

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)
2ND CONFERENCE COMMITTEE
SUBSTITUTE FOR ENGROSSED
HOUSE BILL NO. 1160

By: Mitchell of the House

and

Hooper of the Senate

2ND CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to tourism and state government; requiring that positions within the Golf Course Operations be unclassified; providing exceptions; authorizing certain options concerning employee status; providing certain procedures; amending 74 O.S. 1991, Section 1847.1, as amended by Section 20, Chapter 373, O.S.L. 1992 (74 O.S. Supp. 1992, Section 1847.1), which relates to powers, rights and privileges of the Oklahoma Tourism and Recreation Commission; clarifying language relating to exceptions from the payment of certain fees, licenses and charges; specifying types of proof for identification purposes; authorizing the reduction or waiver of certain fees, licenses and charges for certain volunteer groups and governmental entities; eliminating certain identification provision; adding duty relating to developing an incentive pay plan; providing for implementation of such plan; requiring the promulgation of certain rules by the Commission; amending 51 O.S. 1991, Section 6, as last amended by Section 11, Chapter 373, O.S.L. 1992 (51 O.S. Supp. 1992, Section 6), which relates to officers; expanding exceptions to the dual office-holding prohibition; amending 82 O.S. 1991, Section 1461, which relates to the Scenic Rivers Commission; authorizing certain administrators to be commissioned as park rangers; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1825.1 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided by law, positions within the Golf Course Operations of the Oklahoma Tourism and Recreation Department shall be unclassified.

B. Any classified employee in Golf Course Operations on July 1, 1993, shall have the option of retaining such classified status. Any incumbent who chooses to change status from classified to unclassified shall so indicate in writing. All future appointments to such position shall be in the unclassified service.

SECTION 2. AMENDATORY 74 O.S. 1991, Section 1847.1, as amended by Section 20, Chapter 373, O.S.L. 1992 (74 O.S. Supp. 1992, Section 1847.1), is amended to read as follows:

Section 1847.1 A. The Commission is granted the additional powers herein given it for the purpose of operating, maintaining, extending and improving state parks in the State of Oklahoma, including specifically all parks and park and recreational properties now owned or leased by the state or by the Commission together with all additions which may be made thereto and all additional park and recreational properties which may be acquired hereafter by the Commission and by the state.

The Commission shall have and is hereby authorized to exercise the following powers, rights and privileges:

1. To have the exclusive possession and control of, and to control, operate and maintain for the benefit of the people of the State of Oklahoma all state parks and all lands and other properties now or hereafter owned or leased by the state or Commission for park or recreational purposes.

2. To acquire by purchase, lease, gift, or in any other manner and to maintain, use and operate any and all property, real, personal or mixed, necessary or convenient to the exercise of the powers, rights, privileges and functions conferred upon it by this act. Title to all such property shall be vested in the State of Oklahoma, although such property is sometimes herein referred to as property "of the Commission". The power of condemnation herein granted shall be exercised in the manner

provided by the general laws of the state for the condemnation of property by the state.

3. To acquire real property by condemnation only when the Attorney General or other counsel deems it an appropriate means of clearing title from willing or unavailable sellers.

4. Subject to the provisions of this act, from time to time to lease, without restriction as to term, any property which said Commission shall determine advisable to more fully carry into effect the duties and powers of said Commission.

5. To acquire, construct, extend, improve, maintain and operate any and all facilities of all kinds which in the judgment of the Commission will provide recreational or other facilities for the benefit of the public, or which are necessary or convenient to the exercise of the powers of the Commission.

6. To sue and be sued.

7. To adopt, use and alter an official seal.

8. To make bylaws for the management and regulation of its affairs.

9. To appoint officers, agents and employees and prescribe their duties and to fix their compensation.

10. To make such contracts and execute such instruments as in the judgment of the Commission are necessary or convenient to the exercise of the powers conferred upon it by this act.

11. To prescribe and enforce rules ~~and regulations~~ for the use of all recreational and other facilities and properties of the Commission, including the restriction or prohibition of the use of firearms, the inspection of boats, the issuance of permits for the operation of watercraft of all kinds, the charging and collection of fees for the inspection and for the operation of such craft, prescribing the type, style, location and equipment of all wharves, docks and anchorages, pavilions, restaurants and other structures or buildings which may be constructed along shores or upon the waters of any body of water or upon other property controlled by the Commission and providing for the licensing, inspection and supervision of same, and granting and imposing charges for permits and for all commercial uses or purposes to

which any of the properties of the Commission or any structures or buildings located on property of the Commission may be used.

12. To prescribe and collect reasonable rates, fees, tolls or charges for the services, facilities and commodities rendered by all property of the Commission. The Commission may erect cabins and support facilities on any land under its control. The Commission may operate or lease cabins, lodges, restaurants and other facilities and improvements for the public making use of the recreational facilities surrounding such improvements.

13. To develop a pay incentive plan for employees of the Division of State Lodges. Such incentive pay shall be based on customer service and improved financial condition of the state lodge. The total amount of all pay incentives awarded shall not exceed two percent (2%) of the Division of State Lodges revenue from sales of products and services at the state lodges. Such pay incentive plan shall not be implemented before April 1, 1994. The Commission shall promulgate rules for the implementation of such plan.

