

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

COMMITTEE SUBSTITUTE  
FOR  
SENATE BILL 1785

By: Wyrick

COMMITTEE SUBSTITUTE

[ environment and natural resources - requiring  
Department to appoint coordinator for scenic rivers  
protection - noncodification - effective date -

emergency ]

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

SECTION 1. AMENDATORY 27A O.S. 2001, Section 2-3-101, as amended by Section 1, Chapter 139, O.S.L. 2002 (27A O.S. Supp. 2005, Section 2-3-101), is amended to read as follows:

Section 2-3-101. A. There is hereby created the Department of Environmental Quality.

B. Within its jurisdictional areas of environmental responsibility, the Department of Environmental Quality, through its duly designated employees or representatives, shall have the power and duty to:

1. Perform such duties as required by law; and
2. Be the official agency of the State of Oklahoma, as designated by law, to cooperate with federal agencies for point source pollution, solid waste, hazardous materials, pollution, Superfund, water quality, hazardous waste, radioactive waste, air quality, drinking water supplies, wastewater treatment and any other program authorized by law or executive order.

C. Any employee of the Department in a technical, supervisory or administrative position relating to the review, issuance or enforcement of permits pursuant to this Code who is an owner,

stockholder, employee or officer of, or who receives compensation from, any corporation, partnership, or other business or entity which is subject to regulation by the Department of Environmental Quality shall disclose such interest to the Executive Director. Such disclosure shall be submitted for Board review and shall be made a part of the Board minutes available to the public. This subsection shall not apply to financial interests occurring by reason of an employee's participation in the Oklahoma State Employees Deferred Compensation Plan or publicly traded mutual funds.

D. The Executive Director, Deputy Director, and all other positions and employees of the Department at the Division Director level or higher shall be in the unclassified service.

E. The following programs are hereby established within the Department of Environmental Quality:

1. An air quality program which shall be responsible for air quality;

2. Water programs which shall be responsible for water quality, including, but not limited to point source and nonpoint source pollution within the jurisdiction of the Department, public and private water supplies, public and private wastewater treatment, water protection and discharges to waters of the state;

3. Land protection programs which shall be responsible for hazardous waste, solid waste, radiation, and municipal, industrial, commercial and other waste within its jurisdictional areas of environmental responsibility pursuant to Section 1-3-101 of this title; and

4. Special projects and services programs which shall be responsible for duties related to planning, interagency coordination, technical assistance programs, laboratory services and laboratory certification, recycling, education and dissemination of information.

F. Within the Department there are hereby created:

1. The complaints program which shall be responsible for intake processing, investigation, mediation and conciliation of inquiries and complaints received by the Department and which shall provide for the expedient resolution of complaints within the jurisdiction of the Department; and

2. The customer assistance program which shall be responsible for advising and providing to licensees, permittees and those persons representing businesses or those persons associated with and representing local political subdivisions desiring a license or permit, the necessary forms and the information necessary to comply with the Oklahoma Environmental Quality Code. The customer assistance program shall coordinate with other programs of the Department to assist businesses and municipalities in complying with state statutes and rules governing environmental areas.

The customer assistance program shall also be responsible for advising and providing assistance to persons desiring information concerning the Department's rules, laws, procedures, licenses or permits, and forms used to comply with the Oklahoma Environmental Quality Code.

G. The Department shall be responsible for holding administrative hearings as defined in Section 2-1-102 of this title and shall provide support services related to them, including, but not limited to, giving required notices, maintaining the docket, scheduling hearings, and maintaining legal records.

H. 1. The Department shall prepare and submit an annual report assessing the status of the Department's programs to the Board, the Governor, the President Pro Tempore of the State Senate, and the Speaker of the Oklahoma House of Representatives by January 1 of each year. The annual status report shall include: the number of environmental inspections made within the various regulatory areas under the Department's jurisdiction; the number of permit

applications submitted within the various regulatory areas under the Department's jurisdiction; the number of permits issued within the various regulatory areas under the Department's jurisdiction; the number and type of complaints filed with the Department; the number of resolved and unresolved Department complaints; a list of any permits and complaints which failed to be either completed or resolved within the Department's established time frames and an explanation of why the Department was unable to meet said time frames; the number and kinds of services provided corporations, businesses, cities, towns, schools, citizen groups and individuals by the customer assistance programs; a summary of the Department's environmental education efforts; the number and type of administrative hearings held and their outcomes; a detailed description of any promulgated and pending emergency or permanent rules requested by the Department and the current status of pending rules within the rulemaking process; the number of notices of violations issued by the Department within the various regulatory areas under its jurisdiction; the amount of penalties collected by the Department within the various regulatory areas under its jurisdiction; and any other information which the Department believes is pertinent.

2. Beginning January 1, 1995, and on or before January 1 of every year thereafter, the Department shall prepare an Oklahoma Environmental Quality Report which outlines the Department's annual needs for providing environmental services within its jurisdictional areas. The report shall reflect any new federal mandates and any state statutory or constitutional changes recommended by the Department within its jurisdictional areas. The Oklahoma Environmental Quality Report shall be reviewed, amended, and approved by the Board. The Department shall transmit an approved copy of the Oklahoma Environmental Quality Report to the Governor,

President Pro Tempore of the State Senate, and Speaker of the House of Representatives.

