

CHAPTER 29
South Carolina Scenic Rivers Act

SECTION 49-29-10. Short title.

This chapter may be cited as the “South Carolina Scenic Rivers Act of 1989”.

HISTORY: 1989 Act No. 96, Section 1; 1993 Act No. 181, Section 1256.

SECTION 49-29-20. Definitions.

Except as otherwise required by the context:

- (1) “Department” means the Department of Natural Resources.
- (2) “Free flowing” means existing or flowing in natural condition without impoundment, (diversion) straightening, riprapping, or other modification of the waterway. The existence of low dams, diversion works, and other minor structures at the time a river is proposed for inclusion in the State Scenic Rivers Program does not automatically bar its consideration for inclusion, but this may not be construed to authorize, intend, or encourage future construction of those structures within components of the State Scenic Rivers Program.
- (3) “Management agency” means the Department of Natural Resources.
- (4) “Mean highwater line” means that line which intersects with the shore in tidal waters representing the average height of high waters over an eighteen and one-half year tidal cycle. Benchmarks purporting to have established mean high or low water values must be verified by the department as meeting state and national ocean survey standards.
- (5) “Ordinary highwater mark” means the natural or clear line impressed on the shore or bank in nontidal waters representing the ordinary height of water. It may be determined by bank shelving, changes in the character of the soil, destruction or absence of terrestrial vegetation, the presence of litter or debris, or a combination of the above or other appropriate criteria that consider the characteristics of the surrounding area. Ordinary highwater mark is not the line reached by floods, but it is the line to which ordinary high water usually reaches.
- (6) “Perpetual 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 the scenic qualities of those lands bordering the river as determined by the State under this chapter;
 - (b) is restricted to the area defined in the easement deed;
 - (c) grants a privilege to those charged with the administration or enforcement of the provisions of this chapter to go upon the land for the purpose of compliance inspection.
- (7) “River” means a flowing body of water or a section, portion, or tributary of it including rivers, streams, creeks, branches, or small natural lakes.
- (8) “Road” means a highway or any hard-surface road.

HISTORY: 1989 Act No. 96, Section 1; 1993 Act No. 181, Section 1256.

SECTION 49-29-30. Findings and policy.

The General Assembly finds that certain selected rivers and river segments of this State possess unique or outstanding scenic, recreational, geologic, botanical, fish, wildlife, historic, or cultural values. It is the policy of the General Assembly to provide for the protection of these selected diminishing values and to preserve the state’s natural heritage for the benefit and enjoyment of present and future generations. The provisions of this chapter complement and are considered part of the State Water Resources Plan as formulated by the department.

HISTORY: 1989 Act No. 96, Section 1; 1993 Act No. 181, Section 1256.

SECTION 49-29-40. Types of rivers eligible for inclusion in scenic rivers program.

The following types of rivers are eligible for inclusion in the State Scenic Rivers Program:

Natural rivers: those free-flowing rivers or river segments generally inaccessible except by trail or river, with adjacent lands and shorelines essentially undeveloped and its waters essentially unpolluted.

Scenic rivers: those rivers or river segments which are essentially free flowing and possess shorelines largely undeveloped and with limited road access. Adjacent lands are partially or predominantly used for agriculture, silviculture, or other dispersed human activity which does not disturb substantially the natural character of the river corridor.

Recreational rivers: those rivers or river segments accessible by road and that possess development along shorelines and adjacent lands. Included are rivers with developed or partially developed shorelines and adjacent lands for residential, commercial, or industrial purposes, rivers with parallel roads or railroads, and rivers with some impoundments. These rivers or river segments provide outstanding river-related recreational opportunities.

HISTORY: 1989 Act No. 96, Section 1; 1993 Act No. 181, Section 1256.

SECTION 49-29-50. Inventory and study of rivers; designation of river as eligible state scenic river; proposals for inclusion of additional rivers.

(A) The department shall inventory and study all South Carolina rivers and identify the rivers or river segments which possess unique or outstanding scenic, recreational, geological, botanical, fish, wildlife, historic, or cultural values in accordance with Section 49-29-70.

(B) Rivers or river segments identified in the inventory as possessing unique or outstanding scenic, recreational, geologic, botanical, fish, wildlife, historic, or cultural values are eligible for the State Scenic Rivers Program and may be designated as an eligible state scenic river by the department. Rivers or river segments so designated are subject to the completion of a management plan and the acquisition of management rights on adjacent riparian lands.

