

Tennessee State Code

CHAPTER 13

SCENIC RIVERS

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11-13-101. Title - Legislative intent.

(a) This chapter shall be known by the title "The Tennessee Scenic Rivers Act of 1968."

(b) The general assembly finds that certain rivers of Tennessee possess outstanding scenic, recreational, geological, fish and wildlife, botanical, historical, archaeological and other scientific and cultural values of great present and future benefit to the people. The general assembly further finds that the policy that has resulted in dam and other construction on many of the rivers of Tennessee needs to be complemented by a policy that would preserve other valuable selected rivers or sections thereof in their free-flowing natural or scenic condition and protect their water quality and adjacent lands. It is the policy of the general assembly to preserve and, if necessary, reclaim for the benefit of the people selected parts of Tennessee's diminishing resources of freeflowing rivers. It is the policy of the general assembly to maintain a proper balance between reservoirs and free-flowing rivers, to provide, thereby, a desirable variety of scenic, recreational, scientific and other values. It is the policy of the general assembly to preserve, within the scenic river system itself, several different types and examples of river areas including the mountain streams and deep gorges of east Tennessee, the pastoral rivers of middle Tennessee and the swamp and wildfowl rivers of west Tennessee. For aesthetic as well as ecological and other scientific reasons, priority and especial emphasis shall be given to the preservation of natural, unspoiled, undeveloped river areas. Few of these are left in the eastern United States and the general assembly feels a strong obligation to the American people to protect the remarkably beautiful ones in Tennessee. The general assembly affirms that it must not deny the people of this generation and their descendants the opportunity to refresh their spirits with the infinite beauties of the unspoiled stream. To implement these policies it is the purpose of this chapter to establish a state scenic rivers system by designating certain scenic river

areas for immediate inclusion in the system and by prescribing the procedures and criteria for protecting and administering the system and for adding new components to it. It is not the intent of this chapter to require or to authorize acquisition of all lands within the exterior boundaries of scenic river areas but to assure preservation of the scenic, ecological and other values and to provide proper management of the recreational, wildlife and other land and water resources. It is the intention of the general assembly that in all planning for the use and development of water and related land resources, consideration shall be given by all local, state and federal agencies involved to potential scenic river areas, and all river basin and project plan reports should discuss any such potential. [Acts 1968, ch. 540, §§ 1, 2; T.C.A., § 11-1401.]

Comparative Legislation. Scenic rivers:

Ark. Stat. Ann. § 9-1201 et seq.

Ga. O.C.G.A. § 12-5-350 et seq.

Ky. Rev. Stat. Ann. § 146.200 et seq.

N.C. Gen. Stat. § 113A-39 et seq.

Va. Code § 10-167 et seq.

11-13-102. Definitions. -Except as otherwise required by the context:

(1) "Conservation easement" means a conservation easement as defined in § 66-9-303. No conservation easement obtained pursuant to this chapter shall grant a right of physical access to the public;

(2) "Free flowing" means existing or flowing in natural condition without impoundment, diversion, straightening, rip-rapping, or other modification of ' the waterway. The existence, however, of low dams, diversion works, and other minor structures at the time any river is proposed for inclusion in the state scenic rivers system shall not automatically bar its consideration for such inclusion; provided, that this shall not be construed to authorize, intend, or encourage future construction of such structures within components of the state scenic rivers system;

(3) "Public access area" means an area adjoining the river acquired by the state in fee simple;

(4) "Public use easement" means a perpetual right in land of less than fee simple which:
(A) Obligates the grantor and his heirs and assigns to certain restrictions constituted to maintain and enhance the scenic qualities of those lands bordering the river;
(B) Is restricted to the area defined in the easement deed; and
(C) Grants a right of public use but prohibits camping;

(5) "River" means a flowing body of water or a section, portion or tributary thereof, including rivers, streams, creeks, branches, or small lakes; and

(6) "Road" means highway, hard-surface road, improved and unimproved dirt road. The existence, however, of unimproved roads at the time any river is proposed for inclusion in the state scenic rivers system shall not automatically bar its consideration for such inclusion; provided, that this shall not be construed to authorize, intend, or encourage future construction. [Acts 1968, ch. 540, § 3; 1972, ch. 686, § 1; T.C.A., § 11-1402; Acts 1981, ch. 361, § 11.]

Compiler's Notes. Acts 1981, ch. 361, which amended this section, provided in § 14 of the act that the

provisions of the act shall not affect any easement entered into prior to July 1, 1981, nor any rights, privileges or duties pursuant to such easements. See also § 66-9-309.

