

1 ENGROSSED HOUSE
2 BILL NO. 3173

By: Hickman and Tibbs of the
House

3 and

4 Bingman of the Senate
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6

7 An Act relating to consolidation of state agencies;
8 transferring certain powers and duties of the Scenic
9 Rivers Commission to the Oklahoma Tourism and
10 Recreation Commission; specifying the transfer of
11 certain property, assets, liabilities, fund balance,
12 and obligations; defining the jurisdictional area of
13 the Scenic Rivers Commission; transferring all
14 employees of the Scenic Rivers Commission to the
15 Oklahoma Tourism and Recreation Commission; stating
16 legislative intent; requiring execution of certain
17 conveyances and documents by a certain date;
18 providing for the election of retirement systems by
19 certain employees; providing for the transfer of
20 certain funds donated to the Scenic Rivers Commission
21 for certain pollution or conservation purposes;
22 providing for the transfer of monies accruing after a
23 certain date; providing for succession of contractual
24 rights; providing for the enforcement of certain
rules by the Oklahoma Tourism and Recreation
Commission; transferring certain powers and duties to
the Oklahoma Conservation Commission; providing for
the enforcement of certain rules by the Executive
Director of the Oklahoma Conservation Commission;
amending 82 O.S. 2001, Sections 1454, 1457, as
amended by Section 1, Chapter 148, O.S.L. 2002, 1458,
1462C, as amended by Section 4, Chapter 192, O.S.L.
2003, 1464, as amended by Section 3, Chapter 305,
O.S.L. 2003, 1466 and 1470, as last amended by
Section 2, Chapter 301, O.S.L. 2008 (82 O.S. Supp.
2009, Sections 1457, 1462C, 1464 and 1470), which
relate to the Scenic Rivers Act; deleting references
to the Scenic Rivers Commission; modifying authority
relating to maintenance of water quality and
pollution prevention for scenic rivers; modifying
certain progress reporting requirements; changing

1 responsibility for recreational activity related
2 pollution control; deleting requirements for use of
3 certain funds; changing designation and name of the
4 Scenic Rivers Commission Revolving Fund; specifying
5 source of funds; modifying certain restriction;
6 modifying certain authorization for municipalities;
7 changing authorization for certain user fees and
8 penalties; clarifying statutory language; repealing
9 82 O.S. 2001, Sections 1460, 1461, as last amended by
10 Section 1, Chapter 20, O.S.L. 2009, 1462, 1462A, as
11 last amended by Section 1, Chapter 390, O.S.L. 2009,
12 1462B, as amended by Section 3, Chapter 192, O.S.L.
13 2003, 1463, as amended by Section 5, Chapter 192,
14 O.S.L. 2003, 1468 and 1469, as amended by Section 6,
15 Chapter 192, O.S.L. 2003 (82 O.S. Supp. 2009,
16 Sections 1461, 1462A, 1462B, 1463 and 1469), which
17 relate to the Scenic Rivers Act; providing for
18 codification; providing an effective date; and
19 declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 1472 of Title 82, unless there
is created a duplication in numbering, reads as follows:

A. 1. Effective July 1, 2010, all powers, duties, functions,
and responsibilities of the Scenic Rivers Commission relating to the
public use and enjoyment, ownership and control of public access
points to the scenic river areas, issuance of use permits and
licenses, law enforcement on and around the scenic rivers,
activities which impact the proper protection of the aesthetic,
scenic, historic, archeologic and scientific features of the scenic

1 river areas, land use, and other standards and management matters
2 that are within the jurisdiction of the Oklahoma Tourism and
3 Recreation Commission shall be transferred to the Oklahoma Tourism
4 and Recreation Commission. Except as otherwise provided for in this
5 section, the transfer shall include all real property, buildings,
6 furniture, equipment, supplies, records, personnel, assets, current
7 and future liabilities, fund balances, encumbrances, obligations,
8 and indebtedness associated with the Scenic Rivers Commission.

9 2. For purposes of this section, the Scenic Rivers Commission
10 shall mean the Scenic Rivers Commission as created in Section 1461
11 of Title 82 of the Oklahoma Statutes which has an operating area for
12 the Illinois and Flint Creeks within Adair, Cherokee and Delaware
13 Counties and for the Barren Fork Creek within Cherokee County.

