ENROLLED HOUSE
BILL NO. 1110

BY: ISAAC of the HOUSE

and

HOOPER of the SENATE

AN ACT RELATING TO WATERS AND WATER RIGHTS; AMENDING 82 O.S. 1981, SECTION 1461, AS LAST AMENDED BY SECTION 1, CHAPTER 205, O.S.L. 1990 (82 O.S. SUPP. 1990, SECTION 1461), WHICH RELATES TO SCENIC RIVERS COMMISSIONS; RE-CREATING A SCENIC RIVERS COMMISSION; AMENDING 82 O.S. 1981, SECTION 1452, AS LAST AMENDED BY SECTION 9, CHAPTER 203, O.S.L. 1988 (82 O.S. SUPP. 1990, SECTION 1452), WHICH RELATES TO SCENIC RIVER AREAS; MODIFYING DESIGNATION OF A SCENIC RIVER AREA; PROVIDING AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 82 O.S. 1981, Section 1461, as last amended by Section 1, Chapter 205, O.S.L. 1990 (82 O.S. Supp. 1990, Section 1461), is amended to read as follows:

Section 1461. A. The creation of a Scenic Rivers Commission is hereby authorized for each designated scenic river area or combination of areas for which operating areas for planning and management have been delineated. Each Commission shall be an agency of the state and shall be named to reflect the area or areas subject to its jurisdiction. State funds for each Commission shall be provided for by a separate line-item appropriation through the state agency specifically named or by direct appropriation. If funded through the named state agency, said state agency shall disburse the funds to the appropriate Scenic Rivers Commission in the amount and pursuant to the conditions prescribed by the Legislature.

There is hereby re-created, to continue until July 1, ~~1991~~ 1997, in accordance with the provisions of the Oklahoma Sunset Law, Section 3901 et seq. of Title 74 of the Oklahoma Statutes a Scenic Rivers Commission for the Illinois River and Flint Creek Scenic River Areas and those portions of Barren Fork Creek within Cherokee County.

B. The operating area for the Scenic Rivers Commission for the Illinois River and Flint Creek will be limited to areas within Adair, Cherokee and Delaware Counties, and to areas within Cherokee County for Barren Fork Creek.

C. Each Commission shall consist of not less than seven (7) nor more than fifteen (15) members:

1. The Governor shall appoint two members for initial terms of one (1) year, at least one of whom shall be a representative of the Oklahoma Conservation Commission or the Oklahoma Tourism and Recreation Commission. The President Pro Tempore of the Senate shall appoint, for an initial term of one (1) year, one member who shall be a member of a statewide citizens' conservation or environmental group. The Speaker of the House of Representatives

shall appoint one member for a term of four (4) years who shall be a resident of one of the counties containing the scenic river area.

2. The additional members of the Commission shall be elected in a nonpartisan election to represent the following:

a. The registered voters who reside or own property within six hundred and sixty (660) feet of the Illinois River, Flint Creek and Barren Fork Creek within Cherokee County, shall elect one member for a term of two (2) years to represent the county in which they live or own property.

b. The registered voters who reside or own property within six hundred and sixty (660) feet of the Illinois River, Flint Creek and Barren Fork Creek within Cherokee County, shall elect two at-large members for terms of four (4) years.

3. Thereafter, vacancies shall be filled by the procedure described in paragraphs 1, 2 and 4 of this subsection, and the terms of the members shall be for four (4) years and until their respective successors shall be appointed and qualify, or be elected, unless terminated by death or resignation. Each Scenic Rivers Commission shall establish procedures consistent with the requirements of this section for replacing members who fail to attend meetings or otherwise become unable to function due to disability, death, or resignation. The replacement shall serve for the remainder of the unexpired term of the member being replaced.

4. Commission members appointed by a board of county commissioners shall cease to be members upon the expiration of their present term of office, and no further appointments shall be made by a board of county commissioners. Any vacancy that occurs in the office of a member appointed by a board of county commissioners shall not be filled. Upon the expiration of the term of office of the members of the Commission appointed by a board of county commissioners, the Governor, President Pro Tempore of the Senate, and Speaker of the House of Representatives shall each appoint one member to the Commission in addition to the members provided for in paragraph 1 of this subsection.