Section to Section References. This section is referred to in §§ 11-13-105, 11-13-109.

11-13-103. Classes of rivers includable in system. - The following types of rivers are eligible for inclusion in the state scenic rivers system in which they will be administered in general accord with the criteria hereinafter set forth:

Classes of Scenic River Areas

Class I Natural river areas

Class II Pastoral river areas

Class III Partially developed river areas

Class I Natural River Areas

Those free-flowing rivers or sections of rivers with shorelines and scenic vistas unchanged, or essentially unchanged, by man, with no extensive paralleling roads closer than one (1) mile (except in river gorges where there must be no extensive paralleling roads within the gorge or within one quarter (1/4) mile back from the gorge rim), and with only a limited number of crossing roads or spur roads existing at the time of designation as a state scenic river. Additional access would be limited to trails. Waters would be kept unpolluted. Lands adjacent to these rivers that are not already in state or other public ownership should be protected by acquisition of fee title or by conservation easements to the full extent necessary to preserve a true natural environment. These river areas should be managed in accordance with the concepts embodied in the national Wilderness Act (78 Stat. 890; 16 U.S.C. ch. 23), and would represent samples of natural America saved unspoiled for this and future generations to enjoy as precious pieces of our natural heritage.

Class II Pastoral River Areas

Those free-flowing rivers or sections of rivers the lands adjacent to which are partially or predominantly used for agriculture and other dispersed human activities which do not substantially interfere with public use and enjoyment of the rivers and their shores. Waters would be kept unpolluted. Lands adjacent to any such river would remain primarily in the type of use existing at the time of designation as a state scenic river or else be allowed to revert to natural conditions. Scenic values should be preserved by acquisition of conservation easements, zoning and similar means, and by acquisition of fee title of areas set aside for access, camping and recreation. Acquisition of fee title or other areas would not be precluded, particularly where the cost of alternative methods of land use control is comparable to the cost of acquiring the fee with leaseback or other similar arrangements.

Class III Partially Developed River Areas

Those rivers or sections of rivers in areas affected by the works of man, but which still possess actual or potential scenic values. Included would be rivers with some housing or other building developments near their shorelines, rivers with parallel roads or railroads, rivers with some impoundments, and rivers polluted, for example, by strip-mine runoff. These rivers would be

managed to prevent further loss of scenic values, to improve the scenic aspects of their surroundings, and to restore the quality of their waters. A polluted river section in an otherwise natural area could be improved to the point where it would be upgraded to class 1. Lands adjacent to any such river and the use thereof, should be subject to public control by zoning, tax incentives, acquisition of easements or fee title and other means sufficient to realize the purposes for which such river is designated a state scenic river. [Acts 1968, ch. 540, § 4; T.C.A., § 11-1403]

Compiler's Notes. The national Wilderness Act may be found in 16 U.S.C., §§ 1131-1136.

Section to Section References. This section is referred to in § 11-13-106.

11-13-104. Rivers initially included in system. - The rivers or segments of rivers to be initially included in this system, being classified by the above-stated criteria, are as follows:

Class I Natural River Areas

Blackburn Fork - That segment of the stream from the county road at Cummings Mill downstream one and one-half (1 1/2) miles.

Conasauga River - The entire segment of the river in Polk County, upstream from the Highway 411 bridge.

Roaring River - That segment from State Route 136 downstream two (2) miles.

Spring Creek - That segment from Waterloo Mill downstream to the Overton-Jackson county line.

Hatchie River as a swamp river.

Class II Pastoral River Areas

Blackburn Fork - That segment downstream from a point one and one-half (1 1/2) miles downstream from the county road at Cummings Mill to its confluence with Roaring River.

Buffalo River - The entire river, except that portion which lies within Wayne, Perry, Humphreys and Lewis counties.

Collins River - That segment which lies within the Savage Gulf natural scientific area.

Duck River - That segment of the Duck River beginning at Iron Bridge Road at river mile 136.4 extending continuously to a point upstream to the boundary of Marshall County at river mile 173.7" under "Class II Pastoral River Areas".

Harpeth River - The entire river except that segment lying north of Highway 100 and south of Interstate 40 in Davidson County; and except those segments located in Cheatham, Dickson and Williamson counties.

Roaring River - That segment downstream from a point two (2) miles downstream from State Route 136, to its confluence with the future Cordell Hull Lake.

Spring Creek - That segment between State Highway 136 and Waterloo Mill, and that segment downstream from the Overton-Jackson county line to its confluence with Roaring River.

