
CR 04-057

The Wisconsin Department of Transportation proposes an order to amend TRANS 201.01; and create TRANS 201.23 and ch. TRANS 202, relating to the Wisconsin scenic byways program.

**REPORT OF THE DEPARTMENT OF TRANSPORTATION
ON THE FINAL RULE DRAFT**

This report is submitted to the presiding officers of the Senate and Assembly for referral to the appropriate standing committees. The report consists of the following parts:

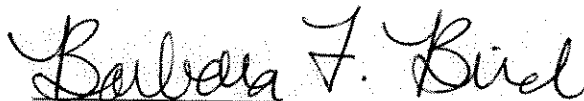
Part 1--Analysis prepared by the Department of Transportation.

Part 2--Rule text in final draft form.

Part 3--Recommendations of the Legislative Council.

Part 4--Analysis prepared pursuant to the provisions of s. 227.19(3), Stats.

Submitted by:



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PART 1

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: ss. 84.106, 85.16 and 227.11, Stats.,

STATUTES INTERPRETED: s. 84.106, Stats.

Plain Language Analysis. In 1999 Wisconsin Act 9, the Wisconsin Legislature created § 84.106, Stats., mandating that the Department of Transportation develop, implement and administer a state scenic byways program. This statute also directed the Department to promulgate rules for the program consistent with 23 U.S.C. 162 and regulations established under that section. The purpose of this rule making is to adopt rules to create a Wisconsin scenic byways program consistent with the regulations of the Federal Highway Administration (FHWA) for the national scenic byways program published in the Federal Register on May 18, 1995. This rule making will create ch. Trans 202 to implement a Wisconsin scenic byways program. A Scenic Byways Advisory Committee consisting of a representative from the Department of Tourism, Department of Commerce, Department of Natural Resources, Wisconsin State Historical Society, four at-large members appointed by the Secretary of the Department of Transportation and the chairperson of the senate and assembly standing committees having jurisdiction over transportation matters is created to review applications for designation of Wisconsin scenic byways. The nomination procedure must be initiated by at least one local government sponsor. The Scenic Byway Advisory Committee will make recommendations to the Secretary of the Department of Transportation who has the authority to make designation decisions. In Wisconsin, state scenic byways must be state trunk highways other than interstate highways and must have exceptional scenic qualities. The nomination process may involve two stages. In the first stage of the process, an application is reviewed to see if the proposed route has a reasonable potential for designation as a state scenic byway. The second stage of the process will require the development by the local government sponsors of a corridor management plan. The Department of Transportation will monitor the implementation of such plans on designated scenic byways. The proposed rule also creates a new section in ch. Trans 201 to provide for the control of new outdoor advertising signs along state trunk highways designated as state scenic byways.

Summary of, and Preliminary Comparison with, Existing or Proposed Federal Regulation. The Intermodal Surface Transportation Efficiency Act 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, mandated the establishment of a national scenic byways program. Section 1047 of the ISTEA set up an advisory committee to assist the U.S. Secretary of Transportation in establishing a national program. The committee was composed of 17 members including a designee of the Administrator of the FHWA, appointees of U.S. Forest Service, the National Park Service, the Bureau of Land Management, the Bureau of Indian Affairs, the U.S. Travel and Tourism Administration of the Department of Commerce, and individuals representing the interests of recreational users of scenic byways, conservationists, the tourism industry, historic preservationists, highway users, state and local highway transportation officials, the motoring public, scenic preservationists, the outdoor advertising industry, and the planning professions.

Following the report of the committee, the FHWA adopted an interim policy for the National Scenic Byways Program which was published in the Federal Register on May 18, 1995. (Vol. 60, No. 96, p. 26759) No federal rules have been adopted and the program is administered in accordance with the interim policy.

The policy sets forth criteria for the designation of National Scenic Byways or All-American Roads based on their scenic, historic, recreational, cultural, archeological and/or natural intrinsic qualities. To be designated as a National Scenic Byway, a road or highway must significantly meet at least one of the six intrinsic qualities listed above. To be designated as a All-American Road, the road or highway must meet the criteria for at least two of the six intrinsic qualities. To be designated, the road or highway must safely and conveniently accommodate two-wheel drive automobiles, conventional tour buses and, where feasible, bicycle and pedestrian travel. Designations are made by the U.S. Secretary of Transportation after consultation with the Departments of the Interior, Agriculture and Commerce. A panel of six to eight experts designated by the FHWA may assist in the review of highways nominated for designation as National Scenic Byways or All-American Roads.

The policy provides that any highway submitted for designation by state or federal agencies should first be designated as a State Scenic Byway. All nominations for National Scenic Byways or All-American Roads must be submitted by the state agency responsible for administering the state's scenic byway program activities. A corridor management plan must be submitted with each nomination. A corridor management plan is a written document that specifies the actions, procedures, controls, operational practices and administrative strategies to maintain the scenic, historic, recreational, cultural, archeological and natural qualities of the nominated scenic byway. The plan is intended to provide an effective management strategy to balance conservation and enhancement of the byway's intrinsic qualities as well as promotion of tourism and economic development.

Under the federal program, states may apply for discretionary grants for the purpose of planning, designing and developing state scenic byways programs, including the development of corridor management plans; developing state scenic byways to make them eligible for designation as National Scenic Byways or All-American Roads; and enhancing or improving designated National Scenic Byways or All-American Roads. All grant applications must be submitted to the FHWA by the state highway agency.

The FHWA regulations also provide that if a state has a state scenic byway program, the state must control outdoor advertising as provided in 23 U.S.C. 131(s) along any highway on the interstate or primary highway system that is designated as a scenic byway under the state's program. The states must apply the same controls to any National Scenic Byway and All-American Road whether or not they are designated as state scenic byways.

The proposed rule is consistent with and follows the FHWA interim policy on the national scenic byway program quite closely. This includes the use of an advisory body to

evaluate and make recommendations regarding designation of routes to be added to the program and a two tier nomination process. The rule provides for consideration of the intrinsic qualities used by the FHWA policy as criteria for evaluation of potential scenic byways. Scenic quality is necessary for designation as a Wisconsin scenic byway with other qualities being complementary. The rule making also provides for the control of outdoor advertising consistent with the FHWA regulations which require that if a state has a state scenic byway program, the state may not allow the erection of new signs not in conformance with 23 U.S.C. 131(c) along any highway on the interstate or Federal-aid primary system which is designated as a state or national scenic byway or All-American Road.

Comparison with Rules in Adjacent States: The states of Iowa, Illinois, Michigan and Minnesota all have established state scenic byways programs as follows:

Michigan: The Michigan byways program is called Michigan Heritage Routes and is mandated by state statute. (MCL 247.951 to 247.958) Heritage routes are limited to state trunk highways. Criteria for selection of heritage routes and procedures for designation were approved by the Legislature but are not promulgated as administrative rules. The program policy identifies three types of heritage routes: historic, scenic or cultural. Nominations for designation are made to the Department of Transportation by local government sponsors. The program encourages local governments and stakeholders to engage in planning for adjacent land uses consistent with the intent of the designation including outdoor advertising signs along scenic heritage routes. The Heritage Route Program dates from June 22, 1993.

Minnesota: The state scenic byways program is managed by the Minnesota Scenic Byways Commission. The Commission was created by a memorandum of understanding between the Department of Transportation, the Department of Natural Resources, Minnesota Historical Society, and the Office of Tourism of the Department of Trade and Economic Development. The MOU became effective June 12, 1992. The Commission is responsible for final designation of routes with the Department of Transportation taking the lead role. Nominations originate locally and were open yearly for the first three years and once every five years thereafter. All categories of public roads are eligible for nomination and local authorities having jurisdiction over the routes must approve designation. The program is organized on the basis of thirteen "recreational landscape" regions identified by the Department of Natural Resources. Outstanding scenic quality with natural or cultural resources representative of each region is the primary criteria for designation. The jurisdictions through which the designated routes pass must have ordinances to control outdoor advertising consistent with 23 U.S.C.131(s). The Minnesota Department of Transportation also enforces the provisions of 23 U.S.C. 131(s).

Illinois: The Illinois scenic byways program is mandated by statute. The program consists of a process for the Illinois Department of Transportation to nominate to the U.S. Department of Transportation routes for designation as National Scenic Byways or All-American Roads. (225 ILCS 440, sec. 14.02) To be nominated, the highways or roads

must possess any of the six intrinsic qualities specified by the FHWA; must accommodate 2-wheel drive vehicles and, where feasible, bicycle and pedestrian traffic; have a corridor management plan meeting federal requirements and developed with community input; business and property owners must receive notice from the appropriate local unit of government that a nomination is pending and must have the opportunity to comment; and must not contain sections that traverse business areas. On highways that have received designation as a National Scenic Byway or All-American Road and which are interstate or primary highways, the statute prohibits the erection of new outdoor advertising signs except for those signs permitted by federal law in 23 U.S.C. 131(s). (225 ILCS 440, sec. 5) The statutes creating the Illinois byways program were effective August 2, 1996.

