

Senate Energy, Agriculture and Natural Resources Committee 1

Amendment No. 1 to SB0466

**Southerland
Signature of Sponsor**

AMEND Senate Bill No. 466

House Bill No. 74*

by deleting all language after the caption and substituting instead the following:

WHEREAS, the State of Tennessee is fortunate to possess mountains, rivers, lakes, and other natural wonders that benefit our quality of life and boost the economy of the State by attracting visitors to rural counties; and

WHEREAS, in East Tennessee, the Ocoee River is one such natural wonder that has become the nation's most popular whitewater river. In 1983, the United States Congress passed legislation to provide for recreational water releases from the Ocoee No. 2 power project and to enable the State of Tennessee and the Tennessee Valley Authority to enter into a contract to provide reliable releases for 116 days each year. That contract expires in March 2019, with the last recreational release for rafting to occur in October 2018; and

WHEREAS, since the Ocoee River first became available for rafting in 1978, nearly five million people have rafted the river, with over two million of those visitors arriving in the past ten years; and

WHEREAS, the Ocoee River is an economic engine and centerpiece for tourism development in the southeastern corner of Tennessee, which has led to the construction of lodging facilities, restaurants, and retail outlets. Many of these inns, restaurants, retail outlets, and shops will struggle to survive without the annual influx of visitors to the Ocoee River; and

WHEREAS, the Ocoee River Management Zone is owned by the TVA and the United States Forest Service and managed by the Tennessee Department of Environment and Conservation pursuant to agreements between the agencies; and

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WHEREAS, the members of this legislative body recognize that the passage of new legislation is necessary to support management of the area by Tennessee State Parks, to encourage economic growth of the area, and to support recreational releases on the Ocoee River; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 11, is amended by adding the following as a new chapter:

11-26-101.

This chapter shall be known and may be cited as the "Ocoee River Recreation and Economic Development Fund Act."

11-26-102.

As used in this chapter, unless the context requires otherwise:

- (1) "Board" means the Ocoee River recreation and economic development fund board created pursuant to § 11-26-104;
- (2) "Commissioner" means the commissioner of environment and conservation or the commissioner's designee;
- (3) "Department" means the department of environment and conservation;
- (4) "Development fund" means the Ocoee River recreation and economic development fund;

(5) "Nonprofit organization" means an entity that is exempt from federal income taxation pursuant to § 501(c) of the Internal Revenue Code, codified in 26 U.S.C. § 501(c), as it may be amended;

(6) "Ocoee River management zone" means the area of land managed by the department in accordance with agreements with the Tennessee Valley Authority and U.S. Forest Service;

(7) "Ocoee River recreation fee" means the fee deposited in the development fund pursuant to the issuance of a permit as authorized in § 11-26-107(a); and

(8) "Rafting season" means the time period within a calendar year commencing on the date of the first release of water from the Ocoee River dams for recreational purposes by the Tennessee Valley Authority and concluding on the date of the last release of water from such dams for recreational purposes.

11-26-103.

(a) The Ocoee River recreation and economic development fund is established as a special agency account in the state general fund.

(b) The purpose of this chapter is to support recreational water releases on the Ocoee River management by Tennessee State Parks and to encourage economic growth of the river.

(c) All revenue collected from the Ocoee River recreation fee, pursuant to § 11-26-107, shall be deposited into the development fund.

(d) The development fund may be used for the following purposes:

(1) All costs incurred by the department associated with management of the Ocoee River management zone;

(2) Infrastructure upgrades to the Ocoee River management zone;

(3) Tourism promotion and economic development activities that benefit the Ocoee River management zone;

(4) Expenses of the board and the department associated with administration of the development fund; and

(5) Other reasonable expenses as determined by the board to be necessary to carry out the intent of this chapter.

(e) The development fund may accept funds from any public or private entity and may solicit private grants or donations.

(f) Moneys from the development fund shall not be transferred or otherwise revert to the general fund.

(g) The state treasurer shall invest moneys in the development fund, in accordance with § 9-4-603, except as qualified by this chapter. The state treasurer shall hold the development fund separate and apart from all other moneys, funds, and accounts.

(h) Any balance remaining unexpended at the end of a fiscal year in the development fund shall be carried forward into the subsequent fiscal year.

(i) Investment earnings credited to the assets of the development fund, including, but not limited to, interest, shall be carried forward into the subsequent fiscal year.

(j) Moneys received by a nonprofit entity created pursuant to § 11-26-105(a)(3), shall be expended only in accordance with, and for the purposes stated in, this chapter.

11-26-104.

(a) There is established the Ocoee River recreation and economic development fund board. The board shall be attached to the department of environment and conservation for administrative purposes, but shall be independent of the department.

Expenditures from the development fund shall be made only upon authorization of the board.

(b)

(1) The board shall consist of eleven (11) voting members as follows:

(A) The manager of the Hiwassee/Ocoee Scenic River State Park;

(B) The comptroller of the treasury, or designee;

(C) The state treasurer, or designee;

(D) The member of the house of representatives whose legislative district includes the majority of the Ocoee River management zone;

(E) The member of the senate whose legislative district includes the majority of the Ocoee River management zone;

(F) The Polk County mayor;

(G) One (1) member, appointed by the governor, who represents economic development interests;

(H) One (1) member, appointed by the governor, who represents private boater interests; and

(I) Three (3) members, appointed by the governor, who are Ocoee River management zone commercial permit holders.

