

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 SENATE BILL 655

By: Shaw

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5
6 AS INTRODUCED

7 An Act relating to Scenic Rivers; amending 82 O.S.
8 2011, Sections 1452 and 1461, as amended by Section
9 1, Chapter 348, O.S.L. 2013 (82 O.S. Supp. 2014,
10 Section 1461), which relate to designation of scenic
11 river areas and Scenic Rivers Commissions; expanding
12 scenic river designation on the Illinois River;
13 modifying requirements for certain commission member;
14 and providing an effective date.

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

16 SECTION 1. AMENDATORY 82 O.S. 2011, Section 1452, is
17 amended to read as follows:

18 Section 1452. A. The Oklahoma Legislature finds that some of
19 the free-flowing streams and rivers of Oklahoma possess such unique
20 natural scenic beauty, water conservation, fish, wildlife and
21 outdoor recreational values of present and future benefit to the
22 people of the state that it is the policy of the Legislature to
23 preserve these areas for the benefit of the people of Oklahoma. For
24 this purpose there are hereby designated certain "scenic river
areas" to be preserved as a part of Oklahoma's diminishing resource
of free-flowing rivers and streams.

1 B. The areas of the state designated as "scenic river areas"
2 shall include:

3 1. The Flint Creek and the Illinois River above the ~~confluence~~
4 ~~of the Barren Fork Creek~~ 667-foot elevation level of Tenkiller Ferry
5 Lake in Cherokee, Adair and Delaware Counties;

6 2. The Barren Fork Creek in Adair and Cherokee Counties from
7 the present alignment of Highway 59 West to the Illinois River;

8 3. The Upper Mountain Fork River above the 600-foot elevation
9 level of Broken Bow Reservoir in McCurtain and LeFlore Counties;

10 4. Big Lee's Creek, sometimes referred to as Lee Creek, located
11 in Sequoyah County, above the 420-foot MSL elevation, excluding that
12 portion necessary for a dam to be built in the State of Arkansas
13 with a crest elevation of no more than the 420-foot MSL elevation.
14 The Oklahoma Water Resources Board shall make such classifications,
15 designations or adjustments to Oklahoma's water quality standards as
16 required to allow the impoundment of water by said dam; and

17 5. Little Lee's Creek, sometimes referred to as Little Lee
18 Creek, located in Adair and Sequoyah Counties, beginning
19 approximately four (4) miles east-southeast of Stilwell, Oklahoma,
20 and ending at its conjunction with Big Lee's Creek approximately two
21 (2) miles southwest of Short, Oklahoma.

22 C. The term "scenic river area" as used in the Scenic Rivers
23 Act is defined as the stream or river and the public use and access
24 areas located within the area designated.

1 SECTION 2. AMENDATORY 82 O.S. 2011, Section 1461, as
2 amended by Section 1, Chapter 348, O.S.L. 2013 (82 O.S. Supp. 2014,
3 Section 1461), is amended to read as follows:

4 Section 1461. A. 1. A Scenic Rivers Commission may be created
5 pursuant to the Scenic Rivers Act for each designated scenic river
6 area or combination of areas for which operating areas for planning
7 and management have been delineated. Each Scenic Rivers Commission
8 shall be organized in cooperation with local governments in
9 accordance with procedures provided for in the Scenic Rivers Act.

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

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

18 B. 1. There is hereby re-created, to continue until July 1,
19 2017, in accordance with the provisions of the Oklahoma Sunset Law,
20 a Scenic Rivers Commission for the Illinois River and Flint Creek
21 Scenic River Areas within Adair, Cherokee and Delaware Counties and
22 those portions of Barren Fork Creek within Cherokee County.

23 2. The operating area for the Scenic Rivers Commission for the
24 Illinois River and Flint Creek will be limited to areas within

1 Adair, Cherokee and Delaware Counties, and to areas within Cherokee
2 County for Barren Fork Creek.

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

7 1. a. The Governor shall appoint three members, one of whom
8 shall be a representative of the Oklahoma Conservation
9 Commission or the Oklahoma Tourism and Recreation
10 Commission.

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

14 c. The Speaker of the House of Representatives shall
15 appoint two members who shall each be a resident of
16 one of the counties containing the scenic river area,
17 and one of whom shall be a representative of the
18 agriculture industry; and

19 2. a. The additional members of the Scenic Rivers Commission
20 created pursuant to this subsection and as authorized
21 by subsection A of this section shall be elected in a
22 nonpartisan election to represent the following:

23 (1) 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 or Flint Creek within Delaware
3 County, shall elect one member to represent them,

4 (2) the registered voters who reside, own real
5 property, or own permanent residential structures
6 within six hundred sixty (660) feet of the
7 Illinois River in Adair County, Oklahoma, shall
8 elect one member to represent them,

9 (3) the registered voters who reside, own real
10 property, or own permanent residential structures
11 within six hundred sixty (660) feet of the
12 Illinois River above ~~its confluence with the~~
13 ~~Barren Fork Creek~~ the 667-foot elevation level of
14 Tenkiller Ferry Lake in Cherokee County or those
15 portions of the Barren Fork Creek in Cherokee
16 County shall elect one member to represent them,

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

20 (a) the Illinois River, above its confluence
21 with the Barren Fork Creek located in Adair,
22 Cherokee and Delaware Counties, or

23 (b) Flint Creek located within Delaware County
24 or Barren Fork Creek within Cherokee County,

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

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

7 b. All members elected under divisions (1), (2) and (3)
8 of subparagraph a of this paragraph shall reside or
9 own property within the county they represent. All
10 at-large members elected under division (4) of
11 subparagraph a of this paragraph shall reside or own
12 property within Adair, Cherokee or Delaware Counties.