Iowa: The scenic byways program is mandated by statute. (Ch. 306D of the Iowa Statutes) The Iowa Department of Transportation has adopted rules to implement its program. The rules create a scenic byway advisory council comprised of representatives from the Department of Transportation, the Department of Economic Development, the Department of Cultural Affairs, and the Department of Natural Resources. The council selects the routes to be designated after the Iowa Department of Transportation inventories and evaluates applications for designation. There is a two-year cycle for nominations with specific deadlines for key steps in the evaluation process. Primary roads, secondary roads and city streets are eligible for designation as scenic byways and each city and county, through which a route passes, must approve the scenic byway designation. The designation is based on the scenic qualities of the proposed routes. (Ch. 132 of the Iowa Administrative Code) The Iowa legislature also directed the Iowa Department of Transportation to adopt rules to control outdoor advertising along scenic byways in order to comply with federal requirements for implementation of a scenic byways program. (95 Acts, ch. 135, § 4; 306D.4 of the Iowa statutes) In 761-Ch. 117.3 of the Iowa Administrative Code, the rule provides that no new off-premise advertising device may be erected along an interstate, freeway-primary or primary highway that has been designated as a scenic byway if the advertising device will be visible from the highway.

Summary of Factual Data and Analytical Methodologies Used and How the Related Findings Support the Regulatory Approach Chosen: The Secretary of the Department of Transportation appointed a sixteen (16) member advisory group to recommend procedures and criteria for a Wisconsin scenic byways program. The members of the advisory group were: Rep. Sheryl Albers (Joint Committee on Finance); Sen. Roger Breske (Senate Committee on Transportation); Gary Brunner (Department of Transportation); Mary Jo Carson (Department of Commerce); Dennis Fay (Department of Tourism); Richard Dexter (State Historical Society); Kelly Haverkamp (Wisconsin Rural Partners); Martin Holden (Bay Lake Regional Planning Commission); Tom Howells (Wisconsin Motor Carriers Association); Rob Kennedy (Citizens for a Better Environment); Lisie Kitchel (Department of Natural Resources); Larry MacDonald (Mayor, City of Bayfield); Phil Scherer (Transportation Development Association of Wisconsin); Tom Solheim (Rustic Roads Board); Ernie Stetenfeld (AAA of Wisconsin); and Rep. Jeff Stone (Assembly Committee on Transportation). The advisory group unanimously endorsed the following program structure.

A scenic byway should be a state trunk highway; should be at least 30 miles long; should exclude interstate and Corridor 2020 backbone routes; should not be scheduled for or have anticipated improvement projects; should have scenic qualities as its primary characteristic and have local government sponsors to demonstrate local support. A two-step application process was recommended with an initial screening followed by a more formal application. The review of applications should be performed by an advisory body consisting of representatives from the Department of Tourism, Department of Commerce, Department of Natural Resources and the State Historical Society. The advisory group should make recommendations to the Secretary of the Department of Transportation who makes the final decision on designation. The advisory group will also include the chairpersons of the Senate and Assembly standing committees having jurisdiction over transportation matters and two at-large members appointed by the Secretary of the Department of Transportation. Designation as a scenic byway should not inhibit or prevent safety or capacity improvements, stop private development from occurring, invoke or trigger smart growth legislation or requirements, nor should scenic byways be considered rustic roads.

This rule making implements the recommendations of the advisory group.

Effect on Small Business and, If Applicable, Any Analysis and Supporting Documentation Used to Determine Effect on Small Businesses: The provisions of this proposed rule creating a process for the designation of state trunk highways as scenic byways have no direct effect on small businesses. It is expected that designation of a highway segment as a scenic byway will increase tourism to the area which may have an indirect positive effect on local small businesses especially those that provide goods and services to tourists such as restaurants, hotels and motels, gift shops, and similar businesses.

Fiscal Effect and Anticipated Costs Incurred by Private Sector: The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district, sewerage district, or federally-recognized tribes or bands. The designation of a segment of a state trunk highway as a state scenic byway may make a county or municipality eligible to apply for and receive grants of federal funds for enhancement projects related to the scenic byway. The Department estimates that there will be no impact on state or private liabilities or revenues. Administration of the program by the Department will be absorbed by existing staff and resources.

Copies of Proposed Rule: Copies of the proposed rule may be obtained, without cost, by writing to Jane Carrola, Department of Transportation, Division of Transportation Investment Management, Bureau of Planning, Room 901, P. O. Box 7913, Madison, WI 53707-7913. You may also contact Ms. Carrola by phone at (608) 266-0649, or via e-mail: jane.carrola@dot.state.wi.us.

PART 2
TEXT OF PROPOSED RULE

SECTION 1. Trans 201.01 is amended to read:

Trans 201.01 General. Pursuant to authority contained in ss. 84.106, 84.30 and 86.19, Stats., the department of transportation adopts the following rules to apply to signs along and visible from the controlled highways in Wisconsin. Section 84.30, Stats., and these rules apply to the interstate system, federal aid primary or national highway system, and the Great River Road established under 23 USC 148, which are referred to herein as "controlled highways." These rules are so closely associated with the Wisconsin Statutes, and make such extensive reference to s. 84.30, Stats., that it is essential to refer to both these rules and the law in order to apply the controls. This chapter shall be interpreted consistently with the requirements of the 23 USC 131 federal regulations related to outdoor advertising control at 23 CFR Part 750, and the agreements between the state of Wisconsin and the U.S. federal highway administration dated June 9, 1961 and March 28, 1972, and with regulations and policies of the U.S. department of transportation implementing a national scenic byways program under 23 USC 162.

SECTION 2. Trans 201.23 is created to read:

Trans 201.23 Scenic byways. (1) In this section:

- (a) "All-American Road" has the meaning provided in s. Trans 202.02(2).
- (b) "Great River Road" has the meaning provided in s. 84.107, Stats.
- (c) "National Scenic Byway" has the meaning provided in s. Trans 202.02(9).
- (d) "Scenic byway" means the Great River Road and any other public highway or portion of a public highway designated as a Wisconsin scenic byway pursuant to

s. 84.106, Stats., or designated as a National Scenic Byway or an All-American Road pursuant to 23 USC 162.

(2) After the effective date of this section... [revisor insert date], no sign visible from the main-traveled way of highway that is a scenic byway may be erected except the following:

(a) Directional and other official sign authorized by s. 84.30(3)(a), Stats.

(b) Signs advertising the sale or lease of property upon which they are located authorized by s. 84.30(3)(b), Stats.

(c) Signs advertising activities conducted on the property on which they are located authorized by s. 84.30(3)(c), Stats.

SECTION 3. Chapter Trans 202 is created to read:

WISCONSIN SCENIC BYWAYS PROGRAM

Trans 202.01 Purpose and scope. (1) As required by s. 84.106, Stats., this chapter establishes a Wisconsin scenic byways program. This chapter establishes the criteria and procedures to be used by the secretary to designate portions of the state trunk highway system as a scenic byway when the highway corridor possesses unusual, exceptional, or distinctive scenic features.

(2) The purpose of this chapter is to identify, designate, promote and preserve a system of state trunk highways recognized for their outstanding scenic views and ability to offer travelers an exceptional travel experience. These byway corridors shall highlight the best scenic qualities along with the natural, historic, archeological, cultural and recreational opportunities available in Wisconsin. Program participation may increase roadway corridor recognition, increase marketing potential, promote

community consensus building, aid in preservation of resources, and increase eligibility for federal or state funding for certain byway related projects along the corridor.

Trans 202.02 Definitions. The words and phrases defined in s. 340.01, Stats., have the same meaning in this chapter unless a different definition is specifically provided. In this chapter:

(1) "Action items" mean the specific activities, procedures, controls, operational practices and administrative strategies that are undertaken as part of a corridor management plan to maintain and promote the scenic, historic, recreational, cultural, archeological and natural qualities of the scenic byway.

(2) "All-American Road" means a public highway that has been designated by the federal government as satisfying national scenic byway criteria and the additional criteria and requirements for designation as an "All-American Road."

NOTE: A road should first be designated as a state scenic byway before national designation may be pursued. The criteria are set forth in the interim policy for the National Scenic Byway Program published in the Federal Register on May 18, 1995, at page 26759 of Vol. 60, No. 96.

(3) "Corridor" means the highway right-of-way and the area adjacent to and extending along the right-of-way that is visible from the roadway of a designated Wisconsin scenic byway.

(4) "Corridor management plan" or "CMP" means a written document authored by the local government sponsor that serves as the coordinating plan by which the scenic, historical, recreational, cultural, archeological and natural qualities on a designated byway are maintained and promoted.

(5) "Great River Road" has the meaning provided in s. 84.107, Stats.

(6) "Local government" means a county, town, village, city or tribal government.

