State	Code on Designation of Scenic Byways	Page No.
Alabama	Code of Ala. § 23-1-293. The Designating Committee [for Scenic Byways].	1
	§ 23-1-294. The Advisory Council [for Scenic Byways].	2
Arkansas	ACA § 27-67-203. Scenic highway designations.	6
California	Cal Sts & Hy Code § 154. Encouragement of construction and development by counties of county scenic highways; Designation; Revocation of authority to designate	10
	§ 260. Establishment and application of planning and design standards for scenic highways; Factors to be considered in connection therewith.	12
	§ 262. Designation of highway as official state scenic highway; Indication on maps; Signs; Revocation of designation	14
	§ 262.5. Designation of official state scenic highways in United States National Forest lands	17
Florida	§ 335.093. Scenic highway designation	19
Illinois	§ 225 ILCS 440/14.02. Scenic byways; nomination	20
Iowa	Iowa Code § 306D.3 Plan recommendations and pilot projects.	22
Louisiana	La. R.S. § 48:1815. Creole Nature Trail Scenic Byway District; creation; boundaries; and purpose	23
	§ 56:1951. Purpose [To Designate Scenic Highways]	24
Maine	23 M.R.S. § 4206. Duties of commissioner [1-G. To establish a system of scenic highways]	25
Missouri	§ 226.797. Scenic roads and highways system to be established--commission's powers and duties--counties or municipalities may make application, procedure to join or remove from scenic system	29
	§ 226.799. Procedure to designate a road or highway as scenic, publication--hearing--county or city in area affected to notify commission of approval or rejection, effect	31
Montana	Mont. Code Anno., § 60-2-217 Signs identifying mountain ranges -- scenic loop highways -- costs -- responsibility of department.	32
New Mexico	N.M. Stat. Ann. § 67-13-4. Creation of scenic highway zones	36
New York	NY CLS High § 349-aa. Statement of intent [for scenic byways program]	37
	§ 349-cc. New York state scenic byways advisory board	38
North Carolina	N.C. Gen. Stat. § 136-18. Powers of Department of Transportation [31. To designate scenic highways and byways (p. 46)]	40
Rhode Island	R.I. Gen. Laws § 24-15-1. Purpose [Scenic Highways Creation]	56

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*** Current through Acts 2009, No. 09-336 of the 2009 Regular Session ***

TITLE 23 Highways, Roads, Bridges And Ferries
CHAPTER 1 Alabama Highways
Article 9A Alabama Scenic Byways Program

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Code of Ala. § 23-1-290 (2009)

§ 23-1-290. Title.

This article shall be known as "Alabama the Beautiful Act."

HISTORY: Acts 2000, No. 00-589.

NOTES: Effective dates.

Acts 2000, No. 2000-589, effective August 1, 2000.

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TITLE 23 Highways, Roads, Bridges And Ferries
CHAPTER 1 Alabama Highways
Article 9A Alabama Scenic Byways Program

Go to the Alabama Code Archive Directory

Code of Ala. § 23-1-291 (2009)

§ 23-1-291. Findings.

The Legislature finds that certain portions of the state highway system provide access to state locales that are notable for their scenic, natural, historic, recreational, cultural, and archaeological value and are therefore worthy of designations as scenic byways in order to provide special consideration of their unique features and special role in the highway system. The Legislature further finds that the public interest would be served by the formation of a coordinated scenic byways program to enhance recreational, cultural, and archaeological resources, encourage economic development through tourism, improve the transportation system, and educate residents and visitors on the history, culture, and natural beauty of this state. In order to implement this program, the Legislature has determined that a two-tiered structure would best serve the governance of the Alabama Scenic Byways program. The Legislature recognizes that the application of this article is meant to add value to the community, and that public involvement, specifically the rights and interests of private property owners, must be considered in implementing provisions of this article and in the designation of byways. Specifically, any such actions taken which affect private property are subject to statutes and regulations otherwise established in accordance with the United States Constitution and the Constitution of Alabama of 1901.

HISTORY: Acts 2000, No. 00-589.

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TITLE 23 Highways, Roads, Bridges And Ferries
CHAPTER 1 Alabama Highways
Article 9A Alabama Scenic Byways Program

Go to the Alabama Code Archive Directory

Code of Ala. § 23-1-292 (2009)

§ 23-1-292. Alabama Scenic Byways program.

The Alabama Scenic Byways program is hereby established through a two-tiered system consisting of a Designating Committee and an Advisory Council. Appointments to the committee and the council shall be made within 30 days and 45 days, respectively, of August 1, 2000. Organizational meetings of the committee and the council shall be held within 60 days of August 1, 2000. The Advisory Council and the Designating Committee may adopt such organizational and administrative rules and procedures deemed necessary to conduct business.

HISTORY: Acts 2000, No. 00-589.

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TITLE 23 Highways, Roads, Bridges And Ferries
CHAPTER 1 Alabama Highways
Article 9A Alabama Scenic Byways Program

Go to the Alabama Code Archive Directory

Code of Ala. § 23-1-293 (2009)

§ 23-1-293. The Designating Committee.

(a) The Designating Committee shall consist of a state legislator to be appointed by the Governor, a state Senator appointed by the President Pro Tempore of the Senate, a member of the House of Representatives appointed by the Speaker of the House, and the heads, or their official designees, of the following seven departments:

(1) The Alabama State Department of Transportation.

(2) The Alabama Bureau of Tourism and Travel.

(3) The Alabama Historical Commission.

(4) The Alabama Council on the Arts.

(5) The Alabama Department of Economic and Community Affairs.

(6) The Alabama Department of Conservation and Natural Resources.

(7) The Alabama Forestry Commission.

(b) The Designating Committee shall perform the following duties:

(1) Designate as scenic byways from the highways recommended to it by the Advisory Council, as provided in subsection (d) of Section 23-1-294.

(2) Advise the Governor and the Legislature of each designation.

(3) Adopt procedures for the administration of designating and managing scenic byways.

(4) Remove the designation of a highway as a scenic byway where it deems appropriate.

HISTORY: Acts 2000, No. 00-589.

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TITLE 23 Highways, Roads, Bridges And Ferries
CHAPTER 1 Alabama Highways
Article 9A Alabama Scenic Byways Program

Go to the Alabama Code Archive Directory

Code of Ala. § 23-1-294 (2009)

§ 23-1-294. The Advisory Council.

(a) The Advisory Council shall consist of a member of the Alabama House of Representatives appointed by the Speaker of the House, a member of the Alabama Senate appointed by the Lieutenant Governor, one member appointed by each member of the Designating Committee, three persons appointed from the state at-large by the Governor, and one representative appointed by the Governor from each of the following groups or organizations:

(1) Scenic Alabama.

(2) Alabama Environmental Council.

(3) The outdoor advertising industry.

(4) The Alabama Wildlife Federation.

(5) A business, industry, or trade association or professional organization having its principal programs extending generally throughout the state, and having a demonstrated concern for balancing economic growth with protection for the environment and increased recreational opportunities.

(6) Public utilities.

(7) Tourism associations.

(8) Real estate associations.

(9) Regional planning commissions.

(10) A statewide historic preservation organization.

(11) Forestry interests.

(12) Agricultural interests.

In making these appointments, the Governor shall ensure equitable geographic representation.

(b) Additionally, a member shall be appointed from each of the following departments or organizations:

(1) The United States Department of the Interior, designated by the Secretary of the Interior.

(2) The Alabama League of Municipalities, designated by the president of the league.

(3) The Alabama Association of County Commissions, designated by the president of the association.

(4) The Black Heritage Council designated by the chair of the council.

(5) The Alabama Association of Resource Conservation and Development Councils designated by the chair of the association.

(c) The Advisory Council shall report to the Governor and the Legislature on the progress of the implementation of this article within one year of August 1, 2000, and by January 1 of each year thereafter.

(d) The duties and responsibilities of the Advisory Council shall include the following:

(1) Providing, in the first report, a scenic byways program implementation plan identifying essential components for the Alabama Scenic Byways system, and recommending any actions by the Legislature which may be necessary to implement a cohesive and coordinated scenic byways program that would serve the goals of preserving and protecting scenic, historic, natural, recreational, cultural, and archaeological resources, enhancing recreation, and promoting economic development through tourism and education in the history, culture, and natural beauty of Alabama. An initial inventory of potential scenic byways created for the Department of Transportation and the Bureau of Tourism and Travel may be used in developing the implementation program and considered in the selection of byways.

(2) Developing a process for nominations for scenic byway and nomination criteria.

(3) Advising and consulting with municipalities regarding the process of recommending municipal roads for inclusion in the scenic byways program.

(4) Encouraging towns and municipalities to designate scenic byways within their jurisdictions and to petition the Designating Committee for the inclusions of these byways into the Alabama Scenic Byways program. Such inclusion may enable the municipality to participate in any federal, state, or other funding that may be available.

(5) Encouraging and assisting in fostering public awareness, understanding, and participation in the objectives and functions of the scenic byways program.

(6) Providing municipalities with tools and ideas for the enhancement and protection of designated scenic byways.

(7) Recommending operation and management standards for highways designated as scenic byways, including strategies for maintaining or improving the qualities for which a highway is designated as a scenic byway, and for protecting and enhancing the landscape and view corridors within the public rights-of-way surrounding such a highway, provided that such standards shall have no impact on the facilities or equipment used in the generation, transmission, or distribution of electric power, telecommunications, commercial mobile radio services, broadband services or existing wireless facilities. However, all new wireless services structures, unless used primarily for educational purposes, shall be reviewed under the terms of this article and shall consider the communication needs of the community and shall not be in conflict with any local, state, and federal laws and regulations.

(8) Recommending standards for scenic byway-related signs, including those which identify highways as scenic byways.

(9) Recommending standards for maintaining highway safety on the scenic byway system.

(10) Recommending measures to safely accommodate the largest variety of scenic byway users, including, but not limited to, persons traveling by automobile, recreation vehicle, motor coach, bicycle, horse, watercraft, or by foot.

(11) Recommending design review procedures for location of highway facilities, landscaping, and travelers facilities on the scenic byway system.

(12) Removing the designation of a highway as a scenic byway if the highway is determined to no longer meet the criteria under which it was designated or has not adequately adhered to its submitted corridor management plan.

(13) Advising on such other matters as may be necessary or desirable to further the purposes of this program.

(14) Evaluating and recommending to the Designating Committee and the Legislature amendments of the statutes and regulations relevant to the furtherance of a cohesive system of scenic byways.

(15) Making recommendations with respect to state regulatory policy consistent with the Alabama Scenic Byways program.

(16) Establishing procedures, standards, guidelines, and plans consistent with federal, state, and local authority and recommend designations accordingly. Until all rules, procedures, guidelines, and standards are established, the federal rules for establishing a corridor management plan shall be utilized.

(17) Recommending for designations and removal of designations as scenic byways in Alabama based on criteria which include, but shall not be limited to, the following:

a. Significant possession of at least one of the following intrinsic qualities: Scenic, historic, natural, recreational, cultural, or archaeological.

b. Demonstration in scenic byway nominations of local, private, and public support.

c. Presence and implementation of a corridor management plan. A corridor management plan is a written document that specifies the actions, procedures, controls, operational practice, and administrative strategies necessary to maintain the scenic, historic, cultural, recreational, archaeological, and natural qualities of the scenic byway.

d. Conducting a public hearing in the area of the proposed designation before a scenic byway is so designated.

(18) Outdoor advertising shall be addressed pursuant to the following criteria:

a. Corridor management plans for individual byways shall include provisions for the regulation of outdoor advertising to conform with applicable federal, state, and local laws, including, but not limited to, 23 U.S.C.S. § 131(s).

b. Corridor management plans shall also include provisions for removal of dilapidated and nonfunctional signage within six months.

c. Removal of any antiquated and non-applicable signs on roads and highways throughout the state within six months.

Notwithstanding the foregoing, nothing in this bill shall impede or prohibit the Alabama Department of Transportation from constructing, repairing, or maintaining any highway, road, or bridge or any other matter which falls

within the jurisdiction of the Alabama Department of Transportation.

HISTORY: Acts 2000, No. 00-589.

NOTES:

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Archaeological and Historic Sites

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TITLE 23 Highways, Roads, Bridges And Ferries
CHAPTER 1 Alabama Highways
Article 9A Alabama Scenic Byways Program

Go to the Alabama Code Archive Directory

Code of Ala. § 23-1-295 (2009)

§ 23-1-295. Applications.

The Advisory Council shall evaluate initial applications. Local governments in conjunction with the Advisory Council shall perform a field survey of the byway and score its qualities, with special attention paid to the scenic quality of the roadway. The following criteria and procedures shall be used for nominating potential scenic byways:

(1) Any road corridor shall have at least one of the following six intrinsic qualities to be nominated: Scenic, natural, cultural, historic, archaeological, and recreational.

(2) Each nomination shall be made and supported by a sponsor, including, but not limited to, any of the following: An historic preservation group, an environmental group, another nongovernmental organization, a local government, or an individual.

(3) The sponsor or sponsors of a potential scenic byway shall complete an application form and submit it to the Advisory Council.

(4) Special consideration or first priority shall be given the Alabama's 10 Environmental Natural Wonders, Civil War, Native American and Civil Rights sites, and the Robert Trent Jones Trail, due to their particular importance to Alabama's scenic, historic, cultural, and recreational heritage. Special consideration or first priority shall also be given to counties with the highest unemployment rates and the slowest rates of economic growth. These sites shall go through the normal nomination procedure.

(5) Nominations shall be accepted on an ongoing basis, but shall be evaluated and passed on to the Designating Committee on a semi-annual basis, beginning one year from August 1, 2000.

HISTORY: Acts 2000, No. 00-589.

NOTES:

Archaeological and Historic Sites

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*** Current through Acts 2009, No. 09-336 of the 2009 Regular Session ***

TITLE 41 State Government
CHAPTER 9 Boards and Commissions
Article 41 International Voting Rights Trail and Commission

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Code of Ala. § 41-9-990 (2009)

§ 41-9-990. Legislative findings.

The Legislature of Alabama finds and declares all of the following:

(1) On Sunday, March 7, 1965, citizens participating in a peaceful march while seeking their voting rights were beaten as they attempted to cross the Edmond Pettus Bridge in Selma, Alabama.

(2) The initial impetus for the march on March 7, 1965, derived from the killing of Jimmy Lee Jackson in Marion, Alabama, and the majority of the citizens on the march were citizens of Perry County, Alabama, who had traveled in a processional from Marion via Highway 14 to Selma, Alabama.

(3) On March 21, 1965, the Selma to Montgomery March brought international attention to the State of Alabama.

(4) Over 25,000 people marched together in a fight for the right to vote, free and fair from any discrimination.

(5) Due in part to the effort of the participants in the Selma to Montgomery March, the federal government enacted the Voting Rights Act of 1965, thereby protecting the right of all citizens to vote.

(6) The Selma to Montgomery March inspired people from nations all over the world, including South Africa and Poland, to proclaim and fight for their right to vote and is an international symbol for the right to vote.

(7) On September 19, 1996, the United States Secretary of Transportation designated the Selma to Montgomery Scenic Byway as an All-American Road under the National Scenic Byways Program.

(8) The National Park Omnibus Act of 1996 officially established the Selma to Montgomery National Historic Trail, consisting of 54 miles, of city streets and U.S. Highway 80 from Brown Chapel A.M.E. Church in Selma to the State Capitol Building in Montgomery, Alabama.

(9) The Selma to Montgomery March made America a true democracy by providing the impetus by which all citizens of the United States of America are allowed to exercise their constitutional right to vote.

(10) Although the rich history and notoriety surrounding the Selma to Montgomery March have had a tremendous impact on educating people about voting rights and promoting tourism and economic development in the State of Alabama, the designation of the "International Voting Rights Trail" and creation of the International Voting Rights Trail Commission will enable the people of Alabama to make an even greater impact on future generations.

(11) Sammie Young was murdered in Tuskegee while struggling for voting rights and Gomillon vs. Lightfoot, one of the most important landmark cases of our time on voting rights, originated in Tuskegee, Alabama.

HISTORY: Acts 2000, No. 00-98.

NOTES: Effective dates.

Acts 2000, No. 2000-98, effective March 3, 2000.

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*** CURRENT THROUGH THE 2008 FIRST EXTRAORDINARY SESSION ***
*** THE GENERAL ELECTION OF NOVEMBER 4, 2008, AND UPDATES ***
*** FROM THE ARKANSAS CODE REVISION COMMISSION THROUGH FEBRUARY 24, 2009 ***
*** ANNOTATIONS CURRENT THROUGH DECEMBER 31, 2008 ***

Title 26 Taxation
Subtitle 5. State Taxes
Chapter 51 Income Taxes
Subchapter 5 -- Tax Credits Generally

Go to the Arkansas Code Archive Directory

A.C.A. Tit. 26, Subtit. 5, Ch. 51, Subch. 5 Note (2008)

Tit. 26, Subtit. 5, Ch. 51, Subch. 5 Note

NOTES: A.C.R.C. Notes.

Acts 2007, No. 518, § 3, provided:

"Definitions.

"As used in this act:

"(1) "Economically distressed area" means a county-wide area in Arkansas in which the percentage of families that earn income below poverty level exceeds twenty-three percent (23%), based on year 2000 income levels as compiled by the Bureau of the Census, United States Department of Commerce demographic profiles;

"(2) "Geotourism" means tourism that sustains or enhances the geographical character of an area including without limitation, its environment, heritage, aesthetics, culture, natural resources, and well-being of its residents.

"(3) "Geotourism attraction" means an environmental, aesthetic, cultural, or natural point of interest in an area of natural phenomena or scenic beauty that attracts tourists to experience and appreciate the environmental, aesthetic, cultural, or natural point of interest including without limitation:

"(A) A geological monument;

"(B) A lake;

"(C) A mountain;

"(D) A park;

"(E) A river;

"(F) A species of animal abundant or unique to a particular area;

"(G) A species of bird abundant or unique to a particular area;

"(H) A species of insect abundant or unique to a particular area;

"(I) A wetland or aquatic resources area; and

"(J) An historic site;

"(4) "(A) "Geotourism-supporting business" means a business necessary to support a geotourism attraction by constructing, expanding or re-modeling a retail facility including without limitation, cultural or educational centers, indoor or outdoor plays or music shows, recreational or entertainment facilities, sporting goods retail and rental establishments, guide services, transient lodging facilities including RV parks, arts and antique shops, campgrounds, bed and breakfasts, and dining establishments.

"(B) "Geotourism-supporting business" does not include:

"(i) Facilities that are not open to the general public; or

"(ii) Facilities owned by the State of Arkansas or a political subdivision of the state.

"(5) "Geotourist" means a person who travels to an area to enjoy the area's natural habitats, heritage sites, scenic appeals, and local culture;

"(6) "Lower Mississippi River Delta" means a county in Arkansas or portion of a county in Arkansas whose land area includes an alluvial plain created by the Mississippi River; and

"(7) "Person or entity" means a sole proprietorship, partnership, LLC, or corporation."

Acts 2007, No. 518, § 3, provided:

"Income tax credit for geotourism development.

"(a) To qualify for an income tax credit under this act, a person or entity shall invest a minimum of twenty-five thousand dollars ($25,000) in a geotourism-supporting business located in the Lower Mississippi River Delta that meets the following criteria:

"(1) In an economically distressed area or a county that borders two (2) counties defined as economically distressed.

"(2) In an unincorporated area or a city with a population of less than sixteen-thousand (16,000) as determined by the U.S. Census Report of 2000;

"(3) Within five (5) miles of a national scenic byway; and

"(4) Within fifteen (15) miles of:

"(A) Public access to a navigable river; or

"(B) An Arkansas State Park; or

"(C) An Arkansas State Game and Fish Commission Wildlife Management Area; or

"(D) A National Wildlife Refuge.

"(b) "(1) A person or entity is eligible to receive an income tax credit under this act equal to twenty-five percent (25%) of the amount of an investment for a purpose described in subsection (a) of this section for the year that the investment is made provided that the geotourism-supporting business is currently operating as a business.

"(2) For any tax year, the maximum amount of investment to be considered in determining the income tax credit under this act is one hundred thousand dollars ($100,000)."

Acts 2007, No. 518, § 4, provided:

"Rules and regulations.

"(a) The Department of Finance and Administration shall promulgate rules necessary to implement this act.

"(b) The Department of Finance and Administration shall consult with the Arkansas Department of Parks and Tourism in promulgating rules under this act.

"(c) The Department of Finance and Administration and the Arkansas Department of Parks and Tourism may inspect facilities and records of a person or an entity requesting or receiving an income tax credit under this act as necessary to verify a claim."

Acts 2007, No. 518, § 5, provided:

"Expiration.

"(a) This act expires at the end of the 2011 tax year.

"(b) If the geotourism-supporting business is currently operating as a business, an unused income tax credit under this act may be carried forward on an income tax return for five (5) years after the year in which the income tax credit was first earned or until exhausted, whichever event occurs first."

Publisher's Notes.

Acts 1997, No. 951, § 34: Sections 1 through 24, 32 and 33 shall be effective for tax years beginning on and after January 1, 1997. However, it is the intent of this Act that those portions of the Internal Revenue Code adopted by this Act which for federal tax purposes do not become effective until some time after January 1, 1997, shall also not become effective for state tax purposes until the same time.

