ENROLLED SENATE
BILL NO. 357

By: Rozell of the Senate

and

Wilson of the House

An Act relating to waters and water rights; amending 82 O.S. 2001, Sections 1461, 1462A, 1462B, 1462C, 1463, 1469 and 1470, which relate to the Scenic Rivers Act; re-creating the Scenic Rivers Commission; modifying area of Scenic Rivers Commission; increasing membership of Commissions; modifying initial term of office; adding qualification for certain member; deleting appointment made by board of county commissioners; allowing certain employees to maintain possession of certain property under certain conditions; expanding area in which certain peace officers may secure; modifying method in which Scenic Rivers Commissions funds may be requested; modifying method in which Scenic Rivers Commissions petty cash funds may be requested; modifying fees; modifying method in which Scenic Rivers Commissions may be dissolved; modifying area in which Scenic Rivers Act shall apply; expanding area in which Scenic Rivers user fees may be accessed; expanding area in which rules shall be promulgated; modifying definition; and declaring an emergency.

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 within Adair, Cherokee and Delaware Counties 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~~ three 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~~ two members who shall each 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~~ two members who shall each be a resident of one of the counties containing the scenic river area, and one of whom shall be a representative of the agriculture industry; 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, Cherokee or Delaware ~~or Cherokee~~ Counties.

D. The Scenic ~~River~~ Rivers 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~~ chair 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~~ chair 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 or her interest publicly, abstain from voting on the matter should he or she 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~~,~~ and Flint Creek within Adair, Cherokee and Delaware Counties, and ~~the bottom portion~~ those portions of the ~~Baron~~ Barren Fork Creek ~~located in~~ within 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~~,~~ and Flint Creek within Adair, Delaware and Cherokee Counties, and ~~portion~~ those portions of the ~~Baron~~ Barren Fork Creek ~~located in~~ within 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. Any peace officer who has completed twenty (20) years of service or retires from the Scenic Rivers Commission may maintain possession of his or her badge and assigned firearm.

4. 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~~,~~ and Flint Creek within Adair, Cherokee and Delaware Counties, and ~~the bottom portion~~ those portions of the ~~Baron~~ Barren Fork Creek ~~located in~~ within 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.

SECTION 2. AMENDATORY 82 O.S. 2001, Section 1462A, is amended to read as follows:

Section 1462A. A. The Director of State Finance is hereby authorized~~, upon request by the Oklahoma Tourism and Recreation Department,~~ to establish a special fund in the State Treasury for each Scenic Rivers Commission.

B. Said fund shall consist of all monies received by the Commission under statutory authority or appropriated for its use. The fund shall be a continuing fund not subject to fiscal year limitations.

C. Monies accruing to the credit of the fund shall be expended pursuant to laws of the state in carrying out the duties and responsibilities of the Commission, and without legislative appropriation.

D. Warrants for expenditure from the fund shall be made pursuant to claims prepared by the Administrator of the Scenic Rivers Commission~~, signed by the approving officer of the Oklahoma Tourism and Recreation Department~~ and approved by the Director of State Finance for payment.

SECTION 3. AMENDATORY 82 O.S. 2001, Section 1462B, is amended to read as follows:

Section 1462B. A. The Director of State Finance is hereby authorized~~, upon request by the Oklahoma Tourism and Recreation Department,~~ to establish a Petty Cash Fund for each Scenic Rivers Commission in an amount not to exceed Five Hundred Dollars ($500.00).

B. The fund shall be established and replenished from any monies available to a Scenic Rivers Commission for operating expenses.

C. The Director of State Finance shall prescribe all forms, systems and procedures for administering a Petty Cash Fund so established.

SECTION 4. AMENDATORY 82 O.S. 2001, Section 1462C, is amended to read as follows:

Section 1462C. A. The fees collected pursuant to the provisions of subsection B of Section 1470 of this title shall be used to purchase additional public access areas along the Flint Creek and Illinois River Scenic River Areas <u>within Adair, Cherokee and Delaware Counties</u> and those portions of Barren Fork Creek within Cherokee County or for the general operations of the Commission.

B. 1. For these purposes, there is hereby created in the State Treasury a revolving fund for the Scenic Rivers Commission, to be designated the "Scenic Rivers Commission Revolving Fund".

2. The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received by the

Scenic Rivers Commission~~,~~ from all ~~canoe~~ fees. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Scenic Rivers Commission for the purpose of performing the duties imposed by law upon the Scenic Rivers Commission.

3. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 5. AMENDATORY 82 O.S. 2001, Section 1463, is amended to read as follows:

Section 1463. A. Each Scenic Rivers Commission may be dissolved by a ~~joint~~ resolution passed by ~~the boards of county commissioners of all counties that make up a part of the affected area and~~ an affirmative vote of two-thirds (2/3) of the members of the Scenic Rivers Commission.

B. Upon the dissolution of a Commission, the title to all real property and other property and funds shall vest in the State of Oklahoma.

SECTION 6. AMENDATORY 82 O.S. 2001, Section 1469, is amended to read as follows:

Section 1469. A. It is hereby declared to be the policy of the State of Oklahoma to develop in an orderly and expeditious manner the Scenic Rivers Commissions contemplated in the Scenic Rivers Act.

B. For such purposes, the provisions of the Scenic Rivers Act shall apply only to the Illinois River~~,~~ and Flint Creek~~,~~ within Adair, Cherokee and Delaware Counties and those portions of Barren Fork Creek within Cherokee County and the operating areas of the Scenic Rivers Commission established pursuant to subsection C of Section 1461 of this title.

SECTION 7. AMENDATORY 82 O.S. 2001, Section 1470, is amended to read as follows:

Section 1470. A. 1. The Scenic Rivers Commission for the Flint Creek~~,~~ and Illinois River within Adair, Cherokee and Delaware Counties and those portions of Barren Fork Creek within Cherokee County is authorized and directed to charge an annual use fee of Five Dollars ($5.00) per commercially owned and operated flotation device.

2. The operation of a commercial flotation device without displaying a proper Oklahoma Scenic Rivers Commission license is subject to a fine not to exceed One Hundred Dollars ($100.00). The penalty will be assessed upon the owner or operator of the commercial flotation device business and not upon the individual renting the commercial flotation device.

B. 1. In addition to the annual use fee imposed on a commercially owned and operated flotation device, there shall be imposed a user fee of One Dollar ($1.00) per trip per flotation

device or a user fee of Two Dollars ($2.00) per trip per raft to be paid by the individual renting the commercial flotation device or raft. The fee shall be paid into the Scenic Rivers Commission Revolving Fund.

2. A per-trip user fee of One Dollar ($1.00) shall also be levied on privately owned flotation devices and a two-dollar per trip flotation fee shall be levied on privately owned rafts.

3. Property owners adjacent to the rivers ~~under~~ located within the operating area of the Scenic Rivers Commission may own and operate one flotation device for their individual use without paying the user fees assessed by this section.

4. If a commercial operator fails to remit such user fees on schedule as required by the Scenic Rivers Commission, such operator shall be assessed an additional fee of Twenty-five Dollars ($25.00) per week for each week he or she remains in arrearage. The fee shall be paid into the Scenic Rivers Commission Revolving Fund.

C. The Scenic Rivers Commission for the Flint Creek~~,~~ and Illinois River within Adair, Cherokee and Delaware Counties and those portions of Barren Fork Creek within Cherokee County Scenic River Areas shall promulgate rules and regulations for the collection and administration of the fees imposed pursuant to the provisions of this section in accordance with the Administrative Procedures Act.

D. The Oklahoma Tax Commission shall conduct an annual on-the-scene audit of all commercial flotation device businesses to determine if all fees required are being properly collected and reported. Such audit shall be conducted at least once each three (3) years.

E. The Commission may establish a fee for use of camping sites located in public use and access areas controlled by the Commission. The fee charged by the Commission shall not exceed the rate charged by the Oklahoma Tourism and Recreation Department for camping sites. The Commission is authorized to promulgate rules to implement such fee pursuant to Article I of the Administrative Procedures Act.

F. The administrator of the Scenic Rivers Commission is authorized to be commissioned as a peace officer after completion of all required training for the purpose of supervision of peace officers employed by the Commission and such administrator may be utilized for any law enforcement purpose as may be necessary.

G. For the purposes of this section, the term commercial flotation device shall mean a canoe, boat, kayak, inner tube or other similar device suitable for the transportation of a person or persons on waterways which is available for hire by the public for use on waterways within the operating area of the Oklahoma Scenic Rivers Commission. The term "raft" shall mean a privately owned or commercially operated inflatable flotation device which has a fixed floor and is able to transport two or more persons.

SECTION 8. 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 Senate the 30th day of April, 2003.

_____
Presiding Officer of the Senate

Passed the House of Representatives the 7th day of April, 2003.

_____
Presiding Officer of the House
of Representatives