(7) "Local government sponsor" means a local government through whose jurisdiction a proposed Wisconsin scenic byway passes or a local government that is adjacent to a proposed scenic byway and that formally initiates the application process.

(8) "National Scenic Byway" means a public highway, designated pursuant to 23 USC 162 as satisfying the federal criteria for a national scenic byway.

NOTE: A road should first be designated as a state scenic byway before national designation may be pursued. The criteria are set forth in the interim policy for the National Scenic Byways Program published in the Federal Register on May 18, 1995 at page 26759 of Vol. 60, No. 96.

(9) "Scenic byways advisory committee" or "SBAC" means the committee appointed by the secretary to review applications from local government sponsors and to recommend to the secretary whether an application for designation of a state trunk highway as a scenic byway should be approved.

(10) "Scenic qualities" are a combination of natural and manmade features that give remarkable character to the visual landscape, are striking in appearance and provide a pleasing and memorable experience to travelers.

(11) "Segmentation" means the exclusion of any segment or part of a state trunk highway that is inconsistent with the criteria for designating a Wisconsin scenic byway.

(12) "Sign" has the meaning provided in s. 84.30(2)(j), Stats.

(13) "Traffic control device" means a sign, marking or traffic control signal erected or placed within the right of way of a public highway by the government unit having jurisdiction over the highway for the purpose of guiding, warning or regulating traffic upon the highway.

(14) "Wisconsin scenic byway" means a state trunk highway or combination of state trunk highways that has special scenic qualities and may in addition have special historic, recreational, cultural, archeological, or natural qualities that is designated as a scenic byway by the secretary pursuant to s. 84.106, Stats.

Trans 202.03 Previously designated scenic byways. (1) Any roadway previously designated as a scenic, historic, or recreational route or some combination thereof, either by legislative or by administrative action, may also be designated as a Wisconsin scenic byway upon satisfaction of the administrative process for the Wisconsin scenic byways program pursuant to s. 84.106, Stats.

(2) The Great River Road was designated by the secretary as a Wisconsin scenic byway under s. 84.106, Stats., on June 24, 1999. The provisions of ss. Trans 202.05, 202.06 and 202.07 do not apply to the Great River Road.

Trans 202.04 Scenic byways advisory committee membership. (1) The SBAC shall consist of all of the following:

(a) One representative from each of the following state agencies nominated by the respective agency and appointed by the secretary:

1. Wisconsin department of tourism.
2. Wisconsin department of commerce.
3. Wisconsin department of natural resources.
4. Wisconsin state historical society.

(b) Four members at large appointed by the secretary.

(c) The chairpersons of the senate and assembly standing committees having jurisdiction over transportation matters as determined by the speaker of the assembly and the president of the senate.

(2) The state agency representatives and the members at large shall be appointed by the secretary in staggered 4-year terms.

Trans 202.05 Qualifications for scenic byway designation. (1) The majority of the route proposed as a Wisconsin scenic byway shall have scenic qualities or characteristics, which are unique to the route. The scenic qualities or characteristics shall be as continuous as possible throughout the corridor.

(2) The route shall be on the state trunk highway system and be approximately 30 miles in length at a minimum and, where feasible, provide a completed closure or loop or connect to major highways at both ends of the route.

(3) The proposed route shall be as continuous as possible. Segmentation shall be used sparingly and considered on a case-by-case basis.

(4) The interstate system is not eligible for scenic byway designation.

(5) Historical, archeological, cultural, recreational and natural features and characteristics shall be considered complimentary to the scenic features and characteristics of the proposed route. They may be documented and submitted as part of the application.

(6) The proposed route may not be scheduled or anticipated for major improvements that would significantly diminish its scenic characteristics. If there are scheduled or anticipated major improvements, the SBAC may consider the application

after the improvements are made or after the improvements are well defined in approved plans.

Trans 202.06 Application procedure. (1) Application to have a route designated as a Wisconsin scenic byway is voluntary. Interested parties seeking designation may include residents, organizations and local governments. The responsibility for identifying a suitable route for scenic byway designation rests with the aforementioned groups.

(2) There shall be at least one local government sponsor who initiates the application procedure.

(3) The department shall design the application form and determine the completeness of responses from local government sponsors. The department may require preliminary information from the local government sponsor to determine if the proposed route has a reasonable potential for being designated as a state scenic byway. Resolutions from local governments abutting the proposed route may be required.

NOTE: The application form may be obtained upon request by writing to the Department of Transportation, Division of Transportation Investment Management, Bureau of Planning, Room 901, P. O. Box 7913, Madison, WI 53707-7913.

(4) A corridor management plan shall be prepared by the local government sponsor after the route's potential has been confirmed by the SBAC, but before final designation takes place.

(5) The SBAC shall evaluate the application materials and make a recommendation to the secretary on the approval or denial of the request to designate the proposed route as a scenic byway.

(6) The secretary shall make the decision to approve or deny an application for designation of the proposed route as a scenic byway.

Trans 202.07 Reviewing and monitoring of Wisconsin scenic byways. The department shall review the approved CMP of a designated scenic byway on a periodic basis to insure that the local government sponsor has implemented the action steps in its CMP. The department shall notify the local government sponsor of the results of the review. In the case of uncompleted action items, the department and local government sponsor shall coordinate to develop a schedule and timeline to implement the remaining action items or to amend the remaining action items in a mutually agreeable manner. Failure to address the uncompleted action items in a timely manner may result in withdrawal of scenic byway designation.

Trans 202.08 Jurisdiction and authority. Designation of a state trunk highway as a scenic byway does not affect the department's jurisdiction over the highway. The department retains the authority to maintain and improve the highway in order to serve the traveling public.

Trans 202.09 Maintaining and improving a state scenic byway. Designation as a Wisconsin scenic byway is not intended to prohibit or affect future roadway design or construction and does not change the existing state or federal classification of the highway. Designation as a Wisconsin scenic byway shall not be a factor in department decisions on whether or not a highway improvement project is necessary or appropriate for the designated highway.

Trans 202.10 Traffic control devices and route markings. (1) The department, at its own expense, shall furnish and install signs to mark and identify all officially designated scenic byways.

(2) The scenic byways marking signs may be placed on existing information or highway identification sign posts but may not be placed on any regulatory or warning sign posts.

(3) All traffic control devices shall be erected and maintained in accordance with chs. 84, 86 and 349, Stats., and ch. Trans 200.

(4) Scenic byways signing shall be removed on highways that are no longer designated as scenic byways.

Trans 202.11 Outdoor advertising. Highways designated by the secretary as scenic byways pursuant to s. 84.106, Stats., are subject to all applicable state laws and regulations and local ordinances regarding outdoor advertising signs. Highways designated as scenic byways shall also conform to s. Trans 201.23.

Trans 202.12 National scenic byways program. State trunk highways designated as Wisconsin scenic byways may, upon satisfaction of the federal guidelines and recommendation by the scenic byways advisory committee, be nominated by the secretary for designation and inclusion in the national scenic byways program as a National Scenic Byway or All-American Road. A local government may be responsible for supplying additional information or photos as needed for the national application.

Trans 202.13 Withdrawal of Wisconsin scenic byways designation.
(1) Designation of a state trunk highway as a scenic byway may be withdrawn after


resolution by 2/3 of the local government sponsors and with the approval of the SBAC and the secretary. There shall be at least one public hearing by a local government sponsor before such a removal.

(2) The SBAC may recommend to the secretary that a scenic byway designation for a particular state trunk highway be rescinded if the route no longer possesses the scenic character of the route originally qualifying it for designation due to overdevelopment, the presence of some other visual detraction, or the failure to adequately implement the corridor management plan. The department may request that the SBAC review and recommend whether a scenic byway designation for a particular state trunk highway should be rescinded. If the SBAC recommends that a scenic byway designation for a particular state trunk highway be rescinded, the department shall hold a public hearing on the removal. After the public hearing is held, the designation as a scenic byway for the particular state trunk highway may be withdrawn upon approval of the secretary.

(END OF RULE TEXT)

Effective Date. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2)(intro.), Stats.

Signed at Madison, Wisconsin, this 30th day of August, 2004.


FRANK J. BUSALACCHI
Secretary
Wisconsin Department of Transportation



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
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PART 3 CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 04-057

AN ORDER to amend TRANS 201.01; and to create TRANS 201.23 and chapter TRANS 202, relating to the Wisconsin scenic byways program.

Submitted by **DEPARTMENT OF TRANSPORTATION**

06-11-2004 RECEIVED BY LEGISLATIVE COUNCIL.

06-30-2004 REPORT SENT TO AGENCY.

RS:PGC

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]
Comment Attached YES NO
2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]
Comment Attached YES NO
3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]
Comment Attached YES NO
4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]
Comment Attached YES NO
5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]
Comment Attached YES NO
6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]
Comment Attached YES NO
7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]
Comment Attached YES NO



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 04-057

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 2002.]

