To: Highways and Transportation

MISSISSIPPI LEGISLATURE
REGULAR SESSION 2002
By: Senator(s) Dearing, Johnson (38th)

SENATE BILL NO. 2098
(As Sent to Governor)

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

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

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

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

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

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

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

(b) Churches;

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

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

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

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

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

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

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

(ii) Natural: Minimal disturbance of the natural ecological features that are associated with the region;
(iii) Historic: Landscapes, buildings, structures or other visual evidence of the past other than just a site;

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

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

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

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

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

SECTION 4. The Mississippi Department of Transportation, upon approval of the Mississippi Transportation Commission, may administer a Mississippi Scenic Byways Program. Under the program, the department, with assistance from the Scenic Byways Advisory Committee created under Section 5 of this act, shall develop, adopt and implement a scenic byways corridor management plan for the state. The plan shall be consistent with the provisions of Sections 2 through 8 of this act and with guidelines established by federal law, and shall specify actions, procedures, controls, operational practices and administrative strategies necessary to govern the selection, nomination and declaration of scenic byways and to ensure that highways, roads, streets and corridors designated as scenic byways are properly managed and that their intrinsic qualities are maintained.
SECTION 5. (1) There is created a Scenic Byways Advisory Committee to assist the department in the development and administration of the Mississippi Scenic Byways Program, the adoption of a corridor management plan, the review of scenic byway applications and the selection and nomination of highways, roads and streets as scenic byways. The committee shall consist of:

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

(i) The Mississippi Department of Transportation;
(ii) The Mississippi Development Authority, Division of Tourism Development;
(iii) The Keep Mississippi Beautiful/People Against Litter Association;
(iv) The Mississippi Association of Supervisors;
(v) The Mississippi Outdoor Advertising Association;
(vi) The Mississippi Retail Association;
(vii) The Mississippi Tourism Association; and
(viii) The Mississippi Municipal League; and

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

(2) The corridor management plan adopted by the committee shall use best management practices to maintain the intrinsic qualities of highways, roads and streets designated as scenic byways while ensuring the rights of landowners, including riparian owners, to continue existing agriculture, forestry, water supply, recreational, residential, commercial and industrial uses, and any other uses of land and water, identified in the plan. The department may enter into agreements for the mutual management of
scenic byways with counties, municipalities and other political subdivisions of the state, state and federal agencies and private landowners or businesses. The plan shall ensure that landowners have input into management practices of any land or water that is designated as a scenic byway or that is included within a scenic byway corridor. Land placed in the program shall not be obtained by eminent domain. A landowner's decision to participate in the program shall be entirely voluntary and a participating landowner may terminate his participation at any time without liability, criminally or civilly, for his subsequent failure to participate. Counties, municipalities and other political subdivisions of the state may participate in the program as landowners in the same manner as private landowners. For the purposes of carrying out the intent of Sections 2 through 8 of this act, counties, municipalities and other political subdivisions of the state, in addition to and supplemental to any other powers authorized by law for the acquisition of real property, may acquire by donation or purchase, but not by eminent domain, interests in real property.

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

(4) A corridor management plan may not become effective until a draft of the plan has been submitted for review and recommendation to the Transportation Committee of the House of Representatives and the Highways and Transportation Committee of the Senate.
SECTION 6. (1) The corridor management plan adopted under Sections 2 through 8 of this act shall establish criteria, policies and procedures that will permit county boards of supervisors, municipal governing authorities and the Mississippi Department of Transportation to submit to the advisory committee applications for highways, roads and streets under the governmental entity's respective jurisdiction for nomination as a scenic byway. Nothing in the corridor management plan shall be interpreted as amending or limiting any county or municipal zoning or land use ordinances unless the county or municipality has authorized the amendment according to the procedure provided for in its ordinance. The corridor management plan shall authorize county boards of supervisors and municipal governing authorities to submit one or more plans for one or more highways, roads or streets to be designated a scenic byway that may have management requirements that are more strict than the department's corridor management plan. Such plans for a scenic byway submitted by a county or municipality shall describe the additional management requirements proposed for application to the scenic byway and, if approved by the department, shall apply only to the approved scenic byway. In carrying out the purposes of Sections 2 through 8 of this act and the specific plans for scenic byways, counties and municipalities may include in such specific plans for the corridor (including, but not limited to, medians) provisions for planting and replanting of trees, shrubs and flowers; vegetative buffers, design guidelines and limitations for landscaping, signage and lighting; and noise guidelines and limitations. The authority granted to counties and municipalities under this subsection is supplementary and in addition to any other authority that a county or municipality may have under law.

(2) After receipt of an application, the advisory committee shall hold a public meeting in the geographic area where the proposed scenic byway is located to receive comments and
recommendations from the public. Notice of the meeting, along with a description of the highway, road or street proposed as a scenic byway shall be given once each week for at least three (3) consecutive weeks by publication in some newspaper having a general circulation in the county where the proposed scenic byway is located. Following the public meeting, the committee may nominate the highway, road or street as a scenic byway if it is eligible and meets the guidelines established under the program. A highway, road or street that has been nominated by the committee as a scenic byway shall be submitted by the advisory committee to the Legislature at the next regular session of the Legislature following its nomination. A highway, road or street that has been nominated as a scenic byway may be designated as an official Mississippi Scenic Byway only by its introduction and passage as a legislative bill.

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

SECTION 7. (1) The department may accept donations, bequests, gifts, grants, appropriations of federal money, in-kind contributions and things of value from any source, public or private, including individuals, organizations and federal, state and local governmental bodies, for the purpose of establishing and maintaining the Mississippi Scenic Byways Program. All such money so received by the department shall be deposited into a special fund that is created in the State Treasury to be designated as the
"Scenic Byways Development and Maintenance Fund." Unexpended amounts remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any investment earnings or interest earned on amounts in the fund shall be deposited to the credit of the fund.

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

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

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

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

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

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

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

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

(h) To develop and implement scenic byway marketing programs; and
(i) To match monies made available from the federal government for the establishment and maintenance of the Scenic Byways Program.

SECTION 8. (1) Sections 2 through 8 of this act shall not prohibit, restrict or otherwise affect any existing or future lawful use or activity in or related to a scenic byway area.

Sections 2 through 8 of this act also shall not prohibit, restrict or otherwise affect the operation, maintenance or new construction of any facility, road, railroad, bridge, utility, pipeline, crossing or any other structure in or related to a scenic byway area. If there is any conflict between this section and any other provision of Sections 2 through 8 of this act, this section shall control.

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

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