Preambles.

Acts 1929, No. 118, contained a preamble which read:

"Whereas, this State has been neglectful of its Wards in the Charitable Institutions, which is a disgrace to the people of a Great Commonwealth, and it is imperative that additional Revenue should be provided to correct the fearful conditions which now exist; and

"Whereas, an equalization Fund should be provided to give equal Educational opportunities to the Boys and Girls of our Rural Communities; and

"Whereas, Agricultural and Industrial development is now being retarded because of a policy to secure practically all of the Revenue from an Ad Valorem Tax, thus penalizing and discouraging ownership of property, while many who

enjoy the benefits of Government and have large incomes, pay almost nothing to support the Government; Therefore...."

Acts 1961, No. 411 contained a preamble which read:

"Whereas, corporations organized and existing under the laws of the State of Arkansas are required to pay income taxes to other states because of activities or presence of property therein; and

"Whereas, Arkansas corporations which have qualified to transact business in other states are, under present law, relieved from paying Arkansas income tax on income attributable to such other states, but corporations which have not qualified to transact business in other states, although subject to tax by such other states as to income attributable thereto, are required to pay Arkansas income tax on all their income, including income on which income tax is paid to such other states; and

"Whereas, it is the intention of the General Assembly to allow a credit to all persons, whether individuals, fiduciaries, partnerships or corporations, as to income derived from property located outside the State of Arkansas or from business transacted outside the State of Arkansas, where such person incurs liability for income tax to another state or territory...."

Acts 1967, No. 495, contained a preamble, which read:

"Whereas, there are some mentally retarded children in this State who are cared for by a state institution without cost to such child's parents, and

"Whereas, some parents of mentally retarded children care for such children at home, thus relieving the State of the financial burden of caring for such children, and

"Whereas, the care of such mentally retarded children by the parents is costly and represents a substantial saving to the State of Arkansas in tax dollars...."

Effective Dates.

Acts 1929, No. 118, § 44: approved Mar. 9, 1929. Emergency clause provided: "It is hereby ascertained and declared that the Hospital for Nervous Diseases is inadequate to properly care for all who should be confined therein, to the end there are many persons of unsound mind at large, who are a menace to the public safety, and that said Hospital as now equipped is inadequate to restrain those insane persons who are confined therein, so that there is danger of their escaping at any time and imperil the safety of the public; that there are hundreds and hundreds of persons desiring to enter the Tuberculosis Sanitarium who cannot now be accommodated there, because that institution has neither room, beds nor facilities for additional people, as a result said consumptives at large are spreading the disease amongst their families and friends; that the funds to be raised by this Act will be used for the better care of the charitable wards of this State and to provide better for the rural schools of this State; and it is therefore ascertained and declared that it is necessary for the public peace, health and safety that this Act go into immediate operation, and accordingly it is provided that this act shall take effect and be in force from and after its passage."

Acts 1941, No. 129, § 8: approved Mar. 11, 1941. Emergency clause provided: "Because of the various social problems caused by the failure of the State to provide adequate relief for its aged citizens, and it appearing that there is a dire need for additional funds to meet the requirements of the Social Security Act and give additional revenue to this State and because the old folks in this State are suffering by reason of the failure of the State to secure funds with which to pay Old Age Pensions, and [an] emergency is hereby found to exist and is so declared by the Legislature of Arkansas; that this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage."

Acts 1943, No. 162, § 3: approved Mar. 4, 1943. Emergency clause provided: "It is ascertained and hereby declared

that Arkansas residents are being prevented from engaging in business and owning property in other states because of double income taxation on the same income, and that for the same reason persons now residents of other states are prevented from becoming citizens and residents of Arkansas, and that constitutes an emergency, and this Act, being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared, and this Act shall take effect and be in full force from and after its passage."

Acts 1947, No. 135, § 9: approved Mar. 3, 1947. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that existing laws providing for the distribution of state revenues are such that a moderate diminution of certain of the revenues would have the effect of curtailing the activities of certain necessary agencies of the State Government, and that only the provisions of this Act will correct a situation which otherwise may deprive the citizens of this State from receiving the benefits which the operation of the State Government contemplates. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from after its passage."

Acts 1953, No. 320, § 4: approved Mar. 26, 1953. Emergency clause provided: "It is found by the General Assembly of this State that under the existing income tax law that persons owning and operating real estate located outside the State of Arkansas are not required to account for the income on said real estate in their Arkansas Income Tax Returns, but that they are permitted under the present law to take deductions by reason of expenditures and losses on said real estate and that by such method the State of Arkansas is being defeated of its just portion of taxes due this State. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force from and after its passage."

Acts 1961, No. 411, § 2: effective for all taxable years ending Sept. 30, 1961 and thereafter.

Acts 1968 (2nd Ex. Sess.), No. 7, § 4: Jan. 1, 1968. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present definition in the Arkansas Income Tax Law as to what constitutes a "dependent" for the purposes of allowing a tax credit is unclear and unduly hampers the efficient administration of the Income Tax Laws of this State; that by such ambiguity creates an inequity in the administration of such laws; and that in order to clarify the definition of who constitutes a "dependent" for income tax credit purposes and to remedy this situation, it is necessary that this Act become effective immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective and be in full force and effect from and after January 1, 1968."

Acts 1969, No. 75, § 3: Feb. 20, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 413 of 1961, as amended, The Uniform Division of Income for Tax Purposes Act, provides for the apportionment of net income of multi-state transactions for income tax purposes; that in order to more efficiently administer the income tax laws of this State and to insure that Arkansas receives its fair share of income taxes from such transactions, it is necessary that this Act become effective immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in effect from and after its passage and approval."

Acts 1969, No. 219, § 4: provisions of act applicable to 1969 income upon which the tax is paid in 1970.

Acts 1977, No. 629, § 3: Dec. 31, 1976.

Acts 1977, No. 734, § 4: Mar. 24, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that many taxpayers are unable to take a legitimate dependent care deduction if they file separately, and that this is an arbitrary and unreasonable distinction which will be repealed by this Act. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 420, § 3: Mar. 20, 1979. Emergency clause provided: "It is hereby found and determined by the

General Assembly that the present definition of deaf persons is erroneous and this Act is immediately necessary to correct such error. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 379, § 27: Dec. 31, 1982. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain provisions of the State's income and estate tax laws that have counterparts in the Federal tax laws do not coincide with recent amendments and changes to the Federal tax laws; and that this Act is immediately necessary to make the Arkansas tax laws conform with the Federal tax laws to clarify any possible question of confusion caused by such differences. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public, peace, health and safety shall be in full force and effect for all income years after, or estate tax return filing dates coming after, December 31, 1982."

Acts 1983, No. 785, § 8: Mar. 24, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the current level of employment is unacceptable; and that it is incumbent upon the General Assembly to provide an economic climate conducive to the creation of jobs for the citizens of this State; and that the tax credit provided by this Act could serve as a stimulus for businesses to create needed job opportunities. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 382, § 34: Mar. 24, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the federal government has recently made major changes in the federal income tax law; that for simplicity of administration and equity various provisions of the federal law should be adopted for Arkansas Income Tax purposes; and that for the effective administration of this Act, the Act should become effective immediately. Therefore an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 172, § 5; effective beginning with returns for the 1991 income year.

Acts 1993, No. 654, § 5: Mar. 24, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that clarification of the law for the tax credit for waste reduction, reuse, or recycling equipment is necessary; that the use of Arkansas post-consumer waste should be encouraged by means of this credit; that the credit should be refunded or disallowed under certain circumstances; and that for the effective administration of this act, the act should become effective immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 785, § 24: Mar. 30, 1993. Emergency clause provided: "It is hereby found and determined that certain changes are necessary to the Arkansas income tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 785, § 20: amendments to subchapters 1, 4, 5, 9, and 10 effective for taxable years beginning on and after January 1, 1993.

Acts 1993, Nos. 820 and 987, § 9: Apr. 1, 1993, and April 9, 1993, respectively. Emergency clause provided: "It is hereby found and determined by the General Assembly of this state that unemployment and economic underdevelopment has reached intolerable levels in certain portions of this state and the state as a whole has been unable to compete with other state's incentive programs for economic development, and, that the incentives afforded by this

Act are critical to the development and expansion of job opportunities in the state. Therefore, an emergency is declared to exist and this act, being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 850, § 8: effective for taxable years beginning January 1, 1995.

Acts 1995, No. 850, § 12: Mar. 31, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that the State of Arkansas is in serious need to provide for the health, welfare and education of the State's children by encouraging child care facilities to offer an "appropriate early childhood program" and this Act is designed to meet that need by providing tax incentives to encourage construction of these facilities. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 951, § 34, provided "Sections 1 through 24, 32 and 33 shall be effective for tax years beginning on and after January 1, 1997. However, it is the intent of this Act that those portions of the Internal Revenue Code adopted by this Act which for federal tax purposes do not become effective until some time after January 1, 1997, shall also not become effective for state tax purposes until the same time."

Acts 1997, No. 951, § 38: March 31, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that current state tax laws are unclear or confusing, creating difficulty for taxpayers seeking to comply with these tax laws; that the changes made by Sections 25 through 31 of this bill are necessary to provide adequate direction to those taxpayers and to maintain the efficient administration of the Arkansas tax laws; and that the provisions of Sections 25 through 31 of this Act are necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and the provisions of Sections 25 through 31 of this Act being necessary for the preservation of the public peace, health, and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, Sections 25 through 31 shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, Sections 25 through 31 shall become effective on the date the last house overrides the veto."

Acts 2001, No. 773, § 12: effective for tax years beginning on and after January 1, 2001.

Acts 2003, No. 663, § 14: effective for tax years beginning on and after January 1, 2003.

Acts 2003, No. 993, § 2: effective for tax years beginning on or after January 1, 2003.

Acts 2003, No. 1724, § 2: effective for tax years beginning on or after January 1, 2003.

Acts 2005, No. 675, § 17: effective for tax years beginning on or after January 1, 2005.

Acts 2005, No. 2247, § 2: effective for tax years beginning on or after January 1, 2006.

Research References

Am. Jur.

71 Am. Jur. 2d, State Tax., § 549 et seq.

Ark. L. Rev.

Income Tax Amendments, 5 Ark. L. Rev. 371.

U. Ark. Little Rock L.J.

Survey of Arkansas Law, Taxation, 1 U. Ark. Little Rock L.J. 258.

HIERARCHY NOTES:
Tit. 26, Subtit. 5, Ch. 51 Note

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*** CURRENT THROUGH THE 2008 FIRST EXTRAORDINARY SESSION ***
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*** ANNOTATIONS CURRENT THROUGH DECEMBER 31, 2008 ***

Title 27 Transportation
Subtitle 5. Highways, Roads, And Streets
Chapter 67 State Highway System
Subchapter 2 -- Highway Designation, Construction, and Maintenance

Go to the Arkansas Code Archive Directory

A.C.A. Tit. 27, Subtit. 5, Ch. 67, Subch. 2 Note (2008)

Tit. 27, Subtit. 5, Ch. 67, Subch. 2 Note

NOTES: Cross References.

Contracts for construction on state-aid roads, § 27-72-310.

Growing pines on state highway rights-of-way, § 22-5-101.

Procedure for purchase of materials, supplies, and equipment, § 27-65-111.

Traffic control devices, § 27-52-101 et seq.

Preambles.

Acts 1927, No. 103 contained a preamble which read:

"Whereas, the State of Arkansas is embarking upon a new era of permanent road construction, which will require large quantities of road materials such as sand, gravel, crushed stone, cement, etc. and

"Whereas, these and other materials used in the construction of roads are found or can be manufactured in abundant quantities in the State of Arkansas, and the use of such materials found or manufactured in this State would be of great benefit in the development of the State, in the employment of home people, and in providing an adequate and dependable supply of material for road construction;

"Now, therefore...."

Acts 1939, No. 359 contained a preamble which read:

"Whereas, the State Highway Department does do necessary maintenance work on detours, where such detours would become impassable without such maintenance; and

"Whereas, there are roads surfaced with gravel, crushed rock, and other material, which are not on the state highway system and receive no maintenance by the Highway Department, when traffic from a state highway is diverted over said road due to an emergency; and

"Whereas, it is only fair for the state to replace any wear to the surface of such a road to the extent of the wear by such diverted traffic, when a surfaced road is frequently used in order to route traffic around a flooded section of a state highway that is deeply submerged by the temporary overflow of some creek or stream, making travel impossible on a state highway;

"Now, therefore...."

Effective Dates.

Acts 1927, No. 103, § 2: approved Mar. 4, 1927. Emergency clause provided: "It is ascertained and hereby declared that the purpose of this act is to provide for the encouragement of the production in Arkansas of road materials to be used in the construction and repairing of the highways of the State under the provisions of Act No. 11, of 1927, and that said act is now effective, and that the production of these materials for the construction and maintenance of the roads of the State contemplated by said Act is necessary and essential for the public safety and welfare; that an emergency is therefore declared and this Act shall take effect and be in force from and after its passage."

Acts 1929, No. 65, § 75: approved Feb. 28, 1929. Emergency clause provided: "It is ascertained and hereby declared that the defective condition of the public roads is a standing menace to the traveling public; that the repairs of the present public roads, and the construction of the roads contemplated by this act, are necessary for the safety of the traveling public, so that the immediate operation of the act is essential for the protection of the public safety, and an emergency is therefore declared; and this act shall take effect and be in force from and after its passage."

Acts 1937, No. 109, § 4: Feb. 17, 1937. Emergency clause provided: "That because of the present condition of roads connecting State highways with State parks, tourists and residents of the State of Arkansas are not visiting State parks in the numbers and as frequently as they would if said roads were properly maintained. Use of said roads would materially increase the revenue to the State highway fund, and said fund is in need of additional revenues to avoid default on obligations for which said fund is liable. This condition constitutes an emergency, and the same being necessary for the immediate preservation of the public peace, health, and safety, this act shall become effective and be in full force from and after its passage and approval."

Acts 1941, No. 6, § 2: Jan. 30, 1941. Emergency clause provided: "It is hereby ascertained and declared to be a fact that those portions of the State Highways extending into and through cities of 2,500 inhabitants and over population are not at present included in the State Highway System; that said portions are in many instances in poor repair and constitute a menace to traffic; that the municipalities are financially unable to provide the material, labor and equipment for repairing and maintaining the same, and that as a result of the poor condition of said portions, accidents resulting in damage to persons and property have resulted. Therefore, an emergency is declared to exist, and this act being necessary for the immediate preservation of the public peace, health and safety shall take effect and be in force from and after its passage and approval."

Acts 1947, No. 222, § 1 (in part): Mar. 18, 1947. Emergency clause provided: "Due to the fact that it will be possible to construct such flashing light signals or other types of railroad highway grade crossing protective devices more economically, and it being necessary for the public peace, health and safety, an emergency is hereby declared to exist and this act shall take effect and be in full force immediately upon its passage and approval."

Acts 1953, No. 323, § 2: Mar. 27, 1953. Emergency clause provided: "Traffic conditions in cities and towns and on

state highways have developed that endanger the public peace, health and safety and this act being necessary for the alleviation of such conditions, an emergency is hereby declared to exist and this act shall become effective upon its approval."

Acts 1953, No. 345, § 3: Mar. 28, 1953. Emergency clause provided: "It is hereby determined by the General Assembly that confusion exists as to whether the State Highway Department as the producer under section 84-2101(f) of Arkansas Statutes (1947) is liable for the tax on sand and gravel severed by the State Highway Department under an agreement with the land owner to pay a certain royalty per yard or per ton of sand and gravel so severed and used on the public highways, and that the passage of this act is necessary to remove such confusion. Therefore an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1957, No. 387, § 3: Mar. 27, 1957. Emergency clause provided: "It has been found and is declared by the General Assembly of the State of Arkansas that the roads and highways within the geological boundaries of State parks and the roads and highways connecting the parks to established State highways are in very poor condition and in need of immediate repairs; that tourists and residents are not visiting State parks in the numbers and as frequently as they would if the roads were properly maintained; and that the enactment of this bill will alleviate the situation. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval."

Acts 1961, No. 83, § 3: Feb. 13, 1961. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that much confusion exists in the interpretation of Act 109 of 1937 as amended by Act 387 of 1957, and that the roads and highways leading to and within the boundaries of newly created state parks are in very poor condition and in need of immediate repairs; that the tourists and residents are not visiting these state parks in the numbers and as frequently as they would if the roads were properly maintained; and that the enactment of this bill will alleviate this situation. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after the date of its passage and approval."

Acts 1963, No. 127, § 3: Feb. 28, 1963. Emergency clause provided: "It is hereby found and determined by the General Assembly that in connection with many state highway construction projects county roads are often utilized in connection with such construction work and that occasionally serious damage to such county road results in connection with such projects; that the State Highway Department owes an obligation to the county to restore any such damaged county road to its former condition of repair; that the State Highway Department does not presently have authority to make such repairs; and, the immediate passage of this act is necessary in order to authorize such repairs and to prevent undue cost to counties in connection therewith. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1965, No. 387, § 5: Mar. 19, 1965. Emergency clause provided: "It is hereby found and determined by the General Assembly that the provisions of law relative to notice to landowners in instances where condemnations of private property for highway purposes is affected in the County Court are unclear, and that such want of clarity has resulted in confusion of land titles and unnecessary litigation arising from such condemnations, and that the immediate passage of this Act is necessary in order to correct said situation. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1969, No. 99, § 4: Feb. 24, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that a white stripe of not less than four (4) inches in width along the edges of a State highway reduces the number of traffic accidents; that any method which insures safer driving conditions and reduces the possibility of accidents should be utilized to reduce the death rates on the highways of this State; and that in order to

accomplish these purposes, it is necessary that this Act become effective immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

Acts 1979, No. 584, § 3: Mar. 27, 1979. Emergency clause provided: "It is hereby found by the General Assembly that the immediate passage of this Act is necessary because the location of the institutions of higher education is of importance to not only the people of the State of Arkansas but also to other travelers of the highways in Arkansas; that many important local, regional and state events and activities are occurring at these institutions which the people have a vital interest in and in which their attendance is necessary, and that the immediate passage of this Act is necessary to accomplish this purpose. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 181, § 3: Feb. 15, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the segment of State Highway 309 from Havana, Arkansas to Paris, Arkansas, across Mt. Magazine is one of the most scenic highways in the State of Arkansas; that the designation of scenic highways in the beautiful mountainous areas of the State not only serves as an invitation to tourists to visit those areas but instills a sense of pride in local citizens in the area and gives them incentive to maintain the highway rights-of-way and those areas visible from the highways in an attractive state; that the 1983 tourist season will begin in the near future and it is urgent that this Act be given effect immediately in order that appropriate signs may be placed along this portion of the highway and in order that such segment of Highway 309 can be designated a scenic highway on official State highway maps as soon as possible. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 803, § 3: Apr. 3, 1985. Emergency clause provided: "It is hereby found by the General Assembly that the immediate passage of this Act is necessary because the location of the institutions of higher education and postsecondary vocational and technical schools is of importance to not only the people of the State of Arkansas but also to other travelers of the highways in Arkansas; that many important local, regional and State events and activities are occurring at these institutions which the people have a vital interest in and in which their attendance is necessary, and that the immediate passage of this Act is necessary to accomplish this purpose. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989 (3rd Ex. Sess.), No. 21, § 4: Nov. 6, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that that Highway 12 East of Rogers has appeared on former official state highway maps prepared and distributed by the State Highway and Transportation Department as a scenic highway; that the department has placed appropriate highway identifying signs on Highway 12 East of Rogers designating it a scenic highway; that the newest official state highway map fails to designate Highway 12 East of Rogers as scenic; that such an oversight has resulted in loss of tourism in the area; that it is in the best interests of the citizens of this State that this error be corrected as soon as possible. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

HIERARCHY NOTES:
Tit. 27, Subtit. 5, Ch. 67 Note

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Title 27 Transportation
Subtitle 5. Highways, Roads, And Streets
Chapter 67 State Highway System
Subchapter 2 -- Highway Designation, Construction, and Maintenance

Go to the Arkansas Code Archive Directory

A.C.A. § 27-67-203 (2008)

Legislative Alert: LEXSEE 2009 Ark. ALS 495 -- See section 1.

27-67-203. Scenic highway designations.

