



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #763

Outdoor Advertising Signs on Designated Scenic Byways (DOT -- State Highway Program)

[LFB 2003-05 Budget Summary: Page 429, #9]

CURRENT LAW

The statutes generally prohibit signs visible from the main-traveled way of any interstate or federal-aid highway from being erected or maintained. Several exceptions are provided, however, allowing either certain types of signs, such as official directional signs, or signs to be placed in certain areas, such as in areas zoned for business, industrial, or commercial activities ("business areas").

DOT administers a scenic byways program, under which the Department may designate highways in the state that have outstanding scenic, historic, cultural, natural, recreational, or archeological qualities as scenic byways. DOT may also seek to have these highways designated as national scenic byways, consistent with federal regulations. States may receive federal funds under the national scenic byways program for certain activities related to state-designated scenic byways. In Wisconsin, the only highway that has been designated as a scenic byway is the Great River Road in the western part of the state.

GOVERNOR

Specify that provisions that allow certain types of signs to be erected and maintained along interstate and federal-aid highways (as exceptions to a general prohibition against the erection and maintenance of signs along such highways) do not apply to the following types of signs in an area adjoining a portion of the highway that is designated by the Department as a scenic byway: (a) signs located in business areas; (b) signs on farm buildings that are utilized by owners of the building for agricultural purposes, if the signs promote a Wisconsin agricultural product; and (c) signs erected prior to October 14, 1997, by the Crime Stoppers organization. The effect of this provision would be to prohibit the erection or maintenance of these signs along highways designated as scenic byways. Modify the definition of the term "primary highway" to conform with current federal law by including highways designated by DOT and approved by

the appropriate authority of the federal government as: (a) a part of the federal-aid primary system in existence on June 1, 1991; or (b) a part of the national highway system under federal law. Modify the provision that generally prohibits the erection and maintenance of signs to conform with this definitional change, by replacing the term "federal-aid highways" with the term "primary highways."

Specify that DOT must provide just compensation for signs that are removed or relocated, are not in conformity with advertising sign provisions, and that were lawfully in existence on land adjoining that portion of an interstate or primary highway that was designated by the Department as a scenic byway after the effective date of the bill.

DISCUSSION POINTS

1. Current federal law requires any state that administers a state scenic byways program to prohibit advertising signs, with certain exceptions, along interstate and primary highways that are designated by the state as scenic byways. Current federal law also requires the Federal Highway Administration (FHWA) to withhold 10% of certain categories of the state's federal highway aid from any state that FHWA determines "has not made provision for effective control of the erection and maintenance" of signs along the interstate system and the primary system, although FHWA can suspend the penalty "for periods [deemed] necessary" if it is determined that such suspension would be "in the public interest." If a penalty were to be imposed, it is estimated, based on the levels of federal aid in the bill, that the state would be subject to an annual loss of federal aid of approximately \$40 million.

2. If FHWA determines that the state is out of compliance with the outdoor advertising provisions and decides to take action to withhold funds, the U.S. DOT Secretary is required to provide the state with written notice at least 60 days prior to taking any action to withhold funds. During this time, the state may modify its law to come into compliance or may request a hearing on the issue. After this period, the U.S. DOT Secretary may issue the final determination, which could involve the withholding of funds. The state may, however, appeal this determination in U.S. District Court.

3. The bill would make modifications to the state's law on outdoor advertising control to recognize the particular requirements associated with designated scenic byways. However, after reviewing the bill's provisions, DOT has determined that some modifications to the bill are necessary to fully comply with the federal law and to clarify the intent of the provision. These modifications would: (a) include in the list of signs that could not be erected or maintained along a scenic byway on or after the date that the highway is designated as a scenic byway, signs that are in an urban area outside an area within 660 feet of the nearest edge of the highway right-of-way (the "adjacent area"), but that are visible from the traveled way; and (b) specify that the restrictions on the erection and maintenance of signs along scenic byways apply only on or after the date that the highway is designated as a scenic byway (this includes removing the treatment of the Crime Stoppers provision, since this provision deals only with signs that are already in existence).

4. DOT has also suggested other changes that, while not strictly required by federal law, would, according to the Department, improve the Department's ability to maintain an effective program for the control of outdoor advertising along scenic byways. The first of these changes would authorize DOT to promulgate a rule that, with respect to signs that are visible from a interstate or primary highway that is designated as a scenic byway and that were in existence when the highway was designated as a scenic byway: (a) regulates the size, number, lighting, and spacing of such signs; and (b) contains other requirements related to such signs that are deemed appropriate to implement a scenic byways program. Under current law, DOT is required to promulgate a rule regulating the lighting, size, number, and spacing of signs when such signs are visible from any highway, but only such signs outside the "adjacent area," which is within 660 feet of the nearest edge of the highway right-of-way. The Department's proposed changes would allow regulation of signs both within and outside the adjacent area of a highway designated as a scenic byway.

5. While the bill, as proposed to be amended under Point #3 to be consistent with federal requirements, would prohibit the erection of new signs along scenic byways once the highway is designated as such, it would not affect signs that are already in existence. DOT's proposed change, however, may allow the Department, for instance, to prevent signs from being increased in size or from being moved or lighted once the highway is designated as a scenic byway.

6. The second DOT-proposed change would modify the provision in the bill related to providing just compensation for removed signs that are not in conformity with sign provisions ("nonconforming signs") to specify that just compensation shall be provided to any removed sign that is visible from a designated scenic byway. This change would clarify the bill in a way to ensure that just compensation is provided for removed signs along scenic byways, but reflects the determination that federal law does not require signs lawfully in existence on the date of scenic byway designation to be declared "nonconforming." However, the entire provision in the bill relating to providing just compensation could be eliminated without violating federal requirements related to signs along scenic byways.

ALTERNATIVES

1. Approve the Governor's recommendation relating to the erection and maintenance of signs along highways designated as scenic byways, with the following modifications to bring the law into compliance with federal law: (a) include in the list of signs that could not be erected or maintained along a scenic byway on or after the date that the highway is designated as a scenic byway, signs that are in an urban area outside the adjacent area, but that are visible from the traveled way; and (b) specify that the restrictions on the erection and maintenance of signs along scenic byways apply only on or after the date that the highway is designated as a scenic byway.

2. Approve the Governor's recommendation with the modifications included in Alternative #1 and, in addition, approve one or both of the following modifications:

a. Authorize DOT to promulgate a rule that, with respect to signs that are visible from an interstate or primary highway that is designated as a scenic byway and that were in existence when the highway was designated as a scenic byway: (1) regulates the size, number, lighting, and

spacing of such signs; and (2) contains other requirements related to such signs that are deemed appropriate to implement a scenic byways program.

b. Modify the provision in the bill related to providing just compensation for removed signs that are not in conformity with sign provisions to specify that just compensation shall be provided to any removed sign that is visible from a designated scenic byway.

3. Delete provision.

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