2. Form, Style and Placement in Administrative Code

- a. In s. Trans 201.23 (2), the word “chapter” should be replaced by the word “section.”
- b. Section Trans 202.04 should be restructured in the following way:
 - Trans 202.04 (1) The SBAC shall consist of all of the following:
 - (a) One representative from each of the following state agencies nominated by the respective agency and appointed by the secretary:
 1. Wisconsin department of tourism.
 2. Wisconsin department of commerce.
 3. Wisconsin department of natural resources.
 4. Wisconsin state historical society.
 - (b) Four members at large appointed by the secretary.
 - (c) The chairpersons of the senate and assembly standing committees having jurisdiction over transportation matters as determined by the speaker of the assembly and the president of the senate.

- (2) The state agency representatives and the members at large shall be appointed by the secretary for staggered 4-year terms.

4. Adequacy of References to Related Statutes, Rules and Forms

Section Trans 202.06 (3) refers to an application form designed by the department. The requirements of s. 227.14 (3), Stats., should be met.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In the second paragraph of the summary of, and preliminary comparison with, existing or proposed federal regulations, the phrase "Department of the Interior, Agriculture, and Commerce" should be replaced by the phrase "Departments of the Interior, Agriculture, and Commerce." Also, in the fourth paragraph, a comma should be inserted following the phrase "Under the federal program."

b. In various places, the rule refers to the historic or historical qualities of a scenic byway and to the natural qualities, natural qualities and resources, natural features or characteristics, or natural features and characteristics of a scenic byway. The terms should be used consistently. [See ss. Trans 202.02 (1), (4), (6) and (15) and 202.05 (5).]

c. In s. Trans 202.05 (1), the first sentence should read: "The majority of the route proposed as a Wisconsin scenic byway shall..." Also, in sub. (6), the comma following the word "improvements" should be deleted.

d. Section Trans 202.07 refers to an "applicant" when the department conducts a review of an approved corridor management plan of a designated scenic byway. Since it appears that the route already has been designated as a scenic byway, the word "applicant" should be replaced by the defined term "local government sponsor."

PART 4
CR 04-057

ANALYSIS OF FINAL DRAFT OF TRANS 202

(a) **Basis and Purpose of Rule.** Section 84.106, Stats., as created by 1999 Wisconsin Act 9, requires the Department of Transportation to develop and implement a state scenic byways program. The purpose of this rule making is to establish criteria and procedures to be used by the Secretary of the Department to designate state scenic byways.

(b) **Modifications as a Result of Testimony at Public Hearing.** The public hearing was held in Madison on July 27, 2004. As a result of testimony received at the public hearing, proposed section Trans 201.23(3) was removed from the rule. The deleted section would have created a moratorium on the processing of permits for new off-premise outdoor advertising signs while an application for designation of a highway as a scenic byway was being reviewed.

(c) **List of Persons who Appeared or Registered at Public Hearing.** The public hearing was held in Madison on July 27, 2004. The following individuals appeared/registered at the hearing:

Jim Holperin, Secretary, Wisconsin Department of Tourism, P. O. Box 8690, Madison, WI 53708—spoke in favor of the rule.

Tom Jackson, Aide to Senator Dale Schultz, Room 18 South, State Capitol, Madison, WI 53703—spoke in favor of the rule.

Martin Hanson, Vice President, WI Transportation, representing Ayres Associates, 3433 Oakwood Hills Parkway, Eau Claire, WI 54701—spoke in favor of the rule.

Chuck Mitchell, Executive Director, Citizens for a Scenic Wisconsin, 7525 Oakhill Avenue, Wauwatosa, WI 53213—spoke in favor of the rule, with concerns.

Charles C. Collins, President, Collins Outdoor Advertising, Inc., 325 North 3rd Street, La Crosse, WI 54601—spoke in favor, in opposition and for information.

Keith Carson, Real Estate Coordinator, Collins Outdoor Advertising, Inc., 325 North 3rd Street, La Crosse, WI 54602-0968—spoke in opposition to the rule.

Alice Ridge, Secretary, Yellowstone Trail Association, 7000 South Shore Drive, Altoona, WI 54720—spoke in opposition to the rule.

John Ridge, President, Yellowstone Trail Association, 7000 South Shore Drive, Altoona, WI 54720—spoke in opposition to the rule.

O. J. Thompto, Trailman for Yellowstone Trail Association, 4715 Sheboygan Avenue, Madison, WI 53705—spoke in opposition to the rule.

Walter F. Baltz, Consultant, Collins Outdoor Advertising, 325 North 3rd Street, La Crosse, WI 54601—spoke in opposition to the rule and for information.

Janet R. Swandby, Executive Director, Outdoor Advertising Association of Wisconsin, 44 East Mifflin Street, Suite 101, Madison, WI 53703—spoke in opposition to the rule.

(d) **Summary of Public Comments and Agency Response to those Comments:** The following is a summary of oral comments received at the public hearing:

1. **All Classifications of Roads should be Eligible for Scenic Byway Designation:**

In favor of:

Chuck Mitchell: All public roads should be eligible for scenic byways designation.

Alice Ridge: All public roads should be eligible for designation as a scenic byway.

John Ridge: The proposed rule should be changed to allow county and township roads where appropriate.

Opposed:

Janet Swandby: The Outdoor Advertising Association of Wisconsin (OAAW) opposes expanding the highways which are eligible for designation to interstates, county roads, town roads, or city/village streets.

Agency Response: The Department of Transportation has not modified the proposed rule to expand eligibility beyond state trunk highways. The following are three main reasons for focusing on state trunk highways for the Wisconsin Scenic Byways Program:

(a) The first reason is based on the premise that the designation will generate more visitors wanting to tour the route, and that the associated traffic will range from cyclist and motorcyclist to oversized RV campers. It is thought that the state trunk highway network is best suited to handle the increased and diverse traffic.

(b) The second reason is that the Rustic Roads Program exists for local roads, including County Trunk Highways. There is no complimentary program for state trunk highways.

(c) The third reason for limiting scenic byways to state highways is that the highways are under state jurisdiction which allows for more efficient communication and coordination.

2. Other Categories such as Natural, Historic, Archaeological, Cultural and Recreational should be Allowed for Inclusion into the Scenic Byways Program.

In favor of:

Alice Ridge: By adding "historic" quality, Wisconsin will be in step with the new direction of the national byways office in Washington, D.C.

John Ridge: The proposed rules should be changed to allow byway applications to be based on any of the six national "intrinsic qualities" and not limited to scenic.

O. J. Thompto: The proposed rules should be changed to allow byway applications to be based on any of the six national "intrinsic qualities" and not limited to scenic.

Jim Holperin: The Department of Tourism acknowledges that there is some expense to the DOT to implement a state scenic byways program. However, Tourism would like as many roadways as possible considered for participation and funding. Therefore, the byways with the primary quality of historic should also be included in the scenic byways program.

Opposed:

Janet Swandby: The OAAW believes that any expansion of the program to permit other eligibility criteria or add highways other than state trunk highways would have a devastating impact on outdoor advertising companies and the Wisconsin businesses which advertise on their signs.

The OAAW opposes any expansion of the criteria for designation from scenic to other categories, such as natural, historic, archaeological, cultural, and recreational.

Agency Response: The Department of Transportation will retain "scenic" as the primary characteristic for designation as a scenic byway. The Department has not modified the rule to provide for historic or other categories of byways. Other characteristics will be complementary.

The FHWA Scenic Byways Program does allow states to individualize their programs to meet the state's circumstances and needs. Wisconsin DOT has elected, with advice from an advisory committee, to move in the direction of making scenic the primary criteria for selecting scenic byways in the state.

The word "scenic" implies pleasing views of natural features. Many travelers would expect that routes listed in a "scenic byways" program would first and foremost have that characteristic.

The Wisconsin Scenic Byways Advisory Group, which was composed of a wide variety of stakeholders including representatives from the Wisconsin Department of Tourism, Natural Resources, Wisconsin State Historical Society, Motor Carriers Association, Transportation Development Association, AAA and state representatives unanimously endorsed a program where the candidate route has outstanding scenic views combined with unique historical, recreational, cultural or other educational opportunities.

From a resource perspective, WisDOT can utilize its internal experience and expertise in landscape architecture to help evaluate and recommend changes to state corridors to help improve the scenic qualities along the roadway.

3. Advocating Historic Roadways as Scenic Byways.

Alice Ridge: (1) Heritage Tourism has economic potential; (2) By allowing all of the intrinsic qualities, there will be more promotion opportunities for the state; and (3) Adding the "historic" quality to the rules would open more Wisconsin roads to being designated America's Byways on maps and other national publicity.

Agency Response: The Department of Transportation will retain "scenic" as the primary characteristic for designation as a scenic byway. The Department has not modified the proposed rule to provide for a category of strictly historic byways.

Wisconsin is endowed with many historical resources as well as scenic. The Wisconsin State Historical Society and Wisconsin Department of Tourism are the more appropriate agencies to be involved in the designation and the promotion of historic roads and sites.

