

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 HOUSE BILL 1695

By: Blackwell of the House

and

6 Treat of the Senate
7
8

9 COMMITTEE SUBSTITUTE

10 An Act relating to sunset; amending 82 O.S. 2011,
11 Section 1461, which relates to the Scenic Rivers
12 Commission; re-creating the Commission; providing for
13 employment of seasonal employees; modifying
14 termination date and declaring an emergency.

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

15 SECTION 1. AMENDATORY 82 O.S. 2011, Section 1461, is
16 amended to read as follows:

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

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

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

7 B. 1. There is hereby re-created, to continue until July 1,
8 ~~2013~~ 2019, in accordance with the provisions of the Oklahoma Sunset
9 Law, a Scenic Rivers Commission for the Illinois River and Flint
10 Creek Scenic River Areas within Adair, Cherokee and Delaware
11 Counties and those portions of Barren Fork Creek within Cherokee
12 County.

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

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

21 1. a. The Governor shall appoint three members, one of whom
22 shall be a representative of the Oklahoma Conservation
23 Commission or the Oklahoma Tourism and Recreation
24 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,

23 (3) the registered voters who reside, own real
24 property, or own permanent residential structures

1 within six hundred sixty (660) feet of the
2 Illinois River above its confluence with the
3 Barren Fork Creek or those portions of the Barren
4 Fork Creek in Cherokee County shall elect one
5 member to represent them,

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

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

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

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

20 b. All members elected under divisions (1), (2) and (3)
21 of subparagraph a of this paragraph shall reside or
22 own property within the county they represent. All
23 at-large members elected under division (4) of
24

1 subparagraph a of this paragraph shall reside or own
2 property within Adair, Cherokee or Delaware Counties.

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

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

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

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

22 2. An interim commission consisting of the members appointed by
23 the Governor, the President Pro Tempore of the Senate, and the
24 Speaker of the House of Representatives shall provide for the

1 election of additional members as provided for in paragraph 2 of
2 subsection C of this section.

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

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

10 b. promulgate such rules and issue such orders as
11 necessary to protect the public interest and to
12 achieve the purposes of the Scenic Rivers Act.

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

19 3. Primary emphasis in the standards shall be given to
20 protecting the aesthetic, scenic, historic, archeologic, and
21 scientific features of the scenic river area with due consideration
22 being given to the orderly development of the lands adjacent and
23 contiguous to the scenic river area.

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

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

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

14 1. Appoint and fix the salary of an administrator experienced
15 in land resource planning and management who shall serve at the
16 pleasure of the Commission and in accordance with its policies,
17 budgets, powers, and responsibilities. Such administrator may be
18 commissioned as a peace officer. The administrator may select,
19 appoint, and employ individuals to fill personnel positions
20 authorized, budgeted, and deemed necessary by the Commission to
21 implement the purposes of the Scenic Rivers Act;

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

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

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

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

21 6. Provide, where appropriate in the discretion of the
22 Commission, for the review and consideration by the Commission of
23 the impact on the natural and aesthetic environment within the
24 Commission's operating area related to any existing or proposed

1 action by public agencies, private individuals or any other
2 activity;

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

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

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

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

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

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

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

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

22 14. Suspend the effectiveness of any action taken by a
23 municipality or county within the designated operating area of such
24 Commission when, in the exercise of alleged local functions, it

1 appears the action has or may have an adverse effect upon the proper
2 achievement of the purposes of the Scenic Rivers Act, whereupon all
3 proceedings thereunder shall be held in abeyance upon receipt of
4 written notice from the administrator pending a final determination
5 of the Commission in regard to such action. If it is determined
6 that such adverse effects exist, the Commission may nullify,
7 supersede, or amend said action only to the extent necessary to
8 achieve the purposes of the Scenic Rivers Act.

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

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

22 L. 1. The administrator may appoint commissioned peace
23 officers certified by the Council on Law Enforcement Education and
24 Training to secure such scenic river area, including all roadways

1 and adjacent areas to the Illinois River and Flint Creek within
2 Adair, Cherokee and Delaware Counties, and those portions of the
3 Barren Fork Creek within Cherokee County. All persons appointed by
4 the administrator as peace officers shall be and have the full
5 powers and authority of peace officers of the State of Oklahoma in
6 securing such scenic river area, including all roadways and adjacent
7 areas to the Illinois River and Flint Creek within Adair, Delaware
8 and Cherokee Counties, and those portions of the Barren Fork Creek
9 within Cherokee County. All peace officers appointed by the
10 administrator shall be in the unclassified service.

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

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

22 4. The administrator is authorized to employ seasonal ~~personnel~~
23 employees, including commissioned peace officers certified by the
24 Council on Law Enforcement Education and Training throughout the

1 calendar year to secure such scenic river area, including all
2 roadways and adjacent areas to the Illinois River and Flint Creek
3 within Adair, Cherokee and Delaware Counties, and those portions of
4 the Barren Fork Creek within Cherokee County. For the purposes of
5 the Scenic Rivers Act, seasonal employees shall be unclassified
6 employees employed by the administrator who work less than one
7 thousand six hundred (1,600) hours in any twelve-month period. The
8 administrator may employ seasonal employees throughout the calendar
9 year. Seasonal employees employed by the administrator for a period
10 of time necessary to complete a project shall be in the unclassified
11 service of the state as provided by the Oklahoma Personnel Act.
12 Seasonal employees shall not be entitled to paid leave, paid
13 holidays, retirement, health, dental or life insurance, and shall be
14 exempt from any laws, rules or practices providing for such
15 benefits. The administrator, in the annual budget request for the
16 Scenic Rivers Commission, shall include a summary of the use of
17 seasonal employees, which shall include the number of seasonal
18 employees employed under the provisions of this subsection and the
19 total wages paid to these employees.

20 5. Project labor employed by the Scenic Rivers Commission for a
21 period of time necessary to complete a project shall be in the
22 unclassified service of the state as provided by the Oklahoma
23 Personnel Act. Such employees shall not be entitled to paid leave,
24 paid holidays, retirement, health, dental or life insurance, and

1 shall be exempt from any laws, rules or practices providing such
2 benefits. The administrator shall submit in its annual budget
3 reporting a summary of the use of project labor that shall include
4 the number of workers employed under the provisions of this section
5 and the total wages paid to these employees.

6 SECTION 2. It being immediately necessary for the preservation
7 of the public peace, health and safety, an emergency is hereby
8 declared to exist, by reason whereof this act shall take effect and
9 be in full force from and after its passage and approval.

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