

1 SENATE BILL NO. 82

2 INTRODUCED BY MAHLUM

3 BY REQUEST OF THE DEPARTMENT OF TRANSPORTATION

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A SCENIC-HISTORIC BYWAYS PROGRAM;
6 AUTHORIZING AN ADVISORY COUNCIL FOR THE SCENIC-HISTORIC BYWAYS PROGRAM AND
7 DESCRIBING THE COUNCIL'S DUTIES; AUTHORIZING THE TRANSPORTATION COMMISSION AND THE
8 DEPARTMENT OF TRANSPORTATION TO ADMINISTER THE PROGRAM; AND AMENDING SECTION
9 60-1-103, MCA."

10
11 STATEMENT OF INTENT

12 A statement of intent is required for this bill because the department of transportation is required
13 in [section 2] to adopt rules to effectuate the scenic-historic byways program. The legislature contemplates
14 that rules promulgated under [section 2] address, at a minimum, the criteria and procedures for establishing
15 a scenic-historic byways program. The legislature intends that:

- 16 (1) local authorities be responsible for nominating routes for inclusion in the program;
17 (2) incorporated communities and their extraterritorial jurisdictions located on designated routes
18 may choose not to be considered as part of the scenic-historic byway; and
19 (3) the designation of a route as a scenic-historic byway in no way be construed to interfere
20 with private property rights or the rights of other highway users, including commercial motor vehicles.

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22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

23
24 **Section 1.** Section 60-1-103, MCA, is amended to read:

25 **"60-1-103. General definitions.** Subject to additional definitions contained in this title that are
26 applicable to specific chapters or sections and unless the context otherwise requires, ~~terms are defined as~~
27 follows the following definitions apply:

- 28 (1) "Abandonment" means cessation of use of right-of-way or an easement or cessation of activity
29 on the right-of-way or easement with no intention to reclaim or use again. Abandonment is sometimes
30 called vacation.

1 (2) "Bridge" means any bridge constructed by the department, together with all appurtenances,
2 additions, alterations, improvements, and replacements and the approaches to the bridge, lands used in
3 connection with the bridge, and improvements incidental or integral to the bridge.

4 (3) "Commission" means the transportation commission provided for in 2-15-2502.

5 (4) "Condemnation" means taking by exercise of the right of eminent domain.

6 (5) "Construction" means supervising, inspecting, actual building, and all expenses incidental to
7 the construction or reconstruction of a highway, including locating, surveying, mapping, and costs of
8 right-of-way or other interests in land and elimination of hazards at railway grade crossings.

9 (6) "Control of access" means the condition in which the right of owners or occupants of abutting
10 land or other persons to access, light, air, or view in connection with a highway is fully or partially
11 controlled by public authority.

12 (7) "County road" means any public highway opened, established, constructed, maintained,
13 abandoned, or discontinued by a county in accordance with Title 7, chapter 14.

14 (8) "Department" means the department of transportation provided for in Title 2, chapter 15, part
15 25.

16 (9) "Director" means the director of transportation, a position provided for in 2-15-2501.

17 (10) "Easement" means a right acquired by public authority to use or control property for a
18 designated purpose.

19 (11) "Eminent domain" means the right of the state to take private property for public use.

20 (12) "Federal-aid highway" means a public highway that is a portion of any of the federal-aid
21 highway systems.

22 (13) "Federal-aid highway systems" means all of the systems named as part of the systems and
23 their urban extensions.

24 (14) "Federal-aid interstate system" means that system of public highways selected by the
25 commission in cooperation with adjoining states, subject to the approval of the secretary of commerce, as
26 provided in Title 23, U.S.C.

27 (15) "Federal-aid primary system" means that system of connected public highways designated by
28 the commission, subject to the approval of the secretary of commerce, as provided in Title 23, U.S.C.

29 (16) "Federal-aid secondary system" means that system of public highways not in the federal-aid
30 primary or interstate systems selected by the commission in cooperation with the boards of county

1 commissioners, subject to the approval of the secretary of commerce, as provided in Title 23, U.S.C.

2 (17) "Fee simple" means an absolute estate or ownership in property, including unlimited power of
3 alienation.

4 (18) "Highway" includes rights-of-way or other interests in land, embankments, retaining walls,
5 culverts, sluices, drainage structures, bridges, railroad-highway crossings, tunnels, signs, guardrails, and
6 protective structures.

7 (19) "Highway", "road", and "street", whether the terms appear together or separately or are
8 preceded by the adjective "public", are general terms denoting a public way for purposes of vehicular travel
9 and include the entire area within the right-of-way.

