ENROLLED HOUSE
BILL NO. 1543

By: Sweeden of the House

and

Gumm of the Senate

An Act relating to Sunset; amending 82 O.S. 2001, Section 1461, which relates to the Scenic Rivers Commission; re-creating such Commission; and modifying termination date.

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

SECTION 1. AMENDATORY 82 O.S. 2001, Section 1461, is amended to read as follows:

Section 1461. A. 1. A Scenic Rivers Commission may be created pursuant to the Scenic Rivers Act for each designated scenic river area or combination of areas for which operating areas for planning and management have been delineated. Each Scenic Rivers Commission shall be organized in cooperation with local governments in accordance with procedures provided for in the Scenic Rivers Act.

2. Each Commission shall be an agency of the state and shall be named to reflect the area or areas subject to its jurisdiction.

3. 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.

B. 1. There is hereby re-created, to continue until July 1, ~~2003~~ 2009, in accordance with the provisions of the Oklahoma Sunset Law, a Scenic Rivers Commission for the Illinois River and Flint Creek Scenic River Areas and those portions of Barren Fork Creek within Cherokee County.

2. 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. The term of office for each member shall be four (4) years. Each Commission shall be composed of the following members:

1. a. 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.

b. 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.

c. 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; and

2. a. The additional members of the Scenic Rivers Commission created pursuant to this subsection and as authorized by subsection A of this section shall be elected in a nonpartisan election to represent the following:

(1) the registered voters who reside, own real property, or own permanent residential structures within six hundred sixty (660) feet of the Illinois River or Flint Creek within Delaware County, shall elect one member to represent them,

(2) the registered voters who reside, own real property, or own permanent residential structures within six hundred sixty (660) feet of the Illinois River in Adair County, Oklahoma, shall elect one member to represent them,

(3) the registered voters who reside, own real property, or own permanent residential structures within six hundred sixty (660) feet of the Illinois River above its confluence with the Barren Fork Creek or those portions of the Barren Fork Creek in Cherokee County shall elect one member to represent them,

(4) the registered voters who reside, own real property, or own permanent residential structures within six hundred sixty (660) feet of:

(a) the Illinois River, above its confluence with the Barren Fork Creek located in Adair, Cherokee and Delaware Counties, or

(b) Flint Creek located within Delaware County or Barren Fork Creek within Cherokee County,

shall elect two at-large members to represent them, and

(5) no person shall be eligible to vote in more than one of the jurisdictional areas outlined in divisions (1), (2) and (3) of subparagraph a of this paragraph.

b. All members elected under divisions (1), (2) and (3) of subparagraph a of this paragraph shall reside or own property within the county they represent. All

at-large members elected under division (4) of subparagraph a of this paragraph shall reside or own property within Adair, Delaware or Cherokee Counties.

D. The Scenic River Commission shall promulgate rules governing the procedure and conduct of elections for Commission members. Such rules shall be consistent with the purposes of general election laws except where otherwise provided for by this act.

E. 1. Vacancies on each Commission shall be filled, as applicable, by the appointing authority or by election, pursuant to the provisions of this section. Members shall serve until their respective successors shall be appointed and qualify, or be elected, unless terminated by death or resignation.

2. Each Scenic Rivers Commission shall promulgate rules 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.

3. 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 subsection C of this section.

F. 1. 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.

2. 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.

G. 1. Each Scenic Rivers Commission shall be invested with the power to:

a. prepare and establish minimum standards for planning and other ordinances and rules for the implementation of the Scenic Rivers Act by counties, municipalities, or any other local authorities in the Commissions' operating area, and

b. promulgate such rules and issue such orders as necessary to protect the public interest and to achieve the purposes of the Scenic Rivers Act.

2. 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.

3. 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.

4. 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.

H. Each Scenic Rivers 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 any Commission the power of eminent domain.

I. Each Scenic Rivers Commission, in addition, 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 as a peace officer. 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. Promulgate rules and issue orders necessary to the exercise of the powers of the Commission and to achieve the purposes of the Scenic Rivers Act;

5. 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;

6. 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 within the Commission's operating area related to any existing or proposed action by public agencies, private individuals or any other activity;

7. 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;

8. 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 or real or personal property;

9. 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;

10. 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;

11. 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. Upon a 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, the Commission may issue such orders as may be necessary and proper to effectuate its primary order;

12. 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;

13. 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 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

14. 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.

J. 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.

K. The rules and orders of the Commission shall be promulgated in compliance with all applicable provisions of the Administrative Procedures Act.

L. 1. The administrator may appoint commissioned peace officers certified by the Council on Law Enforcement Education and Training to secure such scenic river area, including all roadways and adjacent areas to the Illinois River, Flint Creek, and the bottom portion of the Baron Fork Creek located in Cherokee County. All persons appointed by the administrator as peace officers shall be and have the full powers and authority of peace officers of the State of Oklahoma in securing such scenic river area, including all roadways and adjacent areas to the Illinois River, Flint Creek, and portion of the Baron Fork Creek located in Cherokee County. All peace officers appointed by the administrator shall be in the unclassified service.

2. Peace officers who become employed under this subsection or who are transferred to the Scenic Rivers Commission pursuant to this act who have service credit in the Oklahoma Law Enforcement Retirement System may, within thirty (30) days after becoming employed or transferred, elect to continue membership in the Oklahoma Law Enforcement Retirement System; otherwise they may be eligible to enroll only in the Oklahoma Public Employees Retirement System.

3. The administrator is authorized to employ seasonal personnel, including commissioned peace officers certified by the Council on Law Enforcement Education and Training throughout the calendar year to secure such scenic river area, including all roadways and adjacent areas to the Illinois River, Flint Creek, and the bottom portion of the Baron Fork Creek located in Cherokee County. Project labor employed by the Scenic Rivers Commission for a period of time necessary to complete a project shall be in the unclassified service of the state as provided by the Oklahoma Personnel Act, Section 840-1.1 et seq. of Title 74 of the Oklahoma Statutes. Such employees shall not be entitled to paid leave, paid

holidays, retirement, health, dental or life insurance, and shall be exempt from any laws, rules or practices providing such benefits. The administrator shall submit in its annual budget reporting a summary of the use of project labor that shall include the number of workers employed under the provisions of this section and the total wages paid to these employees.

Passed the House of Representatives the 10th day of February, 2003.

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Presiding Officer of the House of Representatives

Passed the Senate the 26th day of March, 2003.

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Presiding Officer of the Senate