(a) The following highways and designated parts of highways within the State of Arkansas are designated as scenic highways:

(1) U.S. 65 from the Louisiana line to the Missouri line;

(2) U.S. 71 from the Louisiana line to the Missouri line;

(3) U.S. 82 from the Mississippi River to Texarkana;

(4) U.S. 270 from U.S. 71 to Hot Springs;

(5) I-30 from Little Rock to U.S. 70 west of Benton, and U.S. 70 to Hot Springs;

(6) I-40 from Little Rock to the Oklahoma line west of Fort Smith;

(7) U.S. 63 from I-55 at Turrell to Mammoth Spring;

(8) U.S. 62 from the Missouri line to the Oklahoma line;

(9) State 7 from the Louisiana line to Bull Shoals Lake north of Harrison;

(10) The Great River Road: Highway 82 from the Mississippi line west to Highway 65; Highway 65 north from the Louisiana line to Dumas; Highway 4 from McGehee east through Arkansas City to Highway 1; Highway 1 from its intersection with Highway 4 through Watson to Highway 165 at Back Gate; Highway 165 north from Dumas to Dewitt;

Highway 1 north to Highway 316; Highway 316 east to Highway 318; Highway 318 south to Highway 20; Highway 20 east to Elaine; Highway 44 north through Helena-West Helena; Phillips County Routes 239 and 217 and Lee County Route 221 through the St. Francis National Forest; Highway 44 to Marianna; Highway 79 north to Highway 38; Highway 38 east to Highway 147; Highway 147 north to Highway 70; Highway 70 and I-55 through West Memphis to the Tennessee line; Highway 77 from Highway 70 in West Memphis north to Highway 61; and Highway 61 through Blytheville to the Missouri line;

(11) State 32 and State 355 from Ashdown to Mineral Springs;

(12) State 27 to Kirby; U.S. 70 and State 8 to Norman; State 27 to Dardanelle; and State 27 from Dover to Harriet;

(13) State 9 from Crows to Jct. U.S. 65; State 16 from U.S. 65 to Shirley; and State 9 from Shirley to Mammoth Spring;

(14) State 28 from U.S. 71 to Ola;

(15) State 154 from Oppelo to State 27;

(16) State 23 from U.S. 71 to the Missouri line;

(17) State 309 from State 10 to State 23 at Ozark;

(18) State 21 from Clarksville to the Missouri line;

(19) State 16 from Searcy to Siloam Springs, including the connecting segment of State 25 at Heber Springs;

(20) State 14 from U.S. 63 to Table Rock Lake;

(21) State 68 from Alpena to Siloam Springs;

(22) State 5 from U.S. 67 to the Missouri line;

(23) State 25 from its intersection with U.S. 65 to Heber Springs; State 25 from Heber Springs to Batesville; U.S. 167 from Batesville to Ash Flat; State 286 from its intersection with I-40 to its intersection with State 60; State 60 from its intersection with State 286 to Perryville; and State 10 from its intersection with State 9 to I-430;

(24) State 58 from Sage through Guion, and State 69 to Melbourne;

(25) State 178 from Flippin to Mountain Home;

(26) State 88 from the Oklahoma line to Mena;

(27) State 59 from Van Buren to Jct. State 220;

(28) State 220 from Jct. 59 to State 74 at Devil's Den State Park;

(29) State 170 from Devil's Den State Park to U.S. 71 at West Fork;

(30) I-40 from the Tennessee line to Little Rock;

(31) I-30 from Benton south to the Clark County line;

(32) State 10 from Ola to Greenwood;

(33) State 22 from Dardanelle to Paris;

(34) State 12 from Rogers to Jct. State 23;

(35) State 141 from Jonesboro to McDougal;

(36) State 125 from its intersection with State 14 north of Yellville to the Missouri line;

(37) U.S. 49 from its intersection at Brinkley to the Mississippi state line, which will be known as the "Delta Parkway, an Arkansas Scenic Highway";

(38) State 5 from Benton to Hot Springs;

(39) U.S. 64 from its intersection with I-40 in Johnson County westward to the western corporate limits of the city of Ozark;

(40) State 186 from its intersection with I-40 in Franklin County south to its intersection with U.S. 64 at Altus;

(41) U.S. 70 from its intersection with I-440 in Pulaski County eastward to its intersection with U.S. 49 at Brinkley;

(42) U.S. 165 from its intersection with I-440 in Pulaski County eastward to Dumas;

(43) State 220 from State 59 to the Oklahoma border;

(44) That portion of State Highway 166 beginning at its intersection with U.S. 62 in Randolph County and extending south to the county line; State 361 beginning at the Spring River Bridge in Lawrence County and ending at its intersection with State 25 in Black Rock; and State 25 beginning at its intersection with State 361 in Black Rock and ending at the entrance to the Lake Charles State Park;

(45) U.S. 62 from St. Francis in Clay County, then south and west through Piggott to the intersection of West Cherry Street, then west on West Cherry Street to 12th Street, then north on 12th Street to its intersection with U.S. 62 West; then west on U.S. 62 to McDougal intersecting with State 141; then south on State 141 through Boydsville and Knob to Hooker where it intersects with State 135; then south along State 135 through Lafe to its intersection with U.S. 49; then south along U.S. 49 to Court Street in Paragould, then east on Court Street to Pruett Street, south on Pruett Street to Main Street, west on Main Street to 7th Street, south on 7th Street to U.S. Highway 412; then west along U.S. 412 to its intersection with State 168; then south on State 168 to an intersection with State 141 at Walcott; then south along State 141 to County Road 766, KAIT Road; then east on County Road 766 to State 351; then south on State 351 to U.S. 49 and U.S. 1 in Jonesboro; then south on U.S. 49 and U.S. 1 to Aggie Road, west to Robinson Street, south to Marshall Street, west to Caraway Road, then south on Caraway Road to Matthews Avenue, then west on Matthews Avenue to U.S. 49B, north to Cate Avenue, west to U.S. 49B, and south to Campus Street; picking up at the intersection of State 1B South and State 18 East, then south on State 1B to an intersection with Windover Road; picking up at the intersection of State 1B South and Lakewood Drive; then south along State 1B to an intersection with State 163; then south on State 163 to South Street in Harrisburg, then southwest on South Street to Center Street, west on Center to the Courthouse Square, south on East Street to Court Street to North Main Street, North Main Street to East Jackson Street, State 14; then east on State 14 to State 163 South through Birdeye to an intersection with U.S. 64 at Levesque; then west along U.S. 64 and U.S. 64B; Hamilton Avenue into Wynne to Terry Street, south on Terry Street to Commercial Avenue, west on Commercial Avenue to Front Street, south on Front Street to Merriman Avenue, east on Merriman Avenue to U.S. 1, Falls Boulevard, south on U.S. 1 to Martin Drive, County Road 734, east on County Road 734 to State 284 South; then south on State 284 to Forrest Street in Forrest City, south on Forrest Street to East Broadway, west to Izard Street, south to East Front Street, west on East Front Street and intersecting with State 1; then south on State 1 to an intersection with U.S. 79; then east on U.S. 79 through Marianna to Poplar Street, then south on Poplar

Street to an intersection with State 44; then south on State 44 through the St. Francis National Forest intersecting with State 242; then south along State 242 to U.S. 49B; then east on U.S. 49B, becoming Perry and Porter Streets, to Cherry Street in Helena-West Helena, south on Cherry Street to Missouri Street, west on Missouri Street to Biscoe, at U.S. 49B; and then south on U.S. 49B to the Arkansas-Mississippi Bridge, which will be known as "Crowley's Ridge Scenic Highway", an Arkansas Scenic Highway;

(46) State 540 from I-40 northward to Mountainburg in Crawford County and that portion of the route being constructed on a new location to its intersection with the U.S. 71 Fayetteville Bypass in Washington County;

(47) I-530 from State 256 to U.S. 65 South;

(48) Beginning at the intersection of State 96 and U.S. 71 west of Mansfield in Sebastian County; then along State 96 westward until reaching the eastern corporate limits of Hartford in Sebastian County, which will be known as the "Poteau Mountain Scenic Highway", an Arkansas Scenic Highway; and

(49) State 10 from the western corporate limits of Greenwood in Sebastian County, then westward along State 10 until reaching the Oklahoma state boundary, which will be known as the "Sugarloaf Mountain Scenic Highway", an Arkansas Scenic Highway.

(b) (1) It shall be the responsibility of the Arkansas State Highway and Transportation Department to place appropriate highway identifying signs on those highways herein that are state highways.

(2) It shall be the obligation of the respective counties to place appropriate signs on county roads on their respective county road systems.

(3) The Arkansas State Highway and Transportation Department shall identify all highways designated herein as scenic highways on any official state highway maps prepared and distributed by the department.

(c) The department shall erect appropriate signs along the route of those highways or sections of highways designated herein, indicating that these highways or parts of highways have been designated as scenic highways.

HISTORY: Acts 1975, No. 462, §§ 1, 2; 1981, No. 676, § 1; 1983, No. 181, § 1; 1985, No. 20, § 1; A.S.A. 1947, §§ 76-560, 76-561; Acts 1989 (3rd Ex. Sess.), No. 21, § 1; 1991, No. 202, § 1; 1991, No. 226, § 1; 1991, No. 679, § 1; 1991, No. 734, § 1; 1993, No. 449, § 1; 1993, No. 464, § 1; 1993, No. 723, § 1; 1995, No. 833, § 1; 1997, No. 180, § 1; 1997, No. 382, § 1; 1997, No. 1268, § 1; 1999, No. 302, § 1; 1999, No. 392, § 1; 2001, No. 92, § 1; 2001, No. 1061, § 1; 2003, No. 130, § 1.

NOTES: A.C.R.C. Notes.

Identical Acts 1993, Nos. 428 and 1211, § 1, purported to amend this section by adding a new (a)(39) which designated U.S. Highway 65 from the Arkansas-Louisiana border north to Pine Bluff, Arkansas as a scenic highway. This provision, duplicative of (a)(1), has not been codified.

Amendments.

The 2003 amendment added (a)(48) and (49) and made related changes.

HIERARCHY NOTES:
Tit. 27, Subtit. 5, Ch. 67 Note
Tit. 27, Subtit. 5, Ch. 67, Subch. 2 Note

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*** ANNOTATIONS CURRENT THROUGH DECEMBER 31, 2008 ***

Title 27 Transportation
Subtitle 5. Highways, Roads, And Streets
Chapter 74 Highway Beautification
Subchapter 1 -- General Provisions

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A.C.A. Tit. 27, Subtit. 5, Ch. 74, Subch. 1 Note (2008)

Tit. 27, Subtit. 5, Ch. 74, Subch. 1 Note

NOTES: Preambles.

Acts 1967, No. 640 contained a preamble which read:

"Whereas, the Congress of the United States has enacted legislation in the Highway Beautification Act of 1965 which will cause substantial losses in federal-aid highway funds apportioned to Arkansas on or after January 1, 1968, unless the Arkansas General Assembly enacts conforming legislation (a) to regulate the erection and maintenance of outdoor advertising signs, displays and devices in areas adjacent to the federal-aid Interstate and Primary Systems; (b) to regulate the establishment, use and maintenance of junkyards in such areas; and (c) to provide for the payment of full and just compensation upon the removal and relocation of outdoor advertising signs and junkyards; and

"Whereas, the Congress of the United States has made available additional federal funds for use in landscape and roadside development within federal-aid highway rights of way and for acquisition of interests and improvement of strips of land necessary for the restoration, preservation and enhancement of scenic beauty adjacent to such federal-aid highways;

"Now, therefore...."

Effective Dates.

Acts 1967, No. 640, Art. 5: emergency failed to pass. Emergency clause provided: "It is hereby found and determined by the General Assembly that recent Federal Highway legislation, particularly Public Law 89-285, approved October 22, 1965, and cited as the 'Highway Beautification Act of 1965' makes it necessary that the State of Arkansas provide for the regulation and control of outdoor advertising and junkyards or lose many millions of dollars of Federal-aid Highway funds greatly needed and required in this state to construct and maintain a suitable and efficient

highway system; and it being further found and determined that the erection and maintaining of outdoor advertising and the establishment and maintenance of junkyards along the Federal-aid Interstate and Primary Highways of this state, unless controlled, mar the natural scenic beauty along such highways; and it being further found and determined that landscaping, scenic enhancement and rest and recreation areas adjacent to all Federal-aid Highways of this state are needed for the accommodation and enjoyment of our citizens and for the attraction of tourists, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval." Approved April 6, 1967.

Acts 1993, No. 554, § 6: Mar. 16, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is necessary for the State of Arkansas to continue to beautify the landscape along the scenic highways in the State; that the amendments contained in this act are necessary in order for the State to be eligible to participate in a federally-aided Scenic Byway Program from which funds are available for the needed improvements to the State's scenic byways; and that the immediate effectiveness of this act is necessary to allow the State to take full advantage of the federal-aid funds. Therefore an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 691, § 6: Mar. 24, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that the amendments contained in this act are necessary in order for the State of Arkansas to be eligible to participate in a federally-aided Scenic Byway program which federal funds may be utilized for much needed improvements to the State's scenic byways and only by the immediate effectiveness of this act may the State take full advantage as soon as possible of such federal-aid funds. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

HIERARCHY NOTES:
Tit. 27, Subtit. 5, Ch. 74 Note

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*** CURRENT THROUGH THE 2008 FIRST EXTRAORDINARY SESSION ***
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*** FROM THE ARKANSAS CODE REVISION COMMISSION THROUGH FEBRUARY 24, 2009 ***
*** ANNOTATIONS CURRENT THROUGH DECEMBER 31, 2008 ***

Title 27 Transportation
Subtitle 5. Highways, Roads, And Streets
Chapter 74 Highway Beautification
Subchapter 1 -- General Provisions

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A.C.A. § 27-74-102 (2008)

27-74-102. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Outdoor advertising" means any outdoor sign, display, device, figures, painting, drawing, message, plaque, poster, billboard, or other thing which is designed, intended, or used to advertise or inform, any part of the advertising or informational contents of which is visible from any place on the main-traveled way of the interstate or primary highways;

(2) "Safety rest area" means an area or site established, operated, and maintained within or adjacent to the right-of-way by or under public supervision or control, for the convenience of the traveling public;

(3) "Information center" means an area or site established, operated, and maintained at a safety rest area for the purpose of informing the public of places of interest within the State of Arkansas and providing such other information as the State Highway Commission may deem desirable;

(4) "Interstate system" or "interstate" means that portion of the National System of Interstate and Defense Highways located within this state, as officially designated or as may hereafter be designated by the State Highway Commission and approved by the Secretary of Transportation, pursuant to the provisions of Title 23 of the United States Code;

(5) "Primary system" or "primary" means that portion of the federal-aid primary system located within this state, as officially designated or as may hereafter be designated by the State Highway Commission and approved by the Secretary of Transportation, pursuant to the provisions of Title 23 of the United States Code;

(6) "Motorist services directional sign" means a sign giving directional information about goods and services in the interest of the traveling public, including, but not limited to:

(A) Places of public lodging;

(B) Places where food is served to the public on a regular basis;

(C) Places where automotive fuel or emergency automotive repair services, including truck stops, are regularly available to the public;

(D) Educational institutions;

(E) Places of religious worship;

(F) Public or private recreation areas, including campgrounds, resorts, and attractions, natural wonders, wildlife and waterfowl refuges, and nature trails;

(G) Plays, concerts, and fairs;

(H) Antique shops; and

(I) Agricultural products in a natural state, including vegetables and fruit;

(7) "Scenic byway" means a highway, or a portion of a highway, that has been designated a scenic byway by the State Highway Commission in accordance with federal laws, regulations, and rules pertaining to scenic byways.

HISTORY: Acts 1967, No. 640, Art. 1, § 2; 1977, No. 386, § 2; A.S.A. 1947, § 76-2503; Acts 1993, No. 554, § 1; 1993, No. 691, § 1.

NOTES: Amendments.

The 1993 amendment, by identical acts Nos. 554 and 691, added (7).

HIERARCHY NOTES:
Tit. 27, Subtit. 5, Ch. 74 Note
Tit. 27, Subtit. 5, Ch. 74, Subch. 1 Note

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Chapter 74 Highway Beautification
Subchapter 2 -- Outdoor Advertising -- Signs, Etc. -- In General

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A.C.A. Tit. 27, Subtit. 5, Ch. 74, Subch. 2 Note (2008)

Tit. 27, Subtit. 5, Ch. 74, Subch. 2 Note

NOTES: Preambles.

Acts 1967, No. 640 contained a preamble which read:

"Whereas, the Congress of the United States has enacted legislation in the Highway Beautification Act of 1965 which will cause substantial losses in federal-aid highway funds apportioned to Arkansas on or after January 1, 1968, unless the Arkansas General Assembly enacts conforming legislation (a) to regulate the erection and maintenance of outdoor advertising signs, displays and devices in areas adjacent to the federal-aid Interstate and Primary Systems; (b) to regulate the establishment, use and maintenance of junkyards in such areas; and (c) to provide for the payment of full and just compensation upon the removal and relocation of outdoor advertising signs and junkyards; and

"Whereas, the Congress of the United States has made available additional federal funds for use in landscape and roadside development within federal-aid highway rights of way and for acquisition of interests and improvement of strips of land necessary for the restoration, preservation and enhancement of scenic beauty adjacent to such federal-aid highways;

"Now, therefore...."

Acts 1979, No. 735 contained a preamble which read:

"Whereas, Act 640 of 1967, as amended, is designed to provide for the reasonable and orderly regulation of the erection and maintenance of outdoor advertising signs and devices in areas adjacent to the National System of Interstate and Defense Highways, Federal Aid Primary Highways and other State Highways, in conformity with the provisions of U. S. Code Title 23, Section 131; and

"Whereas, Act 640 authorized the Arkansas Highway Commission to enter into appropriate agreement with the Secretary of Transportation concerning the regulation of outdoor advertising along said highways to assure proper implementation of and conformity with the provisions of U. S. Code Title 23, Section 131; and

"Whereas, the Commission has entered into such agreement with the Secretary but such agreement does not adequately define certain terms used in the agreement including the term "land predominantly used for residential purposes," and a more specific definition of this term is necessary to enable the Commission to effectively and efficiently implement and carry out the provisions of the agreement;

"Now, therefore...."

Effective Dates.

Acts 1967, No. 640, Art. 5: emergency failed to pass. Emergency clause provided: "It is hereby found and determined by the General Assembly that recent Federal Highway legislation, particularly Public Law 89-285, approved October 22, 1965, and cited as the 'Highway Beautification Act of 1965' makes it necessary that the State of Arkansas provide for the regulation and control of outdoor advertising and junkyards or lose many millions of dollars of Federal-aid Highway funds greatly needed and required in this state to construct and maintain a suitable and efficient highway system; and it being further found and determined that the erection and maintaining of outdoor advertising and the establishment and maintenance of junkyards along the Federal-aid Interstate and Primary Highways of this state, unless controlled, mar the natural scenic beauty along such highways; and it being further found and determined that landscaping, scenic enhancement and rest and recreation areas adjacent to all Federal-aid Highways of this state are needed for the accommodation and enjoyment of our citizens and for the attraction of tourists, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval." Approved April 6, 1967.

Acts 1979, No. 735, § 6: Apr. 6, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain terms used in an agreement relating to outdoor advertising along Interstate and Federal-Aid Primary Highways entered into between the Arkansas Highway Commission and the Secretary of Transportation pursuant to the provisions of Act 640 of 1967, are not adequately defined in the agreement to enable the Arkansas Highway Commission to effectively administer the provisions of said agreement and the provisions of Act 640 of 1967; that the provisions of Section 4 of Article 1 of Act 640 of 1967 and the regulations adopted by the Commission pursuant to the provisions of said Section relating to the granting of permits for the erection and/or maintenance of outdoor advertising prescribe no time limitations within which the Commission is required to act on applications for such permits and that delay by the Commission in granting or denying such permits may result in serious hardship to applicants; and that this Act should be given effect at the earliest possible date to alleviate said problems. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 554, § 6: Mar. 16, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is necessary for the State of Arkansas to continue to beautify the landscape along the scenic highways in the State; that the amendments contained in this act are necessary in order for the State to be eligible to participate in a federally-aided Scenic Byway Program from which funds are available for the needed improvements to the State's scenic byways; and that the immediate effectiveness of this act is necessary to allow the State to take full advantage of the federal-aid funds. Therefore an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 691, § 6: Mar. 24, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that the amendments contained in this act are necessary in order for the State of Arkansas to be

eligible to participate in a federally-aided Scenic Byway program which federal funds may be utilized for much needed improvements to the State's scenic byways and only by the immediate effectiveness of this act may the State take full advantage as soon as possible of such federal-aid funds. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Case Notes

Delegation of Authority.

Delegation of Authority.

This subchapter, in authorizing the State Highway Commission to establish a permit and enforcement mechanism for regulating outdoor advertising devices, was not an unlawful delegation of legislative power to the commission because the General Assembly clearly declared the purpose of the regulations and defined the scope of authority delegated to the commission. Yarbrough v. Arkansas State Hwy. Comm'n, 260 Ark. 161, 539 S.W.2d 419 (1976).

HIERARCHY NOTES:

Tit. 27, Subtit. 5, Ch. 74 Note

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Title 27 Transportation
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Chapter 74 Highway Beautification
Subchapter 2 -- Outdoor Advertising -- Signs, Etc. -- In General

Go to the Arkansas Code Archive Directory

A.C.A. § 27-74-204 (2008)

27-74-204. Permitted advertising.

(a) With the exception of and excluding those highways, or portions of highways, which are designated by the State Highway Commission as scenic byways, nothing contained in this chapter shall prohibit the erection and maintenance of outdoor advertising signs, displays, and devices consistent with customary use within six hundred sixty feet (660') of the nearest edge of the right-of-way of interstate, primary, and other state highways designated by the State Highway Commission:

(1) Within those areas which are zoned industrial or commercial under authority of the laws of this state; or

(2) Within those unzoned commercial or industrial areas which may be determined by agreement between the commission and the United States Secretary of Transportation.

