

National Scenic Byways Legislation

The National Scenic Byways Program is part of the U.S. Department of Transportation, Federal Highway Administration. Established in Title 23, Section 162 of the United States Code under the Intermodal Surface Transportation Efficiency Act of 1991 and reauthorized and expanded significantly in 1998 under TEA-21 and again under SAFETEA-LU in 2005, the program is a grass-roots collaborative effort established to help recognize, preserve and enhance selected roads throughout the United States.

National Scenic Byways Program

Title 23, Sec. 162. National scenic byways program

- a. Designation of Roads. -
 1. In general. - The Secretary shall carry out a national scenic byways program that recognizes roads having outstanding scenic, historic, cultural, natural, recreational, and archaeological qualities by designating the roads as -
 - A. National Scenic Byways;
 - B. All-American Roads; or
 - C. America's Byways.
 2. Criteria. - The Secretary shall designate roads to be recognized under the national scenic byways program in accordance with criteria developed by the Secretary.
 3. Nomination. -
 - A. In general. - To be considered for a designation, a road must be nominated by a State, an Indian tribe, or a Federal land management agency and must first be designated as a State scenic byway, an Indian tribe scenic byway, or, in the case of a road on Federal land, as a Federal land management agency byway.
 - B. Nomination by Indian tribes. - An Indian tribe may nominate a road as a National Scenic Byway, an All-American Road, or one of America's Byways under paragraph (1) only if a Federal land management agency (other than the Bureau of Indian Affairs), a State, or a political subdivision of a State does not have -
 - i. jurisdiction over the road; or
 - ii. responsibility for managing the road.
 - C. Safety. - An Indian tribe shall maintain the safety and quality of roads nominated by the Indian tribe under subparagraph (A).
 4. Reciprocal notification. - States, Indian tribes, and Federal land management agencies shall notify each other regarding nominations made under this subsection for roads that -
 - A. are within the jurisdictional boundary of the State, Federal land management agency, or Indian tribe; or
 - B. directly connect to roads for which the State, Federal land management agency, or Indian tribe is responsible.
- b. Grants and Technical Assistance. -
 1. In general. - The Secretary shall make grants and provide technical assistance to States and Indian tribes to -
 - A. implement projects on highways designated as -
 - i. National Scenic Byways;

- ii. All-American Roads;
 - iii. America's Byways;
 - iv. State scenic byways; or
 - v. Indian tribe scenic byways; and
 - B. plan, design, and develop a State or Indian tribe scenic byway program.
- 2. Priorities. - In making grants, the Secretary shall give priority to -
 - A. each eligible project that is associated with a highway that has been designated as a National Scenic Byway, All- American Road, or 1 of America's Byways and that is consistent with the corridor management plan for the byway;
 - B. each eligible project along a State or Indian tribe scenic byway that is consistent with the corridor management plan for the byway, or is intended to foster the development of such a plan, and is carried out to make the byway eligible for designation as -
 - i. a National Scenic Byway;
 - ii. an All-American Road; or
 - iii. 1 of America's Byways; and
 - C. each eligible project that is associated with the development of a State or Indian tribe scenic byway program.
- c. Eligible Projects. - The following are projects that are eligible for Federal assistance under this section:
 - 1. An activity related to the planning, design, or development of a State or Indian tribe scenic byway program.
 - 2. Development and implementation of a corridor management plan to maintain the scenic, historical, recreational, cultural, natural, and archaeological characteristics of a byway corridor while providing for accommodation of increased tourism and development of related amenities.
 - 3. Safety improvements to a State scenic byway, Indian tribe scenic byway, National Scenic Byway, All-American Road, or one of America's Byways to the extent that the improvements are necessary to accommodate increased traffic and changes in the types of vehicles using the highway as a result of the designation as a State scenic byway, Indian tribe scenic byway, National Scenic Byway, All-American Road, or one of America's Byways.
 - 4. Construction along a scenic byway of a facility for pedestrians and bicyclists, rest area, turnout, highway shoulder improvement, overlook, or interpretive facility.
 - 5. An improvement to a scenic byway that will enhance access to an area for the purpose of recreation, including water-related recreation.
 - 6. Protection of scenic, historical, recreational, cultural, natural, and archaeological resources in an area adjacent to a scenic byway.
 - 7. Development and provision of tourist information to the public, including interpretive information about a scenic byway.
 - 8. Development and implementation of a scenic byway marketing program.
- d. Limitation. - The Secretary shall not make a grant under this section for any project that would not protect the scenic, historical, recreational, cultural, natural, and archaeological integrity of a highway and adjacent areas.
- e. Savings Clause. - The Secretary shall not withhold any grant or impose any requirement on a State or Indian tribe as a condition of providing a grant or technical assistance for any scenic byway unless the requirement is consistent with the authority provided in this chapter.
- f. Federal Share. - The Federal share of the cost of carrying out a project under this section shall be 80 percent, except that, in the case of any scenic byway project along a public road that provides access to or within Federal or Indian land, a Federal

land management agency may use funds authorized for use by the agency as the non-Federal share.