D. Each Commission shall be organized in cooperation with local governments in accordance with procedures provided for in the Scenic Rivers Act, Section 1451 et seq. of this title. An interim commission consisting of the members appointed by the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives shall provide for the election of additional members as provided for in paragraph 2 of subsection C of this section.

E. Each Commission shall be invested with the power to prepare and establish minimum standards for planning and other ordinances and regulations for the implementation of the Scenic Rivers Act by counties, municipalities, or any other local authorities in the designated area and shall make and promulgate such rules and regulations and issue such orders as necessary to protect the public interest and to achieve the purposes of the Scenic Rivers Act. The standards shall be developed and executed in such manner as to protect and enhance the values which caused the area to be named a scenic river area without, insofar as is consistent with said protection and enhancement, limiting other uses that do not substantially interfere with the protection, public use, and enjoyment of these values. Primary emphasis in the standards shall be given to protecting the aesthetic, scenic, historic, archeologic, and scientific features of the scenic river area with due consideration being given to the orderly development of the lands adjacent and contiguous to the scenic river area. Standards set

pursuant to the provisions of the Scenic Rivers Act shall not be less rigid or exacting than those established by any other federal or state agency having jurisdiction in respect to the subject covered by the particular standard. Each Commission may engage in or supervise the conduct of studies, make a plan or plans, receive, disburse, and allocate monies granted or appropriated to it, and do all things, whether expressly enumerated in the Scenic Rivers Act or not, which may be lawful and necessary and proper for the accomplishment of the purposes of the Scenic Rivers Act. Nothing in this section shall be interpreted as giving the Commission the power of eminent domain.

F. Each Commission shall have the following powers and responsibilities:

1. Appoint and fix the salary of an administrator experienced in land resource planning and management who shall serve at the pleasure of the Commission and in accordance with its policies, budgets, powers, and responsibilities. The administrator may select, appoint, and employ individuals to fill personnel positions authorized, budgeted, and deemed necessary by the Commission to implement the purposes of the Scenic Rivers Act;

2. Act in cooperation with all federal, state, and local governments and agencies thereof to implement the purposes of the Scenic Rivers Act;

3. Elect from the Commission membership a chairman and such other officers as the Commission deems necessary to conduct the affairs of the Commission. The officers shall be permitted to succeed themselves once for a total of two (2) consecutive years of service in any office. The Commission shall hold meetings not less than once each quarter, at such times as may be fixed by call of its chairman or as determined by majority vote in advance of the meeting. It is the responsibility of the Commissioners to encourage general public participation in the formation and adoption of plans, standards, procedures, and regulations. The meetings of the Commission shall be open to the public. Minutes of each meeting shall be kept and filed in the office of the Commission and shall be available for public inspection during reasonable office hours;

4. Adopt and publish rules and orders necessary to the exercise of the powers of the Commission and to achieve the purposes of the Scenic Rivers Act;

5. Provide rules and regulations governing the procedures necessary to implement the provisions of the Scenic Rivers Act;

6. Prepare and adopt a management plan or plans to guide and control private activities and public programs and to include varying degrees of protection and development based on the special attributes of the area;

7. Provide, where appropriate in the discretion of the Commission, for the review and consideration by the Commission of the impact on the natural and aesthetic environment of the area of proposed action by public agencies or private individuals within the operating area of the Commission;

8. Accept, in the name of and through the Commission, real and personal property that is granted, bequeathed, devised, or conveyed to the Commission to implement the purposes of the Scenic Rivers Act, upon such trusts and conditions as may be prescribed by the grantors or devisors, upon approval of the Commission;

9. Enter into contracts on behalf of the Commission to implement the purposes of the Scenic Rivers Act and may accept gifts and grants, whether the grants be of federal or other funds;

10. Identify public and private nuisances which are adverse to the purposes of the Scenic Rivers Act and take such action as permitted by law to remove the public nuisances;

11. Own and control public access points to the scenic river area, issue use permits, and purchase easements and fee title to land within the Commission's operating area. Legal title to property shall be held in the name of the individual Scenic Rivers Commission as an agency of the State of Oklahoma;