14 3. All employees of the Scenic Rivers Commission on the
15 effective date of this act, including related liabilities for sick
16 leave, annual leave, holidays, unemployment benefits, and workers'
17 compensation benefits accruing prior to July 1, 2010, to such
18 personnel shall be transferred to the Oklahoma Tourism and
19 Recreation Commission as of July 1, 2010. It is the intent of the
20 Legislature that, to the extent possible, the Oklahoma Tourism and
21 Recreation Commission ensure that the employees retain pay and
22 benefits, as much as possible, including longevity, dependent
23 insurance benefits, seniority, rights, and other privileges or
24 benefits.

1 4. Appropriate conveyances and other documents shall be
2 executed by January 1, 2011, to effectuate the transfer of property
3 owned by the Scenic Rivers Commission to the Oklahoma Tourism and
4 Recreation Commission.

5 5. Any employee transferred pursuant to the provisions of this
6 section who is a member of the Oklahoma Law Enforcement Retirement
7 System may elect to remain a member of the Oklahoma Law Enforcement
8 Retirement System or may elect to become a member of the Oklahoma
9 Public Employees Retirement System. The employee shall file an
10 election on a form prescribed for that purpose with the applicable
11 system no later than July 15, 2010. If the employee files an
12 election to remain in the Oklahoma Law Enforcement Retirement
13 System, the Oklahoma Tourism and Recreation Commission shall pay the
14 required employer contributions applicable to the participating
15 employee as required by law. The employee shall continue to pay
16 employee contributions as required by law. If an employee fails to
17 file an election by July 15, 2010, the employee shall become a
18 member of the Oklahoma Public Employees Retirement System. Any
19 employee who is employed by the Commission after July 1, 2010, and
20 who is otherwise eligible for membership in the Oklahoma Public
21 Employees Retirement System shall be enrolled during employment by
22 the Commission in the Oklahoma Public Employees Retirement System.

23 6. Any monies donated or accruing to or in the name of the
24 Scenic Rivers Commission after July 1, 2010, for the purpose of

1 pollution control, protection, and conservation within the Illinois
2 River basin shall be transferred to the Oklahoma Conservation
3 Commission. Any other monies from appropriations, fees, licenses,
4 fines, penalties, or other similar types of monies that accrue in
5 any funds or accounts after July 1, 2010, in the name of the Scenic
6 Rivers Commission or maintained for the benefit of the Scenic Rivers
7 Commission are transferred to the Oklahoma Tourism and Recreation
8 Commission.

9 7. The Oklahoma Tourism and Recreation Commission shall succeed
10 to any contractual rights and responsibilities incurred by the
11 Scenic Rivers Commission.

12 8. The rules of the Scenic Rivers Commission relating to
13 minimum operation standards, public use, land use, management,
14 property, fees, licenses, and other like matters, that are in effect
15 on July 1, 2010, shall be enforceable by the Oklahoma Tourism and
16 Recreation Commission until the Commission establishes rules.

17 B. 1. Effective July 1, 2010, all powers, duties, functions,
18 and responsibilities of the Scenic Rivers Commission relating to the
19 water quality, public and private water supplies from scenic rivers,
20 public and private wastewater treatment matters impacting scenic
21 rivers, water protection and discharges to scenic rivers, activities
22 which impact the proper protection of the environmental features of
23 the scenic river areas, and any other environmental standards and
24 management matters that are within the jurisdiction of the Oklahoma

1 Conservation Commission shall be transferred to the Oklahoma
2 Conservation Commission.

3 2. The rules of the Scenic Rivers Commission relating to water
4 quality, water supplies, wastewater treatment matters, water
5 protection and discharges, and any other environmental standards and
6 management matters that are within the jurisdiction of the Oklahoma
7 Conservation Commission, that are in effect on July 1, 2010, shall
8 be enforceable by the Executive Director of the Oklahoma
9 Conservation Commission until the Commission establishes rules.

10 SECTION 2. AMENDATORY 82 O.S. 2001, Section 1454, is
11 amended to read as follows:

12 Section 1454. A. It is recognized by the Legislature that an
13 effective program for preserving the scenic beauty of the free-
14 flowing streams and rivers designated as "scenic river areas"
15 necessarily involves the cooperation and support of the people in
16 the operating areas of designated "scenic river areas", as well as
17 the people using the "scenic river areas", and the agencies of state
18 government administering these areas.

