

Clearinghouse Rule 16-045

**STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY**

The State of Wisconsin Department of Transportation Proposes an Order to Amend Permanent Rule Wisconsin Administrative Code § Trans 201.23 and ch. Trans 202 Relating to Wisconsin Scenic Byway Program.

**PROPOSED ORDER
AMENDING PERMANENT RULE**

The Statement of Scope for this Permanent Rule, SS 055-14, was approved by the Governor on May 23, 2014, published in the Wisconsin Administrative Register No.: 702 on June 14, 2014, and approved by the Secretary of the State of Wisconsin Department of Transportation (“Department”) Mark Gottlieb, P.E., on June 26, 2014, as required by Wis. Stat. § 227.135(2).

The Department proposes an Order to amend permanent rule Wisconsin Administrative Code § Trans 201.23 and ch. Trans 202 relating to the Wisconsin Scenic Byway Program. The analysis below was prepared by the Department.

ANALYSIS

Statutes Interpreted: Wis. Stat. § 84.106.

Statutory Authority: Wis. Stat. § 84.106 and 2011 Wisconsin Act 147.

Explanation of Agency Authority: Authority for this rulemaking is provided in Wis. Stat. § 84.106. Wisconsin Stat. § 84.106 (1m), requires the Department to develop, implement, and administer a program to designate highways or portions of highways in this state that have outstanding scenic, historic, cultural, natural, recreational, or archaeological qualities as scenic byways. Originally only state and federal highways, except interstates, could be incorporated into a scenic byway. 2011 Wisconsin Act 147 amended Wis. Stat. § 84.106, so that any type of

highway, except for interstates, intended for regular use by the motoring public has the potential to be designated as a scenic byway.

Wisconsin Stat. § 84.106 (2) requires the Department to promulgate rules related to the scenic byway program. This rulemaking is to incorporate this statutory change into Wis. Admin. Code § Trans 201.23 and ch. Trans 202.

Related Statute or Rule: Wis. Stat. § 84.106.

Plain Language Analysis: This rulemaking specifies which types of highways may be integrated into a scenic byway created under Wis. Stat. § 84.106.

2011 Wisconsin Act 147 amended Wis. Stat. § 84.106, so that any type of highway, except interstates, has the potential to be designated as a scenic byway. Prior to 2011 Wisconsin Act 147, only state and federal highways, other than interstates, could be incorporated into a scenic byway. This rulemaking incorporates this statutory change into Wis. Admin. Code § Trans 201.23 and ch. Trans 202 and excludes those parts of the transportation network not designed or intended for regular use by the motoring public.

The following types of highways will be eligible for inclusion as a scenic byway:

- State and federal highways (currently eligible);
- Connecting highways (currently eligible);
- County highways (new);
- Local streets (new).

The following types of facilities fall within the scope of the legal term “highway” but shall not be eligible for inclusion as a scenic byway:

- Interstate highways (already excluded by rule);
- Alleys (new);
- Bike paths, sidewalks and footpaths (new);
- ATV and snowmobile trails (new);
- Hiking trails (new);
- Railroad rights of way (new);
- Any other facility not intended for use by motor vehicles (new).

Because the Scenic Byways program will now include highways under county and local jurisdiction, to which the federal Highway Beautification Act and conforming state laws do not apply, state outdoor advertising regulations related to scenic highways found in Wis. Admin. Code § Trans 201.23 will make clear that these outdoor advertising regulations are not being extended to those local and county roads.

2011 Wisconsin Act 147 also created Wis. Stat. § 84.106(3), related to marking highways. Wisconsin Stat. § 84.106(3) specifies that the Department is responsible for the installation and maintenance of scenic byways logo signs along sections of the scenic highway that are part of the state trunk highway system, and also provides that the local government that has maintenance authority over a road or highway shall be responsible for the installation and maintenance of scenic byways logo signs on those roads.

Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations: 2011 Wisconsin Act 147 is consistent with the authorizing legislation for a national scenic byways program found in Title 23 U.S.C. § 162, and the control of outdoor advertising on scenic byways on the Federal Aid Primary System found in 23 U.S.C. § 131(2).