B. All fees, licenses and other charges shall be posted in a convenient place in each park. Each and everyone using any of the facilities of said park shall be charged the same fees, licenses and every other charge except:

1. ~~individuals~~ Residents of this state sixty-two (62) years of age and over and their spouses, and nonresidents sixty-two (62) years of age and over and ~~his or her spouse~~ their spouses, provided that their home state provides similar discounts to Oklahoma residents. Identification may be established by presentation of the state driver's license, state license for identification only, birth certificate of such persons or any other form of identification authorized by the Commission;

2. Individuals who have been certified as totally disabled under state or federal law and ~~his or her spouse~~ their spouses will be entitled to a fifty percent (50%) reduction which shall apply to recreation use facilities;

3. Children's groups, volunteer groups as specified by the Commission, or governmental entities that provide beneficial

services at the facility for which the fee ~~is~~ may be reduced or waived. ~~Identification may be established by presentation of state driver's license or birth certificate.~~ The failure to collect such fees, licenses and other charges shall subject the employees of the Commission to a fine of Twenty-five Dollars (\$25.00) for each and every violation; and

4. Special discount rates as authorized in paragraphs 1 and 2 of this subsection may be waived for subject individuals who are members of a group being provided a special group rate in accordance with Section 1834 of this title.

SECTION 3. AMENDATORY 51 O.S. 1991, Section 6, as last amended by Section 11, Chapter 373, O.S.L. 1992 (51 O.S. Supp. 1992, Section 6), is amended to read as follows:

Section 6. A. Except as may be otherwise provided, no person holding an office under the laws of the state and no deputy of any officer so holding any office, shall, during his term of office, hold any other office or be the deputy of any officer holding any office, under the laws of the state. The provisions of this section shall not apply to:

1. Notaries public;
2. Members of the State Textbook Committee;
3. County free fair board members;

4. Municipal and county law enforcement officers serving in positions as law enforcement officers of both such governmental entities upon such terms and conditions as are mutually approved by resolutions adopted by the board of county commissioners and governing body of the municipality employing such officers;

5. Any person holding a county or municipal office or position, or membership on any public trust authority, who is a member or employee of a board or commission that relates to federal, state, county or municipal government and is created by the United States Government, the State of Oklahoma or a political subdivision of the state, except where the duties of the offices or positions conflict;

6. Any elected municipal officers and school board members who are appointed to a state board, commission, or similar entity

if there is no compensation for such services other than reimbursement for necessary travel expenses pursuant to the provisions of the State Travel Reimbursement Act, Section 500.1 et seq. of Title 74 of the Oklahoma Statutes;

7. Any trustee of a public trust, who is appointed as a trustee of a different public trust;

8. Law enforcement officers employed by municipal or county law enforcement departments or agencies, other than those law enforcement officers elected or appointed as sheriff, chief of police or some similar position in which they are the head of a county or municipal law enforcement agency, who are elected to local boards of education; provided, the provisions of this paragraph shall not prohibit any law enforcement officer employed by a municipality having a population of ten thousand (10,000) or fewer people from serving as a member of a local board of education;

9. Any member of the Oklahoma Highway Patrol Division of the Department of Public Safety who is elected to a local board of education;

10. Any District Supervisor, Assistant District Supervisor, Team Supervisor, Parole Officer 1 or Parole Officer 2 of the Department of Corrections who is elected or appointed to a city council;

11. Any trustee or director of a rural electric cooperative, or port authority who is appointed or elected to a state, county or municipal board, commission or similar entity;

12. Deputy county treasurers who are elected as members of town or city councils;

13. Municipal, county, state or tribal law enforcement or peace officers operating under cross-deputization agreements with an Indian tribe or branch of the federal government;

14. Municipal or county law enforcement or peace officers serving in positions as campus police officers or campus public safety officers pursuant to the provisions of the Oklahoma Campus Security Act, upon such terms and conditions as are mutually approved by resolution adopted by the governing body of the

municipality or county and the governing board of the institution of higher education; ~~and~~

15. State law enforcement or peace officers serving in positions as campus police officers or campus public safety officers pursuant to the provisions of the Oklahoma Campus Security Act, upon such terms and conditions as are mutually approved by written agreement between the Commissioner of Public Safety and the governing board of the institution of higher education;

16. Municipal and county law enforcement officers serving in positions as part-time rangers under the Oklahoma Tourism and Recreation Department; and

17. The Administrator of a Scenic Rivers Commission serving in the position of a park ranger under the Oklahoma Tourism and Recreation Department.

The provisions of this section shall not prohibit any person holding an office under the laws of the state or any deputy of any officer so holding any office from serving upon the board of Oklahoma Futures or upon the board of directors of the Oklahoma Center for the Advancement of Science and Technology. The provisions of this section shall not prohibit a member of the board of directors of the Oklahoma Center for the Advancement of Science and Technology from serving upon the board of Oklahoma Futures.

B. Any salaries, emoluments or benefits that would otherwise be paid by the agency or political subdivision to a loaned employee or officer shall instead be paid to the regular employer of such employee who shall in turn be paid his regular salary and benefits the same as if he were continuing his regular employment with his permanent employer.

SECTION 4. AMENDATORY 82 O.S. 1991, 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, 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. Such administrator may be

commissioned by the Oklahoma Tourism and Recreation Department as a park ranger. 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 divisors, 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 5. This act shall become effective July 1, 1993.

SECTION 6. 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.

44-1-7282

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