Class III Developed River Areas

Clinch River – That portion from Melton Hill Dam upstream to Pellissippi Parkway.

French Broad River - That segment from the North Carolina state line to its confluence with Douglas Lake.

Harpeth River - Only that segment of the Harpeth River lying north of Highway 100 and south of Interstate 40; it being the specific intent to exclude all segments of the Harpeth River lying in or

flowing through Cheatham, Dickson and Williamson counties.

Tuckahoe Creek

Hiwassee River - That portion from the Highway 411 bridge to the North Carolina line. [Acts 1968, ch. 540, § 5; 1969, ch. 31, § 1; 1969, ch. 110, § 1; 1970, ch. 437, § 2; 1972, ch. 536, §§ 1, 2; T.C.A., § 11-1404; Acts 1984, ch. 830, § 1.]

Compiler's Notes. Section 1 of Acts 1978, ch. 623 provided that "The provisions of Title 11, Chapter 14, shall not apply to the construction and maintenance of approach roads to and a bridge over the Hatchie Class I Swamp River as a link in the Great River Road recreation parkway to be located in the vicinity of the Fort Pillow State Historic area by any public agency, corporation or person authorized by law to construct roads and bridges, which construction and maintenance are hereby authorized; provided, however, such construction shall be compatible with the surrounding area to the fullest extent possible. The Department of Transportation is authorized to proceed with location, design and construction plans for such approach roads and bridge and is directed to consult the Department of Conservation in determining the exact location and design criteria of the approach roads and bridge and to give consideration to the enhancement of recreational resources in the overall design and location of the bridge and adjacent road."

Section to Section References. This section is referred to in § 11-13-113.

11-13-105. Proposals for additions to system. - The commissioner of conservation shall study and from time to time submit to the governor and to the general assembly proposals for the addition to the state scenic rivers system of rivers and sections of rivers which, in his judgment, fall within one or more of the categories set out in § 11-13-102. Each proposal shall specify the category of the proposed addition and shall be accompanied by a -detailed report on the factors which, in the judgment of the commissioner, make the area a worthy addition to the system. The intention of this requirement is to ensure that such studies will be made; it is not intended to preclude or discourage studies and proposals by other agencies or by citizen groups working independently or with the conservation department. [Acts 1968, ch. 540, § 6; T.C.A., § 11-1405.]

11-13-106. Administration of system - Criteria. - (a) The scenic river system shall be administered by the department of conservation in cooperation with the wildlife resources agency

and according to the policies and criteria set forth in this chapter.

(b) The commissioner of conservation is authorized to make and enforce such regulations as are necessary to carry out the provisions of this chapter as they relate to the scenic values of river areas.

(c) In such administration, primary emphasis shall be given to protecting aesthetic, scenic, historic, archaeological, and scientific features of the area; no buildings for accommodation, administration, or similar purposes shall be constructed, within a scenic river area, within view of the river or its banks, nor shall any automobile parking lots, campgrounds, or similar facilities be located in areas not adequately screened from the river.

(d) When publicizing the state's scenic rivers system, the commissioner shall not publicize, and shall omit from any publicity, any class II or class III river any part of which flows through a county with a population in excess of four hundred thousand (400,000) persons according to the United States census of 1970 or any subsequent census.

(e) Management plans for protection may differ in intensity within a given class of rivers or within a given river area, based on special attributes of the different localities, but should adhere to the following criteria as closely as possible:

(1) Class I scenic river areas should be managed in a manner which:

(A) Would best maintain and enhance those conditions which are attributed to a wilderness

type area, and those criteria embodied in § 11-13-103;

(B) Would allow camping and river access only at designated public access areas acquired in fee; and

(C) Would allow for public use only within prescribed public use easements or public access areas;

(2) Class II scenic river areas should be managed in a manner which would best maintain and enhance the scenic values of the river and the adjacent lands while at the same time preserving

the right of riparian landowners to use the river for customary agricultural and other rural purposes; and

(3) Class III scenic river areas should be managed in a manner which would best maintain and

enhance the scenic values of the river while at the same time preserving the right of riparian landowners to use the river for customary agricultural, residential, recreational, commercial, and industrial purposes. [Acts 1968, ch. 540, § 7; 1972, ch. 686, § 2; impl. am. Acts 1974, ch. 481, §§ 4, 6; T.C.A., § 11-1406.]

11-13-107. Classification to higher status. - (a) Whenever in the judgment of the commissioner of conservation a scenic river area previously administered as class II or class III has been sufficiently restored and enhanced in its natural scenic and recreational qualities, the commissioner of conservation may recommend to the general assembly that such an area be classified to a higher status (class II raised to class I, or class III raised to a class II or class I) and

thereafter administered accordingly.