Under federal law, Title 23 U.S.C. § 162, the national scenic byway program's vision is to create a distinctive collection of American roads, their stories and treasured places. Federal Highway Administration ("FHWA") Interim Policy (Volume 60, No. 96 Federal Register) set forth the criteria for the designation of roads as National Scenic Byways based on their scenic and other qualities, regardless of whether the highways are under state or local jurisdiction. Federal law in 23 U.S.C. § 131(2) does restrict billboard erection along scenic byways that are part of the interstate or national highway systems.

Like the federal program, the Wisconsin Scenic Byways Program's current purpose is to identify, through local government initiatives, highway routes with outstanding scenic characteristics and other related qualities and resources that provide travelers with an exceptional travel experience. Consistent with federal law, Wis. Stat. § 84.106, now permits local roads to be added to the scenic highways system.

This rule also provides that, consistent with federal law, billboard control required under the federal highway beautification act and corresponding state laws and regulations will not be applied to local highways that are not subject to regulation under Wis. Stat. § 84.30.

Comparison with Rules in Adjacent States: While the National Scenic Byways Program administered by the FHWA established the framework and criteria for the program, states have discretion as to how they develop and implement their respective state programs. The Department focus of comparison with respect to neighboring states, is on the following questions:

- What are the types of highways that may be integrated into a scenic byway in Illinois, Iowa, Michigan and Minnesota?
- Who pays for the initial and replacement logo signs that identify the route as a scenic byway?

Illinois All public roads including local roads and county highways in Illinois are eligible for designation. Unless the FHWA designates a scenic byway in Illinois, no new scenic highways may be created in the state. FHWA has not accepted applications for new byways since 2008, so no new byways have been added in Illinois since 2008. Any state or local highway designated as a scenic byway by the Federal government may be signed as a scenic byway in Illinois.

Illinois allows each officially designated byway to have its own unique Scenic Byways logo sign to identify the route as a scenic byway and to guide travelers along it. The average cost of the logo sign is \$100. Byway groups pay for the fabrication of the initial and replacement signs. The

Illinois Department of Transportation installs signs on the state trunk highway system and the appropriate local government installs signs along local highways.

Iowa All public roads including local roads and county highways in Iowa are eligible for designation.

Iowa allows each officially designated byway to have its own unique Scenic Byways logo sign to identify the route as a scenic byway and guide travelers along it. The Iowa DOT is in the process of updating the graphics on these logo signs. The estimated average cost of the logo sign is \$87. The Iowa DOT provides the updated logo signs and installation. The Iowa DOT will provide replacement signs and the local governments or the Iowa DOT district offices will install them.

Michigan Numbered US and state trunk highways in Michigan are eligible for scenic byway designation. Local roads and county highways are not eligible for designation as a state scenic byway.

Michigan has a single standardized logo sign that is used on all of its formally designated byways. In December 2014, the Michigan legislature passed a bill to change the name from “Heritage Route” to “Pure Michigan Byway” as part of a rebranding and reinvention of the program. The estimated cost per sign is \$16; they are made at a state prison. The Michigan Department of Transportation will replace the old logo signs at the end of their life expectancy which is 15 to 20 years. Signs may be replaced earlier if the local byway committee secures funding for the logo signs from a local transportation office or from another source of funding. The Michigan DOT maintains the erected signs.

Minnesota All public roads including local roads and county highways in Minnesota are eligible for designation.

Minnesota allows each officially designated byway to have its own unique Scenic Byways logo sign to identify the route and guide travelers along it. The average cost of the logo sign is \$82.

The byway groups need to secure funding from public or private sources for the fabrication of the initial and replacement signs. The byway groups must also make arrangements for the installation of the signs.

Summary of Factual Data and Analytical Methodologies: Wisconsin Stat. § 84.106(2), requires the Department to promulgate rules related to the scenic byway program. 2011 Wisconsin Act 147 is consistent with the authorizing legislation for a national scenic byways program found in Title 23 U.S.C. § 162, and the control of outdoor advertising on scenic byways on the Federal Aid Primary System found in Title 23 U.S.C. § 131(s).