12. Review any action taken by any local, municipal, or county authority within the operating area of the Commission in an administrative adjudicatory proceeding brought upon the petition of any officer or agency of this state, including the administrator, or of any person acting in behalf of the public interest, to determine whether such action conforms to the standards promulgated by the Commission or has an adverse effect upon the proper achievement of the purposes of the Scenic Rivers Act and, upon finding that such action does not so conform or does have such adverse effect, order that the action be nullified, superseded, or amended to the extent necessary to produce such conformity or eliminate such adverse effect, and may issue such orders as may be necessary and proper to effectuate its primary order;

13. Hire an attorney or request legal assistance from the district attorney or the State Attorney General when appropriate and if there is no conflict in the legal interest of the parties;

14. Bring an action in the district court of any county of the state where service can be obtained on one or more of the defendants, to enjoin the acts or practices which appear to constitute a violation of any provision of the Scenic Rivers Act or any rule or order promulgated to implement the provisions of the Scenic Rivers Act, and to enforce compliance with the provisions of the Scenic Rivers Act or any rule or order. Upon a proper showing, a restraining order, permanent or temporary injunction, writ of mandamus, or other appropriate remedies including damages shall be granted. The court may not require the administrator or Commission to post a bond; and

15. Suspend the effectiveness of any action taken by a municipality or county within the designated operating area of such Commission when, in the exercise of alleged local functions, it appears the action has or may have an adverse effect upon the proper achievement of the purposes of the Scenic Rivers Act, whereupon all proceedings thereunder shall be held in abeyance upon receipt of written notice from the administrator pending a final determination of the Commission in regard to such action. If it is determined that such adverse effects exist, the Commission may nullify, supersede, or amend said action only to the extent necessary to achieve the purposes of the Scenic Rivers Act.

G. A Commission member to whom some private benefit, direct or indirect, financial or otherwise, may come as the result of some public action should not be a participant in that action. The possibility, not the actuality, of a conflict of interest should govern. A Commission member experiencing a conflict of interest should declare his interest publicly, abstain from voting on the matter should he have a vote, and refrain from deliberation on the matter. In addition, the Commission member should not discuss the matter with any fellow member for the purpose of influencing a decision thereon.

H. The rules and regulations or orders of the Commission shall be adopted and issued in compliance with all applicable provisions of Sections 301 through 326 of Title 75 of the Oklahoma Statutes.

SECTION 2. AMENDATORY 82 O.S. 1981, Section 1452, as last amended by Section 9, Chapter 203, O.S.L. 1988 (82 O.S. Supp. 1990, Section 1452), is amended to read as follows:

Section 1452. (a) The Oklahoma Legislature finds that some of the free-flowing streams and rivers of Oklahoma possess such unique natural scenic beauty, water conservation, fish, wildlife and outdoor recreational values of present and future benefit to the people of the state that it is the policy of the Legislature to preserve these areas for the benefit of the people of Oklahoma. For this purpose there are hereby designated certain "scenic river areas" to be preserved as a part of Oklahoma's diminishing resource of free-flowing rivers and streams.

(b) The areas of the state designated as "scenic river areas" shall include:

(1) The Flint Creek and the Illinois River above the ~~650-foot elevation level of Tenkiller Reservoir~~ confluence of the Barren Fork Creek in Cherokee, Adair and Delaware Counties;

(2) The Barren Fork Creek in Adair and Cherokee Counties from the present alignment of Highway 59 West to the Illinois River;

(3) The Upper Mountain Fork River above the 600-foot elevation level of Broken Bow Reservoir in McCurtain and LeFlore Counties;

(4) Big Lee's Creek, sometimes referred to as Lee Creek, located in Sequoyah County, above the 420-foot MSL elevation, excluding that portion necessary for a dam to be built in the State of Arkansas with a crest elevation of no more than the 420-foot MSL elevation. The Oklahoma Water Resources Board shall make such classifications, designations or adjustments to Oklahoma's water quality standards as required to allow the impoundment of water by said dam; and

(5) Little Lee's Creek, sometimes referred to as Little Lee Creek, located in Adair and Sequoyah Counties, beginning approximately four (4) miles east-southeast of Stilwell, Oklahoma, and ending at its conjunction with Big Lee's Creek approximately two (2) miles southwest of Short, Oklahoma.

(c) The term "scenic river area" as used in this act is defined as the stream or river and the public use and access areas located within the area designated.

SECTION 3. This act shall become effective July 1, 1991.

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 25th day of February, 1991.

Speaker of the House of Representatives

Passed the Senate the 19th day of March, 1991.

President of the Senate