19 B. The primary purpose of the Scenic Rivers Act is to encourage
20 the preservation of the areas designated as "scenic river areas" in
21 their natural scenic state.

22 C. In order to assist in the public use and enjoyment of such
23 areas, ~~any Scenic Rivers Commission,~~ the Oklahoma Tourism and
24 Recreation Department and the Oklahoma Wildlife Conservation

1 Commission may acquire, develop and maintain public access points,
2 easements or park areas in or near "scenic river areas". Such
3 acquisitions shall be by private treaty only, and the use of the
4 power of eminent domain for these purposes is specifically
5 prohibited by the Scenic Rivers Act.

6 SECTION 3. AMENDATORY 82 O.S. 2001, Section 1457, as
7 amended by Section 1, Chapter 148, O.S.L. 2002 (82 O.S. Supp. 2009,
8 Section 1457), is amended to read as follows:

9 Section 1457. A. The Executive Director of the Department of
10 Environmental Quality, the Corporation Commission, the ~~State~~
11 Oklahoma Department of Agriculture, Food, and Forestry, the Oklahoma
12 Water Resources Board, the Oklahoma Wildlife Conservation Commission
13 and the Conservation Commission are hereby given the authority to
14 ~~assist the Scenic Rivers Commission in maintaining~~ maintain and
15 ~~improving~~ improve water quality and ~~in preventing~~ prevent and
16 ~~eliminating~~ eliminate the pollution of waters within a "scenic river
17 area".

18 B. 1. The Secretary of Environment shall coordinate with the
19 appropriate state environmental agencies to create a coordinated
20 watershed restoration and protection strategy for each impaired
21 scenic river in this state. The strategy shall be submitted to the
22 Governor, the President Pro Tempore of the Senate and the Speaker of
23 the House of Representatives by January 31, 2003.

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1 2. The coordinated watershed restoration and protection
2 strategy shall identify all permitted or registered water pollution
3 sources and shall include but not be limited to:

- 4 a. an overall pollutant-specific load reduction as
5 identified in a developed total maximum daily load
6 (TMDL), or as otherwise calculated in the absence of a
7 developed total maximum daily load, to bring each
8 impaired scenic river back into compliance with water
9 quality standards,
- 10 b. pollutant-specific load reduction goals for each state
11 environmental agency to accomplish through its water
12 quality protection programs,
- 13 c. detailed compliance schedules indicating how much of
14 the load reduction goal will be accomplished each year
15 by each state environmental agency,
- 16 d. industry-specific descriptions of how load reduction
17 goals for each state environmental agency will be
18 accomplished,
- 19 e. an outline of innovative, cooperative intrastate and
20 interstate strategies that will be pursued in order to
21 expedite pollutant reductions, in particular where
22 scenic river watersheds cross state lines. Such
23 strategies may include nutrient trading and
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1 conservation reserve enhancement program (CREP)
2 initiatives, and

3 f. a list of all permitted or registered water pollution
4 sources subject to the jurisdiction of each state
5 agency within each impaired scenic river watershed.

6 For the permitted or registered water pollution
7 sources subject to each state environmental agency's
8 jurisdiction, the following information shall be
9 included:

- 10 (1) types of operations or organizations regulated,
- 11 (2) list of the registrations or permits issued,
- 12 (3) details on governmental assistance given, and
- 13 (4) details of enforcement actions undertaken.

14 C. 1. The Secretary of Environment shall coordinate with the
15 appropriate state environmental agencies to create ~~an annual a~~
16 progress report, beginning by January 31, 2004, and each year
17 thereafter which shall be updated when there is a significant change
18 or new advancement in the watershed. The progress report All
19 progress reports shall be submitted to the Governor, the President
20 Pro Tempore of the Senate, and the Speaker of the House of
21 Representatives.

