

EHB 1017

THE STATE SENATE
Wednesday, March 25, 2009

ENGROSSED

House Bill No. 1017

ENGROSSED HOUSE BILL NO. 1017 - By: Wright (John) and Ritze of the House and Aldridge of the Senate.

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:

SECTION 1. AMENDATORY 82 O.S. 2001, Section 1461, as amended by Section 1, Chapter 192, O.S.L. 2003 (82 O.S. Supp. 2008, 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

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

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

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

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

18 1. a. The Governor shall appoint three members, one of whom
19 shall be a representative of the Oklahoma Conservation
20 Commission or the Oklahoma Tourism and Recreation
21 Commission.

1 b. The President Pro Tempore of the Senate shall appoint
2 two members who shall each be a member of a statewide
3 citizens' conservation or environmental group.

4 c. The Speaker of the House of Representatives shall
5 appoint two members who shall each be a resident of
6 one of the counties containing the scenic river area,
7 and one of whom shall be a representative of the
8 agriculture industry; and

9 2. a. The additional members of the Scenic Rivers Commission
10 created pursuant to this subsection and as authorized
11 by subsection A of this section shall be elected in a
12 nonpartisan election to represent the following:

13 (1) the registered voters who reside, own real
14 property, or own permanent residential structures
15 within six hundred sixty (660) feet of the
16 Illinois River or Flint Creek within Delaware
17 County, shall elect one member to represent them,

18 (2) the registered voters who reside, own real
19 property, or own permanent residential structures
20 within six hundred sixty (660) feet of the
21 Illinois River in Adair County, Oklahoma, shall
22 elect one member to represent them,

1 (3) the registered voters who reside, own real
2 property, or own permanent residential structures
3 within six hundred sixty (660) feet of the
4 Illinois River above its confluence with the
5 Barren Fork Creek or those portions of the Barren
6 Fork Creek in Cherokee County shall elect one
7 member to represent them,

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

11 (a) the Illinois River, above its confluence
12 with the Barren Fork Creek located in Adair,
13 Cherokee and Delaware Counties, or

14 (b) Flint Creek located within Delaware County
15 or Barren Fork Creek within Cherokee County,
16 shall elect two at-large members to represent
17 them, and

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

22 b. All members elected under divisions (1), (2) and (3)
23 of subparagraph a of this paragraph shall reside or

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

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

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

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

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

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

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

8 a. prepare and establish minimum standards for planning
9 and other ordinances and rules for the implementation
10 of the Scenic Rivers Act by counties, municipalities,
11 or any other local authorities in the Commissions'
12 operating area, and

13 b. promulgate such rules and issue such orders as
14 necessary to protect the public interest and to
15 achieve the purposes of the Scenic Rivers Act.

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

22 3. Primary emphasis in the standards shall be given to
23 protecting the aesthetic, scenic, historic, archeologic, and

1 scientific features of the scenic river area with due consideration
2 being given to the orderly development of the lands adjacent and
3 contiguous to the scenic river area.

4 4. Standards set pursuant to the provisions of the Scenic
5 Rivers Act shall not be less rigid or exacting than those
6 established by any other federal or state agency having jurisdiction
7 in respect to the subject covered by the particular standard.

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

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

17 1. Appoint and fix the salary of an administrator experienced
18 in land resource planning and management who shall serve at the
19 pleasure of the Commission and in accordance with its policies,
20 budgets, powers, and responsibilities. Such administrator may be
21 commissioned as a peace officer. The administrator may select,
22 appoint, and employ individuals to fill personnel positions

1 authorized, budgeted, and deemed necessary by the Commission to
2 implement the purposes of the Scenic Rivers Act;

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

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

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

22 5. Prepare and adopt a management plan or plans to guide and
23 control private activities and public programs and to include

1 varying degrees of protection and development based on the special
2 attributes of the area;

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

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

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

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

21 10. Own and control public access points to the scenic river
22 area, issue use permits, and purchase easements and fee title to
23 land within the Commission's operating area. Legal title to

1 property shall be held in the name of the individual Scenic Rivers
2 Commission as an agency of the State of Oklahoma;

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

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

19 13. Bring an action in the district court of any county of the
20 state where service can be obtained on one or more of the
21 defendants, to enjoin the acts or practices which appear to
22 constitute a violation of any provision of the Scenic Rivers Act or
23 any rule or order promulgated and to enforce compliance with the

1 provisions of the Scenic Rivers Act or any rule or order. Upon a
2 proper showing, a restraining order, permanent or temporary
3 injunction, writ of mandamus, or other appropriate remedies
4 including damages shall be granted. The court may not require the
5 administrator or Commission to post a bond; and

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

17 J. A Commission member to whom some private benefit, direct or
18 indirect, financial or otherwise, may come as the result of some
19 public action should not be a participant in that action. The
20 possibility, not the actuality, of a conflict of interest should
21 govern. A Commission member experiencing a conflict of interest
22 should declare his or her interest publicly, abstain from voting on
23 the matter should he or she have a vote, and refrain from

1 deliberation on the matter. In addition, the Commission member
2 should not discuss the matter with any fellow member for the purpose
3 of influencing a decision thereon.

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

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

20 2. Peace officers who become employed under this subsection or
21 who are transferred to the Scenic Rivers Commission pursuant to this
22 act who have service credit in the Oklahoma Law Enforcement
23 Retirement System may, within thirty (30) days after becoming

1 employed or transferred, elect to continue membership in the
2 Oklahoma Law Enforcement Retirement System; otherwise they may be
3 eligible to enroll only in the Oklahoma Public Employees Retirement
4 System.

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

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

1 employed under the provisions of this section and the total wages
2 paid to these employees.
3 COMMITTEE REPORT BY: COMMITTEE ON GENERAL GOVERNMENT, dated 3-23-09
4 - DO PASS.