(C) Proposals for including additional rivers or river segments may be made by state agencies, local governments, and other governmental or citizen's groups and submitted to the department for evaluation and study.

HISTORY: 1989 Act No. 96, Section 1; 1993 Act No. 181, Section 1256.

SECTION 49-29-60. Public meeting on proposed designation of river as scenic river.

The department shall hold a public meeting in the vicinity of the river or river segment proposed for addition to the State Scenic Rivers Program. This public meeting must be conducted before any action by the department to designate the river or river segment as an eligible state scenic river. The purpose of this meeting is to solicit comments from the public concerning the proposed designation of a river or river segment. Notice of this meeting must be published at least thirty days before the meeting in the State Register and in a newspaper having general circulation in each county containing or bordering the river or river segment under study and in a newspaper having general circulation in the State. Landowners along the proposed river or river segment also must be notified by letter.

HISTORY: 1989 Act No. 96, Section 1; 1993 Act No. 181, Section 1256.

SECTION 49-29-70. Minimum criteria for assessing river's eligibility for designation as scenic river.

The department shall establish and publish minimum criteria for assessing a river's eligibility and classification under the State Scenic Rivers Program. To qualify as eligible, the river or river segment must possess unique or outstanding scenic, recreational, geological, botanical, fish, wildlife, historic or cultural values. The level of pollution of a river's waters must be considered in determining eligibility for qualification as a scenic river. A river with relatively polluted waters may qualify as eligible as a scenic river if other values are considered outstanding. The river or river segment must be managed permanently for the preservation or enhancement of its values.

HISTORY: 1989 Act No. 96, Section 1; 1993 Act No. 181, Section 1256.

SECTION 49-29-80. Advisory council for designated scenic river.

After eligibility procedures for a river or river segment are completed by the department, and the General Assembly ratifies such designation, the department, through the executive director, shall establish an advisory council for that scenic river. The advisory council must be appointed as early as possible to assist the work of the department. Each advisory council must consist of not less than six nor more than ten members who must be selected from local government, riparian landowners, community interests, and the department, whose staff member must serve as chairman. The riparian landowners must constitute a majority of the membership on each council. The duties of the advisory councils are to assist and advise the department concerning protection and management of each scenic river.

HISTORY: 1989 Act No. 96, Section 1; 1993 Act No. 181, Section 1256.

SECTION 49-29-90. Formal action by department required for designation; notice of proposed designation; approval of designation by General Assembly.

No river or river segment may be eligible as a state scenic river and accorded the protection of this chapter, except upon formal action by the department. Following action by the department declaring a river or river segment eligible as a state scenic river, the department shall publish a notice of the eligibility in the State Register and provide written notice to the Department of Administration, the Department of Revenue, and the affected units of local government. Notice of eligibility also must be published in a newspaper of general circulation in the State to apprise interested parties of the opportunities under Section 49-29-100. The notice must describe the boundaries of the river or river segment. Following notice of eligibility, the department shall submit the same to the General Assembly for review. No river or river segment may be designated a state scenic river until the General Assembly has duly enacted legislation ratifying such designation.

HISTORY: 1989 Act No. 96, Section 1; 1993 Act No. 181, Section 1256.

Code Commissioner's Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

SECTION 49-29-100. Acquisition of lands adjacent to scenic rivers; donations; requirements; tax treatment of donations; reports; liability of title holders.

After ratification by the General Assembly of the designation of a river or river segment as a scenic river under the State Scenic Rivers Program, the State, through the Department of Administration, and with the consent of the legislative delegation for the county in which the land is located, may purchase with donated or appropriated funds, exchange lands for, or otherwise accept donations of certain lands adjacent to the eligible river or section of a river either in fee simple or perpetual easement from an owner. Unless unusual circumstances warrant, purchases of land adjacent to scenic and recreational rivers may not be less than one hundred feet in width from the ordinary high-water mark or mean high-water line of the river in normal conditions. Purchases of land for natural rivers may not be less than three hundred feet in width from the ordinary high-water mark or mean high-water line of the river.