Funding for the National Scenic Byways Program

Section 1101(a)(12) of SAFETEA-LU authorizes the funding for the National Scenic Byways Program:

SEC. 1101. AUTHORIZATION OF APPROPRIATIONS

- a. **IN GENERAL.**—The following sums are authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account):

12. **NATIONAL SCENIC BYWAYS PROGRAM.**—For the national scenic Byways program under section 162 of such title—
- A. \$26,500,000 for fiscal year 2005;
 - B. \$30,000,000 for fiscal year 2006;
 - C. \$35,000,000 for fiscal year 2007;
 - D. \$40,000,000 for fiscal year 2008; and
 - E. \$43,500,000 for fiscal year 2009.

America's Byways Resource Center

Sec. 1803 of SAFETEA-LU authorizes the continuation of ABRC:

SEC. 1803. AMERICA'S BYWAYS RESOURCE CENTER

- a. **IN GENERAL.**—The Secretary shall allocate funds made available to carry out this section to the America's Byways Resource Center established pursuant to section 1215(b)(1) of the Transportation Equity Act for the 21st Century (112 Stat. 209).
- b. **TECHNICAL SUPPORT AND EDUCATION.**—
- 1. **USE OF FUNDS.**—The Center shall use funds allocated to the Center under this section to continue to provide technical support and conduct educational activities for the national scenic byways program established under section 162 of title 23, United States Code.
 - 2. **ELIGIBLE ACTIVITIES.**—Technical support and educational activities carried out under this sub-section shall provide local officials and organizations associated with National Scenic Byways, All-American Roads, and America's Byways with proactive, technical, and on-site customized assistance, including training, communications (including a public awareness series), publications, conferences, on-site meetings, and other assistance considered appropriate to develop and sustain such byways and roads.
- c. **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) to carry out this section \$1,500,000 for fiscal year 2005 and \$3,000,000 for each of fiscal years 2006 through 2009.
- d. **APPLICABILITY OF TITLE 23.**—Funds authorized by this section shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code; except that the Federal share of the cost of any project or activity carried out under this section shall be 100 percent, and such funds shall remain available until expended and shall not be transferable.

Control of Outdoor Advertising (Billboards, etc.)

Title 23, Section 131(s) describes control of outdoor advertising along designated scenic byways:

- s. Scenic Byway Prohibition.--If a State has a scenic byway program, the State may not allow the erection along any highway on the Interstate System or Federal-aid primary system which before, on, or after the effective date of this subsection, is designated as a scenic byway under such program of any sign, display, or device which is not in conformance with [subsection \(c\)](#) of this section. Control of any sign, display, or device on such a highway shall be in accordance with this section. In designating a scenic byway for purposes of this section and section 1047 of the Intermodal Surface Transportation Efficiency Act of 1991, a State may exclude from such designation any segment of a highway that is inconsistent with the State's criteria for designating State scenic byways. Nothing in the preceding sentence shall preclude a State from signing any such excluded segment, including such segment on a map, or carrying out similar activities, solely for purposes of system continuity.

Title 23, Section 131(t) defines the terms "primary system" and "Federal-aid primary system":

- t. Primary System Defined.--For purposes of this section, the terms "primary system" and "Federal-aid primary system" mean the Federal- aid primary system in existence on June 1, 1991, and any highway which is not on such system but which is on the National Highway System.

Title 23, Section 131(s) references subsection 131(c) which explains what signs, displays, or devices are allowable along designated scenic byways:

- c. Effective control means that such signs, displays, or devices after January 1, 1968, if located within six hundred and sixty feet of the right-of-way and, on or after July 1, 1975, or after the expiration of the next regular session of the State legislature, whichever is later, if located beyond six hundred and sixty feet of the right-of-way located outside of urban areas, visible from the main traveled way of the system, and erected with the purpose of their message being read from such main traveled way, shall, pursuant to this section, be limited to (1) directional and official signs and notices, which signs and notices shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historical attractions, which are required or authorized by law, which shall conform to national standards hereby authorized to be promulgated by the Secretary hereunder, which standards shall contain provisions concerning lighting, size, number, and spacing of signs, and such other requirements as may be appropriate to implement this section, (2) signs, displays, and devices advertising the sale or lease of property upon which they are located, (3) signs, displays, and devices, including those which may be changed at reasonable intervals by electronic process or by remote control, advertising activities conducted on the property on which they are located, (4) signs lawfully in existence on October 22, 1965, determined by the State, subject to the approval of the Secretary, to be landmark signs, including signs on farm structures or natural surfaces, or historic or artistic significance the preservation of which would be consistent with the purposes of this section, and (5) signs, displays, and devices advertising the distribution by nonprofit organizations of free coffee to individuals traveling on the Interstate System or the primary system. For the purposes of this subsection, the term "free coffee" shall include coffee for which a donation may be made, but is not required.

Additional information from FHWA on outdoor advertising control can be found here:
http://www.fhwa.dot.gov/realestate/out_ad.htm.