

EHB 1543

THE STATE SENATE
Monday, March 24, 2003

ENGROSSED

House Bill No. 1543

ENGROSSED 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

1 to the appropriate Scenic Rivers Commission in the amount and
2 pursuant to the conditions prescribed by the Legislature.

3 B. 1. There is hereby re-created, to continue until July 1,
4 ~~2003~~ 2009, in accordance with the provisions of the Oklahoma Sunset
5 Law, a Scenic Rivers Commission for the Illinois River and Flint
6 Creek Scenic River Areas and those portions of Barren Fork Creek
7 within Cherokee County.

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

12 C. Each Commission shall consist of not less than seven (7) nor
13 more than fifteen (15) members. The term of office for each member
14 shall be four (4) years. Each Commission shall be composed of the
15 following members:

16 1. a. The Governor shall appoint two members for initial
17 terms of one (1) year, at least one of whom shall be a
18 representative of the Oklahoma Conservation Commission
19 or the Oklahoma Tourism and Recreation Commission.

20 b. The President Pro Tempore of the Senate shall appoint,
21 for an initial term of one (1) year, one member who
22 shall be a member of a statewide citizens'
23 conservation or environmental group.

1 c. The Speaker of the House of Representatives shall
2 appoint one member for a term of four (4) years who
3 shall be a resident of one of the counties containing
4 the scenic river area; and

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

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

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

19 (3) the registered voters who reside, own real
20 property, or own permanent residential structures
21 within six hundred sixty (660) feet of the
22 Illinois River above its confluence with the
23 Barren Fork Creek or those portions of the Barren

1 Fork Creek in Cherokee County shall elect one
2 member to represent them,

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

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

9 (b) Flint Creek located within Delaware County
10 or Barren Fork Creek within Cherokee County,
11 shall elect two at-large members to represent
12 them, and

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

17 b. All members elected under divisions (1), (2) and (3)
18 of subparagraph a of this paragraph shall reside or
19 own property within the county they represent. All
20 at-large members elected under division (4) of
21 subparagraph a of this paragraph shall reside or own
22 property within Adair, Delaware or Cherokee Counties.

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

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

10 2. Each Scenic Rivers Commission shall promulgate rules
11 consistent with the requirements of this section for replacing
12 members who fail to attend meetings or otherwise become unable to
13 function due to disability, death, or resignation. The replacement
14 shall serve for the remainder of the unexpired term of the member
15 being replaced.

16 3. Commission members appointed by a board of county
17 commissioners shall cease to be members upon the expiration of their
18 present term of office, and no further appointments shall be made by
19 a board of county commissioners. Any vacancy that occurs in the
20 office of a member appointed by a board of county commissioners
21 shall not be filled. Upon the expiration of the term of office of
22 the members of the Commission appointed by a board of county
23 commissioners, the Governor, President Pro Tempore of the Senate,

1 and Speaker of the House of Representatives shall each appoint one
2 member to the Commission in addition to the members provided for in
3 paragraph 1 of subsection C of this section.

4 F. 1. Each Commission shall be organized in cooperation with
5 local governments in accordance with procedures provided for in the
6 Scenic Rivers Act, Section 1451 et seq. of this title.

7 2. An interim commission consisting of the members appointed by
8 the Governor, the President Pro Tempore of the Senate, and the
9 Speaker of the House of Representatives shall provide for the
10 election of additional members as provided for in paragraph 2 of
11 subsection C of this section.

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

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

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

22 2. The standards shall be developed and executed in such manner
23 as to protect and enhance the values which caused the area to be

1 named a scenic river area without, insofar as is consistent with
2 said protection and enhancement, limiting other uses that do not
3 substantially interfere with the protection, public use, and
4 enjoyment of these values.

5 3. Primary emphasis in the standards shall be given to
6 protecting the aesthetic, scenic, historic, archeologic, and
7 scientific features of the scenic river area with due consideration
8 being given to the orderly development of the lands adjacent and
9 contiguous to the scenic river area.

10 4. Standards set pursuant to the provisions of the Scenic
11 Rivers Act shall not be less rigid or exacting than those
12 established by any other federal or state agency having jurisdiction
13 in respect to the subject covered by the particular standard.

14 H. Each Scenic Rivers Commission may engage in or supervise the
15 conduct of studies, make a plan or plans, receive, disburse, and
16 allocate monies granted or appropriated to it, and do all things,
17 whether expressly enumerated in the Scenic Rivers Act or not, which
18 may be lawful and necessary and proper for the accomplishment of the
19 purposes of the Scenic Rivers Act. Nothing in this section shall be
20 interpreted as giving any Commission the power of eminent domain.

21 I. Each Scenic Rivers Commission, in addition, shall have the
22 following powers and responsibilities:

1 1. Appoint and fix the salary of an administrator experienced
2 in land resource planning and management who shall serve at the
3 pleasure of the Commission and in accordance with its policies,
4 budgets, powers, and responsibilities. Such administrator may be
5 commissioned as a peace officer. The administrator may select,
6 appoint, and employ individuals to fill personnel positions
7 authorized, budgeted, and deemed necessary by the Commission to
8 implement the purposes of the Scenic Rivers Act;

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

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

1 shall be kept and filed in the office of the Commission and shall be
2 available for public inspection during reasonable office hours;

3 4. Promulgate rules and issue orders necessary to the exercise
4 of the powers of the Commission and to achieve the purposes of the
5 Scenic Rivers Act;

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

10 6. Provide, where appropriate in the discretion of the
11 Commission, for the review and consideration by the Commission of
12 the impact on the natural and aesthetic environment within the
13 Commission's operating area related to any existing or proposed
14 action by public agencies, private individuals or any other
15 activity;

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

21 8. Enter into contracts on behalf of the Commission to
22 implement the purposes of the Scenic Rivers Act and may accept gifts

1 and grants, whether the grants be of federal or other funds or real
2 or personal property;

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

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

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

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

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

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

1 supersede, or amend said action only to the extent necessary to
2 achieve the purposes of the Scenic Rivers Act.

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

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

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

1 roadways and adjacent areas to the Illinois River, Flint Creek, and
2 portion of the Baron Fork Creek located in Cherokee County. All
3 peace officers appointed by the administrator shall be in the
4 unclassified service.

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

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

1 holidays, retirement, health, dental or life insurance, and shall be
2 exempt from any laws, rules or practices providing such benefits.

3 The administrator shall submit in its annual budget reporting a
4 summary of the use of project labor that shall include the number of
5 workers employed under the provisions of this section and the total
6 wages paid to these employees.

7 COMMITTEE REPORT BY: COMMITTEE ON SUNSET REVIEW, dated 3-20-03 - DO
8 PASS.