Analysis Regarding Rule's Effect on Small Businesses: This proposed rule neither requires nor prohibits any action on the part of any small business. This rule will not impose any direct or indirect costs on small businesses. The anticipated economic impact of implementing the proposed rule changes are:

- Scenic byways designation may provide an additional attraction for tourists. Therefore, more scenic byway designations should have a positive impact on tourism.
- Scenic byway designation provides municipalities on a route with a means of distinguishing themselves from other nearby municipalities (*e.g.*, “come visit us; we are a scenic byway”). Designation also creates additional avenues for promotion at the local level.
- In 2004, an economic impact study and marketing analysis was conducted of Wisconsin’s first scenic byway known as the Great River Road. The route is primarily on WIS 35, from Prescott to Kieler. The study showed that in 2003, recreational users along the Great River Road Scenic Byway generated an estimated \$337.5M in tourist expenditures. These expenditures supported an estimated 10,219 full-time equivalent jobs on the scenic byway. The full-time jobs generated an estimated additional \$145M in wages and proprietary income.
- No other studies or analyses have been done in Wisconsin regarding the economic impact of scenic byways.

Fiscal Estimate: The Department estimates that the fiscal impact will be to towns, villages, cities, counties or tribal governments for the purchase and installation of scenic byway logo signs on a local road or county trunk highway that is part of a formally designated scenic byway route. Scenic Byways logo signs are needed to identify the route and guide travelers along it.

2011 Wisconsin Act 147 creates Wis. Stat. § 84.106(3), related to marking highways. Wisconsin Stat. § 84.106(3) specifies that the Department shall be responsible for the installation and maintenance of logo signs along the state trunk highway system. 2011 Wisconsin Act 147 also specifies that the local government that has maintenance authority over a road or highway shall be responsible for the installation and maintenance of logo signs along those roads. The current cost of a logo sign, post, and installation is \$175. There is an average of 0.68 signs per mile on the three formally designated byways (excluding the Great River Road) in Wisconsin.

The minimum length for a Wisconsin scenic byway is 30 miles. Assuming the route is solely on county highways or local roads, approximately 20 signs would be needed for a total cost of \$3,500. It is important to note that the total cost would be shared by the local governments abutting the route. The actual cost per local government would depend on the percentage of the mileage of the local roads that comprise the scenic byways route.

Local governments may be able to coordinate with local service clubs or commissions to help defray the purchase cost of the signs. However, they have the ultimate responsibility for the purchase, installation and on-going maintenance of these signs.

The Department estimates that there will be no other fiscal impact on the liabilities or revenues of any town, village, city, county or tribal government related to scenic byway designation.

Anticipated costs incurred by the private sector: None.

Effect on small businesses: This proposed rule neither requires nor prohibits any action on the part of any small business. This rule will not impose any direct or indirect costs on small businesses.

A scenic byways designation provides an additional attraction for tourists. Small businesses located along a formally designated byway that are involved in the provision of goods and services related to tourism or travel may experience an incremental increase in visitors and revenues due to increased visitation by tourists as a result of byway designation. The agency contact person listed below is also the small business regulatory coordinator for this proposed rule. This proposed rule, fiscal estimate, and other related documents may be viewed at <https://health.wisconsin.gov/admrules/public/Home>.

Agency Contact Person:

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Place Where Comments Should Be Submitted and Deadline: Comments may be submitted to the agency contact person listed above until the deadline given in the upcoming notice of public hearing. The deadline for submitting comments and the notice of public hearing will be posted on the Wisconsin Administrative Rules Website at <http://adminrules.wisconsin.gov> after the hearing is scheduled.

TEXT OF PERMANENT RULE

SECTION 1. Trans 201.23 (2) is amended to read:

Trans 201.23 (2) After March 1, 2005, no sign visible from the main-traveled way of a an interstate or primary highway that is a scenic byway may be erected except the following:

Note: Under Trans 202.05(4)(2016), interstates are not currently eligible for scenic byway designation.

SECTION 2. Trans 201.23 note is created to read:

Trans 201.23 Note: Signs which are not on or visible from the main-traveled way of an interstate or primary highway are not subject to outdoor advertising regulations under s. 84.30, Wis. Stat. Local ordinances govern regulations on other routes.

SECTION 3. Trans 202.01 (1) is amended to read:

Trans 202.01 (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 scenic byways. ~~portions of the state trunk highway system as a scenic byway when the highway corridor possesses unusual, exceptional, or distinctive scenic features.~~

SECTION 4. Trans 202.01 (2) is amended to read:

Trans 202.01 (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.