~~3.~~ I. 1. The Executive Director shall establish such divisions and such other programs and offices as the Executive Director may determine necessary to implement and administer programs and functions within the jurisdiction of the Department pursuant to the Oklahoma Environmental Quality Code.

2. The Executive Director shall appoint a coordinator for scenic rivers protection. The office of the coordinator shall be located within one of the scenic river areas of the state as specified by the Scenic Rivers Act. With respect to facilities or activities within the regulatory jurisdiction of the Department, the coordinator shall be responsible for coordinating the Department's regulatory and enforcement efforts to help protect and preserve the scenic river areas of the state, and for assisting a Scenic Rivers Commission pursuant to the provisions of subsection A of Section 1457 of Title 82 of the Oklahoma Statutes.

~~4.~~ J. 1. The Department may contract with other governmental entities to provide environmental services. Such contracts may include duties related to providing information to the public regarding state environmental services, resources, permitting requirements and procedures based upon the ability, education and training of state environmental agency employees.

2. The Department, in conjunction with the state environmental agencies, may develop a program for the purpose of training government employees to provide any needed environmental services; provided, that the investigation of complaints regarding, or inspections of, permitted sites or facilities shall not be performed by employees of other agencies, unless otherwise authorized by law.

SECTION 2. AMENDATORY 74 O.S. 2001, Section 840-5.13, is amended to read as follows:

Section 840-5.13 A. The Department of Environmental Quality shall be under the Merit System. Except as otherwise provided in subsection B of this section, all offices, positions and personnel shall be classified and subject to the provisions of the Merit System of Personnel Administration and rules promulgated hereunder. This section shall supersede and repeal any and all executive orders issued pursuant to this act to place the agency or its predecessors under the Merit System.

B. In addition to offices, positions and personnel that are unclassified pursuant to Section 840-5.5 of this title, the following offices, positions and personnel shall be in the unclassified service:

1. Division Directors;
2. General Counsel;
3. Attorneys;
4. Director of Public Information and Education;
5. Customer Service Specialists;
6. Senior Coordinator of Rural Solid Waste Systems Development;
7. Director of Support Services; ~~and~~
8. Director of the Office of Waste Planning and Systems Development; and
9. Scenic Rivers Coordinator.

SECTION 3. AMENDATORY 82 O.S. 2001, Section 1461, as amended by Section 1, Chapter 192, O.S.L. 2003 (82 O.S. Supp. 2005, 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, 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 three members, 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 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 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~~ in 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 Counties.

D. The Scenic 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.

F. 1. Each Commission shall be organized in cooperation with local governments in accordance with procedures provided for in the Scenic Rivers Act.

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 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 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; and

15. Report to the scenic rivers coordinator of the Department of Environmental Quality any violation identified within a scenic river area which is subject to the regulatory jurisdiction of the Department.

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 those portions of the Barren Fork Creek 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 those portions of the Barren Fork Creek

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 those portions of the Barren Fork Creek 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. 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 4. AMENDATORY 82 O.S. 2001, Section 1462, is amended to read as follows:

Section 1462. The Oklahoma Tourism and Recreation Department shall:

1. Establish procedures for organizing and certifying Scenic Rivers Commissions to administer a resource management program for designated scenic river areas and adjacent lands, consistent with the purposes of the Scenic Rivers Act. ~~No~~ Except as otherwise provided by law, no Commission shall be certified as an agency of the state to exercise the powers provided for in the Scenic Rivers Act until an interim commission has formulated procedures for holding an election for the additional Commission members. No Scenic Rivers Commission shall be established unless otherwise provided for in the Scenic Rivers Act or recommended for organization by one of the following methods:

- a. a resolution signed by two or more counties or one county and a city or conservation district of an adjoining county statutorily defined as part of the designated scenic river area, or
- b. a resolution signed by at least one county statutorily defined as part of the designated scenic river area and a state agency, or
- c. a petition signed by five hundred (500) registered voters residing in any county statutorily defined as a part of the designated scenic river area;

2. Disburse line-item or other state appropriations to certified Scenic Rivers Commissions established in accordance with the Scenic Rivers Act and provide upon request, if funds and resources are available, technical assistance to said Commissions in the planning and administration of resource management programs within its operating areas;

3. Prepare procedures for review and comment by appropriate state and local agencies on proposed management plans, standards,

and developments identified by a Scenic Rivers Commission as having a significant impact within its operating area; and

4. Establish, as provided in subsection C of Section 1461 of this title, a Scenic Rivers Commission for the Flint Creek, Illinois River Scenic River Areas, and those portions of Barren Fork Creek within Cherokee County.

SECTION 5. AMENDATORY 82 O.S. 2001, Section 1462A, as amended by Section 2, Chapter 192, O.S.L. 2003 (82 O.S. Supp. 2005, Section 1462A), is amended to read as follows:

Section 1462A. A. The Director of State Finance is hereby authorized 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 and approved by the Director of State Finance for payment.

E. Administrative support for the Scenic Rivers Commission shall be provided by the Department of Environmental Quality.

SECTION 6. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

The budgetary limitation of the Department of Environmental Quality for 571.0 FTEs is hereby increased to 572.0 to implement the provisions of this act.

SECTION 7. This act shall become effective July 1, 2006.

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.

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