

By: Senator(s) Dearing, Johnson (38th)

To: Highways and
TransportationSENATE BILL NO. 2098
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 55-13-35, MISSISSIPPI CODE OF 1972,
 2 TO MAKE IT CLEAR THAT THE HEIGHT RESTRICTIONS ON STRUCTURES WITHIN
 3 1,000 FEET OF THE NATCHEZ TRACE PARKWAY APPLY TO ADVERTISING
 4 STRUCTURES AND TO REMOVE CERTAIN EXEMPTIONS FROM SUCH HEIGHT
 5 RESTRICTIONS; TO CREATE THE MISSISSIPPI SCENIC BYWAYS PROGRAM; TO
 6 DEFINE CERTAIN TERMS AS USED IN THE ACT; TO CREATE A SCENIC BYWAYS
 7 ADVISORY COMMITTEE TO ASSIST THE DEPARTMENT IN THE DEVELOPMENT AND
 8 ADMINISTRATION OF THE MISSISSIPPI SCENIC BYWAYS PROGRAM, THE
 9 ADOPTION OF A CORRIDOR MANAGEMENT PLAN, THE REVIEW OF SCENIC BYWAY
 10 APPLICATIONS AND THE SELECTION AND NOMINATION OF HIGHWAYS, ROADS
 11 AND STREETS AS SCENIC BYWAYS; TO REQUIRE SCENIC BYWAY NOMINATIONS
 12 TO BE SUBMITTED TO THE LEGISLATURE AND ENACTED INTO LAW IN ORDER
 13 TO BECOME OFFICIALLY DESIGNATED AS A SCENIC BYWAY; TO AUTHORIZE
 14 THE MISSISSIPPI DEPARTMENT OF TRANSPORTATION TO ACCEPT DONATIONS,
 15 BEQUESTS, GIFTS, GRANTS, APPROPRIATIONS OF MONEY, IN-KIND
 16 CONTRIBUTIONS AND THINGS OF VALUE FROM ANY SOURCE, PUBLIC OR
 17 PRIVATE, INCLUDING INDIVIDUALS, ORGANIZATIONS AND FEDERAL, STATE
 18 AND LOCAL GOVERNMENTAL BODIES, FOR THE PURPOSE OF ESTABLISHING AND
 19 MAINTAINING THE MISSISSIPPI SCENIC BYWAYS PROGRAM; TO CREATE A
 20 SPECIAL FUND IN THE STATE TREASURY TO BE DESIGNATED AS THE "SCENIC
 21 BYWAYS DEVELOPMENT AND MAINTENANCE FUND" FOR THE DEPOSIT OF ALL
 22 SUCH MONIES SO RECEIVED BY THE DEPARTMENT; TO PRESCRIBE THE
 23 PURPOSES FOR WHICH MONIES IN THE SPECIAL FUND MAY BE EXPENDED; TO
 24 REQUIRE THE ADVISORY COMMITTEE TO REVIEW PERIODICALLY EACH
 25 DESIGNATED SCENIC BYWAY TO ENSURE THAT THE PROGRAM PARTICIPANTS
 26 ARE MEETING THEIR OBLIGATIONS UNDER THE PLAN AND THAT THE BYWAY
 27 CONTINUES TO POSSESS THE INTRINSIC QUALITIES AND MEET THE CRITERIA
 28 WHICH SUPPORTED ITS INITIAL DESIGNATION; TO AUTHORIZE THE
 29 LEGISLATURE, UPON RECOMMENDATION OF THE ADVISORY COMMITTEE TO
 30 DE-DESIGNATE A SCENIC BYWAY THAT IS NOT BEING MAINTAINED PROPERLY
 31 OR THAT HAS LOST ITS NECESSARY INTRINSIC QUALITIES; AND FOR
 32 RELATED PURPOSES.

33 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

34 **SECTION 1.** Section 55-13-35, Mississippi Code of 1972, is
 35 amended as follows:

36 55-13-35. (1) It shall be unlawful to construct or erect a
 37 building, advertising structure or other structure, of more than
 38 three (3) stories or thirty-five (35) feet in height, whichever is
 39 lesser, within one thousand (1,000) feet of the outside boundary
 40 of the Natchez Trace Parkway. Such restrictions on buildings and
 41 structures shall apply notwithstanding that such area is located



42 inside or outside a municipality and notwithstanding any other
43 provisions of law to the contrary.