The National Register of Historic Places administered by the National Park Service offers recognition for historic properties over 50 yrs old including historic roads and bridges. Requests for listing must be placed through the state historic preservation officer.

The Historic Roads website (www.historicroads.org) provides a listing of historic roads and the type of designation that it received. Approximately 64 of the 109 routes listed had national register designation while 10 had National Scenic Byway designation and another 15 had a sub-category of NSB designation called All American Roads.

In 1990, the Wisconsin Heritage Tourism Program was established to increase the awareness of the importance of history and culture to the residents and visitors of Wisconsin and to provide economic development opportunities to areas based on

history and Tourism. The Heritage Tourism Program was designed to assist in the development, packaging and promotion of historical resources. While the formal program was eliminated, the Wisconsin Dept. of Tourism states on its website that the department remains committed to promoting Wisconsin heritage tourism and historic attractions.

WisDOT traditionally has had no involvement in the identification, preservation or promotion of historic roads or historic sites. Since the 1930's, WisDOT has had involvement with the visual scenic characteristics of the road. The involvement has continued to the present time with the Rustic Roads Program, wild plant program and wayside and rest areas. The expertise with promoting and identifying heritage tourism types of activities should rest with the Department of Tourism and the State Historical Society.

4. Scenic Byways and Outdoor Advertising:

Chuck Mitchell: The scenic byway proposed rules appear to allow for the expansion of existing billboards on designated scenic byways. The hospitality industry needs outdoor advertising to direct people to their places of business. It is appropriate that signs be allowed in industrially zoned areas. Existing billboards along scenic byways should become non-conforming structures.

Janet Swandby: OAAW objects to the prohibition of applications for new outdoor advertising signs while a scenic byways application is being considered. No other state has this provision and it places an undue hardship on business.

Agency Response: The proposed rule has been modified to delete s. Trans 201.23(3) which provided for a moratorium on processing applications for permits to erect signs while an application for designation as a scenic byway was being considered. The other provisions of the rule will be retained without modification. The proposed rule complies with federal law but is not more restrictive.

The proposed rule does not allow for new billboards. New off-property signs are not allowed on either state or federal scenic byways (Federal Law: 23 USC 131s). Existing conforming off-property signs remain as legal, conforming signs. Existing conforming signs may be maintained, repaired, and re-built on the same "foot print" (s. Trans 201.08 (2)).

WisDOT will follow federal law and treat existing outdoor advertising signs on designated highways as conforming. Current Wisconsin Statute and administrative rules will be used to define conforming signs.

WisDOT has re-evaluated s. Trans 201.23(3) and finds that it is inconsistent with the voluntary, grass-roots structure of the program. Local governments have the option to enact ordinances declaring a temporary moratorium if they are concerned about new signs being placed on a proposed scenic byway. This provision will be deleted.

5. Segmentation or Exclusion of Part of a State Trunk Highway as Scenic Byway.

In Favor of:

Keith Carson: Segmentation should be allowed so that areas that are not truly scenic are excluded.

Walter Baltz: Segmentation should be allowed so that areas that are not truly scenic are excluded.

Janet Swandby: OAAW objects to the language discouraging the use of segmentation when designating scenic byways routes. Supports segmentation, which is reflected in the Scenic Byways programs in Minnesota or Illinois.

Opposed:

Chuck Mitchell: Segmentation should not be allowed at all. Rather, bad portions should be identified in the corridor management plan and efforts be made to make them more appealing or keep them from deteriorating further.

Agency Response. The Department of Transportation has made no modifications to proposed s. Trans 202.05(3).

The national scenic byways legislation allows for "segmentation" or the exclusion of some portions of the highway, which are not scenic due to commercial/industrial development. (23 USC 131s)

The FHWA Interim Policy on Scenic Byways references continuity in 3.(h). It says in part, "Neither (National Scenic Byways or All American Roads) should have too many gaps but rather "should be as continuous as possible and should minimize intrusions on the visitor's experience."

WisDOT will follow federal guidelines and allow for segmentation with the expectation that it will be used sparingly. The decision on whether or not to exclude a segment will be locally determined staying with the grass roots, voluntary intent of the program. Additionally, the excluded segments will not be eligible to compete for federal scenic byways discretionary funds.

6. WisDOT's Involvement and Assistance in the Development of Corridor Management Plans.

Martin Hanson: The requirement for developing a corridor management plan is key to helping identify key resources and keeping them accessible to our state's residents while preserving them and protecting them for future generations. I

encourage WisDOT Central and District office staff to provide whatever assistance possible in this effort and in helping local sponsors implement key elements of their adopted plans.

Tom Jackson: There is not a critical mass in rural areas to put together a CMP. Having WisDOT involvement in the preparation and update of CMP's would greatly assist rural areas.

Mark Cupp: The Lower Wisconsin State Riverway Board supports creation of a Scenic Byways program in Wisconsin. With limited local resources, technical assistance from the Department of Transportation will be necessary to assure the local governmental units are able to develop a CMP that considers the necessary elements. A corridor management plan, as defined in s. Trans 202.02(4), must be authored by a local government sponsor to serve as the coordinating plan on how the byway would be maintained and promoted. However, the elements of the plan are not clearly identified. (Did not testify at the public hearing but submitted written comments.)

Agency Response: The Department of Transportation has made no modifications to the proposed rule provisions on development of a CMP.

A corridor management plan describes the vision and goals of the byway, how it will be promoted and protected and who will be responsible for the goals and activities related to the corridor. The anticipated components for a Wisconsin CMP are based on and simplified from 14 components required of a national scenic byways application.

WisDOT has drafted a guide on the essential elements of a CMP. This guide will serve to assist local community sponsors prepare the management plans. Examples of existing corridor management plans will be available for sponsors to review as they move forward with the application process. The state scenic byways staff will be available to answer questions regarding the CMP process.

WisDOT feels that using a simplified version of the Federal CMP for the state program will allow local sponsors to author and implement their CMP since the Transportation Districts do not have additional resources at this time to assist with CMP's.

Written Comments. The Department accepted written comments until close of business on August 9, 2004. Written comments were received from the following individuals:

Allegra Zick, E9243 Hwy. 136, North Freedom, WI 53951—wrote in favor of the rule.

Karen Raymore, Chief Executive Officer, Door County Chamber of Commerce, P. O. Box 406, Sturgeon Bay, WI 54235-0406. Ms. Raymore wrote in support of the rule as drafted.

Joni Herren Graves, Transportation Planner, Southwestern Wisconsin Regional Planning Commission, via e-mail—wrote in favor of the rule.

Marge Witt, 434 Center Street, Waupaca, WI 54981—suggests an amendment that an “historic” category be included in the scenic byways program. Ms. Witt supports inclusion of the Yellowstone Trail as part of a scenic byways program.

Julia Hertel, Executive Director, Wisconsin Association of Convention & Visitors Bureaus, P. O. Box 393, Sun Prairie, WI 53590. Ms. Hertel wrote in favor of the rule but suggests an amendment that the “historic” category be included in the scenic byways program.

Judy Gilles, Cabin Ridge Rides, via e-mail—wrote to suggest two amendments. Ms. Gilles would like to have all categories of public roads be eligible for designation as scenic byways and would like to have the state program expanded to include all categories recognized in the federal program.

Thomas P. Solheim, Chair, Wisconsin Rustic Roads Board, U.S. Bank Plaza, Suite 301, One South Pinckney Street, P. O. Box 1644, Madison, WI 53701-1644. Mr. Solheim wrote in favor of the rule, with suggested amendments as follows:

1. Suggested explicit reference to negative factors that may be present along a proposed route.

2. Supports broad local involvement but expressed concern that designation could be delayed by local unit of government declining to adopt resolution of support. Suggested public hearing process as an alternative.

3. Advertising signs. The rule appropriately takes a fairly strict approach to limiting signs. Retention of strict standards is encouraged.

4. Composition of Scenic Byways Advisory Committee. An inconsistency is noted between the analysis of the rule and the text of the rule. The analysis indicates the Committee will have two at-large members, while s. Trans 202.04 indicates the Committee will have four at-large members. Four members seems appropriate.

Philip Scherer, Senior Transportation Associate, Ayres Associates, 3433 Oakwood Hills Parkway, P. O. Box 1590, Eau Claire, WI 54702-1590. Mr. Scherer wrote in favor of the rule, with suggested amendments. Mr. Scherer suggested that a provision allowing federal land management agencies to participate could maximize funding for enhancement projects; suggested there may be a need to recognize a role for specific scenic byway organizations including not-for-profit organizations; suggested that one local government agency be designated as the fiscal agent for transportation funded projects; and suggested that the right to control and market the scenic byway “brand” be clarified.

In addition, Mr. Scherer made several suggestions for non-substantive changes to rule language.

Darien Schaefer, Executive Director, Wausau/Central Wisconsin CVB via e-mail. Mr. Schaefer wrote in support of the rule but expressed concern that not including interstate highways might make designation of STH 51 from Baton Rouge, Louisiana, to Hurley, Wisconsin, difficult.