(b) No scenic river area shall be managed in a manner that would:

- (1) Result in the area falling into a lower class; or
- (2) Be detrimental to the highest water quality classification standards determined by federal and/or state agencies. (Acts 1968, ch. 540, § 8; 1972, ch. 686, § 3; T.C.A., § 11-1407.)

11-13-108. General rules for establishing boundaries of area -- Establishment of Duck River area.

(a) The commissioner of environment and conservation shall, within two (2) years after a river or segment of river has been made part of the state scenic rivers system, determine generally the boundaries of the scenic river area associated with that river or river segment. Establishment of these boundaries shall be determined by the river classification as follows:

(1) For a Class I river (the gorge and swamp rivers), the boundary shall be established in such a way that it includes at least the entire scenic vista from the river and its banks. In the case of gorge rivers, the boundaries shall be no more than three thousand feet (3,000') from the center of the river on each side. In the case of swamp rivers, the boundaries shall be no more than one thousand feet (1,000') from the center of the river on each side; and

(2) For Class II or Class III rivers area, the boundary shall include the vista from the river and shall be no more than four hundred fifty feet (450') from the usual banks of the river on each side.

(b) (1) For the establishment of boundaries on the new scenic river created by § 11-13-104, a segment of the Duck River, the commissioner of environment and conservation shall engage in a new program of cooperative effort with landowners. As soon as practicable, the commissioner shall engage in a program of outreach and education of the property owners in the area of this river segment and the local community to explain the program and the environmental and economic benefits it affords. The commissioner shall then, using sound discretion and considering all relevant circumstances, establish a perpetual boundary of the scenic river area associated with the river or river segment. If the proposed boundary of the scenic river area includes private property, the state shall obtain the notarized consent of the private landowner before establishing the boundary.

(2) No later than July 31, 2005, the commissioner of environment and conservation shall submit a report to the chairs of the senate environment, conservation, and tourism committee and the house conservation and environment committee on this cooperative effort. The report shall include a description of the outreach and educational efforts of the department, a description of the areas for which landowner consent for scenic river boundaries was obtained, a description of the areas for which scenic river boundaries were established or are in the process of being established for the river, and recommendations for or against expanding this program of cooperative effort to all scenic rivers and any suggested modifications. Until this section is amended to the contrary, the department shall only

establish boundaries on this river based upon the consent of the owner of any affected private lands.

HISTORY: Acts 1968, ch. 540, § 9; 1970, ch. 437, § 1; 1976, ch. 462, § 1; T.C.A., § 11-1408; 2001, ch. 232, § 2.

11-13-109. Acquisition of land. - Within the exterior boundaries of a scenic river area, as established under § 11-13-108, the commissioner of conservation may acquire on behalf of the state of Tennessee lands in fee title, or an interest in land in the form of easements as defined in § 11-13-102. Acquisition of land or of interest therein may be by donation, purchase with donated or appropriated funds, exchange, or otherwise. [Acts 1968, ch. 540, § 10; 1972, ch. 686, § 4. T.C.A., § 11-1409; Acts 1984, ch. 575, § 1.]

11-13-110. [Repealed.]

11-13-111. Land uses permitted. - Land uses to be allowed within the exterior boundaries of a scenic river area shall depend upon the classification of such an area, as follows:

(a)(1) In class I scenic river areas, no new roads or buildings shall be constructed, and there shall be no mining. The cutting of timber shall be allowed pursuant to reasonable regulations issued by the commissioner of conservation, which regulations shall be consistent with commonly accepted

tree farming practices; and

(2) In class II and class III scenic river areas, the continuation of present agricultural practices, such as grazing and the propagation of crops, shall be permitted. The construction of farm-use buildings shall be permitted, provided that it is found to be compatible with the maintenance of scenic vistas from the stream and its banks. There shall be no mining, commercial timber harvest,

or construction of roads paralleling the river within the limits of any conservation easement, public

use easement or public access area. Public access through new road construction, as well as landings and other structures related to recreational use of these scenic river areas shall be allowed, provided there is no other such access within seven (7) river miles in either direction.

(b) (1) No landfill for the disposal of solid or hazardous wastes shall be permitted within two (2) miles from the center of a Class II river on each side nor within two (2) miles of the center of such river on each side in any county which is adjacent to such Class II river, notwithstanding the fact that the river is not designated as a scenic river in such adjacent county, if the river in such adjacent county flows into the county in which such river is designated as a Class II river.