44 (2) It is the legislative intent of this section, in part,
45 that possession of a building permit on July 1, 1988, shall not
46 allow any construction after July 1, 1988, based on that permit.
47 This section shall not apply to any building in existence on July
48 1, 1988.

49 (3) The following buildings or structures are exempt from
50 the application of this section if they were constructed or under
51 construction prior to July 1, 2002:

52 (a) Silos, buildings and structures designed for
53 agricultural use;

54 (b) Churches; and

55 (c) Any building or structure * * * on property
56 that * * * is owned by a public school district and used for
57 educational purposes * * *.

58 **SECTION 2.** Sections 2 through 8 of this act shall be known
59 and may be cited as the "Mississippi Scenic Byways Program."

60 **SECTION 3.** As used in Sections 2 through 8 of this act, the
61 following terms have the meanings ascribed to them in this section
62 unless the context clearly requires otherwise:

63 (a) "Corridor" means a highway, road or street
64 right-of-way and the adjacent area that is visible from and
65 extends along the highway, road or street;

66 (b) "Department" means the Mississippi Department of
67 Transportation;

68 (c) "Intrinsic qualities," as related to scenic byways,
69 include:

70 (i) Scenic: Beauty, whether natural or man-made.
71 The quality of the feature is measured by how memorable,
72 distinctive, unique, uninterrupted and unified a scenic byway is;

73 (ii) Natural: Minimal disturbance of the natural
74 ecological features that are associated with the region;



75 (iii) Historic: Landscapes, buildings, structures
76 or other visual evidence of the past other than just a site;

77 (iv) Cultural: Visual evidence of the unique
78 customs, traditions, folklore or rituals of a currently existing
79 human group;

80 (v) Archeological: Visual evidence of the unique
81 customs, traditions, folklores or rituals of a no longer existing
82 human group;

83 (vi) Recreational: Use of a scenic byway or its
84 corridor for recreational activities like jogging, biking,
85 roadside picnics or for direct access to recreational sites like
86 campgrounds, lakes, etc.;

87 (d) "Program" means the Mississippi Scenic Byways
88 Program created under the provisions of Sections 2 through 8 of
89 this act;

90 (e) "Scenic byway" means a public highway, road or
91 street, including the corridor through which it passes, that has
92 been designated as a scenic byway in order to develop, promote and
93 maintain its intrinsic qualities.

94 **SECTION 4.** The Mississippi Department of Transportation,
95 upon approval of the Mississippi Transportation Commission, may
96 administer a Mississippi Scenic Byways Program. Under the
97 program, the department, with assistance from the Scenic Byways
98 Advisory Committee created under Section 5 of this act, shall
99 develop, adopt and implement a scenic byways corridor management
100 plan for the state. The plan shall be consistent with the
101 provisions of Sections 2 through 8 of this act and with guidelines
102 established by federal law, and shall specify actions, procedures,
103 controls, operational practices and administrative strategies
104 necessary to govern the selection, nomination and declaration of
105 scenic byways and to ensure that highways, roads, streets and
106 corridors designated as scenic byways are properly managed and
107 that their intrinsic qualities are maintained.



108 **SECTION 5.** (1) There is created a Scenic Byways Advisory
109 Committee to assist the department in the development and
110 administration of the Mississippi Scenic Byways Program, the
111 adoption of a corridor management plan, the review of scenic byway
112 applications and the selection and nomination of highways, roads
113 and streets as scenic byways. The committee shall consist of:

114 (a) Two (2) members from each of the following
115 entities, with one (1) member from each entity being the executive
116 director of that entity, or his or her designee, and the other
117 member being a member of that entity selected by its executive
118 director:

119 (i) The Mississippi Department of Transportation;

120 (ii) The Mississippi Development Authority,
121 Division of Tourism Development;

122 (iii) The Keep Mississippi Beautiful/People
123 Against Litter Association;

124 (iv) The Mississippi Association of Supervisors;

125 (v) The Mississippi Outdoor Advertising
126 Association;

127 (vi) The Mississippi Retail Association;

128 (vii) The Mississippi Tourism Association; and

129 (viii) The Mississippi Municipal League; and

130 (b) Three (3) members to be selected by the Mississippi
131 Transportation Commission, one (1) from each commissioner's
132 district.