Mark E. Cupp, Executive Director, Lower Wisconsin State Riverway Board, P. O. Box 187, Muscoda, WI 53573 via e-mail. Mr. Cupp wrote in support of this rule making but identified four areas he felt needed clarification.

1. Mr. Cupp felt that the elements of a corridor management plan were not sufficiently identified and suggested that assistance from the Department of Transportation may be needed to assure local government units are able to develop a plan.

2. Mr. Cupp felt the provisions of s. Trans 202.05(6) regarding the impact of future construction projects was vague.

3. Mr. Cupp suggested that exclusion of county roads will eliminate a number of desirable candidates.

4. Mr. Cupp expressed concern that the rule did not have an express time frame for the review and approval process.

Janet R. Swandby, Executive Director, Outdoor Advertising Association of Wisconsin, 44 East Mifflin Street, Suite 101, Madison, WI 53703. Ms. Swandby, who testified at the public hearing submitted additional written comments. Ms. Swandby expressed the support of the OAAW for requiring corridor nominations to be initiated locally; for requiring that any corridor management plan be authored by a local government sponsor; for stipulating that designation as a scenic byway does not inhibit, or prevent, safety or capacity improvements; and for stipulating that designation as a scenic byway not stop private development along state highways. The OAAW expressed opposition to amendment of the proposed rule to expand criteria for designation from scenic to other categories such as natural, historic, archaeological, cultural and recreational and to expanding eligible highways to include interstate highways, county roads, town roads and city/village streets.

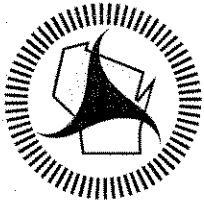
Agency Response: The issue of including a category for historic routes and expanding the program to public roads other than state trunk highways has been addressed above in the response to testimony at the public hearing. Many of the comments of Thomas Solheim, Philip Scherer and Mark Cupp express a desire for greater detail in the provisions of the rule such as the suggestion that the contents of a corridor management plan be included. The Department of Transportation has not adopted these suggestions as it believes the concerns raised by these commenters can

best be addressed in guidance and instructions that will be developed at a later date by the Department and the Scenic Byways Advisory Committee. Many of Mr. Philip Scherer's suggestions on language clarification were incorporated in the final draft.

(e) **Explanation of any Changes Made to the Plain Language Analysis or Fiscal Estimate:** No changes have been made to the plain language analysis or to the fiscal estimate.

(f) **Response to Legislative Council Recommendations.** The Legislative Council report contained a number of recommendations, all of which are incorporated into the proposed rule.

(g) **Effect on Small Business and, If Applicable, Any Analysis and Supporting Documentation Used to Determine Effect on Small Businesses:** The provisions of this proposed rule creating a process for the designation of state trunk highways as scenic byways have no direct affect on small businesses. It is expected that designation of a highway segment as a scenic byway will increase tourism to the area which may have an indirect positive effect on local small businesses especially those that provide goods and services to tourists such as restaurants, hotels and motels, gift shops, and similar businesses.



Wisconsin Department of Transportation

www.dot.wisconsin.gov

Jim Doyle
Governor

Frank J. Busalacchi
Secretary

Office of General Counsel
4802 Sheboygan Ave., Rm. 115B
P O Box 7910
Madison, WI 53707-7910

Telephone: 608-266-8810
FAX: 608-267-6734
E-mail: ogc.exec@dot.state.wi.us

The Honorable Senator Joseph Leibham
Chairman, Senate Transportation Committee
Room 409 South
State Capitol
Madison, Wisconsin 53707

August 31, 2004

The Honorable Representative John Ainsworth
Chairman, Assembly Transportation Committee
Room 309 North, State Capitol
Madison, Wisconsin 53702

RE: Proposed Administrative Rule **TRANS 202**
Notification of Legislative Standing Committees
CLEARINGHOUSE RULE 04-057

Dear Senator Leibham and Representative Ainsworth:

In accordance with the Department of Transportation's efforts to keep you informed of its ongoing rule making actions, enclosed is a courtesy copy of Final Draft rule **Trans 202**, relating to the **Wisconsin scenic byways program**, which is being submitted to the Legislature for committee review.

Sincerely,

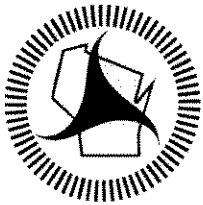
A handwritten signature in cursive script that reads "Julie A. Johnson".

Julie A. Johnson
Paralegal

JAJ/dim

Enclosure

cc: Mark Wolfgram
Dennis Leong
Jane Carrola



Wisconsin Department of Transportation

www.dot.wisconsin.gov

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E-mail: ogc.exec@dot.state.wi.us

The Honorable Alan Lasee
President, Wisconsin State Senate
Room 220 South, State Capitol
Madison, Wisconsin 53707

August 31, 2004

The Honorable John Gard
Speaker, Wisconsin State Assembly
Room 211 West, State Capitol
Madison, Wisconsin 53707

RE: Proposed Administrative Rule **TRANS 202**
Notification of Legislative Standing Committees
CLEARINGHOUSE RULE 04-057

Gentlemen:

Enclosed is a copy of Clearinghouse Rule **04-057**, relating to the **Wisconsin scenic byways program**. The rule is submitted to you for referral to the appropriate standing committees.

Sincerely,

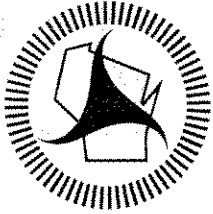
A handwritten signature in cursive script that reads "Julie A. Johnson".

Julie A. Johnson
Paralegal

JAJ/dim

Enclosure

cc: Gary Poulson/Senator Joseph Leibham/Representative Glenn Grothman/
Mark Wolfgram/Dennis Leong/Jane Carrola



Wisconsin Department of Transportation

www.dot.wisconsin.gov

Jim Doyle
Governor

Frank J. Busalacchi
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Division of Transportation Investment
Management
4802 Sheboygan Ave.
P O Box 7913
Madison, WI 53707-7913

OCT 27 2004

Telephone: 608-266-3661
FAX: 608-267-0441

October 26, 2004

Senator Joe Leibham, Chair
Senate Committee on Transportation and Information Infrastructure
Room 409 South
State Capitol
P.O. Box 7882
Madison 53707-7882

Dear Senator Leibham:

This letter is in reference to Clearing House Rule 04-057, the proposed Scenic Byways Administrative Rule.

In accordance with s. 227.19(4)(b)2., I am formally agreeing on behalf of the Wisconsin Department of Transportation to consider modifications to the proposed rule.

We appreciate the Transportation Committee's thoughtful review of these draft rules.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Wolfgram".

Mark Wolfgram, Administrator
Division of Transportation Investment Management

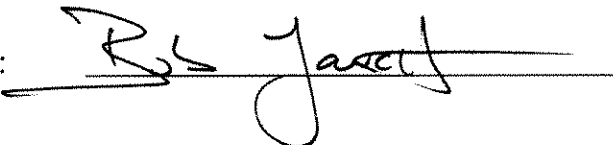
Vote Record

**Committee on Transportation and Information
Infrastructure**

Date: October 21, 2004
Bill Number: Clearinghouse Rule 04-057 (CR 04-057)
Moved by: Senate Committee on Transportation and Information Infrastructure
Motion: *The Senate Committee on Transportation and Information Infrastructure, pursuant to s. 227.19 (4) (b) 2., Stats., requests the Department of Transportation to consider modifications to Clearinghouse Rule 04-057, relating to the Wisconsin scenic byways program.*

Committee Member
Senator Bob Jauch

<u>Aye</u>	<u>No</u>	<u>Not Voting</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Signature: 

Vote Record

Committee on Transportation and Information Infrastructure

Date: October 21, 2004
Bill Number: Clearinghouse Rule 04-057 (CR 04-057)
Moved by: Senate Committee on Transportation and Information Infrastructure
Motion: *The Department of Transportation be requested to modify Clearinghouse Rule 04-057 such that the criteria of the scenic byways program is expanded to include "historic" methods as perceivable. This language may be based on the Michigan model, such that the route should include places designated on the National Historic Register, historic districts, and a connection of structures of historic context.*

Committee Member
Senator Bob Jauch

<u>Aye</u>	<u>No</u>	<u>Not Voting</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Signature: _____



Vote Record


Committee on Transportation and Information
Infrastructure

Date: October 21, 2004
Bill Number: Clearinghouse Rule 04-057 (CR 04-057)
Moved by: Senate Committee on Transportation and Information Infrastructure
Motion: *The Department of Transportation be requested to modify Clearinghouse Rule 04-057 such that areas zoned industrial or commercial shall be segmented out of the scenic byway designation, unless requested otherwise by the municipality.*