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

18 E. 1. Vacancies on each Commission shall be filled, as
19 applicable, by the appointing authority or by election, pursuant to
20 the provisions of this section. Members shall serve until their
21 respective successors shall be appointed and qualify, or be elected,
22 unless terminated by death or resignation.

23 2. Each Scenic Rivers Commission shall promulgate rules
24 consistent with the requirements of this section for replacing

1 members who fail to attend meetings or otherwise become unable to
2 function due to disability, death, or resignation. The replacement
3 shall serve for the remainder of the unexpired term of the member
4 being replaced.

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

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

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

- 15 a. prepare and establish minimum standards for planning
16 and other ordinances and rules for the implementation
17 of the Scenic Rivers Act by counties, municipalities,
18 or any other local authorities in the Commissions'
19 operating area, and
- 20 b. promulgate such rules and issue such orders as
21 necessary to protect the public interest and to
22 achieve the purposes of the Scenic Rivers Act.

23 2. The standards shall be developed and executed in such manner
24 as to protect and enhance the values which caused the area to be

1 named a scenic river area without, insofar as is consistent with
2 said protection and enhancement, limiting other uses that do not
3 substantially interfere with the protection, public use, and
4 enjoyment of these values.

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

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

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

23 1. Appoint and fix the salary of an administrator experienced
24 in land resource planning and management who shall serve at the

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

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

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

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

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

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

14 7. Accept, in the name of and through the Commission, real and
15 personal property that is granted, bequeathed, devised, or conveyed
16 to the Commission to implement the purposes of the Scenic Rivers
17 Act, upon such trusts and conditions as may be prescribed by the
18 grantors or devisors, upon approval of the Commission;

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

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

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

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

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

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

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

22 J. A Commission member to whom some private benefit, direct or
23 indirect, financial or otherwise, may come as the result of some
24 public action should not be a participant in that action. The

1 possibility, not the actuality, of a conflict of interest should
2 govern. A Commission member experiencing a conflict of interest
3 should declare his or her interest publicly, abstain from voting on
4 the matter should he or she have a vote, and refrain from
5 deliberation on the matter. In addition, the Commission member
6 should not discuss the matter with any fellow member for the purpose
7 of influencing a decision thereon.

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

11 L. 1. The administrator may appoint commissioned peace
12 officers certified by the Council on Law Enforcement Education and
13 Training to secure such scenic river area, including all roadways
14 and adjacent areas to the Illinois River and Flint Creek within
15 Adair, Cherokee and Delaware Counties, and those portions of the
16 Barren Fork Creek within Cherokee County. All persons appointed by
17 the administrator as peace officers shall be and have the full
18 powers and authority of peace officers of the State of Oklahoma in
19 securing such scenic river area, including all roadways and adjacent
20 areas to the Illinois River and Flint Creek within Adair, Delaware
21 and Cherokee Counties, and those portions of the Barren Fork Creek
22 within Cherokee County. All peace officers appointed by the
23 administrator shall be in the unclassified service.
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1 2. Peace officers who become employed under this subsection or
2 who are transferred to the Scenic Rivers Commission pursuant to this
3 act who have service credit in the Oklahoma Law Enforcement
4 Retirement System may, within thirty (30) days after becoming
5 employed or transferred, elect to continue membership in the
6 Oklahoma Law Enforcement Retirement System; otherwise they may be
7 eligible to enroll only in the Oklahoma Public Employees Retirement
8 System.

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

12 4. The administrator is authorized to employ seasonal
13 employees, including commissioned peace officers certified by the
14 Council on Law Enforcement Education and Training throughout the
15 calendar year to secure such scenic river area, including all
16 roadways and adjacent areas to the Illinois River and Flint Creek
17 within Adair, Cherokee and Delaware Counties, and those portions of
18 the Barren Fork Creek within Cherokee County. For the purposes of
19 the Scenic Rivers Act, seasonal employees shall be unclassified
20 employees employed by the administrator who work less than one
21 thousand six hundred (1,600) hours in any twelve-month period. The
22 administrator may employ seasonal employees throughout the calendar
23 year. Seasonal employees employed by the administrator for a period
24 of time necessary to complete a project shall be in the unclassified

1 service of the state as provided by the Oklahoma Personnel Act.
2 Seasonal employees shall not be entitled to paid leave, paid
3 holidays, retirement, health, dental or life insurance, and shall be
4 exempt from any laws, rules or practices providing for such
5 benefits. The administrator, in the annual budget request for the
6 Scenic Rivers Commission, shall include a summary of the use of
7 seasonal employees, which shall include the number of seasonal
8 employees employed under the provisions of this subsection and the
9 total wages paid to these employees.

10 5. Project labor employed by the Scenic Rivers Commission for a
11 period of time necessary to complete a project shall be in the
12 unclassified service of the state as provided by the Oklahoma
13 Personnel Act. Such employees shall not be entitled to paid leave,
14 paid holidays, retirement, health, dental or life insurance, and
15 shall be exempt from any laws, rules or practices providing such
16 benefits. The administrator shall submit in its annual budget
17 reporting a summary of the use of project labor that shall include
18 the number of workers employed under the provisions of this section
19 and the total wages paid to these employees.

20 SECTION 3. This act shall become effective November 1, 2015.
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