(2) The commissioner of environment and conservation, the commissioner of tourism, the commissioner of economic and community development, and the executive director of the wildlife resources agency, or their designees, shall serve as ex officio, nonvoting members of the board.

(c) Appointed board members shall serve four-year, renewable terms. In order that the members of the board serve staggered terms, the initial appointments to the board shall consist of:

(1) One (1) commercial permit holder member to serve a term of two (2) years;

(2) One (1) commercial permit holder member and one (1) private boater member to serve a term of three (3) years; and

(3) One (1) commercial permit holder member and one (1) economic development member to serve a term of four (4) years.

(d) Members shall be appointed by June 15 of each year to take office on July 1 of each year.

(e) Should a board position become vacant through resignation, removal, or other cause, the governor shall appoint a new member to serve the unexpired term. A board member shall continue to serve on the board after the expiration of the member's term until a new member is appointed.

(f) Seven (7) members of the board shall constitute a quorum for the purpose of conducting business.

(g) Board members shall receive no compensation for their service on the board, but may be reimbursed for those expenses allowed by the comprehensive travel regulations, as promulgated by the department of finance and administration and approved by the attorney general and reporter.

11-26-105.

(a) The board is authorized to:

(1) Apply for and receive grants and matching funds to carry out the purposes of this chapter;

(2) Request and receive gifts, contributions, bequests, and donations from public and private sources to effectuate its purpose. Any such funds received shall be deposited into the development fund; provided, that, if any such gifts, contributions, bequests, and donations are not in the form of funds, any income, rents, or proceeds generated from the items received shall be deposited into the development fund;

(3) Create or establish a nonprofit organization, which shall also be eligible to request and receive gifts, contributions, bequests, donations, and grants from any legal and appropriate source to effectuate the development fund's purpose;

(4) Enter into contracts and cooperative agreements with state, federal, and local governments, with private individuals and corporations, and with associations and organizations, as the board may deem necessary to carry out the purposes of this chapter;

(5) Adopt policies and guidelines for the use of the development fund;

(6) Make such studies and recommendations to the department concerning the Ocoee River management zone; and

(7) Take any other necessary actions to carry out this chapter.

(b) The board shall meet not less than twice a year.

(c) The board shall adopt bylaws. The board chairperson and other officers shall be selected as provided in the bylaws.

(d) The board shall adopt and implement a policy related to conflicts of interest, to ensure that all board members avoid any situation that creates an actual or perceived conflict of interest related to the work of the development fund board.

(e) The board shall submit an annual report to the governor, speaker of the house of representatives, speaker of the senate, the chair of the energy, agriculture and

natural resources committee of the senate, and the chair of the agriculture and natural resources committee of the house of representatives by June 30 of each year. The report shall include detailed information on the operation and financial status of the development fund and any nonprofit entity created pursuant to subdivision (a)(3).

(f) Any nonprofit entity created pursuant to subdivision (a)(3) shall be subject to an annual audit by the comptroller of the treasury, and the entity shall bear the full costs of the audit.

11-26-106.

Any county that incurs costs for the management of the Ocoee River management zone shall submit a financial statement and justification for costs incurred to the board. The board shall reimburse such counties for all costs determined by the board to be reasonable.

11-26-107.

(a) Beginning in the 2019 rafting season, and continuing for each subsequent rafting season, the commissioner is authorized to issue permits to commercial operations conducting business within the Ocoee River management zone.

(b) The commissioner is authorized to levy and collect the Ocoee River recreation fee, which shall be ten percent (10%) of the annual gross revenue generated by commercial activities occurring within the Ocoee River management zone. Revenue generated from the fee shall be deposited in the development fund pursuant to the issuance of a permit as authorized in subdivision (a).

(c) The commissioner shall have the authority to revoke the permit of any commercial operations conducting business within the Ocoee River management zone for failure to comply with the rules promulgated by the commissioner pursuant to this chapter. Revocation of permits shall be carried out in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(d) The commissioner is authorized to promulgate rules to effectuate the purposes of this chapter. Such rules shall be promulgated in accordance with the Uniform Administrative Procedures Act.

11-26-108.

Any appropriations made in the general appropriations act for fiscal year 2017-2018 and allocated to the development fund shall be held in the fund until all contracts and memorandums of understanding have been entered into by state, federal, and private entities to ensure the continued release of water for recreational purposes on the Ocoee River beyond the year 2018.

11-26-109.

Notwithstanding any law, rule, or regulation to the contrary, the daily commercial carrying capacity for that section of the Ocoee River between Rogers Branch and Caney Creek in the lower Ocoee River Recreational Area shall be six thousand (6,000) commercial customers for the dates on which the commercial usage on such dates during the last season exceeded six thousand (6,000) customers. Each date on which the carrying capacity was capped for the last season shall also be capped on the same date for the next season unless the commercial usage on the capped date during the previous season fell below four thousand fifty (4,050) customers.

SECTION 2. Tennessee Code Annotated, Section 11-13-110, is amended by deleting subsection (a).

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.