

THE HOUSE OF REPRESENTATIVES
Thursday, February 12, 2009

Committee Substitute for
House Bill No. 1017

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 1017 - By: WRIGHT (JOHN) of the House.

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

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

- 1 SECTION 1. AMENDATORY 82 O.S. 2001, Section 1461, as amended by
2 Section 1, Chapter 192, O.S.L. 2003 (82 O.S. Supp. 2008, Section 1461), is amended to
3 read as follows:
- 4 Section 1461. A. 1. A Scenic Rivers Commission may be created pursuant to the
5 Scenic Rivers Act for each designated scenic river area or combination of areas for which
6 operating areas for planning and management have been delineated. Each Scenic Rivers
7 Commission shall be organized in cooperation with local governments in accordance with
8 procedures provided for in the Scenic Rivers Act.
- 9 2. Each Commission shall be an agency of the state and shall be named to reflect
10 the area or areas subject to its jurisdiction.

1 3. State funds for each Commission shall be provided for by a separate line-item
2 appropriation through the state agency specifically named or by direct appropriation. If
3 funded through the named state agency, said state agency shall disburse the funds to the
4 appropriate Scenic Rivers Commission in the amount and pursuant to the conditions
5 prescribed by the Legislature.

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

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

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

- 16 1. a. The Governor shall appoint three members, one of whom shall be a
17 representative of the Oklahoma Conservation Commission or the
18 Oklahoma Tourism and Recreation Commission.
- 19 b. The President Pro Tempore of the Senate shall appoint two members
20 who shall each be a member of a statewide citizens' conservation or
21 environmental group.

- 1 c. The Speaker of the House of Representatives shall appoint two
2 members who shall each be a resident of one of the counties containing
3 the scenic river area, and one of whom shall be a representative of the
4 agriculture industry; and
- 5 2. a. The additional members of the Scenic Rivers Commission created
6 pursuant to this subsection and as authorized by subsection A of this
7 section shall be elected in a nonpartisan election to represent the
8 following:
- 9 (1) the registered voters who reside, own real property, or own
10 permanent residential structures within six hundred sixty (660)
11 feet of the Illinois River or Flint Creek within Delaware County,
12 shall elect one member to represent them,
- 13 (2) the registered voters who reside, own real property, or own
14 permanent residential structures within six hundred sixty (660)
15 feet of the Illinois River in Adair County, Oklahoma, shall elect
16 one member to represent them,
- 17 (3) the registered voters who reside, own real property, or own
18 permanent residential structures within six hundred sixty (660)
19 feet of the Illinois River above its confluence with the Barren
20 Fork Creek or those portions of the Barren Fork Creek in
21 Cherokee County shall elect one member to represent them,

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

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

7 (b) Flint Creek located within Delaware County or Barren
8 Fork Creek within Cherokee County,

9 shall elect two at-large members to represent them, and

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

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

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

21 E. 1. Vacancies on each Commission shall be filled, as applicable, by the
22 appointing authority or by election, pursuant to the provisions of this section. Members

1 shall serve until their respective successors shall be appointed and qualify, or be elected,
2 unless terminated by death or resignation.

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

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

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

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

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

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

1 2. The standards shall be developed and executed in such manner as to protect and
2 enhance the values which caused the area to be named a scenic river area without,
3 insofar as is consistent with said protection and enhancement, limiting other uses that
4 do not substantially interfere with the protection, public use, and enjoyment of these
5 values.

6 3. Primary emphasis in the standards shall be given to protecting the aesthetic,
7 scenic, historic, archeologic, and scientific features of the scenic river area with due
8 consideration 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 Rivers Act shall not be
11 less rigid or exacting than those established by any other federal or state agency having
12 jurisdiction in respect to the subject covered by the particular standard.

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

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

21 1. Appoint and fix the salary of an administrator experienced in land resource
22 planning and management who shall serve at the pleasure of the Commission and in

1 accordance with its policies, budgets, powers, and responsibilities. Such administrator
2 may be commissioned as a peace officer. The administrator may select, appoint, and
3 employ individuals to fill personnel positions authorized, budgeted, and deemed
4 necessary by the Commission to implement the purposes of the Scenic Rivers Act;

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

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

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

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

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

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

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

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

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

19 11. Review any action taken by any local, municipal, or county authority within the
20 operating area of the Commission in an administrative adjudicatory proceeding brought
21 upon the petition of any officer or agency of this state, including the administrator, or of
22 any person acting in behalf of the public interest, to determine whether such action

1 conforms to the standards promulgated by the Commission or has an adverse effect upon
2 the proper achievement of the purposes of the Scenic Rivers Act. Upon a finding that
3 such action does not so conform or does have such adverse effect, order that the action be
4 nullified, superseded, or amended to the extent necessary to produce such conformity or
5 eliminate such adverse effect, the Commission may issue such orders as may be
6 necessary and proper to effectuate its primary order;

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

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

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

1 If it is determined that such adverse effects exist, the Commission may nullify,
2 supersede, or amend said action only to the extent necessary to achieve the purposes of
3 the Scenic Rivers Act.

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

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

13 L. 1. The administrator may appoint commissioned peace officers certified by the
14 Council on Law Enforcement Education and Training to secure such scenic river area,
15 including all roadways and adjacent areas to the Illinois River and Flint Creek within
16 Adair, Cherokee and Delaware Counties, and those portions of the Barren Fork Creek
17 within Cherokee County. All persons appointed by the administrator as peace officers
18 shall be and have the full powers and authority of peace officers of the State of Oklahoma
19 in securing such scenic river area, including all roadways and adjacent areas to the
20 Illinois River and Flint Creek within Adair, Delaware and Cherokee Counties, and those
21 portions of the Barren Fork Creek within Cherokee County. All peace officers appointed
22 by the administrator shall be in the unclassified service.

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

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

10 4. The administrator is authorized to employ seasonal personnel, including
11 commissioned peace officers certified by the Council on Law Enforcement Education and
12 Training throughout the calendar year to secure such scenic river area, including all
13 roadways and adjacent areas to the Illinois River and Flint Creek within Adair,
14 Cherokee and Delaware Counties, and those portions of the Barren Fork Creek within
15 Cherokee County. Project labor employed by the Scenic Rivers Commission for a period
16 of time necessary to complete a project shall be in the unclassified service of the state as
17 provided by the Oklahoma Personnel Act. Such employees shall not be entitled to paid
18 leave, paid holidays, retirement, health, dental or life insurance, and shall be exempt
19 from any laws, rules or practices providing such benefits. The administrator shall
20 submit in its annual budget reporting a summary of the use of project labor that shall

1 include the number of workers employed under the provisions of this section and the
2 total wages paid to these employees.

3 COMMITTEE REPORT BY: COMMITTEE ON ADMINISTRATIVE RULES AND
4 AGENCY OVERSIGHT, dated 02-11-09 - DO PASS, As Amended.