133 (2) The corridor management plan adopted by the committee
134 shall use best management practices to maintain the intrinsic
135 qualities of highways, roads and streets designated as scenic
136 byways while ensuring the rights of landowners, including riparian
137 owners, to continue existing agriculture, forestry, water supply,
138 recreational, residential, commercial and industrial uses, and any
139 other uses of land and water, identified in the plan. The
140 department may enter into agreements for the mutual management of



141 scenic byways with counties, municipalities and other political
142 subdivisions of the state, state and federal agencies and private
143 landowners or businesses. The plan shall ensure that landowners
144 have input into management practices of any land or water that is
145 designated as a scenic byway or that is included within a scenic
146 byway corridor. Land placed in the program shall not be obtained
147 by eminent domain. A landowner's decision to participate in the
148 program shall be entirely voluntary and a participating landowner
149 may terminate his participation at any time without liability,
150 criminally or civilly, for his subsequent failure to participate.
151 Counties, municipalities and other political subdivisions of the
152 state may participate in the program as landowners in the same
153 manner as private landowners. For the purposes of carrying out
154 the intent of Sections 2 through 8 of this act, counties,
155 municipalities and other political subdivisions of the state, in
156 addition to and supplemental to any other powers authorized by law
157 for the acquisition of real property, may acquire by donation or
158 purchase, but not by eminent domain, interests in real property.

159 (3) The plan adopted under Sections 2 through 8 of this act
160 shall be in compliance with all applicable Federal Highway
161 Administration rules, regulations and policies regarding outdoor
162 advertising on or along a highway, road or street designated as a
163 scenic byway. Nothing in Sections 2 through 8 of this act shall
164 be interpreted as amending or limiting any county or municipal
165 zoning or land use ordinance unless the county or municipality has
166 authorized the amendment according to the procedure provided for
167 in its ordinance.

168 (4) A corridor management plan may not become effective
169 until a draft of the plan has been submitted for review and
170 recommendation to the Transportation Committee of the House of
171 Representatives and the Highways and Transportation Committee of
172 the Senate.



173 **SECTION 6.** (1) The corridor management plan adopted under
174 Sections 2 through 8 of this act shall establish criteria,
175 policies and procedures that will permit county boards of
176 supervisors, municipal governing authorities and the Mississippi
177 Department of Transportation to submit to the advisory committee
178 applications for highways, roads and streets under the
179 governmental entity's respective jurisdiction for nomination as a
180 scenic byway. Nothing in the corridor management plan shall be
181 interpreted as amending or limiting any county or municipal zoning
182 or land use ordinances unless the county or municipality has
183 authorized the amendment according to the procedure provided for
184 in its ordinance. The corridor management plan shall authorize
185 county boards of supervisors and municipal governing authorities
186 to submit one or more plans for one or more highways, roads or
187 streets to be designated a scenic byway that may have management
188 requirements that are more strict than the department's corridor
189 management plan. Such plans for a scenic byway submitted by a
190 county or municipality shall describe the additional management
191 requirements proposed for application to the scenic byway and, if
192 approved by the department, shall apply only to the approved
193 scenic byway. In carrying out the purposes of Sections 2 through
194 8 of this act and the specific plans for scenic byways, counties
195 and municipalities may include in such specific plans for the
196 corridor (including, but not limited to, medians) provisions for
197 planting and replanting of trees, shrubs and flowers; vegetative
198 buffers, design guidelines and limitations for landscaping,
199 signage and lighting; and noise guidelines and limitations. The
200 authority granted to counties and municipalities under this
201 subsection is supplementary and in addition to any other authority
202 that a county or municipality may have under law.