For landowners donating perpetual easements to the State under the Scenic Rivers Program, a deduction from state income tax may be taken equal to the fair market value of the easement granted. The value of a perpetual easement is determined as the difference between the fair market value of the total property before the land is burdened with the easement and the fair market value of the property after the easement is granted. After the grant of a perpetual easement, land subject to a permanent easement is exempt from all

property taxes. Donors of land in fee simple may elect to take a deduction from state income tax equal to the value of the fee donated. For both donations in fee simple or easement, the donor may elect to take the deduction during a five-year period following the donation. The total deduction may be taken during any one year of the five-year period or the deduction may be taken in proportionate amounts during the five-year period. The value of the fee or easement must be assessed at the time of the donation.

Land placed in the Scenic Rivers Program which is owned by the State may be restricted in conformance with this chapter by executed easement or deed restriction executed by the donating agency and approved by the Budget and Control Board.

The Department of Administration shall submit annually a report of the property included in the Scenic Rivers Program to the Department of Revenue and the auditor of each county in which the property is situated.

The limitations of the liability of titleholders, as provided under Section 29-3-50, apply to all land purchased or donated in easement under the Scenic Rivers Program.

HISTORY: 1989 Act No. 96, Section 1; 1993 Act No. 181, Section 1256; 2002 Act No. 222, Section 2.
Code Commissioner's Note

At the direction of the Code Commissioner, references in the first and fourth paragraphs of this section to the former State Budget and Control Board were changed to the Department of Administration, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015. Reference in the third paragraph of this section to the former Budget and Control Board has not been changed pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), until further action by the General Assembly.

SECTION 49-29-110. Scenic Rivers Trust Fund.

There is created the Scenic Rivers Trust Fund which must be kept separate from other funds of the State. The fund must be administered by the department for the purpose of acquiring fee simple or lesser interest in land adjacent to scenic rivers and river segments, legal fees, appraisals, surveys, or other costs involved in the acquisition of those interests. The fund also may be utilized for educational or planning projects associated with the administration and management of the State Scenic Rivers Program.

Unexpended balances, including interest derived from the fund, must be carried forward each year and used for the purposes provided in this chapter.

No fund money may be expended to acquire an interest in land by eminent domain nor may the funds be expended to acquire interest in land without a recommendation from the board and the approval of the State Fiscal Accountability Authority or Department of Administration, as applicable.

The board shall report by letter to the presiding officers of the General Assembly and chairmen of the House and Senate Agriculture and Natural Resources Committees each year all funds expended pursuant to this chapter for the previous year, including the amount of funds expended and the uses to which the expenditures were applied.

The fund is eligible to receive appropriations of state general funds, federal funds, donations, gifts, bond issue receipts, securities, and other monetary instruments of value. A reimbursement for monies expended from this fund must be deposited in this fund. A fund received through sale, exchange, or otherwise of land acquired under this chapter accrues to the fund.

HISTORY: 1989 Act No. 96, Section 1; 1993 Act No. 181, Section 1256; 1998 Act No. 286, Section 1.
Code Commissioner's Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

SECTION 49-29-120. Acquisition of land by eminent domain prohibited.

The lands to be placed in the Scenic Rivers Program may be obtained only from private or corporate owners voluntarily in the manner specified in Section 49-29-100. Neither the State nor an agency or department of it may obtain by eminent domain land for the Scenic Rivers Program either in fee simple or in perpetual easement.

HISTORY: 1989 Act No. 96, Section 1; 1993 Act No. 181, Section 1256.

SECTION 49-29-130. Title of donated land reverts back to donor.

Whenever land or a portion of it donated pursuant to this chapter ceases to be used for the purpose for which it was donated, the title to the land reverts to the donor.

HISTORY: 1989 Act No. 96, Section 1; 1993 Act No. 181, Section 1256.

SECTION 49-29-140. Applicable policies for managing scenic rivers.

Management of scenic river areas may differ in degree within a given class of rivers based on the special attributes of the river but must adhere to the following management policies:

(1) Natural rivers must be managed in a manner which:

- (a) would best maintain and enhance those conditions which are attributed to wilderness type areas;
- (b) would allow camping and river access only at designated public access areas; and
- (c) would allow certain public uses only within prescribed public access areas.

(2) Scenic rivers must be managed in a manner which best maintains and enhances the scenic values of the river and the adjacent land while at the same time preserving the right of riparian landowners to use the river for customary agricultural, silvicultural, or other similar purposes.

(3) Recreational rivers must 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, silvicultural, residential, recreational, commercial, and industrial purposes.

