CS for HB 3173

THE HOUSE OF REPRESENTATIVES
Wednesday, February 24, 2010

Committee Substitute for

House Bill No. 3173

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 3173 - By: HICKMAN of the House.

An Act relating to consolidation of state agencies; transferring certain powers and duties of the Scenic Rivers Commission to the Oklahoma Tourism and Recreation Commission; specifying the transfer of certain property, assets, liabilities, fund balance, and obligations; defining the jurisdictional area of the Scenic Rivers Commission; transferring all employees of the Scenic Rivers Commission to the Oklahoma Tourism and Recreation Commission; stating legislative intent; requiring execution of certain conveyances and documents by a certain date; providing for the election of retirement systems by certain employees; providing for the transfer of certain funds donated to the Scenic Rivers Commission for certain pollution or conservation purposes; providing for the transfer of monies accruing after a certain date; providing for succession of contractual 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 responsibility for recreational activity related pollution control; deleting requirements for use of certain funds; changing designation and name of the Scenic Rivers Commission Revolving Fund; specifying source of funds; modifying certain restriction; modifying certain authorization for municipalities; changing authorization for certain user fees and penalties; clarifying statutory language; repealing 82 O.S. 2001, Sections

1460, 1461, as last amended by Section 1, Chapter 20, O.S.L. 2009, 1462, 1462A, as last amended by Section 1, Chapter 390, O.S.L. 2009, 1462B, as amended by Section 3, Chapter 192, O.S.L. 2003, 1463, as amended by Section 5, Chapter 192, O.S.L. 2003, 1468 and 1469, as amended by Section 6, Chapter 192, O.S.L. 2003 (82 O.S. Supp. 2009, Sections 1461, 1462A, 1462B, 1463 and 1469), which relate to the Scenic Rivers Act; providing for codification; providing an effective date; and declaring an emergency.

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 river areas, land use, and other standards and management matters that are within the jurisdiction of the Oklahoma Tourism and Recreation Commission shall be transferred to the Oklahoma Tourism and Recreation Commission. Except as otherwise provided for in this section, the transfer shall include all real property, buildings, furniture, equipment, supplies, records, personnel, assets, current and future liabilities,

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fund balances, encumbrances, obligations, and indebtedness associated with the Scenic Rivers Commission.

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

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

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

5. Any employee transferred pursuant to the provisions of this section who is a member of the Oklahoma Law Enforcement Retirement System may elect to remain a member of the Oklahoma Law Enforcement Retirement System or may elect to become a member of the Oklahoma Public Employees Retirement System. The employee shall file an election on a form prescribed for that purpose with the applicable system no later

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than July 15, 2010. If the employee files an election to remain in the Oklahoma Law Enforcement Retirement System, the Oklahoma Tourism and Recreation Commission shall pay the required employer contributions applicable to the participating employee as required by law. The employee shall continue to pay employee contributions as required by law. If an employee fails to file an election by July 15, 2010, the employee shall become a member of the Oklahoma Public Employees Retirement System. Any employee who is employed by the Commission after July 1, 2010, and who is otherwise eligible for membership in the Oklahoma Public Employees Retirement System shall be enrolled during employment by the Commission in the Oklahoma Public Employees Retirement System.

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

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

8. The rules of the Scenic Rivers Commission relating to minimum operation standards, public use, land use, management, property, fees, licenses, and other like

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matters, that are in effect on July 1, 2010, shall be enforceable by the Oklahoma Tourism and Recreation Commission until the Commission establishes rules.

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

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

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

Section 1454. A. It is recognized by the Legislature that an effective program for preserving the scenic beauty of the free-flowing streams and rivers designated as "scenic river areas" necessarily involves the cooperation and support of the people in the

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operating areas of designated "scenic river areas", as well as the people using the "scenic river areas", and the agencies of state government administering these areas.

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

C. In order to assist in the public use and enjoyment of such areas, ~~any Scenic Rivers Commission,~~ the Oklahoma Tourism and Recreation Department and the Oklahoma Wildlife Conservation Commission may acquire, develop and maintain public access points, easements or park areas in or near "scenic river areas". Such acquisitions shall be by private treaty only, and the use of the power of eminent domain for these purposes is specifically prohibited by the Scenic Rivers Act.

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

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

B. 1. The Secretary of Environment shall coordinate with the appropriate state environmental agencies to create a coordinated watershed restoration and protection

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strategy for each impaired scenic river in this state. The strategy shall be submitted to the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives by January 31, 2003.

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

a. an overall pollutant-specific load reduction as identified in a developed total maximum daily load (TMDL), or as otherwise calculated in the absence of a developed total maximum daily load, to bring each impaired scenic river back into compliance with water quality standards,

b. pollutant-specific load reduction goals for each state environmental agency to accomplish through its water quality protection programs,

c. detailed compliance schedules indicating how much of the load reduction goal will be accomplished each year by each state environmental agency,

d. industry-specific descriptions of how load reduction goals for each state environmental agency will be accomplished,

e. an outline of innovative, cooperative intrastate and interstate strategies that will be pursued in order to expedite pollutant reductions, in particular where scenic river watersheds cross state lines. Such strategies may include nutrient trading and conservation reserve enhancement program (CREP) initiatives, and

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f. a list of all permitted or registered water pollution sources subject to the jurisdiction of each state agency within each impaired scenic river watershed. For the permitted or registered water pollution sources subject to each state environmental agency's jurisdiction, the following information shall be included:

(1) types of operations or organizations regulated,

(2) list of the registrations or permits issued,

(3) details on governmental assistance given, and

(4) details of enforcement actions undertaken.

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

2. The ~~annual~~ progress report shall include any revisions and updates to the information provided in the original strategy, in 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,

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

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

3. If the ~~state's~~ water quality monitoring data <u>for the state</u> demonstrate that the water quality standards for phosphorus applicable to a watershed remain impaired, and

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only after all permitted or registered water pollution sources have also implemented the best available waste control processes for phosphorus to address the pollutant or pollutants contributing to the impairment of the watershed, the Department shall again evaluate and require regulated entities to take additional actions to achieve water quality standards for phosphorus.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 1466. Each county, city, incorporated town or other governmental entity that makes up a part of the ~~operating~~ designated area of a ~~Scenic Rivers Commission~~ scenic river is hereby authorized to grant or otherwise provide funds for the operation and use of the scenic river to the Oklahoma Tourism and Recreation Commission and for the environmental protection of the scenic river to the Oklahoma Conservation Commission.

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

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

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

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B. The ~~Scenic Rivers~~ Commission ~~for the Flint Creek and Illinois River within Adair, Cherokee and Delaware Counties and those portions of Barren Fork Creek within Cherokee County Scenic River Areas~~ shall promulgate rules ~~and regulations~~ for the collection and administration of the fees imposed pursuant to the provisions of this section in accordance with the Administrative Procedures Act.

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

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

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

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

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Chapter 390, O.S.L. 2009, 1462B, as amended by Section 3, Chapter 192, O.S.L. 2003, 1463, as amended by Section 5, Chapter 192, O.S.L. 2003, 1468 and 1469, as amended by Section 6, Chapter 192, O.S.L. 2003 (82 O.S. Supp. 2009, Sections 1461, 1462A, 1462B, 1463 and 1469), are hereby repealed.

SECTION 10. This act shall become effective July 1, 2010.

SECTION 11. 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.

COMMITTEE REPORT BY: COMMITTEE ON GOVERNMENT MODERNIZATION, dated 02-23-10 - DO PASS, As Amended.

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