(b) Neither shall these prohibitions apply to signs, displays, and devices:

(1) Advertising the sale or lease of property upon which they are located;

(2) Advertising activities conducted on the property upon which they are located;

(3) Which locate, identify, mark, or warn of the presence of pipelines, utility lines, or rail lines, and appurtenances thereto, including, but not limited to, markers used in maintenance, operation, observation, and safety;

(4) Granted an exemption by the Secretary of Transportation pursuant to 23 U.S.C. § 131(o).

(c) The erection of outdoor advertising signs, displays, and devices along a scenic byway shall be limited to those permitted by 23 U.S.C. § 131(c).

HISTORY: Acts 1967, No. 640, Art. 1, § 5; 1977, No. 386, § 3; A.S.A. 1947, § 76-2506; Acts 1993, No. 554, § 2;

1993, No. 691, § 2.

NOTES: Amendments.

The 1993 amendment, by identical acts Nos. 554 and 691, in the introductory language of (a) added "With the exception of and excluding those highways, or portions of highways, which are designated by the Arkansas State Highway Commission as scenic byways" at the beginning, and at the end substituted "State Highway Commission" for "commission"; substituted "United States" for "U.S." in (a)(1); and added (c).

LexisNexis 50 State Surveys, Legislation & Regulations

Billboards and Outdoor Advertising

Case Notes

Constitutionality. Construction. Applicability. Permit Required. Zoning.

Constitutionality.

The exemption from regulation of those areas which were already heavily commercialized or industrialized did not deny equal protection to plaintiffs in agricultural areas because the classification to preserve pastoral scenery and eliminate disharmonious advertising had a substantial, fair, and reasonable relation to the object of the Highway Beautification Act, § 27-74-101 et seq.Yarbrough v. Arkansas State Hwy. Comm'n, 260 Ark. 161, 539 S.W.2d 419 (1976).

Construction.

Subsection (a) of this section and Ark. Reg. for the Control of Outdoor Adver. on Ark. Highways 1(H)(2), when construed together, prohibit billboards in areas where, although a commercial use existed, there also existed a predominantly residential use. Lamar Outdoor Adver. v. Ark. Highway & Transp. Dep't, 86 Ark. App. 279, 184 S.W.3d 461 (2004).

Applicability.

Advertising company's request to erect highway billboard on commercial property was properly denied where property was located in a residential subdivision, predominately residential, and subject to a bill of assurance limiting it to residential use. Lamar Outdoor Adver. v. Ark. Highway & Transp. Dep't, 86 Ark. App. 279, 184 S.W.3d 461 (2004).

Permit Required.

Rotating billboard sign was unlawfully maintained where advertisers failed to obtain the appropriate permit on or after October 1, 1972, as required by state regulation. Arkansas State Hwy. & Transp. Dep't v. Kidder, 326 Ark. 595, 933 S.W.2d 794 (1996).

Zoning.

The State Highway and Transportation Department's may review limited commercial zoning decisions relating to outdoor advertising to determine validity; this fosters the purposes of this chapter and assures compliance with federal law. Files v. Arkansas State Hwy. & Transp. Dep't, 325 Ark. 291, 925 S.W.2d 404 (1996).

State zoning actions that are created primarily to permit outdoor advertising structures will not be recognized as valid for outdoor advertising control purposes. Files v. Arkansas State Hwy. & Transp. Dep't, 325 Ark. 291, 925 S.W.2d 404 (1996).

HIERARCHY NOTES:
Tit. 27, Subtit. 5, Ch. 74 Note
Tit. 27, Subtit. 5, Ch. 74, Subch. 2 Note

15 of 400 DOCUMENTS

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2009, EFF. MAY 10, 2009, & PROP. 1F APPROVED, EFF. MAY 20, 2009

BUSINESS & PROFESSIONS CODE
Division 3. Professions and Vocations Generally
Chapter 2. Advertisers
Article 1. General Provisions

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Bus & Prof Code § 5216.6 (2009)

§ 5216.6. "Officially designated scenic highway or scenic byway"

(a) "Officially designated scenic highway or scenic byway" is any state highway that has been officially designated and maintained as a state scenic highway pursuant to Sections 260, 261, 262, and 262.5 of the Streets and Highways Code or that has been officially designated a scenic byway as referred to in Section 131(s) of Title 23 of the United States Code.

(b) "Officially designated scenic highway or scenic byway" does not include routes listed as part of the State Scenic Highway system, Article 2.5 (commencing with Section 260) of Chapter 2 of Division 1 of the Streets and Highways Code, unless those routes, or segments of those routes, have been designated as officially designated state scenic highways.

HISTORY:

Added Stats 1993 ch 991 § 4 (AB 881), as B & P C § 5216.4. Renumbered by Stats 2000 ch 787 § 4 (SB1404). Amended Stats 2008 ch 179 § 11 (SB 1498), effective January 1, 2009.

NOTES:

Amendments:

2008 Amendment:

Substituted "State Scenic Highway system, Article 2.5 (commencing with Section 260) of Chapter 2 of Division 1

of the Streets and Highways Code," for "State Scenic Highway system, Streets and Highway Code, Section 263, et seq.," in subd (b).

Hierarchy Notes:

Div. 3 Note

Div. 3, Ch. 2 Note

Div. 3, Ch. 2, Art. 1 Note

LexisNexis 50 State Surveys, Legislation & Regulations

Billboards and Outdoor Advertising

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BUSINESS & PROFESSIONS CODE
Division 3. Professions and Vocations Generally
Chapter 2. Advertisers
Article 7. Regulations

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Bus & Prof Code § 5418.1 (2009)

§ 5418.1. Order of priorities for removal of displays

When allocating funds pursuant to Section 5418, the commission shall consider, and may designate for expenditure, all or any part of such funds in accordance with the following order of priorities for removal of those outdoor advertising displays for which compensation is provided pursuant to Section 5412:

(a) Hardship situations involving outdoor advertising displays located adjacent to highways which are included within the state scenic highway system, including those nonconforming outdoor advertising displays which are offered for immediate removal by the owners thereof.

(b) Hardship situations involving outdoor advertising displays located adjacent to other highways, including those nonconforming outdoor advertising displays which are offered for removal by the owners thereof.

(c) Nonconforming outdoor advertising displays located adjacent to highways which are included within the state scenic highway system.

(d) Nonconforming outdoor advertising displays which are generally used for product advertising, and which are located in unincorporated areas.

(e) Nonconforming outdoor advertising displays which are generally used for product advertising located within incorporated areas.

(f) Nonconforming outdoor advertising displays which are generally used for non-motorist-oriented directional advertising.

(g) Nonconforming outdoor advertising displays which are generally used for motorist-related directional

advertising.

HISTORY:

Added Stats 1971 ch 1782 § 4.

NOTES:

Hierarchy Notes:

Div. 3 Note

Div. 3, Ch. 2 Note

Div. 3, Ch. 2, Art. 7 Note

17 of 400 DOCUMENTS

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BUSINESS & PROFESSIONS CODE
Division 3. Professions and Vocations Generally
Chapter 2. Advertisers
Article 8. Landscaped Freeways

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Bus & Prof Code § 5440.1 (2009)

§ 5440.1. Prohibition against displays near scenic highway or byway

Except as provided in Section 5442.5, no advertising display may be placed or maintained along any highway or segment of any interstate highway or primary highway that before, on, or after the effective date of Section 131(s) of Title 23 of the United States Code is an officially designated scenic highway or scenic byway.

HISTORY:

Added Stats 1993 ch 991 § 9 (AB 881).

NOTES:

Collateral References:

Cal. Legal Forms, (Matthew Bender) § 50.11[2].

Hierarchy Notes:

Div. 3 Note

Div. 3, Ch. 2 Note

Div. 3, Ch. 2, Art. 8 Note

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CODE OF CIVIL PROCEDURE
Part 2. Of Civil Actions
Title 14. Miscellaneous Provisions
Chapter 6. Costs

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Code Civ Proc § 1021.5 (2009)

§ 1021.5. Attorney fees in cases resulting in public benefit

Upon motion, a court may award attorneys' fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity, are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any. With respect to actions involving public entities, this section applies to allowances against, but not in favor of, public entities, and no claim shall be required to be filed therefor, unless one or more successful parties and one or more opposing parties are public entities, in which case no claim shall be required to be filed therefor under Part 3 (commencing with Section 900) of Division 3.6 of Title 1 of the Government Code.

Attorney's fees awarded to a public entity pursuant to this section shall not be increased or decreased by a multiplier based upon extrinsic circumstances, as discussed in Serrano v. Priest, 20 Cal. 3d 25, 49.

HISTORY:

Added Stats 1977 ch 1197 § 1. Amended Stats 1993 ch 645 § 2 (SB 764).

NOTES:

Amendments:

1993 Amendment:

(1) Amended the first paragraph by adding **(a)** ", or of enforcement by one public entity against another public entity," after "private enforcement" in the first sentence; and **(b)** ", unless one or more successful parties and one or more opposing parties are public entities, in which case no claim shall be required to be filed therefor under Part 3 (commencing with Section 900) of Division 3.6 of Title 1 of the Government Code" in the second sentence; and **(2)** added the second paragraph.

Cross References:

Compensation of attorneys: CCP § 1021.

Attorney fees following rejection of settlement offer: CCP § 1021.1.

Attorney fees in damage action based on commission of felony: CCP § 1021.4.

Attorney fees involving claim to implied indemnity: CCP § 1021.6.

Attorney fees in actions involving peace officers, libel, slander, bad faith: CCP § 1021.7.

Attorney fees in trespass actions: CCP § 1021.9.

Attorney fees in actions for recovery of wages: CCP § 1031.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 174 "Costs And Attorney's Fees".

Cal. Points & Authorities (Matthew Bender(R)) ch 41 "Class And Representative Actions" § 41.58A.

Cal. Points & Authorities (Matthew Bender(R)) ch 60 "Costs" § 60.90.

Cal. Points & Authorities (Matthew Bender(R)) ch 60 "Costs" § 60.300.

Cal. Points & Authorities (Matthew Bender(R)) ch 60 "Costs" § 60.320.

Cal. Points & Authorities (Matthew Bender(R)) ch 60 "Costs" § 60.340.

Cal. Points & Authorities (Matthew Bender(R)) ch 60 "Costs" § 60.360.

Cal. Points & Authorities (Matthew Bender(R)) ch 60 "Costs" § 60.370.

Cal. Points & Authorities (Matthew Bender(R)) ch 60 "Costs" § 60.400.

Cal. Points & Authorities (Matthew Bender(R)) ch 60 "Costs" § 60.440.

Cal. Points & Authorities (Matthew Bender(R)) ch 60 "Costs" § 60.451.

Cal. Points & Authorities (Matthew Bender(R)) ch 60 "Costs" § 60.550.

Cal. Points & Authorities (Matthew Bender(R)) ch 81 "Discovery: Privileges And Other Discovery Limitations" §

81.240.

Cal. Fam. Law Practice & Procedure (Matthew Bender(R)), § 33.25.

Cal. Fam. Law Practice & Procedure (Matthew Bender(R)), § 62.02.

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 174 "Costs and Attorneys Fees" II.

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 418 "Pollution and Environmental Matters".

Cal. Torts (Matthew Bender(R)), § 50.31.

Cal. Torts (Matthew Bender(R)), § 50.31.1.

Cal. Torts (Matthew Bender(R)), § 50.31.2.

Cal. Torts (Matthew Bender(R)), § 62.04.

Cal. Torts (Matthew Bender(R)), § 82.51.

Cal. Class Actions Practice & Procedure ch 11.04, 15.01, 15.10, 21.01.

Cal. Legal Forms, (Matthew Bender) §§ 35A.210[1][d], 90A.141.

Matthew Bender (R) Practice Guide: Cal. Trial and Post Trial Civil Procedure §§ 25A.02, 25A.03, 25A.11[1], 25A.11[2], 25A.11[3], 25A.11[7], 25A.11[8], 25A.11[9], 25A.11[10], 25A.11[11], 25A.11[12], 25A.21, 25A.23[2], 25A.25, 25A.27[4], 25A.32, 25A.35, 25A.36.

Matthew Bender(R) Practice Guide: Federal Pretrial Civil Procedure in California, 20.12.

Witkin Procedure (4th ed), "Judgment" §§ 227, 228, 230-239, 241-245, 248, 250, 252, 253, 257, 264, 265, 266, 269.

Cal Jur 3d (Rev) Costs § 102 et seq.

Calif Trial Handbook 2d (BW, 1987) 24:38.

7 Witkin Summary (10th ed) Constitutional Law § 141.

9 Witkin Summary (10th ed) Taxation § 121.

13 Witkin Summary (10th ed) Equity § 125.

Attorneys' fees under private attorney general doctrine proper if lawsuit causally connected to relief obtained. CEB Civ Lit Rep (1985) Vol 7 No. 7, p 202.

County may not recover costs of law enforcement from protestors; defendant awarded attorneys' fees under Code of Civil Procedure § 1021.5. CEB Civ Lit Rep (1986) Vol 8 No. 4 p 134.

Trial court erroneously relied on absence of concrete or actual benefits to deny attorneys' fees under Code of Civil Procedure § 1021.5. CEB Civ Lit Rep (1986) Vol 8 No. 4 p 134.

No attorneys' fees to lay person under Code of Civil Procedure § 1021.5. CEB Real Property Law Reporter (1986) Vol 9 No. 3 p 69.

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Catalyst for Change the California Supreme Court Has Parted Ways with the U.S. Supreme Court in Preserving the Catalyst Theory under the Private Attorney General Fee Statute. 28 LA Law 28.

De Novo Standard of Review. 28 LA Law 30.

Annotations:

Attorneys' fees: cost of services provided by paralegals or the like as compensable element of award in state court. 73 ALR4th 938.

Private attorney general doctrine--State cases. 106 ALR5th 523.

Propriety of amount of attorneys' fees awarded to prevailing parties under Civil Rights Attorney's Fees Awards Act of 1976 (42 USCS § 1988). 118 ALR Fed 1.

Award of attorneys' fees in excess of § 75 per hour under Equal Access to Justice Act (EAJA) (28 USCS § 2412(d)(2)(A)(ii)) authorizing higher awards - cases involving law other than social security law. 119 ALR Fed 1.

Recoupment of attorney fees, under Equal Access to Justice Act (EAJA) (28 USCS § 2412(d)(2) by litigant represented by counsel to whom no fee is paid by litigant. 121 ALR Fed 291.

Who is "prevailing party" for purposes of awards of attorneys' fees under 42 USCS § 19731(e), providing for such awards to prevailing parties in actions or proceedings to enforce voting guarantees under Fourteenth or Fifteenth Amendment. 127 ALR Fed 1.

Hierarchy Notes:

Pt. 2, Tit. 14, Ch. 6 Note

NOTES OF DECISIONS 1. In General 2. Construction 3. Time for Motion 4. Necessity of Agreement for Fees 5. Review 6. Particular Circumstances; Banks and Banking 7. --Budget and Appropriations 8. --Challenges to Courts 9. --Challenges to Government Officials and Boards 10. --Challenges to Statutes, Rules and Regulations 11. --Civil and Constitutional Rights 12. --Criminal Prosecution or Defense 13. --Elections 14. --Employment, Unemployment, Benefits 15. -- --Public Employees 16. --Family Law Proceedings 17. --Health and Safety 17.5. --Insurance 18. --Land Use; Zoning; Environmental Protection 19. --Prisoners' Actions 20. --Public Facilities; Streets and Highways 21. --Records Maintenance or Destruction 22. --Schools and School Programs 23. --Shareholder Actions 24. --Taxation 25. Actions Under Unfair Competition Law 26. Pre-litigation attempt at settlement 27. Amounts Recoverable 28. Related Proceedings

1. In General

The Legislature adopted CCP § 1021.5, authorizing awards of attorney fees under the private attorney general doctrine, as a codification of the private attorney general doctrine that had been developed in numerous prior judicial decisions. The fundamental objective of the private attorney general doctrine for attorney fees is to encourage suits effectuating a strong public policy by awarding substantial attorney fees to those who successfully bring such suits and thereby bring about benefits to a broad class of citizens. The doctrine rests on the recognition that privately initiated lawsuits are often essential to the effectuation of the fundamental public policies embodied in constitutional or statutory provisions, and that, without some mechanism authorizing the award of attorney fees, private actions to enforce such important public policies will as a practical matter frequently be infeasible. Woodland Hills Residents Assn., Inc. v. City Council of Los Angeles (1979) 23 Cal 3d 917, 154 Cal Rptr 503, 593 P2d 200, 1979 Cal LEXIS 238.

The Legislature in enacting CCP § 1021.5, expressly authorizing an award of attorney fees under the private attorney general doctrine, drew heavily on federal judicial decision in framing the provisions of the statute, and thus such authorities, while no longer viable in the federal realm, are helpful and reliable guides in interpreting the various provisions of the California statutes. Woodland Hills Residents Assn., Inc. v. City Council of Los Angeles (1979) 23 Cal 3d 917, 154 Cal Rptr 503, 593 P2d 200, 1979 Cal LEXIS 238.

Due to the disparity in the purposes underlying the private attorney general doctrine and the substantial benefit doctrine, the doctrines differ in a number of subtle but important respects. Whereas the private attorney general doctrine as embodied in CCP § 1021.5, provides for the shifting of attorney fees from plaintiff to one or more opposing parties, the substantial benefit doctrine does not contemplate that the losing party or parties should ultimately bear attorney fees, but rather mandates that those receiving the benefits should contribute to the costs of its production. In some circumstances, however, this difference may be more theoretical than real, for frequently one or more of the opposing or losing parties will either represent or act on behalf of the benefited class, so that an attorney fee award entered against such a party will, as a practical matter, operate to spread the costs proportionately among the benefited class. Woodland Hills Residents Assn., Inc. v. City Council of Los Angeles (1979) 23 Cal 3d 917, 154 Cal Rptr 503, 593 P2d 200, 1979 Cal LEXIS 238.

The private attorney general theory for the award of attorney fees is predicated on achievement of benefits substantial from the viewpoint of the general public but too ephemeral from the standpoint of individual beneficiaries to warrant application of the substantial benefit theory. While the substantial benefit theory is based on concepts of an unjust enrichment, the private attorney general theory seeks to encourage vindication of strong public policies by private lawsuit. CCP § 1021.5, provides explicit statutory authorization for a private attorney general attorney fee award without regard to whether the public policy vindicated rests on the constitution or statute. Rich v. Benicia (1979, 1st Dist) 98 Cal App 3d 428, 159 Cal Rptr 473, 1979 Cal App LEXIS 2284.

CCP § 1021.5, providing explicit statutory authorization for a private attorney general attorney fee award is applicable to any action in which an appeal was pending, if only as to the attorney fee issues, as of the effective date of the statute. Rich v. Benicia (1979, 1st Dist) 98 Cal App 3d 428, 159 Cal Rptr 473, 1979 Cal App LEXIS 2284.

For purposes of establishing the propriety of an award of attorney fees under CCP § 1021.5 (private attorney general theory), a determination that a lawsuit vindicated a public policy of constitutional stature establishes the requirement that the action result in the enforcement of an important right affecting the public interest. Press v. Lucky Stores, Inc. (1983) 34 Cal 3d 311, 193 Cal Rptr 900, 667 P 2d 704, 1983 Cal LEXIS 218.

The fundamental objective of the private attorney general doctrine, as codified in CCP § 1021.5, is to encourage suits effectuating a strong public policy by awarding substantial attorney fees to those who successfully bring such suits and thereby bring about benefits to a large group of citizens. The doctrine rests on the recognition that privately initiated lawsuits are often essential to the effectuation of public policies embodied in constitutional or statutory provisions, and that, without some mechanism authorizing the award of attorney fees, private actions to enforce such important public policies will be impracticable. Daniels v. McKinney (1983, 5th Dist) 146 Cal App 3d 42, 193 Cal Rptr 842, 1983 Cal App LEXIS 2050.

The private attorney general doctrine, which permits an award of attorney fees to those who by litigation secure benefits for a broad class of persons by effectuating a strong public policy, is one of several exceptions to the general rule that each party must pay his own attorney fees. This exception was created by the courts pursuant to their inherent equitable powers. Later, it was given statutory recognition under CCP § 1021.5, which became effective on January 1, 1978, and applied to all pending cases. No Oil, Inc. v. City of Los Angeles (1984, Cal App 2d Dist) 153 Cal App 3d 998, 200 Cal Rptr 768, 1984 Cal App LEXIS 1844.

CCP § 1021.5 (private attorney general doctrine), does not create a new cause of action but is ancillary to the underlying cause. It is a special motion procedure plainly intended to be initiated after the result of the action is known but is subject to no express time limit. Such a motion need not be made and determined until after the judgment is final. No Oil, Inc. v. City of Los Angeles (1984, Cal App 2d Dist) 153 Cal App 3d 998, 200 Cal Rptr 768, 1984 Cal App LEXIS 1844.

An award of attorney fees under either CCP § 1021.5 (private attorney general doctrine), or 42 USCS § 1988 (Civil Rights Attorney's Fees Award Act of 1976), is not intended to punish the defendant in any way. Rather, it is to permit and encourage plaintiffs to enforce their civil rights. Schmid v. Lovette (1984, 1st Dist) 154 Cal App 3d 466, 201 Cal Rptr 424, 1984 Cal App LEXIS 1901.

