

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 COMMITTEE SUBSTITUTE
4 FOR
5 HOUSE BILL NO. 1017

By: Wright (John)

6
7 COMMITTEE SUBSTITUTE

8 An Act relating to sunset; amending 82 O.S. 2001, Section 1461, as amended by
9 Section 1, Chapter 192, O.S.L. 2003 (82 O.S. Supp. 2008, Section 1461), which
10 relates to the Scenic Rivers Commission; re-creating the Commission; and
11 modifying termination date.

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

14 SECTION 1. AMENDATORY 82 O.S. 2001, Section 1461, as amended by Section 1,
15 Chapter 192, O.S.L. 2003 (82 O.S. Supp. 2008, Section 1461), is amended to read as follows:

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

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

23 3. State funds for each Commission shall be provided for by a separate line-item appropriation
24 through the state agency specifically named or by direct appropriation. If funded through the named

1 state agency, said state agency shall disburse the funds to the appropriate Scenic Rivers Commission in
2 the amount and pursuant to the conditions prescribed by the Legislature.

3 B. 1. There is hereby re-created, to continue until July 1, ~~2009~~ 2013, in accordance with the
4 provisions of the Oklahoma Sunset Law, a Scenic Rivers Commission for the Illinois River and Flint
5 Creek Scenic River Areas within Adair, Cherokee and Delaware Counties and those portions of Barren
6 Fork Creek within Cherokee County.

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

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

- 13 1. a. The Governor shall appoint three members, one of whom shall be a representative
14 of the Oklahoma Conservation Commission or the Oklahoma Tourism and
15 Recreation Commission.
- 16 b. The President Pro Tempore of the Senate shall appoint two members who shall
17 each be a member of a statewide citizens' conservation or environmental group.
- 18 c. The Speaker of the House of Representatives shall appoint two members who
19 shall each be a resident of one of the counties containing the scenic river area, and
20 one of whom shall be a representative of the agriculture industry; and
- 21 2. a. The additional members of the Scenic Rivers Commission created pursuant to this
22 subsection and as authorized by subsection A of this section shall be elected in a
23 nonpartisan election to represent the following:
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- (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.

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

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

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

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

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

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

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

21 a. prepare and establish minimum standards for planning and other ordinances and
22 rules for the implementation of the Scenic Rivers Act by counties, municipalities,
23 or any other local authorities in the Commissions' operating area, and
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1 budgeted, and deemed necessary by the Commission to implement the purposes of the Scenic Rivers
2 Act;

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

5 3. Elect from the Commission membership a chair and such other officers as the Commission
6 deems necessary to conduct the affairs of the Commission. The officers shall be permitted to succeed
7 themselves once for a total of two (2) consecutive years of service in any office. The Commission
8 shall hold meetings not less than once each quarter, at such times as may be fixed by call of its chair or
9 as determined by majority vote in advance of the meeting. It is the responsibility of the
10 Commissioners to encourage general public participation in the formation and adoption of plans,
11 standards, procedures, and regulations. The meetings of the Commission shall be open to the public.
12 Minutes of each meeting shall be kept and filed in the office of the Commission and shall be available
13 for public inspection during reasonable office hours;

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

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

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

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

5 8. Enter into contracts on behalf of the Commission to implement the purposes of the Scenic
6 Rivers Act and may accept gifts and grants, whether the grants be of federal or other funds or real or
7 personal property;

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

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

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

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

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

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

17 J. A Commission member to whom some private benefit, direct or indirect, financial or
18 otherwise, may come as the result of some public action should not be a participant in that action. The
19 possibility, not the actuality, of a conflict of interest should govern. A Commission member
20 experiencing a conflict of interest should declare his or her interest publicly, abstain from voting on the
21 matter should he or she have a vote, and refrain from deliberation on the matter. In addition, the
22 Commission member should not discuss the matter with any fellow member for the purpose of
23 influencing a decision thereon.
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1 K. The rules and orders of the Commission shall be promulgated in compliance with all
2 applicable provisions of the Administrative Procedures Act.

3 L. 1. The administrator may appoint commissioned peace officers certified by the Council on
4 Law Enforcement Education and Training to secure such scenic river area, including all roadways and
5 adjacent areas to the Illinois River and Flint Creek within Adair, Cherokee and Delaware Counties, and
6 those portions of the Barren Fork Creek within Cherokee County. All persons appointed by the
7 administrator as peace officers shall be and have the full powers and authority of peace officers of the
8 State of Oklahoma in securing such scenic river area, including all roadways and adjacent areas to the
9 Illinois River and Flint Creek within Adair, Delaware and Cherokee Counties, and those portions of
10 the Barren Fork Creek within Cherokee County. All peace officers appointed by the administrator
11 shall be in the unclassified service.

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

17 3. Any peace officer who has completed twenty (20) years of service or retires from the Scenic
18 Rivers Commission may maintain possession of his or her badge and assigned firearm.

19 4. The administrator is authorized to employ seasonal personnel, including commissioned peace
20 officers certified by the Council on Law Enforcement Education and Training throughout the calendar
21 year to secure such scenic river area, including all roadways and adjacent areas to the Illinois River and
22 Flint Creek within Adair, Cherokee and Delaware Counties, and those portions of the Barren Fork
23 Creek within Cherokee County. Project labor employed by the Scenic Rivers Commission for a period
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1 of time necessary to complete a project shall be in the unclassified service of the state as provided by
2 the Oklahoma Personnel Act. Such employees shall not be entitled to paid leave, paid holidays,
3 retirement, health, dental or life insurance, and shall be exempt from any laws, rules or practices
4 providing such benefits. The administrator shall submit in its annual budget reporting a summary of
5 the use of project labor that shall include the number of workers employed under the provisions of this
6 section and the total wages paid to these employees.

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