Committee Member
Senator Bob Jauch

Aye **No** **Not Voting**

Signature: _____



Vote Record

Committee on Transportation and Information
Infrastructure

Date: October 21, 2004

Bill Number: Clearinghouse Rule 04-057 (CR 04-057)

Moved by: Senate Committee on Transportation and Information Infrastructure

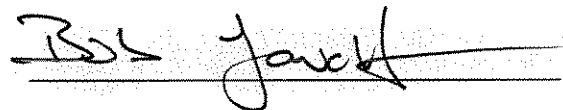
Motion: *The Department of Transportation be requested to modify Clearinghouse Rule 04-057 to create an opportunity for local municipalities to reaffirm their participation in the scenic byway program in 10-year intervals.*

Committee Member

Senator Bob Jauch

Aye No Not Voting

Signature:



Vote Record

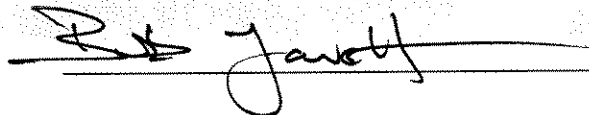
Committee on Transportation and Information
Infrastructure

Date: October 21, 2004
Bill Number: Clearinghouse Rule 04-057 (CR 04-057)
Moved by: Senate Committee on Transportation and Information Infrastructure
Motion: *The Department of Transportation be requested to modify Clearinghouse Rule 04-057, SECTION 3, Chapter Trans 202.10(1) Traffic control devices and route markings., to read: "(1) The department, ~~at its own expense, shall~~ may furnish and install signs to mark and identify all officially designated scenic byways."*

Committee Member
Senator Bob Jauch

<u>Aye</u>	<u>No</u>	<u>Not Voting</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Signature: _____



Vote Record

**Committee on Transportation and Information
Infrastructure**

Date: October 21, 2004

Bill Number: Clearinghouse Rule 04-057 (CR 04-057)

Moved by: Senate Committee on Transportation and Information Infrastructure

Motion: *The Senate Committee on Transportation and Information Infrastructure, pursuant to s. 227.19 (4) (b) 2., Stats., requests the Department of Transportation to consider modifications to Clearinghouse Rule 04-057, relating to the Wisconsin scenic byways program.*

Committee Member

Senator Roger Breske

<u>Aye</u>	<u>No</u>	<u>Not Voting</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Signature: _____

Roger Breske

Vote Record

**Committee on Transportation and Information
Infrastructure**

Date: October 21, 2004

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Motion: *The Department of Transportation be requested to modify Clearinghouse Rule 04-057 such that the criteria of the scenic byways program is expanded to include "historic" methods as perceivable. This language may be based on the Michigan model, such that the route should include places designated on the National Historic Register, historic districts, and a connection of structures of historic context.*

Committee Member

Senator Roger Breske

<u>Aye</u>	<u>No</u>	<u>Not Voting</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Signature: _____

Roger Breske

Vote Record

**Committee on Transportation and Information
Infrastructure**

Date: October 21, 2004

Bill Number: Clearinghouse Rule 04-057 (CR 04-057)

Moved by: Senate Committee on Transportation and Information Infrastructure

Motion: *The Department of Transportation be requested to modify Clearinghouse Rule 04-057 such that areas zoned industrial or commercial shall be segmented out of the scenic byway designation, unless requested otherwise by the municipality.*

Committee Member

Senator Roger Breske

Aye

No

Not Voting

Signature: _____

Roger Breske

Vote Record

**Committee on Transportation and Information
Infrastructure**

Date: October 21, 2004

Bill Number: Clearinghouse Rule 04-057 (CR 04-057)

Moved by: Senate Committee on Transportation and Information Infrastructure

Motion: *The Department of Transportation be requested to modify Clearinghouse Rule 04-057 to create an opportunity for local municipalities to reaffirm their participation in the scenic byway program in 10-year intervals.*

Committee Member

Senator Roger Breske

<u>Aye</u>	<u>No</u>	<u>Not Voting</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Signature: _____

Roger Breske

Vote Record

Committee on Transportation and Information
Infrastructure

Date: October 21, 2004

Bill Number: Clearinghouse Rule 04-057 (CR 04-057)

Moved by: Senate Committee on Transportation and Information Infrastructure

Motion: *The Department of Transportation be requested to modify Clearinghouse Rule 04-057, SECTION 3, Chapter Trans 202.10(1) Traffic control devices and route markings., to read: "(1) The department, ~~at its own expense, shall~~ may furnish and install signs to mark and identify all officially designated scenic byways."*

Committee Member

Senator Roger Breske

<u>Aye</u>	<u>No</u>	<u>Not Voting</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Signature:

Roger Breske

Vote Record

**Committee on Transportation and Information
Infrastructure**

Date: October 21, 2004

Bill Number: Clearinghouse Rule 04-057 (CR 04-057)

Moved by: Senate Committee on Transportation and Information Infrastructure

Motion: *The Senate Committee on Transportation and Information Infrastructure, pursuant to s. 227.19 (4) (b) 2., Stats., requests the Department of Transportation to consider modifications to Clearinghouse Rule 04-057, relating to the Wisconsin scenic byways program.*

Committee Member

Senator Neal Kedzie

Aye

No

Not Voting

Signature:



Vote Record

Committee on Transportation and Information
Infrastructure

Date: October 21, 2004
Bill Number: Clearinghouse Rule 04-057 (CR 04-057)
Moved by: Senate Committee on Transportation and Information Infrastructure
Motion: *The Department of Transportation be requested to modify Clearinghouse Rule 04-057 such that the criteria of the scenic byways program is expanded to include "historic" methods as perceivable. This language may be based on the Michigan model, such that the route should include places designated on the National Historic Register, historic districts, and a connection of structures of historic context.*

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Not Voting</u>
Senator Neal Kedzie	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Signature: _____

Neal J. Kedzie

Vote Record

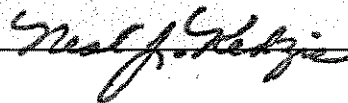
**Committee on Transportation and Information
Infrastructure**

Date: October 21, 2004
Bill Number: Clearinghouse Rule 04-057 (CR 04-057)
Moved by: Senate Committee on Transportation and Information Infrastructure
Motion: *The Department of Transportation be requested to modify Clearinghouse Rule 04-057 such that areas zoned industrial or commercial shall be segmented out of the scenic byway designation, unless requested otherwise by the municipality.*

Committee Member
Senator Neal Kedzie

<u>Aye</u>	<u>No</u>	<u>Not Voting</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Signature: _____



Vote Record

**Committee on Transportation and Information
Infrastructure**

Date: October 21, 2004

Bill Number: Clearinghouse Rule 04-057 (CR 04-057)

Moved by: Senate Committee on Transportation and Information Infrastructure

Motion: *The Department of Transportation be requested to modify Clearinghouse Rule 04-057 to create an opportunity for local municipalities to reaffirm their participation in the scenic byway program in 10-year intervals.*

Committee Member

Senator Neal Kedzie

Aye **No** **Not Voting**

Signature:



Vote Record

Committee on Transportation and Information
Infrastructure

Date: October 21, 2004

Bill Number: Clearinghouse Rule 04-057 (CR 04-057)


Moved by: Senate Committee on Transportation and Information Infrastructure

Motion: *The Department of Transportation be requested to modify Clearinghouse Rule 04-057, SECTION 3, Chapter Trans 202.10(1) Traffic control devices and route markings., to read: "(1) The department, ~~at its own expense, shall~~ may furnish and install signs to mark and identify all officially designated scenic byways."*

Committee Member
Senator Neal Kedzie

<u>Aye</u>	<u>No</u>	<u>Not Voting</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Signature:



Vote Record

**Committee on Transportation and Information
Infrastructure**

Date: October 21, 2004

Bill Number: Clearinghouse Rule 04-057 (CR 04-057)

Moved by: Senate Committee on Transportation and Information Infrastructure

Motion: *The Senate Committee on Transportation and Information Infrastructure, pursuant to s. 227.19 (4) (b) 2., Stats., requests the Department of Transportation to consider modifications to Clearinghouse Rule 04-057, relating to the Wisconsin scenic byways program.*

Committee Member

Senator Ted Kanavas

Aye **No** **Not Voting**

Signature: _____



Vote Record

**Committee on Transportation and Information
Infrastructure**

Date: October 21, 2004

Bill Number: Clearinghouse Rule 04-057 (CR 04-057)

Moved by: Senate Committee on Transportation and Information Infrastructure

Motion: *The Department of Transportation be requested to modify Clearinghouse Rule 04-057 such that the criteria of the scenic byways program is expanded to include "historic" methods as perceivable. This language may be based on the Michigan model, such that the route should include places designated on the National Historic Register, historic districts, and a connection of structures of historic context.*

Committee Member

Senator Ted Kanavas

<u>Aye</u>	<u>No</u>	<u>Not Voting</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