(2) It is the intention of the general assembly by the provisions of this subsection to protect Class II rivers from possible pollution due to the proximity of landfills for the disposal of solid or hazardous wastes.

HISTORY: Acts 1968, ch. 540, § 12; 1972, ch. 686, § 6; T.C.A., § 11-1411; Acts 1981, ch. 361, § 12; 1990, ch. 1077, § 1.

[Acts 1968, ch. 540, § 12; 1972, ch. 686, § 6; T.C.A., § 11-1411; Acts 1981, ch. 361, § 12.]

Compiler's Notes. Acts 1981, ch. 361, which amended this section, provided in § 14 of the act that the provisions of the act shall not affect any easement entered into prior to July 1, 1981, nor any rights, privileges or duties pursuant to such easements. See also § 66-9-309.

11-13-112. Conflict with other laws. - Any component of the state scenic river system that is or shall become a part of any state park, wildlife refuge, or similar area shall be subject to the provisions of this chapter and the laws under which the other areas may be administered, and in the case of conflict between the provisions of these laws the more restrictive provisions shall apply. [Acts 1968, ch. 540, § 13; T.C.A., § 11-1412.]

11-13-113. Cooperation of other state agencies with commissioner of conservation. - (a) All state agencies promptly upon enactment of this chapter, inform the commissioner of conservation of any proceedings, studies, or other activities within their jurisdiction, and regardless of by whom requested, which are now in progress and which affect or may affect any of the rivers specified in § 11-13-104. They shall likewise inform him of any such proceedings, studies, or other activities which are hereafter commenced or resumed before they are commenced or resumed.

(b) Nothing in this chapter shall affect the jurisdiction or responsibilities of other state agencies under other provisions of law with respect to fish and wildlife. [Acts 1968, ch. 540, § 14; T.C.A., § 11-1413.]

11-13-114. Inclusion within national scenic rivers system. - Nothing in this chapter shall preclude a component of the state scenic rivers system from becoming a part of any national scenic rivers system. The commissioner of conservation is directed to encourage and assist any federal studies for inclusion of Tennessee rivers in a national scenic rivers system. The commissioner of conservation may enter into written cooperative agreements for joint federalstate administration of a Tennessee component of any national scenic rivers system, provided such agreements for the administration of water and land uses are not less restrictive than those set forth in this chapter. [Acts 1968, ch. 540, § 15; T.C.A., § 11-1414.]

11-13-115. Assistance from other agencies. - The commissioner of conservation may seek financial assistance for the state scenic rivers system from the land and water conservation fund and other federal and local government sources. In the administration and study of the system and in studies of potential additions to the system he may seek technical assistance from the bureau of outdoor recreation and other federal and local government agencies. [Acts 1968, ch. 540, § 16; T.C.A., § 11-1415.]

11-13-116. Water pollution control. - The commissioner of conservation shall cooperate with the appropriate federal and state water pollution control agencies and environmental management agencies, including forestry, for the purpose of eliminating or diminishing the pollution of waters within scenic rivers areas, providing such cooperation furthers the objectives of preserving natural stream flow and natural ecological conditions. [Acts 1968, ch. 540, § 17; T.C.A., § 11-1416.]

11-13-117. Violations - Penalty. - Whoever violates, fails, neglects or refuses to obey any

provision of this chapter or regulation or order of the commissioner of conservation may be compelled to comply with or obey the same by injunction, mandamus or other appropriate remedy; and provided further that whoever violates, fails, neglects or refuses to obey any provision of this chapter or regulation or order of the commissioner of conservation may be punished by a fine of not more than fifty dollars (\$50.00) for each day of such violation. [Acts 1968, ch. 540, § 18; T.C.A., § 11-1417.]

Collateral References. Right to maintain action to enjoin public nuisance as affected by existence of pollution control agency. 60 A.L.R.3d 665.

11-13-118. Registry of riparian lands - The department shall maintain a registry of riparian lands along those segments of designated scenic rivers specified in § 11-13-104, that are not in state ownership and whose owners have voluntarily agreed to maintain them in a natural state. Such registration shall not be binding nor shall it involve any transfer of property rights. However, owners of riparian lands so registered may at any time voluntarily consent to have such areas included within scenic river boundaries as provided in § 11-13-108. The commissioner may adopt guidelines or regulations for the administration of this voluntary registration program including, but not limited to, the uses that may be made of lands in the registry. Owners of lands in the registry shall be permitted to make public the fact that the area is so listed. If the commissioner finds at any time that the owner has failed to maintain any such lands in a natural state, they shall be removed from the registry.