22 2. The ~~annual~~ progress report shall include any revisions and
23 updates to the information provided in the original strategy, in
24 addition to the following:

- a. identification of all actions taken by each state environmental agency to reduce pollutant levels in each impaired scenic river watershed,
- b. identification of the sources of pollutants causing impairment or continued degradation of each impaired scenic river,
- c. outline of further steps to be taken by each state environmental agency to reduce pollutants from identified sources in order to accomplish pollutant-specific load reduction goals,
- d. an analysis of the effectiveness of the pollutant reduction efforts of each state environmental agency based upon data collected by the Oklahoma Water Resources Board's Beneficial Use Monitoring Program, the Conservation Commission's Small Watershed Rotational Monitoring Program and other appropriate monitoring data, and
- e. recommendations for further administrative, judicial or legislative actions necessary to achieve the load reduction goals assigned to each impaired scenic river watershed and to overcome any identified limitations or obstacles.

D. 1. For those impaired scenic river watersheds where a total maximum daily load (TMDL) for phosphorus has been developed, the

1 Department of Environmental Quality shall initially allocate a
2 wasteload for phosphorus for discharges from wastewater treatment
3 facilities which is achievable by the best available waste control
4 process.

5 2. The ~~annual~~ report required by subsection C of this section
6 shall indicate how the Department has verified that each wastewater
7 treatment facility having a discharge has, in fact, implemented
8 appropriate waste controls for phosphorus.

9 3. If the ~~state's~~ water quality monitoring data for the state
10 demonstrate that the water quality standards for phosphorus
11 applicable to a watershed remain impaired, and only after all
12 permitted or registered water pollution sources have also
13 implemented the best available waste control processes for
14 phosphorus to address the pollutant or pollutants contributing to
15 the impairment of the watershed, the Department shall again evaluate
16 and require regulated entities to take additional actions to achieve
17 water quality standards for phosphorus.

18 E. 1. The ~~Scenic Rivers~~ Oklahoma Conservation Commission shall
19 require all entities using scenic rivers for recreational
20 activities, which are licensed by the Oklahoma Tourism and
21 Recreation Commission, to implement a program to control the amount
22 of pollution entering an impaired scenic river watershed from ~~such~~
23 the recreational activities.

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1 2. The ~~Scenic Rivers~~ Oklahoma Conservation Commission shall
2 include in the coordinated watershed restoration and protection
3 strategy, and all subsequent annual reports, an identification of
4 the pollution from recreational activities which are licensed by the
5 Oklahoma Tourism and Recreation Commission and those actions taken
6 and planned to reduce the amount of pollution from entering an
7 impaired scenic river watershed.

8 F. If the Legislature or the Governor finds, based on any of
9 the annual reports required by this section, that any of the state
10 environmental agencies have failed to appropriately protect water
11 quality standards in an impaired scenic river watershed, the
12 Governor and the Legislature shall take any and all necessary and
13 appropriate action to require the agency to meet its mandated
14 responsibilities.

15 SECTION 4. AMENDATORY 82 O.S. 2001, Section 1458, is
16 amended to read as follows:

17 Section 1458. Before any plans for additional proposed "scenic
18 river areas" are brought to the Legislature for consideration, the
19 ~~Scenic Rivers Commission and the~~ Oklahoma Tourism and Recreation
20 Department shall give reasonable notice in newspapers of general
21 circulation in every county in which land and streams are situated
22 that would be affected by the proposed "scenic river area". The
23 notice shall include a map or drawing of the proposed area and shall
24 give the time and place of a meeting in each county affected, at

1 which time and place the ~~Commission~~ Department shall present ~~their~~
2 plans for the proposed area.

3 SECTION 5. AMENDATORY 82 O.S. 2001, Section 1462C, as
4 amended by Section 4, Chapter 192, O.S.L. 2003 (82 O.S. Supp. 2009,
5 Section 1462C), is amended to read as follows:

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

12 ~~B. 1. For these purposes, there~~ There is hereby created in the
13 State Treasury a revolving fund for the ~~Scenic Rivers~~ Oklahoma
14 Tourism and Recreation Commission, to be designated the "Scenic
15 Rivers ~~Commission~~ Revolving Fund".

16 ~~2.~~ The fund shall be a continuing fund, not subject to fiscal
17 year limitations, and shall consist of all monies received by the
18 ~~Scenic Rivers~~ Commission from all fees collected pursuant to the
19 provisions of Section 1470 of this title. All monies accruing to
20 the credit of said fund are hereby appropriated and may be budgeted
21 and expended by the ~~Scenic Rivers~~ Commission for the purpose of
22 performing the duties imposed by ~~law~~ the Scenic Rivers Act upon the
23 ~~Scenic Rivers~~ Commission.