The fundamental objective of the private attorney general doctrine codified in CCP § 1021.5, is to encourage suits effectuating a strong public policy by awarding substantial attorney fees to those who successfully bring such suits and thereby bring about benefits to a broad class of citizens. Schmid v. Lovette (1984, 1st Dist) 154 Cal App 3d 466, 201 Cal Rptr 424, 1984 Cal App LEXIS 1901.

The private attorney general theory of court-awarded attorney fees, codified by CCP § 1021.5, rests on the recognition that privately initiated lawsuits are often essential to the effectuation of the fundamental public policies embodied in constitutional or statutory provisions, and that without some mechanism authorizing the award of attorney fees, private actions to enforce important public policies will as a practical matter frequently be infeasible. The decision whether to make an award rests initially in the discretion of the trial court. Its determination will be reversed only if there was a prejudicial abuse of discretion, with no reasonable basis for its action being shown. Slayton v. Pomona Unified School Dist. (1984, 2nd Dist) 161 Cal App 3d 538, 207 Cal Rptr 705, 1984 Cal App LEXIS 2684.

The private attorney general doctrine codified in CCP § 1021.5, is not subject to most of the limitations on the substantial benefits doctrine. Rather, its fundamental objective is to encourage suits effectuating a strong public policy by awarding substantial attorney fees to those who successfully bring such actions and thereby confer benefits (which

need not be actual and concrete, but may be no more than the effectuation of a statutory or constitutional purpose) on the public or a broad class of citizens. The unjust enrichment doctrine rests on recognition that privately initiated lawsuits are often essential to the effectuation of the fundamental public policies of constitutional provisions or statutes, and that without some means of awarding attorney fees such private actions will frequently be impracticable or infeasible. Braude v. Automobile Club of Southern Cal. (1986, Cal App 5th Dist) 178 Cal App 3d 994, 223 Cal Rptr 914, 1986 Cal App LEXIS 2719.

CCP § 1021.5 (attorney fees in cases resulting in public benefit), which took effect while an action challenging the constitutionality of a city ordinance limiting contributions to campaign committees for or against municipal ballot measures was pending on appeal, applied retroactively to allow recovery by plaintiffs for trial court fees. Citizens against Rent Control v. City of Berkeley (1986, 1st Dist) 181 Cal App 3d 213, 226 Cal Rptr 265, 1986 Cal App LEXIS 1608.

The "private attorney general" theory is embodied in CCP § 1021.5. The theory rests on the policy of encouraging private actions to vindicate important rights affecting the public interest, without regard to material gain. A central function is to call public officials to account and to insist that they enforce the law. Implicit is the recognition that without some mechanism authorizing the award of attorney fees, private actions to enforce important public policies will as a practical matter frequently be infeasible. The fundamental objective of the doctrine is to encourage this private action to effectuate a strong public policy by awarding substantial attorney fees to those who successfully bring such suits and thereby bring about benefits to a broad class of citizens. Bartling v. Glendale Adventist Medical Center (1986, 2nd Dist) 184 Cal App 3d 97, 228 Cal Rptr 847, 1986 Cal App LEXIS 1895.

The private attorney general doctrine rests upon the recognition that privately initiated lawsuits are often essential to the effectuation of the fundamental public policies embodied in constitutional or statutory provisions, and that, without some mechanism authorizing the award of attorney fees, private actions to enforce such important public policies will as a practical matter frequently be infeasible. Thus, the fundamental objective of the doctrine is to encourage suits enforcing important public policies by providing substantial attorney fees to successful litigants in such cases. Maria P. v. Riles (1987) 43 Cal 3d 1281, 240 Cal Rptr 872, 743 P 2d 932, 1987 Cal LEXIS 449.

The private attorney general doctrine, codified in CCP § 1021.5, is one of several exceptions to the general rule that each party must bear its own attorney fees. The statute seeks to encourage the presentation of meritorious claims affecting a large number of persons by providing successful litigants attorney fees in public interest lawsuits. The doctrine itself rests upon the recognition that privately initiated lawsuits are often essential to the effectuation of fundamental public policies embodied in constitutional or statutory provisions, and that, without some mechanism authorizing the award of fees, private actions to enforce such important policies will, as a practical matter, frequently be infeasible. Because plaintiffs are encouraged to assert their civil rights, attorney fees are appropriate, even if the successful party was represented by public interest lawyers and did not actually incur any legal expense. Bouvia v. County of Los Angeles (1987, 2nd Dist) 195 Cal App 3d 1075, 241 Cal Rptr 239, 1987 Cal App LEXIS 2260.

The purpose behind an award of attorney fees under CCP § 1021.5 (private attorney general doctrine), is to encourage private individuals to bring litigation to enforce rights. Section 1021.5 does not require that the benefit inure to a majority of California residents, nor that such attorney fee awards be limited only to those who brought lawsuits favored by the majority. Indeed, the need for private enforcement of statutory and public policies is often greatest when a minority position is at issue. California Common Cause v. Duffy (1987, 4th Dist) 200 Cal App 3d 730, 246 Cal Rptr 285, 1987 Cal App LEXIS 2513.

The private attorney general theory of CCP § 1021.5, recognizes that citizens frequently have common interests of significant societal importance, but which do not involve any individual's financial interests to the extent necessary to encourage private litigation to enforce the right. To encourage such suits, attorney fees are awarded when a significant public benefit is conferred through litigation pursued by one whose personal stake is insufficient to encourage the action otherwise. Section 1021.5 was not designed as a method for rewarding litigants motivated by their own pecuniary

interests who only coincidentally protect the public interest. Austin v. Board of Retirement (1989, Cal App 2d Dist) 209 Cal App 3d 1528, 258 Cal Rptr 106, 1989 Cal App LEXIS 405, review denied (1989, Cal) 1989 Cal LEXIS 3246.

The fundamental objective of CCP § 1021.5 (private attorney general), is to encourage suits effectuating a strong public policy by awarding substantial attorney fees to those who successfully bring such suits. However, in enacting § 1021.5, the Legislature did not intend to authorize an award of attorney fees in every case involving a statutory violation. Mandicino v. Maggard (1989, 1st Dist) 210 Cal App 3d 1413, 258 Cal Rptr 917, 1989 Cal App LEXIS 544.

The private attorney general doctrine (CCP § 1021.5) rests upon the recognition that privately initiated lawsuits are often essential to the effectuation of the fundamental public policies embodied in constitutional or statutory provisions. Without some mechanism authorizing the award of attorney fees, private actions to enforce such important public policies will as a practical matter frequently be infeasible. Sokolow v. County of San Mateo (1989, 1st Dist) 213 Cal App 3d 231, 261 Cal Rptr 520, 1989 Cal App LEXIS 856.

CCP § 1021.5 (private attorney general doctrine), was not designed as a method for rewarding litigants motivated by their own pecuniary interest who only coincidentally protect the public interest. Angelheart v. City of Burbank (1991, Cal App 2d Dist) 232 Cal App 3d 460, 283 Cal Rptr 676, 285 Cal Rptr 463, 1991 Cal App LEXIS 825.

For purposes of the requirement of CCP § 1021.5 (private attorney general doctrine), that the action benefit the public, evidence of the size of the population benefited by a private suit is not always required. The substantial benefit may be conceptual or doctrinal, and need not be actual and concrete, so long as the public is primarily benefited. Where the suit is brought to enforce a fundamental constitutional right, although constitutional rights are by nature individual rights, their enforcement benefits the entire public. Indeed, only by protecting each individual's fundamental rights will society's general interests in these rights be secured. Planned Parenthood of Santa Barbara, etc. v. Aakhus (1993, Cal App 2d Dist) 14 Cal App 4th 162, 17 Cal Rptr 2d 510, 1993 Cal App LEXIS 265, review denied (1993, Cal) 1993 Cal LEXIS 3060.

CCP § 1021.5 (private attorney general doctrine), was not designed as a method for rewarding litigants motivated by their own pecuniary interests who only coincidentally protect the public interest. Planned Parenthood v. City of Santa Maria (1993, 2nd Dist) 16 Cal App 4th 685, 20 Cal Rptr 2d 391, 1993 Cal App LEXIS 626.

The private attorney general doctrine (CCP § 1021.5) is designed to encourage lawsuits effectuating a strong public policy by awarding attorney fees to those who brought these suits and thereby benefit the public interest or a broad class of people. The doctrine rests upon the recognition that privately initiated lawsuits are often essential to the effectuation of the fundamental public policies embodied in constitutional or statutory provisions, and that, without some mechanism authorizing the award of attorney fees, private actions to enforce public policies will as a practical matter frequently be infeasible. Thus, the fundamental objective of the doctrine is to encourage suits enforcing important public policies by providing substantial attorney fees to successful litigants in these cases. Hospital Systems, Inc. v. Office of Statewide Health etc. Development (1994, 3rd Dist) 25 Cal App 4th 1686, 30 Cal Rptr 2d 922, 1994 Cal App LEXIS 628.

The private attorney general doctrine (CCP § 1021.5) rests upon the recognition that privately initiated lawsuits are often essential to the effectuation of the fundamental public policies embodied in constitutional or statutory provisions, and that, without some mechanism authorizing the award of attorney fees, private actions to enforce such important public policies will as a practical matter frequently be infeasible. Entitlement to fees under § 1021.5 requires a showing that the litigation: (1) served to vindicate an important public right; (2) conferred a significant benefit on the general public or a large class of persons; and (3) imposed a financial burden on plaintiffs that was out of proportion to their individual stake in the matter. California Licensed Foresters Assn. v. State Bd. of Forestry (1994, Cal App 3d Dist) 30 Cal App 4th 562, 35 Cal Rptr 2d 396, 1994 Cal App LEXIS 1205, review denied California v. California State Bd. of Forestry (1995, Cal) 1995 Cal LEXIS 602.

The private attorney general doctrine (CCP § 1021.5) is intended as a bounty for pursuing public interest litigation, not as a reward for litigants motivated by their own interests who coincidentally serve the public. The private attorney general theory recognizes citizens frequently have common interests that are of significant societal importance, but do not involve any individual's financial interests to the extent necessary to encourage private litigation to enforce the right. To encourage such suits, attorney fees are awarded when a significant public benefit is conferred through litigation pursued by one whose personal stake is insufficient to otherwise encourage the action. California Licensed Foresters Assn. v. State Bd. of Forestry (1994, Cal App 3d Dist) 30 Cal App 4th 562, 35 Cal Rptr 2d 396, 1994 Cal App LEXIS 1205, review denied California v. California State Bd. of Forestry (1995, Cal) 1995 Cal LEXIS 602.

CCP § 1021.5, codifies the private attorney general doctrine for awarding attorney fees. This doctrine rests on the recognition that privately initiated lawsuits are often essential to the effectuation of the fundamental public policies embodied in constitutional or statutory provisions, and that, without some mechanism authorizing the award of attorney fees, private actions to enforce such important public policies will, as a practical matter, frequently be infeasible. Where a plaintiff's action has not produced a monetary recovery, an award of attorney fees is proper under § 1021.5 if (1) the action has resulted in enforcement of an important right affecting the public interest, (2) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, and (3) the necessity and financial burden of private enforcement makes the award appropriate. Feminist Women's Health Center v. Blythe (1995, Cal App 3d Dist) 32 Cal App 4th 1641, 39 Cal Rptr 2d 189, 1995 Cal App LEXIS 218, cert den Reali v. Feminist Women's Health Ctr. (1995) 516 US 987, 133 L Ed 2d 423, 116 S Ct 514, 1995 US LEXIS 7837.

CCP § 1021.5, is a codification of the "private attorney general doctrine." In determining whether an award of attorney fees may be entered in favor of a "successful party" under the statute, the trial court must consider whether: (1) the action has resulted in the enforcement of an important right affecting the public interest, (2) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, and (3) the necessity and financial burden of private enforcement make the award appropriate. The significance of the benefit conferred must be determined by the trial court from a practical perspective, and must be based on a realistic assessment in light of all the pertinent circumstances. Evidence of the size of the population benefited by a private suit is not always required. The substantial benefit may be conceptual or doctrinal, and need not be actual and concrete, so long as the public is primarily benefited. The trial court's judgment on this issue must not be disturbed on appeal unless it is clearly wrong and constitutes an abuse of discretion. Family Planning Specialists Medical Group, Inc. v. Powers (1995, 1st Dist) 39 Cal App 4th 1561, 46 Cal Rptr 2d 667, 1995 Cal App LEXIS 1098, modified (1995, 1st Dist) 40 Cal App 4th 1632a, 1995 Cal App LEXIS 1272.

The purpose of an award of attorney fees pursuant to CCP § 1021.5, is to encourage suits that enforce common interests of significant societal importance, but which do not involve any individual's financial interest to the extent necessary to encourage private litigation to enforce the right. To encourage such suits, attorney fees are awarded when a significant public benefit is conferred through litigation pursued by one whose personal stake is insufficient to otherwise encourage the action. Section 1021.5 was not designed as a method for rewarding litigants motivated by their own pecuniary interests who only coincidentally protect the public interest. The decision whether the above listed factors warrant a fee-shifting award is directed to the discretion of the trial court, and will not be overturned on appeal absent a showing of abuse of that discretion. The pertinent question is whether the grounds given for its order are consistent with the substantive law of § 1021.5 and, if so, whether their application to the facts of the case is within the range of discretion conferred upon the trial courts under § 1021.5, read in light of the purposes and policy of the statute. Satrap v. Pacific Gas & Electric Co. (1996, 1st Dist) 42 Cal App 4th 72, 49 Cal Rptr 2d 348, 1996 Cal App LEXIS 69.

Private attorney general fees (CCP § 1021.5) are not intended to provide insurance for litigants and counsel who misjudge the value of their case, and vigorously pursue the litigation in the expectation of recovering substantial damages, and then find that the jury's actual verdict is not commensurate with their expenditure of time and resources. Instead, its purpose is to provide some incentive for the plaintiff who acts as a true private attorney general, prosecuting a lawsuit that enforces an important public right and confers a significant benefit, despite the fact that his or her own financial stake in the outcome would not by itself constitute an adequate incentive to litigate. Satrap v. Pacific Gas &

Electric Co. (1996, 1st Dist) 42 Cal App 4th 72, 49 Cal Rptr 2d 348, 1996 Cal App LEXIS 69.

CCP § 1021.5, is a codification of the private attorney general doctrine and provides for an award of attorney fees to a successful party if: (a) a significant benefit has been conferred on the general public, and (b) the necessity and financial burden of private enforcement are such as to make the award appropriate. An award of fees under § 1021.5 is within the sound discretion of the trial court, and the trial court's decision on fees will not be reversed on appeal unless there is no reasonable basis for the award in the record. Cuadra v. Bradshaw (1997, 1st Dist) 53 Cal App 4th 869, 62 Cal Rptr 2d 102, 1997 Cal App LEXIS 209.

In determining an attorney fee award under CCP § 1021.5 (attorney fees to successful party in case resulting in public benefit), a trial court must first determine a touchstone or lodestar amount based upon the time spent and the reasonable hourly compensation for each attorney. Once the lodestar amount is determined, the court looks to a variety of other factors that may justify either the augmentation or the diminution of the lodestar sum. Among these factors are: (1) the novelty and difficulty of the questions involved and the skill displayed in presenting them, (2) the extent to which the nature of the litigation precluded other employment by the attorneys, (3) the contingent nature of the fee award, both from the point of view of eventual victory on the merits and the point of view of establishing eligibility for an award, (4) the fact that an award against the state would ultimately fall upon the taxpayers, (5) the fact that the attorneys in question received public and charitable funding for the purpose of bringing law suits of the character involved, and (6) the fact that the moneys awarded would inure not to the individual benefit of the attorneys involved but to the organizations by which they are employed. Cuadra v. Bradshaw (1997, 1st Dist) 53 Cal App 4th 869, 62 Cal Rptr 2d 102, 1997 Cal App LEXIS 209.

Absent circumstances rendering the award unjust, attorney fees recoverable under CCP § 1021.5 (attorney fees to successful party in case resulting in public benefit), ordinarily include compensation for all hours reasonably spent, including those necessary to establish and defend the fee claim on appeal. Cuadra v. Bradshaw (1997, 1st Dist) 53 Cal App 4th 869, 62 Cal Rptr 2d 102, 1997 Cal App LEXIS 209.

To obtain an award of fees under CCP § 1021.5, which authorizes an award of attorney fees under the private attorney general doctrine, one must be a successful party in an action resulting in the enforcement of an important right affecting the public interest. A significant benefit, whether pecuniary or nonpecuniary, must have been conferred on the general public or a broad class of persons, and the necessity and financial burden of private enforcement must transcend the litigant's personal interest in the controversy. Whether a party has met the requirements for an award of fees and the reasonable amount of such an award are questions best decided by the trial court in the first instance. That court, utilizing its traditional equitable discretion, must realistically assess the litigation and determine from a practical perspective whether the statutory criteria have been met. Its decision will be reversed only if there has been a prejudicial abuse of discretion. To make such a determination, the appellate court must review the entire record, paying particular attention to the trial court's stated reasons in denying or awarding fees and whether it applied the proper standards of law in reaching its decision. Hewlett v. Squaw Valley Ski Corp. (1997, Cal App 3d Dist) 54 Cal App 4th 499, 63 Cal Rptr 2d 118, 1997 Cal App LEXIS 310, superseded by statute as stated in UFW v. Dutra Farms (2000, Cal App 6th Dist) 83 Cal App 4th 1146, 100 Cal Rptr 2d 251, 2000 Cal App LEXIS 756.

Underlying CCP § 1021.5 (private attorney general doctrine), is the recognition that privately initiated lawsuits often are essential to effectuate fundamental public policies embodied in constitutional or statutory provisions, and that without some mechanism authorizing an attorney fee award, such private actions often will as a practical matter be infeasible. The basic objective of the doctrine is to encourage suits enforcing important public policies by providing substantial attorney fees to successful litigants in such cases. Flannery v. California Highway Patrol (1998, Cal App 1st Dist) 61 Cal App 4th 629, 71 Cal Rptr 2d 632, 1998 Cal App LEXIS 114.

There are three requirements for recovery of attorney's fees under the private attorney general doctrine (CCP § 1021.5): (1) one must be a successful party in an action resulting in the enforcement of an important right affecting the public interest; (2) a significant benefit, whether pecuniary or nonpecuniary, must have been conferred on the general

public or a broad class of persons, and (3) the necessity and financial burden of private enforcement must transcend the litigant's personal interest in the controversy. Whether a party has met the requirements for an award of fees and the reasonable amount of such an award are questions best decided by the trial court in the first instance. That court, utilizing its traditional equitable discretion, must realistically assess the litigation and determine from a practical perspective whether the statutory criteria have been met. Its decision will be reversed only if there has been a prejudicial abuse of discretion. To make such a determination, an appellate court must review the entire record, paying particular attention to the trial court's stated reasons in denying or awarding fees and whether it applied the proper standards of law in reaching its decision. City of Hawaiian Gardens v. City of Long Beach (1998, Cal App 2d Dist) 61 Cal App 4th 1100, 72 Cal Rptr 2d 134, 1998 Cal App LEXIS 166.

The purpose of an award of attorney fees pursuant to CCP § 1021.5, is to encourage suits that enforce common interests of significant societal importance, but which do not involve any individual's financial interest to the extent necessary to encourage private litigation to enforce the right. To encourage such suits, attorney fees are awarded when a significant public benefit is conferred through litigation pursued by one whose personal stake is insufficient to otherwise encourage the action. The statute was not designed as a method for rewarding litigants motivated by their own pecuniary interests who only coincidentally protect the public interest. The request for attorneys' fees may be denied where the potential recovery of damages creates sufficient financial incentive to bring the lawsuit. Advanced Micro Devices, Inc. v. National Semiconductor Corp. (1999, ND Cal) 38 F Supp 2d 802, 1999 US Dist LEXIS 2656.

In a successful action against landowners and an irrigation district to declare a public easement for use of a road along the side of an irrigation canal, the trial court properly declined the district's request to apportion the award of attorney's fees (CCP § 1021.5). Such an award is an obligation which, when imposed on several persons, is presumed to be joint. Treating the § 1021.5 obligation of more than one opposing party as joint is consistent with the purpose of the statute. Friends of the Trails v. Blasius (2000, Cal App 3d Dist) 78 Cal App 4th 810, 93 Cal Rptr 2d 193, 2000 Cal App LEXIS 140, review denied (2000, Cal) 2000 Cal LEXIS 4954.

In a proceeding for attorney fees under the "private attorney general" statute (CCP § 1021.5) arising out of an action against a county concerning a proposed land development project, the county was entitled to conduct limited discovery where it produced evidence suggesting that a public interest organization litigated the action primarily for the benefit of nonlitigants and where, balancing the competing interests of the county and donors to a litigation fund, the incremental, in camera disclosure of information concerning donations to the fund and, if necessary, the names of some donors, would not impermissibly infringe on important associational privacy rights of the donors. Save Open Space Santa Monica Mountains v. Superior Court (2000, 2nd Dist) 84 Cal App 4th 235, 100 Cal Rptr 2d 725, 2000 Cal App LEXIS 800.

Attorney fees under CCP § 1021.5 are not available in a Fair Employment and Housing Act cause of action. Shaw v. City of Sacramento (2001, 9th Cir Cal) 250 F3d 1289, 2001 US App LEXIS 14461.