To the extent practicable and consistent with the objectives of this chapter to preserve and maintain scenic rivers, public access and use must be open in all classes of scenic rivers. The level and nature of public use must not interfere with the rights retained by the titleholders or detract from the natural scenic qualities of the land, but the State may purchase lands or accept donations of easements, in accordance with Section 49-29-100, which restricts public access and use when necessary to implement this chapter.

HISTORY: 1989 Act No. 96, Section 1; 1993 Act No. 181, Section 1256.

SECTION 49-29-150. Application of provisions regarding restrictive use or zoning of lands.

The provisions of this chapter regarding restrictive use or zoning of lands apply only to those lands which have been accepted into the State Scenic Rivers Program by donation, perpetual easement, or purchase.

HISTORY: 1989 Act No. 96, Section 1; 1993 Act No. 181, Section 1256.

SECTION 49-29-160. Comprehensive water and related land use plans.

The department shall formulate comprehensive water and related land use plans for the three classes of scenic rivers. Each plan must address access of electricity, natural gas, and communication lines or other facilities for permitted uses for each class of river facilities. Each plan must also address criteria for permitting the crossing of each class of scenic river by sellers of electric energy, natural gas, or communication services. In developing these criteria, the department must consider the state of available technology, the economics of the various alternatives, and that electric, natural gas, and communication suppliers are required to deliver their services. The department must recognize that emergency situations will arise that require immediate action and must make provision in the management plan to allow this action.

In the comprehensive plan for the river classes, the following general land and water use practices are permitted or prohibited depending on the class:

(1) In natural river areas, no new roads or buildings may be constructed and there may be no mining and no commercial timber harvesting.

(2) In scenic and recreational river areas, the continuation of present agricultural practices such as grazing and the propagation of crops, including timber, is permitted. The construction of farm-use buildings is permitted if it is found to be compatible with the maintenance of scenic qualities of the stream and its banks. There may be no construction of roads paralleling the river within the limits of a scenic easement or public access area. The harvesting of timber is permitted provided the landowner follows the best management practices for forested wetlands as approved by the South Carolina Forestry Commission. Mining activities are permitted pursuant to a mining permit issued under the provisions of Chapter 19 of the "South Carolina Mining Act". Construction for public access related to recreational use of these scenic river areas is allowed in accordance with Section 49-29-140.

HISTORY: 1989 Act No. 96, Section 1; 1993 Act No. 181, Section 1256.

SECTION 49-29-170. Access on, over, or under designated rivers by sellers of electric energy, natural gas, or communication services; certificate of consistency.

Sellers of electric energy, natural gas, or communication services may cross on, over, or under lands designated as part of the Scenic River System provided that the department certifies that such crossing is consistent with the management plan for those lands. A certificate of consistency shall be issued by the department upon a finding:

(1) that the crossing is necessary to provide electric, natural gas, or communication service; and either

(a) that the crossing is consistent with the management plan; or

(b) that the extent of deviation from the management plan for the construction, operation, and maintenance of the facility across the scenic river is justified, considering the state of available technology and the nature and economics of the various alternatives, and that the entity responsible for the encroachment will make reasonable mitigation for the impacts caused by the construction, operation, and maintenance of the facility. The department shall issue a certification of consistency or nonconsistency within thirty days from the receipt of an application. A time extension may be granted upon a mutual agreement of both parties. Certification does not preclude the necessity to obtain other required state and federal authorizations. All administrative proceedings are subject to Article I, Chapter 23 of Title 1 (the Administrative Procedures Act), as amended.

HISTORY: 1989 Act No. 96, Section 1; 1993 Act No. 181, Section 1256.

SECTION 49-29-180. Administration of chapter; regulations; restrictions on management of scenic rivers.

The department shall administer the provisions of this chapter. The department may promulgate regulations to carry out the provisions of this chapter. In addition to general regulations, the department may promulgate further regulations based on the individual attributes of each designated scenic river area if regulations do not defeat, conflict with, or minimize the provisions of the general regulations for each class of scenic river. No scenic river may be managed in a manner that would result in the river corridor falling into a less restrictive class. Nothing in this chapter or its implementation may restrict reasonable utilization of the rivers in the program for fishing from the banks of the rivers or river segments.

HISTORY: 1989 Act No. 96, Section 1; 1993 Act No. 181, Section 1256.