SECTION 5. Trans 202.02 (4) is amended to read:

Trans 202.02 (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.

SECTION 6. Trans 202.02 (10m) is created to read:

Trans 202.02 (10m) “Scenic byway sign” means an official sign designating a scenic byway as set forth in the manual adopted by the department, the Wisconsin Manual on Uniform Traffic Control Devices (MUTCD) under s.84.02(4)(e).

SECTION 7. Trans 202.02 (14) is amended to read:

Trans 202.02 (14) "Wisconsin scenic byway" or "scenic byway" means a ~~state trunk highway or~~ combination of contiguous segments of state and federal highways, connecting highways, county highways and local roads ~~state trunk highways~~ that ~~has~~ have special scenic qualities or historic resources and may in addition have special ~~scenic, historic,~~ recreational, cultural, archeological, or natural qualities for which they are ~~that is~~ designated as a scenic byway by the secretary pursuant to s. 84.106 Stats.

SECTION 8. Trans 202.05 (2) is amended to read:

Trans 202.05 (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. ~~The route may contain municipal streets or highways that the department has designated as connecting highways and that are marked as part of the state trunk highway system.~~

SECTION 9. Trans 202.05 (4) is repealed and created to read:

Trans 202.05 (4) The following are not eligible for scenic byway designation:

- (a) Interstate highways.
- (b) Alleys.
- (c) Bike paths, sidewalks, hiking trails, and footpaths.
- (d) ATV and snowmobile trails, except that roadways designated as ATV or snowmobile routes as defined in s. 23.33(1) (c) and 350.01(16), may be included in a scenic byway.
- (e) Rustic roads designated under s. 83.42.
- (f) Railroad rights of way.

SECTION 10. Trans 202.08 is repealed and created to read:

Trans 202.08 Wisconsin scenic byway designation, as approved by the secretary, except as otherwise provided in this chapter, shall not affect in any manner the authority and responsibilities of the department, any county or any local government over their respective segments of a scenic byway including responsibility for maintenance, safety, improvements or regulation of traffic.

SECTION 11. Trans 202.09 is repealed and created to read:

Trans 202.09 Designation as a Wisconsin scenic byway may not:

- 1. Prohibit or affect future roadway design or construction.
- 2. Change the existing state or federal classification of the highway.
- 3. Be a factor in department or local government decisions on whether or not a highway improvement project is necessary or appropriate for the designated highway.
- 4. Be considered in determining local transportation aids paid under § 86.30.

5. Affect enforcement of state or local traffic laws.

SECTION 12. Trans 202.10 (1) is repealed and created to read:

Trans 202.10 (1) The following units of government shall furnish, erect, replace and maintain signs marking scenic byways in accordance with the manual adopted by the department under s. 84.02(4) (e).

- (a) The department with respect to state trunk highways under its jurisdiction.
- (b) The local units of government with respect to any highway under their maintenance not described in par. (a), including connecting highways.

Note: Section 84.106 (3) requires a local government to provide for all costs associated with signing those segments of a scenic byway or a highway under its maintenance including connecting highways. The manual adopted by the department is the Wisconsin Manual on Uniform Traffic Control Devices (MUTCD) which may be found online at <http://wisconsindot.gov/Pages/doing-bus/local-gov/traffic-ops/manuals-and-standards/wmutcd/wmutcd.aspx>

SECTION 13. Trans 202.13 (3) is amended to read:

Trans 202.13 (3) The SBAC may recommend to the secretary that a scenic byway designation for a particular ~~state trunk highway~~ route be rescinded if the route no longer possesses the scenic or historic character of the route originally qualifying it for designation due to overdevelopment, the presence of some other visual distraction, the failure to adequately implement the corridor management plan, or if substantial modifications to the route have taken place under sub. (1). The department may request that the SBAC review and recommend whether a scenic byway designation for a particular route should be rescinded. If the SBAC recommends that a scenic byway designation for a route 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 route may be withdrawn upon approval of the secretary.

SECTION 14. EFFECTIVE DATE. This rule shall take effect on the first day of the month beginning after publication in the Wisconsin Administrative Register as provided in s. 227.22 (2), Stats.

(END OF RULE TEXT)

Signed this ____ day of _____ 2016.

Mark Gottlieb, P.E.
Secretary
State of Wisconsin Department of Transportation