Award of attorney fees under Cal. Code Civ. Proc. § 1021.5 was reversed on appeal because such an award was available only to a successful party and on appeal the court reversed the judgment granting the students a writ of mandate to require the school board to issue subpoenas to compel the attendance of witnesses at the students' joint expulsion hearing. Woodbury v. Brown-Dempsey (2003, Cal App 4th Dist) 108 Cal App 4th 421, 134 Cal Rptr 2d 124, 2003 Cal App LEXIS 637.

Trial court erred in awarding attorney fees to an individual who had brought suit against the Lottery Commission; the individual could not have been deemed successful as she did not receive judicial relief on any of her claims. Stanley v. California State Lottery Com. (2003, Cal App 3d Dist) 112 Cal App 4th 168, 4 Cal Rptr 3d 861, 2003 Cal App LEXIS 1475, review gr, depublished (2003, Cal) 7 Cal Rptr 3d 776, 81 P3d 221, 2003 Cal LEXIS 9465, review dismissed, (2005, Cal) 24 Cal Rptr 3d 864, 106 P3d 303, 2005 Cal LEXIS 1769.

Plaintiffs who filed a petition for a writ of mandate seeking to overturn a city's approval of a housing project for

senior citizens were entitled to attorney fees pursuant to CCP § 1021.5 for causing an initial writ to be issued, despite the subsequent failure of their other causes of action. Bowman v. City of Berkeley (2005, 1st Dist) 131 Cal App 4th 173, 31 Cal Rptr 3d 447, 2005 Cal App LEXIS 1115.

In a copyright holder's action against an alleged infringer claiming copyright infringement, false designation of origin in violation of 15 USCS § 1125(a), and violation of California's Unfair Competition Law, Bus. & Prof. Code §§ 17200 et seq., regarding the copyright holder's song, the copyright holder was entitled to a default judgment against the alleged infringer where the alleged infringer failed to either actively or passively engage in the defense of his case and failed to abide by the terms of the parties' settlement decree, and although the copyright holder could not show any actual damages under 17 USCS § 504(a), the copyright holder was entitled to: statutory damages under 17 USCS § 504(c) of twice the amount of royalties paid to the alleged infringer for sales of recordings containing the infringing song, interest under 28 USCS § 1961, permanent injunctive relief under 17 USCS § 502(a) due to the threat of future infringing activity, and an award of reasonable attorney fees under 17 USCS § 505. However, while the copyright holder stated claims adequate to demonstrate that the alleged infringer violated 15 USCS § 1125(a) and California Unfair Competition Law, Bus. & Prof. Code §§ 17200 et seq., by passing off the copyright holder's song as his own, there was no support for an award of additional damages or attorney fees under 15 USCS § 1117(a) or Code Civ. Proc. § 1021.5. Jackson v. Sturkie (2003, ND Cal) 255 F Supp 2d 1096, 2003 US Dist LEXIS 5214.

Insurmountable hurdle precluding Florida counsel's invocation of CCP § 1021.5 was that they neither sought fees on behalf of "a successful party" in the settlement litigation, nor were they themselves "parties" to the litigation within the meaning of CCP § 1021.5; therefore, Florida counsel lacked standing to pursue an award of fees. Churchill Vill., L.L.C. v. GE (2004, CA9 Cal) 361 F 3d 566, 2004 US App LEXIS 4879.

Employee who pursued an administrative remedy under Lab C § 98 to recover overtime compensation could recover only those attorney fees allowed by Lab C § 98.2(c) for the employer's de novo appeal; Lab C § 1194 applied only to "civil actions" and thus did not create a right to attorney fees in the administrative proceeding, as distinguished from proceedings under CCP § 1021.5. Sampson v. Parking Service 2000 Com., Inc. (2004, Cal App 2d Dist) 117 Cal App 4th 212, 11 Cal Rptr 3d 595, 2004 Cal App LEXIS 406, rehearing denied (2004, Cal App 2d Dist) 2004 Cal App LEXIS 626, review denied (2004, Cal) 2004 Cal LEXIS 5327.

Because fee awards from other forums were not relevant to the determination of what hourly rates were commonly charged within the district, plaintiffs' evidence failed to support hourly rates as high as those requested by plaintiffs, and plaintiffs bore the burden of establishing that the requested rates were reasonable, the court awarded plaintiffs attorneys' fees under Lab C §§ 218.5 and 1194(a) and CCP § 1021.5 but reduced the attorneys' rates to $300 per hour for the more experienced attorneys and $200 per hour for the less experienced attorneys, who had less than three years of experience practicing law. Velasquez v. Khan (2005, ED Cal) 2005 US Dist LEXIS 28956.

Where inconsistencies in and omissions from the record failed to make clear in what capacity an attorney who recently was admitted to the bar performed services in a civil suit, as to that attorney's services, the court denied without prejudice plaintiffs' request for attorneys' fees under Lab C §§ 218.5 and 1194(a) and CCP § 1021.5. Velasquez v. Khan (2005, ED Cal) 2005 US Dist LEXIS 28956.

Although plaintiffs provided sufficient information for the court to determine that a rate of $100 per hour was reasonable for paralegal services, plaintiffs failed to establish what rate was a reasonable charge for services provided by a student law clerk. When awarding plaintiffs attorneys' fees under Lab C §§ 218.5 and 1194(a) and CCP § 1021.5, the court allowed a rate of only $50 per hour for the law clerks' services. Velasquez v. Khan (2005, ED Cal) 2005 US Dist LEXIS 28956.

Where a public entity receives fees under CCP § 1021.5 for succeeding in important public interest litigation, a private party who succeeded alongside that public entity cannot be denied a similar award of fees simply because the success might have been achieved by the public entity acting alone. State Water Resources Control Bd. Cases (2008, 3d

Dist) 2008 Cal App LEXIS 407.

2. Construction

CCP § 1021.5 (award of attorney fees), does not create a new cause of action but rather is ancillary to the underlying cause, and it thus may apply to a pending case even though its effective date was subsequent to the trial date. Kievlan v. Dahlberg Electronics, Inc. (1978, Cal App 1st Dist) 78 Cal App 3d 951, 144 Cal Rptr 585, 1978 Cal App LEXIS 1360, appeal dismissed (1979) 440 U.S. 951, 99 S. Ct. 1487, 59 L. Ed. 2d 765, 1979 U.S. LEXIS 1144.

The broad statutory language of CCP § 1021.5, authorizing the award of attorney fees under the private attorney general doctrine, and federal precedents, indicate that a right need not be constitutional in nature to justify the application of the private attorney general doctrine. The federal cases apply the doctrine to the vindication of both constitutional and statutory rights. However, the Legislature obviously intended that there be some selectivity, on a qualitative basis, in the award of attorney fees under the statute which specifically alludes to litigation vindicating important rights and does not encompass the enforcement of any or all statutory rights. Thus, the statute directs the judiciary to exercise judgment in attempting to ascertain the strength or societal importance of the right involved. Woodland Hills Residents Assn., Inc. v. City Council of Los Angeles (1979) 23 Cal 3d 917, 154 Cal Rptr 503, 593 P2d 200, 1979 Cal LEXIS 238.

The phrase "important rights" as used in CCP § 1021.5, authorizing the award of attorney fees under the private attorney general doctrine in an action which has resulted in the enforcement of an important right affecting the public interest, is not necessarily confined to any one subject or field. The private attorney general doctrine may find proper application in litigation involving, for example, racial discrimination, the rights of mental patients, legislative reapportionment, and environmental protection. In litigation concerning the application of statutorily based rights in these various fields, courts should, in determining the importance of a particular vindicated right, realistically assess the significance of that right in terms of its relationship to the achievement of fundamental legislative goals. Woodland Hills Residents Assn., Inc. v. City Council of Los Angeles (1979) 23 Cal 3d 917, 154 Cal Rptr 503, 593 P2d 200, 1979 Cal LEXIS 238.

The fact that a plaintiff is able to win his case on a preliminary issue, thereby obviating the adjudication of a theoretically more important right, does not necessarily foreclose the plaintiff from obtaining attorney fees under CCP § 1021.5, authorizing the award of attorney fees under the private attorney general doctrine. When a defendant's activity is invalid on a number of grounds, it is both unfair and contrary to the legislative purpose of the statute to deprive plaintiff of attorney fees simply on the ground that the court decided the case in plaintiff's favor on a simpler or more or less important theory. On the other hand, the fact that a plaintiff prevails on a technical preliminary issue does not necessarily demonstrate that his additional claims have sufficient merit to warrant a conclusion that the action served to vindicate an important right within the meaning of the statute. Under such circumstances, the trial court, utilizing its traditional equitable discretion, now codified in the statute, must realistically assess the litigation and determine whether or not the action served to vindicate an important right so as to justify an attorney fee award under the private attorney general doctrine. Woodland Hills Residents Assn., Inc. v. City Council of Los Angeles (1979) 23 Cal 3d 917, 154 Cal Rptr 503, 593 P2d 200, 1979 Cal LEXIS 238.

Under CCP § 1021.5, providing for an award of attorney fees under the private attorney general doctrine for the enforcement of an important right when a significant benefit, pecuniary or nonpecuniary, has been conferred, the fact that the chief benefits afforded by an action have no readily ascertainable economic or monetary value in no way forecloses an attorney fees award under the statute. This language recognizes that in many cases the important gains or contributions rendered by public interest litigation will be reflected in nonmonetary advances. Under the private attorney general doctrine, unlike the substantial benefit doctrine, the significant benefits that will justify an attorney fee award need not represent a tangible asset or a concrete gain, but may be recognized simply from the effectuation of a fundamental constitutional or statutory policy. However, both the statutory language and the prior case law indicate that the Legislature did not intend to authorize an award of attorney fees in every case involving a statutory violation.

Woodland Hills Residents Assn., Inc. v. City Council of Los Angeles (1979) 23 Cal 3d 917, 154 Cal Rptr 503, 593 P2d 200, 1979 Cal LEXIS 238.

Under Code of Civ. Proc., § 1021.5, permitting an award of attorney fees under the private attorney general doctrine, the benefit which must be conferred as a result of the action is not identical to that under the substantial benefit doctrine. Also, under the statute the significant benefit need not be conferred on the opposing party respondents to justify an attorney fee award, but need only be conferred on the general public or a large class of persons. Woodland Hills Residents Assn., Inc. v. City Council of Los Angeles (1979) 23 Cal 3d 917, 154 Cal Rptr 503, 593 P2d 200, 1979 Cal LEXIS 238.

Under CCP § 1021.5, providing for an award of attorney fees under the private attorney general doctrine, a court may apportion between the parties an award of attorney fees, that is, the court may shift only an appropriate portion of the fees to the losing party or parties. Woodland Hills Residents Assn., Inc. v. City Council of Los Angeles (1979) 23 Cal 3d 917, 154 Cal Rptr 503, 593 P2d 200, 1979 Cal LEXIS 238.

CCP, § 1021.5, which authorizes "a court" to award attorney fees under certain circumstances in actions resulting in enforcement of important rights affecting the public interest, does not authorize the Public Utilities Commission to award attorney fees in quasi-legislative ratemaking proceedings. By no stretch of definition is the commission a "court" when acting in that context, nor is a ratemaking proceeding an "action" within the meaning of the statute. There is no language in the statute indicating a legislative intent that it apply to administrative agencies in any of their functions. (Per Mosk, Richardson, Clark, and Manuel, JJ.) Consumers Lobby against Consumers Lobby Against Monopolies v. PUC (1979) 25 Cal 3d 891, 160 Cal Rptr 124, 603 P2d 41, 1979 Cal LEXIS 349.

Absent circumstances rendering an award of attorney fees unjust, such as a fee request that appears unreasonably inflated, fees recoverable under CCP § 1021.5 (codification of private attorney general doctrine), ordinarily include compensation for all hours reasonably spent, including those necessary to establish and defend the fee claim, since the doctrine will often be frustrated, sometimes nullified, if awards are diluted or dissipated by lengthy, uncompensated proceedings to fix or defend a rightful fee claim. Principles governing an award under the common fund or substantial benefit theory, such as the prevention of unjust enrichment and the potential for conflict of interest, do not control when the award is made under the private attorney general doctrine. Further, enforcement of the right to attorney fees for prevailing on the merits is not a separate "action" under § 1021.5 that must independently satisfy the statute's requirements, since a statutory fee motion is a collateral matter, ancillary to the main cause, and does not create a new cause of action, much less a new "action." Disapproving Mandel v. Lackner (1979) 92 Cal App 3d 747, 155 Cal Rptr 269, 1979 Cal App LEXIS 1714, to the extent it holds litigation on the underlying merits involves an "action" distinct from fee enforcement proceedings. Serrano v. Unruh (1982) 32 Cal 3d 621, 186 Cal Rptr 754, 652 P 2d 985, 1982 Cal LEXIS 238.

The private attorney general theory, codified in CCP, § 1021.5, is designed to encourage private enforcement of important public rights by authorizing an award of attorney fees to private citizens who conduct true public-interest litigation. Determination of the appropriateness of an award under § 1021.5 lies within the discretion of the trial court, which must evaluate three pivotal elements: the societal importance of the right involved; the size of the class benefited by the litigation; and whether the necessity for pursuing the lawsuit placed a burden on the plaintiff out of proportion to his individual stake in the matter. Marini v. Municipal Court for Santa Cruz Judicial Dist. (1979, Cal App 1st Dist) 99 Cal App 3d 829, 160 Cal Rptr 465, 1979 Cal App LEXIS 2377.

A right to an attorney fee award pursuant to CCP § 1021.5, of a party bringing a successful private attorney general action is not limited to actions against a public entity, and the right applies in an action against a private individual, where the criteria for recovery of attorney fees under CCP § 1021.5, is met. Franzblau v. Monardo (1980, Cal App 1st Dist) 108 Cal App 3d 522, 166 Cal Rptr 610, 1980 Cal App LEXIS 2078.

Under the private attorney general theory (codified in CCP § 1021.5), the trial court has the traditional equity

discretion to award attorney fees. The three basic factors to be considered in awarding fees under such theory consist of the strength of societal importance of the public policy vindicated by the litigation, the necessity for private enforcement and the magnitude of the resultant burden upon the plaintiff, and the number of people standing to benefit from the decision. Thus, to justify such an award, the trial court must realistically assess the litigation and determine, from a practical perspective, whether or not the action served to vindicate an important right. People ex rel. Deukmejian v. Worldwide Church of God (1981, Cal App 2d Dist) 127 Cal App 3d 547, 178 Cal Rptr 913, 1981 Cal App LEXIS 2538.

In proceedings to enforce an award of attorney fees under the private attorney general doctrine (CCP § 1021.5), the trial court did not abuse its discretion in denying discovery of the salaries paid and the overhead costs of the public interest organizations employing plaintiffs' attorneys. Services compensable under § 1021.5 are computed from their reasonable market value and the trial court was entitled to use the prevailing billing rates of comparable private attorneys as the "touchstone" for determination of that value. Cost figures bore no reasonable relevance to calculation of the "touchstone" figure. That the costs of a public interest firm may not be considered does not mean, however, that the fact of public or foundational support is not relevant to the size of the final award. Serrano v. Unruh (1982) 32 Cal 3d 621, 186 Cal Rptr 754, 652 P 2d 985, 1982 Cal LEXIS 238.

It is no barrier to an award of attorney fees under CCP § 1021.5 (private attorney general doctrine), that the attorneys involved are employed by publicly funded legal services organizations. Whether the focus is on enabling suits by those otherwise unable to pursue the litigation, or on deterring misconduct, an award to lawyers who have vindicated an important interest achieves the desired result, whether they work for a private firm or a legal services organization. Folsom v. Butte County Assn. of Governments (1982) 32 Cal 3d 668, 186 Cal Rptr 589, 652 P 2d 437, 1982 Cal LEXIS 240.

In calculating the amount of an attorney fee award under CCP § 1021.5 (private attorney general theory), the trial court must first determine a "touchstone" or "lodestar" figure based on a careful compilation of the time spent and reasonable hourly compensation for each attorney. That figure may then be increased or reduced by the application of a multiplier after the trial court has considered certain other factors concerning the lawsuit. Anchoring the analysis to this concept is the only way of approaching the problem that can claim objectivity. Thus, while the trial court has discretion to determine the value of professional services rendered in its court, the determination of the lodestar figure is so fundamental to calculating the amount of the award that the exercise of that discretion must be based on the lodestar adjustment method. Press v. Lucky Stores, Inc. (1983) 34 Cal 3d 311, 193 Cal Rptr 900, 667 P 2d 704, 1983 Cal LEXIS 218.

The determination of whether litigation is successful, for purposes of determining the propriety of an award of attorney fees under CCP § 1021.5 (private attorney general doctrine), depends on more than mere appearance. The trial court must realistically assess the litigation from a practical perspective in order to determine whether it vindicates an important right. The inquiry may go outside the merits of the precise underlying dispute and focus on the condition that the plaintiffs and their attorneys sought to change. The critical fact is the impact of the action, not the manner of its resolution. In addition, when a lawsuit consists of related claims, a plaintiff who has won substantial relief should not have his attorney fees reduced simply because the trial court did not adopt each contention raised. Daniels v. McKinney (1983, 5th Dist) 146 Cal App 3d 42, 193 Cal Rptr 842, 1983 Cal App LEXIS 2050.

Under CCP § 1021.5, awarding attorney fees to the successful party in actions enforcing rights affecting the public interest, reviewing courts are not in a position to decide the question of the propriety of attorney fees in the first instance. The trial court is best fitted to determine whether an attorney fee award is appropriate, and must consider whether the right vindicated is sufficiently important to justify the award. It should determine the significance of the benefit from a realistic assessment, in light of all the pertinent circumstances, of the gains which have resulted in a particular case. It must utilize its traditional equitable discretion to realistically assess the litigation and determine from a practical perspective whether or not the action served to vindicate an important right so as to justify an attorney fee award under a private attorney general theory. Brennan v. Board of Supervisors (1984, 1st Dist) 153 Cal App 3d 193, 200 Cal Rptr 192, 1984 Cal App LEXIS 1768.

The decision as to whether an award of attorney fees is warranted under CCP § 1021.5 private attorney general doctrine), rests initially with the trial court. Utilizing its traditional equitable discretion, that court must realistically assess the litigation and determine, from a practical perspective, whether the statutory criteria have been met. Schmid v. Lovette (1984, 1st Dist) 154 Cal App 3d 466, 201 Cal Rptr 424, 1984 Cal App LEXIS 1901.

An award of attorney fees under the private attorney general theory is appropriate when the cost of the claimant's legal victory transcends his personal interest, that is, when the necessity for pursuing the lawsuit placed a burden on the plaintiff out of proportion to his individual stake in the matter. Schmid v. Lovette (1984, 1st Dist) 154 Cal App 3d 466, 201 Cal Rptr 424, 1984 Cal App LEXIS 1901.

Absent circumstances rendering an award of attorney fees under the private attorney general doctrine (CCP § 1021.5) unjust, such fees ordinarily include compensation for all hours reasonably spent, including those necessary to establish the fee claim and to defend it on appeal. Schmid v. Lovette (1984, 1st Dist) 154 Cal App 3d 466, 201 Cal Rptr 424, 1984 Cal App LEXIS 1901.

In calculating the amount of attorney fees to be awarded under CCP § 1021.5 (award of attorney fees to successful party in action to enforce important right affecting public interest), the trial court is to first determine a "touchstone" or "lodestar" figure based on careful computation of the time spent and a reasonable hourly compensation. The figure may be increased or decreased by the use of a multiplier after the trial court has considered other relevant factors. The court is not limited to use of standard billing rates in setting reasonable hourly compensation under § 1021.5; rather it is obliged to use the "market value" approach, which is more likely to entice competent counsel to undertake difficult public interest cases. San Bernardino Valley Audubon Society, Inc. v. County of San Bernardino (1984, 4th Dist) 155 Cal App 3d 738, 202 Cal Rptr 423, 1984 Cal App LEXIS 2027.

California courts have viewed CCP § 1021.5, which authorizes a court to award attorney fees to a successful party in any action which has resulted in the enforcement of an important right affecting the public interest, as an affirmation of the private attorney general awards of fees formerly recognized in the federal realm, and thus have recognized federal authority, although no longer viable in the federal realm, to be reliable in interpreting this section. San Bernardino Valley Audubon Society, Inc. v. County of San Bernardino (1984, 4th Dist) 155 Cal App 3d 738, 202 Cal Rptr 423, 1984 Cal App LEXIS 2027.

On remand after appeals of the judgment of the superior court to enjoin the showing of allegedly obscene films on the ground that they constituted a public nuisance, the trial court properly denied plaintiff's request for attorney fees made pursuant to CCP § 1021.5. The statute, which permits an award of attorney fees to a successful party in an action which has resulted in the enforcement of an important right affecting the public interest, expressly states that it is not applicable in favor of public entities. The action was instituted by a city attorney in the name of the People of the state. The city attorney is one of the officers authorized by law to abate a public nuisance (Civ. Code, § 3494); therefore the city attorney was not acting as a "private" attorney general in abating the public nuisance in the case. The rationale of the "private" attorney general doctrine as elucidated in the case law has no application to the performance of official action by governmental officers and agencies whose duty it is to prosecute such actions. People ex rel. Cooper v. Mitchell Brothers' Santa Ana Theater (1985, Cal App 4th Dist) 165 Cal App 3d 378, 211 Cal Rptr 501, 1985 Cal App LEXIS 1726, cert den (1985) 474 US 948, 106 S Ct 347, 88 L Ed 2d 293, 1985 US LEXIS 4252.