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1 ~~3-~~ Expenditures from ~~said~~ the fund shall be made upon warrants
 2 issued by the State Treasurer against claims filed as prescribed by
 3 law with the Director of State Finance for approval and payment.

4 SECTION 6. AMENDATORY 82 O.S. 2001, Section 1464, as
 5 amended by Section 3, Chapter 305, O.S.L. 2003 (82 O.S. Supp. 2009,
 6 Section 1464), is amended to read as follows:

7 Section 1464. A. Nothing in the Scenic Rivers Act shall be
 8 construed to unduly restrict or adversely affect the use of property
 9 within ~~the jurisdiction of any Scenic Rivers Commission~~ scenic river
 10 area for farming, ranching, forestry, silviculture and other
 11 agricultural uses so long as they are not inconsistent with the
 12 purposes of the Scenic Rivers Act.

13 B. Present farming, ranching, forestry, silviculture and other
 14 agricultural uses and practices, including existing building and
 15 replacement structures, are hereby exempt from the provisions of ~~any~~
 16 the Scenic Rivers Commission Act.

17 C. The Scenic Rivers Act shall not be construed in any way to
 18 affect existing rights between a landowner and utility or pipeline
 19 companies.

20 SECTION 7. AMENDATORY 82 O.S. 2001, Section 1466, is
 21 amended to read as follows:

22 Section 1466. Each county, city, incorporated town or other
 23 governmental entity that makes up a part of the ~~operating~~ designated
 24 area of a ~~Scenic Rivers Commission~~ scenic river is hereby authorized

1 to grant or otherwise provide funds for the operation and use of the
2 scenic river to the Oklahoma Tourism and Recreation Commission and
3 for the environmental protection of the scenic river to the Oklahoma
4 Conservation Commission.

5 SECTION 8. AMENDATORY 82 O.S. 2001, Section 1470, as
6 last amended by Section 2, Chapter 301, O.S.L. 2009 (82 O.S. Supp.
7 2009, Section 1470), is amended to read as follows:

8 Section 1470. A. 1. The ~~Scenic Rivers~~ Oklahoma Tourism and
9 Recreation Commission for the Flint Creek and Illinois River within
10 ~~Adair, Cherokee and Delaware Counties and those portions of Barren~~
11 ~~Fork Creek within Cherokee County~~ is authorized and directed to
12 charge an annual use fee of Thirty-five Dollars (\$35.00) per
13 commercially owned and operated flotation device.

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

20 B. The ~~Scenic Rivers~~ Commission ~~for the Flint Creek and~~
21 ~~Illinois River within Adair, Cherokee and Delaware Counties and~~
22 ~~those portions of Barren Fork Creek within Cherokee County~~ ~~Scenic~~
23 ~~River Areas~~ shall promulgate rules and regulations for the
24 collection and administration of the fees imposed pursuant to the

1 provisions of this section in accordance with the Administrative
2 Procedures Act.

3 C. The Commission may establish a fee for use of camping sites
4 located in public use and access areas controlled by the Commission.
5 The fee charged by the Commission shall not exceed the rate charged
6 ~~by the Oklahoma Tourism and Recreation Department~~ for camping sites
7 at state parks. The Commission is authorized to promulgate rules to
8 implement such fee pursuant to Article I of the Administrative
9 Procedures Act.

10 D. The administrator of the ~~Scenic Rivers~~ scenic rivers as
11 employed by the Oklahoma Tourism and Recreation Commission is
12 authorized to be commissioned as a peace officer after completion of
13 all required training for the purpose of supervision of peace
14 officers employed by the Commission and ~~such~~ the administrator may
15 be utilized for any law enforcement purpose as may be necessary.

16 E. For the purposes of this section, "commercial flotation
17 device" means a canoe, boat, kayak, inner tube, raft or other
18 similar device suitable for the transportation of a person or
19 persons on waterways which is available for hire by the public for
20 use on waterways within the ~~operating~~ designated area of the
21 ~~Oklahoma Scenic Rivers Commission~~ scenic rivers.

22 SECTION 9. REPEALER 82 O.S. 2001, Sections 1460, 1461,
23 as last amended by Section 1, Chapter 20, O.S.L. 2009, 1462, 1462A,
24 as last amended by Section 1, Chapter 390, O.S.L. 2009, 1462B, as

