census = \$11,000.00

Cost of 4,000 gallons/month = \$ 15.00

$$\text{RBF} = \frac{(\text{cost } 4,000 \text{ gal/mo.} * 12 \text{ mo.})}{\text{MHI}} * 100$$

$$\text{RBF} = \frac{(\$15.00 * 12)}{(\$11,000.00)} * 100$$

$$\text{RBF} = 1.64\%$$

SYSTEM'S RATE BURDEN FACTOR (RBF) CHART

<u>RBF</u>	<u>Type of Financial Assistance</u>
0.0 - 0.49	None
0.50 - up	Interim Financing; 5% interest; maximum 3 year payback
1.00 - 1.49	5% interest; 10 year payback
1.50 - 1.99	5% interest; 20 year payback
1.50 - up	Grant; Must also have two or more of the following: Greater than average State incidence of elderly, low income or unemployed persons.
2.00 - 2.99	5% interest; 10 years deferred interest and principal payments; 20 year payback after 10 year deferral.
2.50 - up	Grant. Must also have one or more of the following: Greater than average State incidence of elderly, low income or unemployed persons.
3.00 - up	Grant.

C. Calculation of the RBF is intended to provide general guidelines and standards for application and review by the Commission. Special consideration may also be given to such factors as documented health hazards and unusual economic impacts. In all instances, each individual application must be reviewed and considered on its own merits. The standards set forth above shall accordingly be interpreted and applied so as to allow sufficient flexibility in the ultimate exercise of the Commission's judgment and discretion.

Section 510.2. LAST FUNDS USED; RETURN OF UNNEEDED FUNDS.

A. When funds provided from the Water Development Fund programs or Water, Sewer and Solid Waste Systems programs are used in conjunction with other funds provided by the Commission's other programs except the Water Development Fund program, other state programs, federal programs or local sources, the Water, Sewer and Solid Waste Systems Program funds shall be the last funds expended. The Executive Director may waive this requirement.

B. Any unneeded funds shall be promptly returned to the Commission.

SUBTITLE XI. SPECIAL REGULATIONS APPLICABLE TO
THE WASTE DISPOSAL AND POLLUTION ABATEMENT FACILITIES
GENERAL OBLIGATION BOND PROGRAM [R E S E R V E D]

SUBTITLE XII. SPECIAL REGULATIONS APPLICABLE TO
THE WATER RESOURCES COST SHARE REVOLVING FUND PROGRAM

Section 512.1. PROJECTS FOR WHICH ASSISTANCE MAY BE
OBTAINED.

In keeping with the purposes of the Water Resources Cost Share Revolving Fund Program ("Cost Share Program") described in the Introduction, financial assistance may be requested for any Project, which qualifies as a "water resources development project."

For the purposes of the Cost Share Program, "water resources development project" means the construction, acquisition, ownership, replacement, operation, and maintenance of facilities, including land, easements, and works of improvement, for the protection, conservation, preservation, development, utilization, and proper disposal of the State's water resources and related land resources in order to:

- A. Provide for the people of the State adequate supplies of quality water for municipal, industrial, agricultural, recreational, and domestic purposes; water for navigation; and access to the State's lakes and streams, and parks and other recreational sites along their shores.
- B. Reclaim, preserve, and protect the State's land resources and to adequately protect the wealth of the State from disastrous floods.

Section 512.2. FORMS OF ASSISTANCE.

- A. The Commission is authorized to make either loans or grants to Eligible Entities with limited financial capacity to provide them with the non-federal share of the cost for a water resources development project.
- B. The Commission may provide financial assistance to an Eligible Entity in the form of loans or grants for a project without the requirement of a cooperative agreement between the entity and the federal government if the Commission determines that the project is of such type or size that cost sharing is not efficient or effective, or current conditions make the financing of the project through cooperative agreement with the federal government within a reasonable time unlikely.
- C. Loans from the Water Resources Cost Share Revolving Fund shall be repaid in full at an interest rate up to the maximum allowed under Article 19, Section 13 of the Constitution of the State of Arkansas, as amended by Amendment 60.

Section 512.3. MAXIMUM PARTICIPATION.

The Commission shall not make a loan or a grant to an Eligible Entity in an amount greater than fifty percent (50%) of the total water resource development project cost unless there is no requirement for a cooperative agreement, in which case, the

Commission may provide up to sixty-five percent (65%) of the total project cost in the form of a loan or grant.

Section 512.4. APPLICATION.

Each January 1, the Commission shall take applications from Eligible Entities for assistance to be awarded for water resource development projects for the next fiscal year. The annual deadline for applications shall be March 31 of each year. The Commission shall award grants and loans for water resource development projects, contingent on the availability of funds, by June 30 of each year.

Section 512.5. PRIORITY RANKING FOR WATER PROJECTS.

[R E S E R V E D]