A party need not prevail on every claim presented in an action in order to be considered a successful party entitled to attorney fees within the meaning of CCP § 1021.5. When a plaintiff is successful within the meaning of the statute, the fact he or she has prevailed on some claims but not on others is a factor to be considered in determining the amount of the fee awarded. Wallace v. Consumers Cooperative of Berkeley, Inc. (1985, 1st Dist) 170 Cal App 3d 836, 216 Cal Rptr 649, 1985 Cal App LEXIS 2282.

It is proper for California courts to look to federal precedent for interpretation of CCP § 1021.5 (court allowance of attorney fees in cases resulting in public benefit). Miller v. California Com. on Status of Women (1985, 3rd Dist) 176

Cal App 3d 454, 222 Cal Rptr 225, 1985 Cal App LEXIS 2949.

The status of prevailing party is a necessary prerequisite to recovery of attorney fees under CCP § 1021.5. While it is not necessary for a plaintiff to achieve a favorable final judgment to qualify for attorney fees, there must be some relief to which plaintiff's action is causally connected; procedural success during the course of litigation is insufficient to justify attorney fees where the ruling is later vacated or reversed on the merits. Thus a trial court did not abuse its discretion by denying attorney fees under both CCP § 1021.5 and 42 USCS § 1988 after plaintiffs' judgment was reversed on appeal. Miller v. California Com. on Status of Women (1985, 3rd Dist) 176 Cal App 3d 454, 222 Cal Rptr 225, 1985 Cal App LEXIS 2949.

CCP § 1021.5, provides that a court may upon motion award attorney fees to a successful party in any action that has resulted in the enforcement of an important right affecting the public interest. The statute presupposes a relationship of attorney and client and limits awards to individuals licensed to practice law, consistent with the provisions of Bus. & Prof. Code, §§ 6125, 6126, which restrict the practice of law to active members of the State Bar and make the unauthorized practice of law a misdemeanor, and is intended, not to compensate lay persons who represent themselves, but to provide counsel fees to prevailing parties in order to give private citizens a meaningful opportunity to vindicate their rights. Atherton v. Board of Supervisors (1986, 4th Dist) 176 Cal App 3d 433, 222 Cal Rptr 56, 1986 Cal App LEXIS 2448.

In order to invoke CCP § 1021.5, which allows awards of attorney fees to prevailing parties in "private attorney general" public interest litigation, an applicant must have represented the interest of the public in the litigation. Because a license to practice law is required to represent anyone other than oneself in a court of law, a nonattorney litigant in an action to enforce provisions of the California Environmental Quality Act was not entitled to an award of such fees under the statute, where the applicant was a pro se litigant and not a member of the Bar. Atherton v. Board of Supervisors (1986, 4th Dist) 176 Cal App 3d 433, 222 Cal Rptr 56, 1986 Cal App LEXIS 2448.

CCP § 1021.5, which provides for an attorney fee award to a "successful party," draws no distinctions between plaintiffs and defendants; allowing fees under § 1021.5 only to complainants would not be consistent with the express wording or purpose of the statute. County of San Luis Obispo v. Abalone Alliance (1986, Cal App 2d Dist) 178 Cal App 3d 848, 223 Cal Rptr 846, 1986 Cal App LEXIS 2706.

CCP § 1021.5 (pertaining to attorney fees in cases resulting in a public benefit), allows for an award when a private party is a defendant. Bartling v. Glendale Adventist Medical Center (1986, 2nd Dist) 184 Cal App 3d 97, 228 Cal Rptr 847, 1986 Cal App LEXIS 1895.

CCP § 1021.5, authorizes an award of attorney fees to a prevailing party when all four of the following criteria are met. First, it must be an action which has resulted in the enforcement of an important right affecting the public interest. Second, a significant benefit must have been conferred on the general public or a large class of persons. Third, the necessity and financial burden of private enforcement must be such as to make the award appropriate. Fourth, such fees should not in the interest of justice be paid out of the recovery, if any. All of these factors are interrelated however. For example, when the ratio between public benefits and the litigant's expected benefits is high the court should award fees even though the ratio between expected litigant benefits and litigant costs is high. On the other hand, where the ratio between public benefits and expected litigant benefits is relatively low, so must be the ratio between the expected litigant benefits and the litigant costs in order to justify a fee award. Los Angeles Police Protective League v. City of Los Angeles (1986, 2nd Dist) 188 Cal App 3d 1, 232 Cal Rptr 697, 1986 Cal App LEXIS 2364.

An attorney fee award may be justified even when the plaintiff's legal action does not result in a final favorable judgment. The procedural device by which a plaintiff seeks to enforce an important right is not determinative of his or her entitlement to attorney fees under CCP § 1021.5 (codification of private attorney general doctrine), and an award under that section is not necessarily barred merely because the plaintiff won the case on a preliminary issue. In determining whether a plaintiff is a successful party for purposes of § 1021.5, the critical fact is the impact of the action,

not the manner of its resolution. Maria P. v. Riles (1987) 43 Cal 3d 1281, 240 Cal Rptr 872, 743 P 2d 932, 1987 Cal LEXIS 449.

Courts are public entities within the meaning of CCP § 1021.5, providing statutory authorization for attorney fees under the private attorney general theory. To hold otherwise would substantially frustrate the legislative purpose underlying § 1021.5 to insure that an aggrieved citizen has access to the judicial process where statutory or constitutional rights have been subjected to wholesale trampling. Lezama v. Justice Court (1987, 1st Dist) 190 Cal App 3d 15, 235 Cal Rptr 238, 1987 Cal App LEXIS 1476.

The requirement under CCP § 1021.5 (award of attorney fees under private attorney general doctrine), that the right secured be of significant benefit to the public or a large class of persons, and the requirement that the litigation secure an important right, are separate elements. As to the significant benefit requirement, the Legislature did not intend to authorize an award of attorney fees in every case involving a statutory violation. A trial court should determine the significance of the benefit, as well as the size of the class receiving it, from a realistic assessment, in light of all the pertinent circumstances, of the gains which have resulted in a particular case. California Common Cause v. Duffy (1987, 4th Dist) 200 Cal App 3d 730, 246 Cal Rptr 285, 1987 Cal App LEXIS 2513.

Under the private attorney general doctrine (CCP § 1021.5), attorney fees are awarded only when the cost of the claimant's legal victory transcends its personal interest, that is, when the necessity for pursuing the lawsuit placed a burden on the plaintiff out of proportion to its individual stake in the matter. In other words, attorney fees are awarded when a significant public benefit is conferred through litigation pursued by one whose personal stake is insufficient to otherwise encourage the action. Phipps v. Saddleback Valley Unified School Dist. (1988, 4th Dist) 204 Cal App 3d 1110, 251 Cal Rptr 720, 1988 Cal App LEXIS 917.

CCP § 1021.5, codifies the private attorney general doctrine. It provides the criteria for and hence the measure of the equitable discretion it confers upon the courts to award attorney fees. Use of the permissive "may" ("court may award...") simply signifies that a court has discretion to act within the criteria of § 1021.5. City of Sacramento v. Drew (1989, 3rd Dist) 207 Cal App 3d 1287, 255 Cal Rptr 704, 1989 Cal App LEXIS 105.

CCP § 1021.5, provides no concrete standard or test against which a court may determine whether the right vindicated in a particular case is sufficiently important to justify a private attorney general fee award. City of Sacramento v. Drew (1989, 3rd Dist) 207 Cal App 3d 1287, 255 Cal Rptr 704, 1989 Cal App LEXIS 105.

In determining the propriety of an award of fees under CCP § 1021.5 (private attorney general), the threshold consideration is whether the action has resulted in the enforcement of an important right affecting the public interest. The language of the statute presumes that there be some selectivity, on a qualitative basis, in the award of attorney fees. Weissman v. Los Angeles County Employees Retirement Assn. (1989, Cal App 2d Dist) 211 Cal App 3d 40, 259 Cal Rptr 124, 1989 Cal App LEXIS 587.

The right to attorney fees under CCP § 1021.5 (private attorney general doctrine) is entirely independent of the right to attorney fees under 42 USCS § 1988 (Civil Rights Attorneys' Fees Award Act). In interpreting and applying the right under CCP § 1021.5, federal precedent is of only analogous precedential value; it is not controlling. Sokolow v. County of San Mateo (1989, 1st Dist) 213 Cal App 3d 231, 261 Cal Rptr 520, 1989 Cal App LEXIS 856.

In awarding attorney fees to the prevailing party under CCP § 1021.5 (private attorney general doctrine), the trial court should reduce the award appropriately if the prevailing party has achieved only limited success in the lawsuit, as distinguished from a successful litigant who, although advancing some unsuccessful legal theories, has nevertheless succeeded in obtaining all the relief actually sought. Sokolow v. County of San Mateo (1989, 1st Dist) 213 Cal App 3d 231, 261 Cal Rptr 520, 1989 Cal App LEXIS 856.

The Legislature did not intend to authorize an award of attorney fees pursuant to CCP § 1021.5 (private attorney general doctrine), in every case involving a statutory violation. Rather, the Legislature contemplated that in adjudicating

a motion for attorney fees under that section, a trial court would determine the significance of the benefit, as well as the size of the class receiving the benefit, from a realistic assessment, in light of all the pertinent circumstances, of the gains that have resulted in particular case. Angelheart v. City of Burbank (1991, Cal App 2d Dist) 232 Cal App 3d 460, 283 Cal Rptr 676, 285 Cal Rptr 463, 1991 Cal App LEXIS 825.

CCP § 1021.5, codifying the private attorney general theory for attorney fee awards, does not expressly limit the size of the award but has been construed to permit a "reasonable" award in light of factors derived from the statute's history and purpose. Budget Act provisions imposing a "cap" on the hourly rate that may be paid under CCP § 1021.5, and requiring the recipient to waive any amounts exceeding the "cap," amount to a mandatory ceiling on fee awards and are void for violating the single subject rule (Cal. Const., art. IV, § 9, providing that every statute must "embrace but one subject, which shall be expressed in its title"). The budget restrictions attempt to alter the provision for a "reasonable" fee, a limitation so inherent and essential to CCP § 1021.5, that it must be considered necessarily implied in the statute. If Code Civ. Proc., § 1021.5, is seen as ambiguous on the amount of fees allowed, the budget restrictions are amendatory for purporting to supersede the judicial resolution of that ambiguity. They are also amendatory in that they impose substantive conditions not appearing in existing law. The Legislature is free to limit fee awards under CCP § 1021.5, but not through amendments masquerading as Budget Act provisions. California Lab. Federation v. Occupational Safety & Health Stds. Bd. (1992, Cal App 1st Dist) 5 Cal App 4th 985, 7 Cal Rptr 2d 399, 1992 Cal App LEXIS 559, rehearing denied (1992, Cal App 1st Dist) 1992 Cal App LEXIS 659.

The fundamental objective of the private attorney general theory codified in CCP § 1021.5, is to encourage suits effecting a strong public policy by awarding substantial attorney fees to those whose successful efforts obtain benefits for a broad class of citizens. The trial court need not rule in favor of a plaintiff on every single issue litigated for the plaintiffs to be "successful" within the meaning of § 1021.5. Hull v. Rossi (1993, Cal App 2d Dist) 13 Cal App 4th 1763, 17 Cal Rptr 2d 457, 1993 Cal App LEXIS 228.

CCP § 1021.5, sets forth the requirements for an award of attorney fees in cases resulting in public benefit, one of which is that the fees should not, in the interest of justice, be paid from the recovery. This requirement is inapplicable where there is no monetary recovery. In such cases, it is not mandatory for the court to find that the interest of justice requires the losing defendant to pay the fees. Planned Parenthood of Santa Barbara, etc. v. Aakhus (1993, Cal App 2d Dist) 14 Cal App 4th 162, 17 Cal Rptr 2d 510, 1993 Cal App LEXIS 265, review denied (1993, Cal) 1993 Cal LEXIS 3060.

The element of CCP § 1021.5 (attorney fees in cases resulting in public benefit), that the necessity and financial burden of private enforcement of a right are such as to make the award appropriate, requires that the cost of the litigation to the plaintiff be disproportionate to the plaintiff's individual stake in the outcome. This criterion is met when the cost of the plaintiff's legal victory transcends his or her personal interest in the subject of the suit. Planned Parenthood of Santa Barbara, etc. v. Aakhus (1993, Cal App 2d Dist) 14 Cal App 4th 162, 17 Cal Rptr 2d 510, 1993 Cal App LEXIS 265, review denied (1993, Cal) 1993 Cal LEXIS 3060.

For the purpose of Code Civ. Proc., § 1021.5, which allows attorney fees to the successful party in cases resulting in public benefit, whether or not a party is successful depends upon whether the underlying action contributed substantially to remedying the conditions at which it was directed. The critical fact establishing the propriety of an award is the impact of the action, not the manner of its resolution. If the impact has been the enforcement of an important right affecting the public interest and a consequent conferral of a significant benefit on the general public or a large class of persons, a § 1021.5 award is not barred in a situation where the case was settled before trial. Planned Parenthood of Santa Barbara, etc. v. Aakhus (1993, Cal App 2d Dist) 14 Cal App 4th 162, 17 Cal Rptr 2d 510, 1993 Cal App LEXIS 265, review denied (1993, Cal) 1993 Cal LEXIS 3060.

An award of attorney fees under CCP § 1021.5 (attorney fees to successful party in cases resulting in public benefit), does not require a determination of liability on the part of the defendant. The statute contains no language requiring as a prerequisite that the opposing party admit to legal wrongdoing. Thus, a claimant settling a lawsuit may be

a "successful party" under the statute. Planned Parenthood of Santa Barbara, etc. v. Aakhus (1993, Cal App 2d Dist) 14 Cal App 4th 162, 17 Cal Rptr 2d 510, 1993 Cal App LEXIS 265, review denied (1993, Cal) 1993 Cal LEXIS 3060.

CCP § 1021.5 (attorney fees to successful party in cases resulting in public benefit), is applied generally to all government and nongovernment persons and entities in California. Thus, a defendant's status as a private party does not preclude an award of attorney fees to a successful plaintiff. Planned Parenthood of Santa Barbara, etc. v. Aakhus (1993, Cal App 2d Dist) 14 Cal App 4th 162, 17 Cal Rptr 2d 510, 1993 Cal App LEXIS 265, review denied (1993, Cal) 1993 Cal LEXIS 3060.

In ruling on a motion for attorney fees under CCP § 1021.5 (action resulting in public benefit), the trial court must evaluate whether the plaintiff's action: (1) served to vindicate an important public right, (2) conferred a significant benefit on the general public or a large class of persons, and (3) imposed a financial burden on the plaintiff that was out of proportion to his or her individual stake in the matter. The trial court's order may not be disturbed on appeal absent a showing the trial court abused its discretion as a matter of law. Planned Parenthood v. City of Santa Maria (1993, 2nd Dist) 16 Cal App 4th 685, 20 Cal Rptr 2d 391, 1993 Cal App LEXIS 626.

In an action in which the prevailing party in an administrative proceeding sought attorney fees pursuant to the private attorney general doctrine (Code Civ. Proc. § 1021.5), the trial court did not err in granting defendant state agency judgment on the pleadings. Attorney fees under § 1021.5 are awarded "upon motion." A motion is not an independent right or remedy; it is confined to incidental matters in the progress of a cause. A motion relates to some question that is collateral to the main object of the action and is connected with and dependent upon the principle remedy. A motion therefore implies the pendency of a suit. Thus, a motion for attorney fees must relate to an existing lawsuit and must be filed in the court in which the suit is pending. Although fees under § 1021.5 may be awarded in a situation where a quasi-judicial administrative proceeding is related to a lawsuit, fees may not be awarded in the absence of a related lawsuit. Since plaintiff had resolved its claim at the administrative level and did not need to resort to litigation, it was not entitled to attorney fees under § 1021.5. Hospital Systems, Inc. v. Office of Statewide Health etc. Development (1994, 3rd Dist) 25 Cal App 4th 1686, 30 Cal Rptr 2d 922, 1994 Cal App LEXIS 628.

A privately enforced action against individual defendants may be deemed "necessary" for purposes of CCP § 1021.5, which authorizes an award of attorney fees under the private attorney general doctrine. Due to the burdens imposed on public agencies, adequate government enforcement of the laws is not always possible, making private action imperative. Section 1021.5 does not proscribe payment of attorney fees to private plaintiffs who successfully initiate and try a private lawsuit for the public benefit solely because the People have initiated a similar action that is consolidated for trial with that brought by such plaintiffs. Hewlett v. Squaw Valley Ski Corp. (1997, Cal App 3d Dist) 54 Cal App 4th 499, 63 Cal Rptr 2d 118, 1997 Cal App LEXIS 310, superseded by statute as stated in UFW v. Dutra Farms (2000, Cal App 6th Dist) 83 Cal App 4th 1146, 100 Cal Rptr 2d 251, 2000 Cal App LEXIS 756.

Under CCP § 1021.5, attorney fees may be awarded to a successful party if certain conditions are met, including that a significant benefit has been conferred on the general public or a large class of persons. "Success" does not necessarily require that the litigant actually receive a favorable result at trial. It is enough that the lawsuit acted as a catalyst speeding the defendant to act in the sense that the plaintiff's lawsuit was a material factor, or contributed in a significant way, to the result achieved. Suter v. City of Lafayette (1997, Cal App 1st Dist) 57 Cal App 4th 1109, 67 Cal Rptr 2d 420, 1997 Cal App LEXIS 729, review denied (1997, Cal) 1997 Cal LEXIS 8365.

CCP § 1021.5 (private attorney general doctrine), specifically provides for an attorney fee award only when the lawsuit has conferred a significant benefit on the general public or a large class of persons. The trial court must determine the significance of the benefit and the size of the class receiving that benefit by realistically assessing the gains that have resulted in a particular case. When the record indicates that the primary effect of a lawsuit was to advance or vindicate a plaintiff's personal economic interests, an award of fees under the statute is improper. Flannery v. California Highway Patrol (1998, Cal App 1st Dist) 61 Cal App 4th 629, 71 Cal Rptr 2d 632, 1998 Cal App LEXIS 114.

An award of attorney's fees and costs under CCP § 1021.5 to referendum proponents, which was made on the basis that the referendum proponents had prevailed at trial in challenging the a county registrar's certification of insufficiency, was inappropriate in that the registrar's certification of insufficiency should have been upheld by the trial court, even though a court-ordered election occurred before the issues could be adjudicated on appeal. A party who should have lost on the merits at trial does not become the "successful party" under CCP § 1021.5 when the issues become moot on appeal. Mapstead v. Anchundo (1998, Cal App 6th Dist) 63 Cal App 4th 246, 73 Cal Rptr 2d 602, 1998 Cal App LEXIS 336, review denied (1998, Cal) 1998 Cal LEXIS 4809.

In a successful action against landowners and an irrigation district to declare a public easement for use of a road along the side of an irrigation canal, the trial court properly awarded attorney's fees against both defendants (CCP § 1021.5), notwithstanding the claim that plaintiff was not a "successful party" as to the irrigation district since no relief was awarded against it. Interpreting "a successful party against one or more opposing parties" to apply to the irrigation district advanced the purpose of § 1021.5, which is to encourage suits which meet its criteria. Friends of the Trails v. Blasius (2000, Cal App 3d Dist) 78 Cal App 4th 810, 93 Cal Rptr 2d 193, 2000 Cal App LEXIS 140, review denied (2000, Cal) 2000 Cal LEXIS 4954.

CCP § 1021.5 was not designed as a method for rewarding litigants motivated by their own pecuniary interests who only coincidentally protect the public interest. Therefore, in determining whether to exercise its discretion to award fees under the doctrine, the district court must consider whether the plaintiff's own interests are sufficient to motivate such a suit, or whether plaintiffs in actions of this kind require the additional carrot of shifted fees to ensure that the public interest will be vindicated. Unocal Corp. v. United States (2000, 9th Cir Cal) 222 F3d 528, 2000 US App LEXIS 18916.

Cal. Code. Civ. Proc. § 1021.5 clearly and unambiguously applies the same, well-established "necessity and financial burden" requirement in the same language to both private parties and public entities. City of Burbank v. State Water Resources Control Bd. (2003, Cal App 2d Dist) 111 Cal App 4th 245, 4 Cal Rptr 3d 27, 2003 Cal App LEXIS 1236, rehearing denied (2003, Cal App 2d Dist) 2003 Cal App LEXIS 1421, affd in part, remanded in part, (2005) 35 Cal 4th 613, 26 Cal Rptr 3d 304, 108 P3d 862, 2005 Cal LEXIS 3486.

Trial court properly limited recovery under the statute to a consumer's attorney fees; CCP § 1021.5 authorizes recovery of attorney fees only, not other expenses, in a private attorney general action. Benson v. Kwikset Corp. (2004, Cal App 4th Dist) 120 Cal App 4th 301, 15 Cal Rptr 3d 407, 2004 Cal App LEXIS 1053, rehearing granted, depublished (2004) 2004 Cal. App. LEXIS 1274.