Signature: _____

Vote Record

**Committee on Transportation and Information
Infrastructure**

Date: October 21, 2004

Bill Number: Clearinghouse Rule 04-057 (CR 04-057)

Moved by: Senate Committee on Transportation and Information Infrastructure

Motion: *The Department of Transportation be requested to modify Clearinghouse Rule 04-057 such that areas zoned industrial or commercial shall be segmented out of the scenic byway designation, unless requested otherwise by the municipality.*

Committee Member

Senator Ted Kanavas

Aye



No



Not Voting



Signature: _____

Vote Record

**Committee on Transportation and Information
Infrastructure**

Date: October 21, 2004

Bill Number: Clearinghouse Rule 04-057 (CR 04-057)

Moved by: Senate Committee on Transportation and Information Infrastructure

Motion: *The Department of Transportation be requested to modify Clearinghouse Rule 04-057 to create an opportunity for local municipalities to reaffirm their participation in the scenic byway program in 10-year intervals.*

Committee Member

Senator Ted Kanavas

Aye **No** **Not Voting**



Signature: _____

Vote Record

**Committee on Transportation and Information
Infrastructure**

Date: October 21, 2004

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Moved by: Senate Committee on Transportation and Information Infrastructure

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Committee Member

Senator Ted Kanavas

<u>Aye</u>	<u>No</u>	<u>Not Voting</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Signature: _____



Vote Record

**Committee on Transportation and Information
Infrastructure**

Date: October 21, 2004
Bill Number: Clearinghouse Rule 04-057 (CR 04-057)
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Motion: *The Senate Committee on Transportation and Information Infrastructure, pursuant to s. 227.19 (4) (b) 2., Stats., requests the Department of Transportation to consider modifications to Clearinghouse Rule 04-057, relating to the Wisconsin scenic byways program.*

Committee Member
Senator Joe Leibham

<u>Aye</u>	<u>No</u>	<u>Not Voting</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Signature: _____

JOE LEIBHAM

Vote Record

Committee on Transportation and Information Infrastructure

Date: October 21, 2004

Bill Number: Clearinghouse Rule 04-057 (CR 04-057)

Moved by: Senate Committee on Transportation and Information Infrastructure

Motion: *The Department of Transportation be requested to modify Clearinghouse Rule 04-057 such that the criteria of the scenic byways program is expanded to include "historic" methods as perceivable. This language may be based on the Michigan model, such that the route should include places designated on the National Historic Register, historic districts, and a connection of structures of historic context.*

Committee Member

Senator Joe Leibham

<u>Aye</u>	<u>No</u>	<u>Not Voting</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Signature: _____

Joe Leibham

Vote Record

**Committee on Transportation and Information
Infrastructure**

Date: October 21, 2004

Bill Number: Clearinghouse Rule 04-057 (CR 04-057)

Moved by: Senate Committee on Transportation and Information Infrastructure

Motion: *The Department of Transportation be requested to modify Clearinghouse Rule 04-057 such that areas zoned industrial or commercial shall be segmented out of the scenic byway designation, unless requested otherwise by the municipality.*

Committee Member
Senator Joe Leibham

<u>Aye</u>	<u>No</u>	<u>Not Voting</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Signature: _____

Joe Leibham

Vote Record

**Committee on Transportation and Information
Infrastructure**

Date: October 21, 2004

Bill Number: Clearinghouse Rule 04-057 (CR 04-057)

Moved by: Senate Committee on Transportation and Information Infrastructure

Motion: *The Department of Transportation be requested to modify Clearinghouse Rule 04-057 to create an opportunity for local municipalities to reaffirm their participation in the scenic byway program in 10-year intervals.*

Committee Member

Senator Joe Leibham

Aye



No



Not Voting



Signature: _____

Joe Leibham

Vote Record

**Committee on Transportation and Information
Infrastructure**

Date: October 21, 2004
Bill Number: Clearinghouse Rule 04-057 (CR 04-057)
Moved by: Senate Committee on Transportation and Information Infrastructure
Motion: *The Department of Transportation be requested to modify Clearinghouse Rule 04-057, SECTION 3, Chapter Trans 202.10(1) Traffic control devices and route markings., to read: "(1) The department, ~~at its own expense, shall~~ may furnish and install signs to mark and identify all officially designated scenic byways."*

Committee Member
Senator Joe Leibham

<u>Aye</u>	<u>No</u>	<u>Not Voting</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Signature: _____

Joe Leibham

Lindstedt, Daniel

From: Lindstedt, Daniel
Sent: Thursday, September 02, 2004 4:38 PM
To: Kedzie, Neal; Leibham, Joseph; Meyer, Mark; Sen.Breske; Sen.Breske; Sen.Kanavas;
Sen.Kedzie; Sen.Leibham; Sen.Meyer
Cc: Lovell, David; Salm, Don; Heiting, Rebecca; Lindstedt, Daniel; Meinholz, Susan; Natzke,
Ryan; Phillips, Matt; Piliouras, Elizabeth; Prange, Katy; Shepherd, Jeremey; Van Natta, Lori;
Vogel, Brad
Subject: Senate Committee on Transportation and Information Infrastructure: Receipt of Clearinghouse
Rule 04-057

Importance: High

**PLEASE OPEN THE ATTACHED WORD DOCUMENT TO REVIEW THE NOTICE
FOR RECEIPT OF: CLEARINGHOUSE RULE 04-057 (CR 04-057).**

HARD COPIES WILL BE DISTRIBUTED UPON REQUEST.



CR 04-057 notice,
DKL, 09.02.0...

Daniel Lindstedt

Office of State Senator Joe Leibham

State Capitol, Room 409 South

Madison, WI 53707-7882

(608) 266-2056 (o)

(608) 282-3549 (f)

www.legis.state.wi.us/senate/sen09/news/index.htm

MEMORANDUM

DATE: Thursday, September 2, 2004

TO: Honorable Members of the Senate Committee on Transportation and Information Infrastructure

FROM: Senator Joe Leibham, Chair
Senate Committee on Transportation and Information Infrastructure

RE: Receipt of Clearinghouse Rule

The following Clearinghouse Rule was referred to the Senate Committee on Transportation and Infrastructure on **September 1, 2004**:

Clearinghouse Rule 04-057 (CR 04-057) relating to Wisconsin fuel tax and international registration program.

THE DEADLINE FOR ACTION ON THIS RULE IS: Friday, October 1, 2004.

Attached, please find a copy of CR 04-057 in .pdf format. The Rule can also be accessed via the following Internet link: Wisconsin Legislature: Infobases. Hard copies are available from the Committee Clerk, upon request.

- **CR 04-057**



CR 04-057, DKL,
09.01.04.pdf

Lindstedt, Daniel

From: Lindstedt, Daniel
Sent: Friday, September 03, 2004 12:33 PM
To: Kedzie, Neal; Leibham, Joseph; Meyer, Mark; Sen.Breske; Sen.Breske; Sen.Kanavas; Sen.Kedzie; Sen.Leibham; Sen.Meyer
Cc: Salm, Don; Heiting, Rebecca; Lindstedt, Daniel; Meinholz, Susan; Natzke, Ryan; Phillips, Matt; Piliouras, Elizabeth; Prange, Katy; Shepherd, Jeremey; Van Natta, Lori; Vogel, Brad
Subject: ***REVISED*** Senate Committee on Transportation and Information Infrastructure: Receipt of Clearinghouse Rule 04-057

Importance: High

PLEASE OPEN THE ATTACHED WORD DOCUMENT TO REVIEW A REVISED* NOTICE FOR RECEIPT OF: CLEARINGHOUSE RULE 04-057 (CR 04-057).

** CR 04-057 relates to the Wisconsin scenic byways program, not the Wisconsin fuel tax and international registration program, as earlier indicated.*



CR 04-057 notice,
revised, DKL...

HARD COPIES WILL BE DISTRIBUTED UPON REQUEST.

Daniel Lindstedt

*Office of State Senator Joe Leibham
State Capitol, Room 409 South
Madison, WI 53707-7882
(608) 266-2056 (o)
(608) 282-3549 (f)
www.legis.state.wi.us/senate/sen09/news/index.htm*

MEMORANDUM

DATE: Friday, September 3, 2004

TO: Honorable Members of the Senate Committee on Transportation and Information Infrastructure

FROM: Senator Joe Leibham, Chair
Senate Committee on Transportation and Information Infrastructure

RE: Receipt of Clearinghouse Rule

The following Clearinghouse Rule was referred to the Senate Committee on Transportation and Infrastructure on **September 1, 2004**:

Clearinghouse Rule 04-057 (CR 04-057) relating to Wisconsin scenic byways program.

THE DEADLINE FOR ACTION ON THIS RULE IS: Friday, October 1, 2004.

Attached, please find a copy of CR 04-057 in .pdf format. The Rule can also be accessed via the following Internet link: Wisconsin Legislature: Infobases. Hard copies are available from the Committee Clerk, upon request.

- **CR 04-057**



CR 04-057, DKL,
09.01.04.pdf