SECTION 49-29-190. Agreements for mutual management of scenic rivers; certain agencies to assist department

The department may enter into agreements with local, state, and federal agencies, and private landowners, for the mutual management of a scenic river. An agency which has administrative jurisdiction over lands

or interests in land along a state scenic river must assist the department to implement the policies and practices of this chapter.

HISTORY: 1989 Act No. 96, Section 1; 1993 Act No. 181, Section 1256.

SECTION 49-29-200. Enforcement of provisions of chapter.

The Natural Resources Enforcement Division of the Department of Natural Resources and the State Forestry Commission, as well as local sheriffs, constables, and special officers, shall cooperate in the inspection and enforcement of the provisions of this chapter.

HISTORY: 1989 Act No. 96, Section 1; 1993 Act No. 181, Section 1256.

SECTION 49-29-210. Penalties for violations of chapter.

A person who violates a provision of this chapter, the regulations promulgated by the management agency under it, or the conditions of the perpetual easements granted to the State under this chapter is guilty of a misdemeanor and may be compelled to comply with or obey the provisions of this chapter by injunction or other appropriate remedy and, upon conviction, must be punished by a fine of not more than five hundred dollars or imprisonment for not more than thirty days for each day of a violation. The provisions of this section do not preclude any applicable action by the Department of Revenue to remove or recover property or income tax due it under Section 49-29-100.

HISTORY: 1989 Act No. 96, Section 1; 1993 Act No. 181, Section 1255; 1993 Act No. 181, Section 1256.

SECTION 49-29-220. Camping activities encouraged at scenic rivers.

To the extent practicable and consistent with the objectives of this chapter to preserve and maintain scenic rivers, camping activities are encouraged to be included in the comprehensive management plans of all classes of scenic rivers when that activity does not interfere with the rights retained by the titleholders or detract from the natural scenic qualities of the land.

HISTORY: 1990 Act No. 385, Section 2; 1993 Act No. 181, Section 1256.

SECTION 49-29-230. Portions of Little Pee Dee, Broad, Saluda, Lynches, Ashley, Black, Great Pee Dee, and Catawba Rivers designated scenic rivers.

The following are designated as scenic rivers:

(1) that portion of the Little Pee Dee River located between the Highway 378 bridge crossing of the Little Pee Dee River and the confluence of the river with the Great Pee Dee River;

(2) that portion of the Broad River located between the 99 Islands Dam and the confluence with the Pacolet River;

(3) that portion of the Saluda River located between the old railroad abutments located three thousand feet below the Saluda Hydroelectric Plant and the confluence with the Broad River;

(4) that portion of the Lynches River located between U.S. 15 near Bishopville and the eastern boundary of Lynches River State Park as defined on May 19, 1993, and that portion located between the eastern boundary of the Lynches River County Park and the confluence with the Great Pee Dee River.

(5) that portion of the Ashley River located between the Highway 17A bridge crossing of the Ashley River and downstream to the Highway 526 bridge crossing of the Ashley River.

(6) that portion of the Black River located between the Clarendon County Road No. 40 bridge crossing of the Black River and downstream to the Pea House Landing at the end of Georgetown County Road No. 38.

(7) that portion of the Great Pee Dee River located between the U. S. Highway 378 bridge crossing of the Great Pee Dee River and downstream to the U. S. Highway 17 bridge crossing the Great Pee Dee River.

(8) that portion of the Little Pee Dee River located in Dillon County between the Marlboro County Line and the Marion County line;

(9) that portion of the Catawba River located between the Lake Wylie Dam and the South Carolina Highway 9 bridge crossing of the Catawba River;

HISTORY: 1990 Act No. 385, Section 1; Repealed by 1991 Act No. 128, Section 2, eff May 31, 1991; 1991 Act No. 928, Section 1; 1993 Act No. 181, Section 1256; 1994 Act No. 318, Section 1; 1998 Act No. 408, Section 1; 1999 Act No. 20, Section 1; 2001 Act No. 51, Section 1; 2002 Act No. 222, Section 1; 2005 Act No. 51, Section 1; 2008 Act No. 302, Section 1, eff June 11, 2008; 2008 Act No. 315, Section 1, eff June 11, 2008.

Effect of Amendment

The first 2008 amendment added item (9) relating to the Catawba River.

The second 2008 amendment, in item (4), expanded the portion of the Lynches River designated as a scenic river to include that portion located between the eastern boundary of the Lynches River County Park and the confluence with the Great Pee Dee River.