203 (2) After receipt of an application, the advisory committee
204 shall hold a public meeting in the geographic area where the
205 proposed scenic byway is located to receive comments and



206 recommendations from the public. Notice of the meeting, along
207 with a description of the highway, road or street proposed as a
208 scenic byway shall be given once each week for at least three (3)
209 consecutive weeks by publication in some newspaper having a
210 general circulation in the county where the proposed scenic byway
211 is located. Following the public meeting, the committee may
212 nominate the highway, road or street as a scenic byway if it is
213 eligible and meets the guidelines established under the program.
214 A highway, road or street that has been nominated by the committee
215 as a scenic byway shall be submitted by the advisory committee to
216 the Legislature at the next regular session of the Legislature
217 following its nomination. A highway, road or street that has been
218 nominated as a scenic byway may be designated as an official
219 Mississippi Scenic Byway only by its introduction and passage as a
220 legislative bill.

221 (3) The advisory committee shall review each designated
222 scenic byway not less often than once each two (2) years to make
223 sure that the program participants are meeting their obligations
224 under the plan and that the byway continues to possess the
225 intrinsic qualities and meet the criteria which supported its
226 initial designation. If the committee finds that a designated
227 byway is not being maintained according to established standards
228 or that it has lost its necessary intrinsic qualities, the
229 committee shall report its findings to the Legislature and the
230 Legislature, by legislation, may de-designate the byway.

231 **SECTION 7.** (1) The department may accept donations,
232 bequests, gifts, grants, appropriations of federal money, in-kind
233 contributions and things of value from any source, public or
234 private, including individuals, organizations and federal, state
235 and local governmental bodies, for the purpose of establishing and
236 maintaining the Mississippi Scenic Byways Program. All such money
237 so received by the department shall be deposited into a special
238 fund that is created in the State Treasury to be designated as the



239 "Scenic Byways Development and Maintenance Fund." Unexpended
240 amounts remaining in the fund at the end of a fiscal year shall
241 not lapse into the State General Fund, and any investment earnings
242 or interest earned on amounts in the fund shall be deposited to
243 the credit of the fund.

244 (2) Monies in the Scenic Byways Development and Maintenance
245 Fund may be expended, upon legislative appropriation, for the
246 following purposes:

247 (a) To plan, design and develop the Mississippi Scenic
248 Byways Program;

249 (b) To develop and implement a corridor management plan
250 for the purposes of maintaining the intrinsic qualities of scenic
251 byways and providing accommodation of increased tourism and
252 development of related amenities;

253 (c) To make safety improvements to Mississippi scenic
254 byways, a National Scenic Byway or an All-American Road to the
255 extent that the improvements are necessary to accommodate
256 increased traffic and changes in the types of vehicles using the
257 highway, road or street as a result of the designation;

258 (d) To construct along scenic byways facilities for use
259 by pedestrians and bicyclists, rest areas, turnouts, highway
260 shoulder improvements, passing lanes, overlooks and interpretive
261 facilities;

262 (e) To make improvements to scenic byways that will
263 enhance access to recreation areas, including water-related
264 recreations;

265 (f) To protect the intrinsic qualities of areas
266 adjacent to scenic byways;

267 (g) To develop and provide tourist information to the
268 public, including interpretive information about scenic byways;

269 (h) To develop and implement scenic byway marketing
270 programs; and



271 (i) To match monies made available from the federal
272 government for the establishment and maintenance of the Scenic
273 Byways Program.

274 **SECTION 8.** (1) Sections 2 through 8 of this act shall not
275 prohibit, restrict or otherwise affect any existing or future
276 lawful use or activity in or related to a scenic byway area.
277 Sections 2 through 8 of this act also shall not prohibit, restrict
278 or otherwise affect the operation, maintenance or new construction
279 of any facility, road, railroad, bridge, utility, pipeline,
280 crossing or any other structure in or related to a scenic byway
281 area. If there is any conflict between this section and any other
282 provision of Sections 2 through 8 of this act, this section shall
283 control.

284 (2) Nothing in Sections 2 through 8 of this act shall
285 mandate local governments to participate in the program, and a
286 local governmental entity may terminate participation in the
287 program at any time by resolution duly adopted and entered upon
288 its minutes.

289 **SECTION 9.** This act shall take effect and be in force from
290 and after July 1, 2002.