10 (20) "Highway authority" means the entity at any level of government authorized by law to
11 construct and maintain highways.

12 (21) "Maintenance" means the preservation of the entire highway, including surface, shoulders,
13 roadsides, structures, and traffic-control devices that are necessary for the safe and efficient use of the
14 highway.

15 (22) "Public highways" means all streets, roads, highways, bridges, and related structures:

16 (a) built and maintained with appropriated funds of the United States or the state or any political
17 subdivision of the state;

18 (b) dedicated to public use;

19 (c) acquired by eminent domain; or

20 (d) acquired by adverse use by the public, jurisdiction having been assumed by the state or any
21 political subdivision of the state.

22 (23) "Right-of-way" is a general term denoting land, property, or any interest in land or property,
23 usually in a strip, acquired for or devoted to highway purposes.

24 (24) "Scenic-historic byway" means a public highway designated by the commission as enhancing
25 Montana's scenic, cultural, historic, recreational, natural, archaeological, or educational assets and as
26 promoting tourism and economic development.

27 (25) "State highway" means any public highway planned, laid out, altered, constructed,
28 reconstructed, improved, repaired, maintained, or abandoned by the department."

29

30 **NEW SECTION. Section 2. Scenic-historic byways program -- rulemaking authority -- advisory**

1 council. (1) There is a scenic-historic byways program. The commission may designate roads to be
2 included as part of the program and may add or delete roads from the program. However, a road may not
3 be designated as a scenic-historic byway without the concurrence of the affected local governments and
4 the agencies responsible for road maintenance and operation.

5 (2) The commission may delegate to the department the responsibility for establishing eligibility
6 criteria for inclusion in the scenic-historic byways program. The department shall adopt rules to effectuate
7 the purposes of the program.

8 (3) Notwithstanding the provisions of 2-15-122, the commission may appoint an advisory
9 council. The purpose of the advisory council is to assist the department in identifying and recommending
10 to the commission roads that should be included in or deleted from the scenic-historic byways program.
11 The advisory council may not exceed 14 members and must include representatives of local governments
12 and individuals with expertise in the fields of visual assessment, resource protection, tourism, economic
13 development, and local planning.

14

15 NEW SECTION. **Section 3. Codification instruction.** [Section 2] is intended to be codified as an
16 integral part of Title 60, chapter 2, part 2, and the provisions of Title 60, chapter 2, part 2, apply to
17 [section 2].

18

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0082, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act establishing a Scenic-Historic Byways Program; authorizing an advisory council for the Scenic-Historic Byways Program and describing the council's duties; and authorizing the Transportation Commission and the Department of Transportation to administer the program.

ASSUMPTIONS:

1. The Montana Department of Transportation (MDT) is proposing to accomplish the second phase of this program. The first phase was funded through a federal Department of Transportation grant, and produced a feasibility study and report on this program.
2. This proposal will complete development of the Scenic-Historic Byways Program by implementing the results of the feasibility study to identify the routes and develop the application and designation procedures that local communities will use, if they opt to participate in the program.
3. The requirement for the Transportation Enhancement setaside of Federal Surface Transportation program funds will be retained in the reauthorization of the Intermodal Surface Transportation Efficiency Act (ISTEA) and as such, federal funds are anticipated to be available for a portion of this program.
4. Costs for signing and marketing designated routes will not be incurred by MDT but will have to be provided by other sources such as: 1) private funds, 2) local allocation of the Montana Community Transportation Enhancement Program (CTEP) funds, or 3) tourism promotional funds.
5. \$40,000 of Federal Special Revenue and \$10,000 of State Special Revenue in each year of the biennium are projected to be necessary to fund the second phase of the program through a consultant contract.

FISCAL IMPACT:

Expenditures:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
Operating Expenses	50,000	50,000

Funding:

Highways Special Revenue (02)	10,000	10,000
Highway Trust Special Revenue (03)	<u>40,000</u>	<u>40,000</u>
Total	50,000	50,000

Revenues:

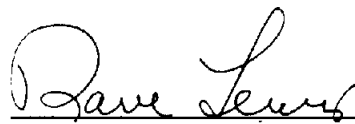
Federal Special Revenue (SPR-PL)	40,000	40,000
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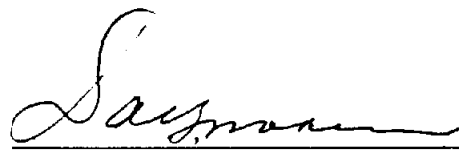
Net Fiscal Impact:

Highway Special Revenue (02):	(10,000)	(10,000)
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EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Local governments are not required to participate in this program. However, if they elect to participate, then funding for signing and marketing will be their responsibility. In addition, some matching funds may be required for CTEP-funded projects if they use this source of funding to pay for signing and marketing costs.

 1-9-97
 DAVE LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

 1-10-97
 DALE MAHLUM, PRIMARY SPONSOR DATE

Fiscal Note for SB0082, as introduced

SB 82

APPROVED BY COM ON
HIGHWAYS & TRANSPORTATION

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 5 AS A SCENIC-HISTORIC BYWAY MAY NOT IN ANY WAY DIMINISH THE PRIVATE PROPERTY RIGHTS OF
 6 A PERSON WHO OWNS LAND ADJACENT TO OR VISIBLE FROM THE DESIGNATED ROAD. THE
 7 DEPARTMENT MAY NOT EXERCISE THE RIGHT OF EMINENT DOMAIN FOR THE PURPOSE OF
 8 IMPLEMENTING A SCENIC-HISTORIC BYWAYS PROGRAM.

9 (2) The commission may delegate to the department the responsibility for establishing eligibility
 10 criteria for inclusion in the scenic-historic byways program. The department shall adopt rules to effectuate
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12 (3) Notwithstanding the provisions of 2-15-122, the ~~commission~~ GOVERNOR may appoint an
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 14 recommending to the commission roads that should be included in or deleted from the scenic-historic
 15 byways program. The advisory council may not exceed ~~14~~ 13 members ~~and must include representatives~~
 16 ~~of local governments and individuals with expertise in the fields of visual assessment, resource protection,~~
 17 ~~tourism, economic development, and local planning.~~ WHO WILL SERVE 2-YEAR STAGGERED TERMS. THE
 18 MEMBERS ARE:

19 (A) TWO PERSONS REPRESENTING THE DEPARTMENT;

20 (B) TWO PERSONS REPRESENTING CITIES;

21 (C) TWO PERSONS REPRESENTING COUNTIES;

22 (D) ONE PERSON REPRESENTING RESOURCE PROTECTION;

23 (E) ONE PERSON REPRESENTING TOURISM;

24 (F) ONE PERSON REPRESENTING ECONOMIC DEVELOPMENT;

25 (G) ONE PERSON REPRESENTING LOCAL PLANNING; AND

26 (H) THREE PERSONS REPRESENTING PRIVATE INDUSTRY.

27 (4) A SCENIC-HISTORIC BYWAYS PROGRAM IS SUBJECT TO THE FOLLOWING RESTRICTIONS:

28 (A) A SPEED LIMIT ON A PUBLIC HIGHWAY MAY NOT BE CHANGED BASED SOLELY ON THE
 29 HIGHWAY'S DESIGNATION AS A SCENIC-HISTORIC BYWAY.

30 (B) THE SCENIC-HISTORIC BYWAYS PROGRAM MUST INCLUDE A PLAN TO ACCOMMODATE

1 COMMERCE AND COMMERCIAL VEHICLES WHILE MAINTAINING A SAFE AND EFFICIENT LEVEL OF
2 HIGHWAY SERVICE.

3 (C) THE SCENIC-HISTORIC BYWAYS PROGRAM MAY NOT INCLUDE ROADS THAT ARE ON THE
4 NATIONAL HIGHWAY SYSTEM OR THE PRIMARY HIGHWAY SYSTEM AS THOSE SYSTEMS ARE DEFINED
5 IN 60-2-125.

6 (D) THE COMMISSION MAY NOT EXPEND STATE FUNDS ON THE SCENIC-HISTORIC BYWAYS
7 PROGRAM.

8 (E) THE COMMISSION SHALL EXCLUDE FROM A SCENIC-HISTORIC BYWAY ANY SEGMENT OF
9 A PUBLIC HIGHWAY THAT THE COMMISSION DETERMINES IS INCONSISTENT WITH CRITERIA FOR
10 DESIGNATING SCENIC-HISTORIC BYWAYS. NEW BILLBOARDS MAY BE ERECTED WITHIN THESE
11 SEGMENTED AREAS.

12
13 NEW SECTION. Section 3. Codification instruction. [Section 2] is intended to be codified as an
14 integral part of Title 60, chapter 2, part 2, and the provisions of Title 60, chapter 2, part 2, apply to
15 [section 2].

16 -END-

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private property rights or the rights of other highway users, including commercial motor vehicles.

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

THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.