Trial court committed legal error by requiring the initiative sponsor to show the requested writ relief would not have issued but for its participation in the litigation. A party who satisfies the criteria for intervention and who contributes to the success of public interest litigation should be entitled to an award of attorneys' fees on the same terms as any other party. City of Santa Monica v. Stewart (2005, Cal App 2d Dist) 126 Cal App 4th 43, 24 Cal Rptr 3d 72, 2005 Cal App LEXIS 109, modified, rehearing denied (2005, Cal App 2d Dist) 2005 Cal App LEXIS 304, review denied (2005, Cal) 2005 Cal LEXIS 4616.

Initiative sponsor satisfied the "financial burden" prong of CCP § 1021.5(b) because the financial burdens on the sponsor of litigating the city's declaratory judgment action unquestionably outweighed the sponsor's ideological interest in implementing the voters' will. City of Santa Monica v. Stewart (2005, Cal App 2d Dist) 126 Cal App 4th 43, 24 Cal Rptr 3d 72, 2005 Cal App LEXIS 109, modified, rehearing denied (2005, Cal App 2d Dist) 2005 Cal App LEXIS 304, review denied (2005, Cal) 2005 Cal LEXIS 4616.

Freeing putative class members from the constraints of a proposed settlement agreement they had the right to disregard by exercising their opt-out right is hardly the kind of important public right contemplated by CCP § 1021.5. Consumer Cause, Inc. v. Mrs. Gooch's Natural Food Markets, Inc. (2005, Cal App 2nd Dist) 127 Cal App 4th 387, 25 Cal Rptr 3d 514, 2005 Cal App LEXIS 339.

For purposes of an award of attorney fees under CCP § 1021.5, an individual may fulfill his or her role as a private attorney general in a variety of ways: prosecuting an action, defending it, or shouldering the burden of litigation after having intervened in the action; however, whether the party has been successful is measured by the resolution of the action, not an ancillary part of the litigation. Consumer Cause, Inc. v. Mrs. Gooch's Natural Food Markets, Inc. (2005, Cal App 2nd Dist) 127 Cal App 4th 387, 25 Cal Rptr 3d 514, 2005 Cal App LEXIS 339.

Denial of opponents' request for attorney fees from a city council did not constitute an abuse of discretion because it was not an "opposing party." Although the city council did not oppose a developer's petition for writ relief, the city council took no position on the developer's petition and merely sought a judicial determination of the procedure to be followed in counting signatures on the referendum petition. Wal-Mart Real Estate Business Trust v. City Council of San Marcos (2005, Cal App 4th Dist) 132 Cal App 4th 614, 33 Cal Rptr 3d 817, 2005 Cal App LEXIS 1406.

Where a union official obtained a stipulated injunction to enforce prison labor wage provisions, the trial court had discretion to award fees incurred before the union official became a party to the action because the services rendered on a wage claim brought by inmates were useful and of the type necessary to advance the union official's taxpayer claim. Vasquez v. State of California (2006, Cal App 4th Dist) 138 Cal App 4th 550, 41 Cal Rptr 3d 556, 2006 Cal App LEXIS 517, rehearing denied (2006, Cal App 4th Dist) 2006 Cal App LEXIS 707, review gr, depublished (2006, Cal) 49 Cal Rptr 3d 208, 142 P3d 1184, 2006 Cal LEXIS 9527.

In clarifying its order awarding costs to plaintiffs' counsel the Court (1) denied counsels' request for expert fees because such fees were not recoverable in a California Fair Employment and Housing Act action; (2) since CCP § 1021.5 did not mention costs, so CCP § 1033.5 applied, the court used its discretion to exclude the cost of legal research and other expenses that were either not properly documented as necessary or not fair to shift to defendant; and (3)stated that postjudgment interest did not begin to accrue until the court granted counsel's motion for fees. Miller v. Vicorp Rests., Inc. (2006, ND Cal) 2006 US Dist LEXIS 10112.

In a case involving a nonprofit mutual benefit corporation's elections, the trial court erred when it awarded fees for experts it had not ordered; pursuant to CCP § 1033.5(b), fees for experts not ordered by the trial court cannot be awarded, and authority to make such an award was not found in CCP § 1021.5, which provides only for recovery of attorney fees. Olson v. Automobile Club of Southern California (2006, Cal App 2d Dist) 139 Cal App 4th 552, 44 Cal Rptr 3d 1, 2006 Cal App LEXIS 725, modified, rehearing denied (2006) 2006 Cal. App. LEXIS 724, review gr, depublished (2006) 47 Cal. Rptr. 3d 778, 141 P.3d 134, 2006 Cal. LEXIS 9081.

Law firm had standing to intervene in its clients' lawsuit pursuant to CCP § 387 and to file a motion for attorney fees under CCP § 1021.5 because it had the type of direct interest in a fee award that was necessary to support intervention. Lindelli v. Town of San Anselmo (2006, Cal App 1st Dist) 139 Cal App 4th 1499, 43 Cal Rptr 3d 707, 2006 Cal App LEXIS 789.

"Successful party" in CCP § 1021.5 is to be construed as authorizing an award of attorney fees to a litigant or its counsel; attorney fees awarded pursuant to § 1021.5 belong, absent an enforceable agreement to the contrary, to the attorneys. Lindelli v. Town of San Anselmo (2006, Cal App 1st Dist) 139 Cal App 4th 1499, 43 Cal Rptr 3d 707, 2006 Cal App LEXIS 789.

With the benefit of the catalyst theory comes its burden, the requirement of pre-suit notification, which is a requirement that applies regardless of the theory under which one seeks fees. Abouab v. City & County of San Francisco (2006, 1st Dist) 141 Cal App 4th 643, 46 Cal Rptr 3d 206, 2006 Cal App LEXIS 1098.

Catalyst theory did not apply to a lawsuit in which, after a county obtained a preliminary injunction in its challenge to a proposed conversion of agricultural land into wildlife habitat, state agencies and a landowner modified a conservation easement to allow agricultural use; although the county voluntarily dismissed its claims thereafter, the preliminary injunction altered the relationship of the parties sufficiently to obtain the judicial imprimatur necessary for

an award of attorney fees without the catalyst theory. County of Colusa v. California Wildlife Conservation Bd. (2006, Cal App 3d Dist) 145 Cal App 4th 637, 52 Cal Rptr 3d 1, 2006 Cal App LEXIS 1921.

Real party in interest in a mandamus proceeding that has a direct interest in the litigation, more than merely an ideological or policy interest, and actively participates in the litigation is an opposing party within the meaning of CCP § 1021.5 and can be liable for attorney fees under the statute. Accordingly, in a case in which a trial court awarded attorney fees to a homeowner as the successful party in a mandamus proceeding that she brought under the California Environmental Quality Act, Pub Res C § 21000 et seq., a developer, as real party in interest, was an opposing party under CCP § 1021.5, and its purported absence of fault or misconduct could not relieve it of liability for fees under the statute. Mejia v. City of Los Angeles (2007, 2d Dist) 67 Cal Rptr 3d 228, 156 Cal App 4th 151, 2007 Cal App LEXIS 1723.

Purpose and primary effect of CCP § 1021.5 is to encourage litigation that enforces important public policies, and the purpose of an award of fees against an unsuccessful opposing party is not to penalize petitioning activity by that party, but to encourage litigation by the successful party by making the litigation financially feasible. The government interest served by § 1021.5 is unrelated to the suppression of valid petitioning activity. Mejia v. City of Los Angeles (2007, 2d Dist) 67 Cal Rptr 3d 228, 156 Cal App 4th 151, 2007 Cal App LEXIS 1723.

Any incidental restriction on an opposing party's right to petition as a result of the financial burden of an attorney fee award under CCP § 1021.5 is regarded as justifiable and narrowly tailored to achieve the purpose of encouraging the enforcement of important public rights by making the litigation financially feasible to the successful party. Accordingly, in a case in which a trial court awarded attorney fees against a developer and to a homeowner as the successful party in a mandamus proceeding under the California Environmental Quality Act, Pub Res C § 21000 et seq., the developer had not shown that the statute was substantially broader than was necessary to achieve the important government interest that it served. Mejia v. City of Los Angeles (2007, 2d Dist) 67 Cal Rptr 3d 228, 156 Cal App 4th 151, 2007 Cal App LEXIS 1723.

Even when an important right has been vindicated and a substantial public benefit conferred, and when a plaintiff's litigation has transcended his or her personal interest, CCP § 1021.5 is not intended to impose fees on an individual seeking a judgment that determines only his or her private rights, but who has done nothing to adversely affect the public interest other than being on the losing side of an important appellate case. Adoption of Joshua S. (2008, Cal) 2008 Cal LEXIS 785.

Language of CCP § 1021.5 cannot fairly be read as requiring prelitigation demands. Vasquez v. State of California (2008, Cal) 45 Cal 4th 243, 2008 Cal LEXIS 13628.

In order to recover attorney fees under this section, plaintiff in a catalyst case must have engaged in a reasonable attempt to settle its dispute with defendant prior to litigation; no such categorical rule applies in noncatalyst cases. Vasquez v. State of California (2008, Cal) 45 Cal 4th 243, 2008 Cal LEXIS 13628.

This section requires the court to determine that the necessity and financial burden of private enforcement are such as to make an award of attorney fees appropriate; in making this determination, court properly considers all circumstances bearing on the question whether private enforcement was necessary, including whether the party seeking fees attempted to resolve the matter before resorting to litigation. Vasquez v. State of California (2008, Cal) 45 Cal 4th 243, 2008 Cal LEXIS 13628.

CCP § 1021.5' s language does not expressly or by necessary implication require that a plaintiff seeking attorney fees have attempted to settle the dispute; instead, the statute only requires that the court determine that private enforcement was sufficiently necessary to justify the award. Vasquez v. State of California (2008, Cal) 45 Cal 4th 243, 2008 Cal LEXIS 13628.

3. Time for Motion

A motion under CCP, § 1021.5, for an award of attorney fees under the private attorney general theory is subject to no express time limit and is entirely separate from an ordinary claim for costs under CCP, § 1033. Thus, in mandamus proceedings initiated by a man charged in municipal court with drunk driving to determine whether a newly-enacted state statute had preempted a local diversion and treatment program for drinking drivers, petitioner did not waive his claim for attorney fees by failing to include it in his memorandum of costs, and his motion under § 1021.5, made 60 days after entry of judgment, was timely. Marini v. Municipal Court for Santa Cruz Judicial Dist. (1979, Cal App 1st Dist) 99 Cal App 3d 829, 160 Cal Rptr 465, 1979 Cal App LEXIS 2377.

A motion for attorney fees under CCP, § 1021.5, must be based on a showing that an action has resulted in the enforcement of an important right, and therefore, such a motion need not be made and determined until after the judgment in the principal action is final. Thus, in mandamus proceedings initiated by a man charged in municipal court with drunk driving to determine whether a newly-enacted state statute had preempted a local diversion and treatment program for drinking drivers, the superior court retained jurisdiction to make an award of attorney fees under § 1021.5, after its judgment had become final. Marini v. Municipal Court for Santa Cruz Judicial Dist. (1979, Cal App 1st Dist) 99 Cal App 3d 829, 160 Cal Rptr 465, 1979 Cal App LEXIS 2377.

In an action by day-care operators against a city challenging the city's regulation of large family day-care homes, plaintiffs' motion for attorney fees pursuant to CCP § 1021.5 (private attorney general doctrine), was not untimely, even if not made within the time required by Cal. Rules of Court, rule 870. CCP § 1021.5, provides for a special motion procedure plainly intended to be initiated after the result of the action is known but subject to no express time limit. The provisions of rule 870 have no application to the motion procedure set out in CCP § 1021.5. Angelheart v. City of Burbank (1991, Cal App 2d Dist) 232 Cal App 3d 460, 283 Cal Rptr 676, 285 Cal Rptr 463, 1991 Cal App LEXIS 825.

Neither CCP § 1021.5, the private attorney general statute, nor CC § 1717 regarding reciprocal contractual attorney's fees entitle a litigant who successfully secures a reversal of a summary judgment on appeal; the right to such fees cannot be determined until there is a resolution on the merits. Liu v. Moore (1999, Cal App 2d Dist) 69 Cal App 4th 745, 81 Cal Rptr 2d 807, 1999 Cal App LEXIS 76.

Department of Health Services waived objection to a trial court's determination that out-of-state hospitals were entitled to an award of attorney fees under CCP § 1021.5 because it failed to file a motion under CCP § 663. Children's Hospital & Medical Center v. Bonta' (2002, Cal App 1st Dist) 97 Cal App 4th 740, 118 Cal Rptr 2d 629, 2002 Cal App LEXIS 3966, review denied Children's Hosp. & Med. Ctr. v. Belshe (2002, Cal) 2002 Cal LEXIS 5484, cert den (2003) 537 US 1160, 123 S Ct 977, 154 L Ed 2d 895, 2003 US LEXIS 782.

Public interest litigants were entitled to attorney fees for defending a permanent injunction, even though they did not move for the fees until three years after the last denial of modification. Cal. Rules of Court, Rule 870.2, which established deadlines for attorney fee motions, was not intended to govern the time for bringing motions for fees arising from post-final judgment activities, such as litigation over modifications to a permanent injunction. Crespin v. Shewry (2004, Cal App 1st Dist) 125 Cal App 4th 259, 22 Cal Rptr 3d 696, 2004 Cal App LEXIS 2208.

Motion for attorney fees under CCP § 1021.5 need not be made and determined until after the judgment is final; the language of the provision itself contemplates that the showing required by statute could not have been made prior to judgment; for that reason, courts expressly recognize requests for remand first made on appeal. Katz v. Los Gatos-Saratoga Joint Union High School Dist. (2004, Cal App 6th Dist) 117 Cal App 4th 47, 11 Cal Rptr 3d 546, 2004 Cal App LEXIS 384.

In a case involving a nonprofit mutual benefit corporation's elections, there was no abuse of discretion in the trial court's decision not to perform a lodestar analysis upon awarding attorney fees because it determined that the case was grossly over-litigated and that many of the claims were unsuccessful, but the trial court erred when it prematurely set

the fee award and deemed the amount reasonable even before it received a detailed motion for supplemental attorney fees. Olson v. Automobile Club of Southern California (2006, Cal App 2d Dist) 139 Cal App 4th 552, 44 Cal Rptr 3d 1, 2006 Cal App LEXIS 725, modified, rehearing denied (2006) 2006 Cal. App. LEXIS 724, review gr, depublished (2006) 47 Cal. Rptr. 3d 778, 141 P.3d 134, 2006 Cal. LEXIS 9081.

4. Necessity of Agreement for Fees

Although compromise agreements ordinarily conclude all matters put in issue by the pleadings, absent affirmative agreement of the parties, they do not conclude matters incident to the judgment that were no part of the cause of action, such as costs and statutorily authorized attorney fees. Thus, in an action challenging certain county allocations to street and road projects of funds collected under the Transportation Development Act of 1971 (Gov. Code, §§ 29530-29536; Pub. Util. Code, §§ 99200-99407), the trial court retained jurisdiction after the filing of a compromise agreement to entertain a cost bill and to consider an attorney fee motion under CCP § 1021.5 (private attorney general doctrine), where the compromise agreement was silent as to costs and attorney fees and where the showing required by § 1021.5 could not have been made prior to judgment. Further, the facts surrounding the agreement did not suggest that the parties intended to waive costs and statutory fees, where the aim of the agreement was to settle plaintiffs' claims on the merits, and where neither costs nor fees were included in those claims. Folsom v. Butte County Assn. of Governments (1982) 32 Cal 3d 668, 186 Cal Rptr 589, 652 P 2d 437, 1982 Cal LEXIS 240.

Except as provided by statute, the measure and mode of compensation of attorneys for their legal services generally is left to the agreement of the parties (CCP § 1021). Equitable exceptions to this rule have been fashioned by the courts, such as the private attorney general doctrine, which has been expanded and codified in CCP § 1021.5. The substance of the equitable doctrine is that a plaintiff's attorneys are entitled to reasonable fees when, as a result of their efforts, state constitutional rights of importance are protected to the benefit of a large number of people, and when under the circumstances of the case the necessity for private enforcement has placed on plaintiff a burden out of proportion to his individual stake in the matter. Under the statutory provisions, a plaintiff's attorney is entitled to fees from the opposing party in suits vindicating any important right, constitutional, statutory or otherwise, affecting the public interest. Daniels v. McKinney (1983, 5th Dist) 146 Cal App 3d 42, 193 Cal Rptr 842, 1983 Cal App LEXIS 2050.

The eligibility of a plaintiff's attorneys for an award of fees under the private attorney general doctrine (CCP § 1021.5) is not affected by the fact that the plaintiff is under no obligation to pay attorney fees, or the further fact that the plaintiff's attorneys receive funding from charitable or public sources. Schmid v. Lovette (1984, 1st Dist) 154 Cal App 3d 466, 201 Cal Rptr 424, 1984 Cal App LEXIS 1901.

An agreement silent as to fees does not bar a motion pursuant to CCP § 1021.5 (governing attorney fees in cases resulting in public benefit); and parties wishing to foreclose suit under 42 USCS § 1988 (permitting attorney fees in civil rights actions brought under specified statutes) must negotiate a settlement agreement clearly releasing the defendant from fee liability. Thus, plaintiff, who in 1985 had entered into a consent decree with a school district resolving a dispute over bilingual education, was entitled to recover on his motion for attorney fees under CCP § 1021.5 and 42 USCS § 1988 for efforts in enforcing the decree before a monitor appointed to secure compliance, if the statutory criteria were met; though the decree provided for fees for successful judicial enforcement, this did not constitute a waiver of fees for nonjudicial enforcement proceedings that were prerequisite to judicial enforcement. Zambrano v. Oakland Unified School Dist. (1991, 1st Dist) 229 Cal App 3d 802, 280 Cal Rptr 454, 1991 Cal App LEXIS 405.

Upon obtaining a favorable verdict in a wrongful death action against the county for the death of their son, the parents were not entitled to attorney fees under CCP § 1021.5 because the purpose of the statute was to provide incentive to sue for public rights despite having no financial stake in the outcome, and the parents had a financial stake in the outcome of the case. Nelson v. County of Los Angeles (2003, Cal App 2d Dist) 113 Cal App 4th 783, 6 Cal Rptr 3d 650, 2003 Cal App LEXIS 1740, review denied (2004, Cal) 2004 Cal LEXIS 999.

5. Review

On appeal from an award of attorney fees under CCP § 1021.5 (private attorney general theory) in which plaintiffs contended that the amount awarded was too low, the reviewing court was required to determine whether the trial court abused its discretion in concluding that plaintiffs were entitled to an award (CCP § 906; matters reviewable on appeal), even though defendant did not cross-appeal. Such determination was necessary in order to evaluate defendant's contention that plaintiffs were not entitled to fees in any amount and thus were not prejudiced by any error the trial court may have made in computing the amount of the award. Press v. Lucky Stores, Inc. (1983) 34 Cal 3d 311, 193 Cal Rptr 900, 667 P 2d 704, 1983 Cal LEXIS 218.

In an action resulting in the enforcement of an important right affecting the public interest, whether the successful parties have met their CCP § 1021.5, requirements for the award of attorney fees is within the sound discretion of the trial court. Thus, on appeal from a judgment awarding such attorney fees, the award will be reversed only if it is clearly wrong or has no reasonable basis. Further, if findings have not been requested or prepared, the appellate court must infer all findings necessary to support the judgment and refuse relief to the unsuccessful party if the findings are supported by substantial evidence. San Bernardino Valley Audubon Society, Inc. v. County of San Bernardino (1984, 4th Dist) 155 Cal App 3d 738, 202 Cal Rptr 423, 1984 Cal App LEXIS 2027.

It is the trial court's initial responsibility to determine the appropriateness of an attorney fee awarded under CCP § 1021.5 (pertaining to attorney fees in cases resulting in a public benefit). Whether the requirement for an award of fees has been met and the reasonable amount of the award are questions decided by the trial court. The standard of review after the trial court has ruled is abuse of discretion. To determine abuse, the appellate court must review the entire record on the issue, paying particular attention to the trial court's stated reasons in denying or awarding fees and whether it applied the proper standards of law in reaching its decision. Bartling v. Glendale Adventist Medical Center (1986, 2nd Dist) 184 Cal App 3d 97, 228 Cal Rptr 847, 1986 Cal App LEXIS 1895.

Whether a party has met the requirements for an attorney fee award under CCP § 1021.5 (codification of private attorney general doctrine) and 42 USCS § 1988 (Civil Rights Attorney's Fees Award Act of 1976), and the reasonable amount of such award are questions best decided by the trial court in the first instance. That court, utilizing its traditional equitable discretion, must realistically assess the litigation and determine from a practical perspective whether the statutory criteria have been met. Its decision will be reversed only if there has been a prejudicial abuse of discretion. To make such a determination, the appellate court must review the entire record, paying particular attention to the trial court's stated reasons in denying or awarding fees and whether it applied the proper standards of law in reaching its decision. Bouvia v. County of Los Angeles (1987, 2nd Dist) 195 Cal App 3d 1075, 241 Cal Rptr 239, 1987 Cal App LEXIS 2260.

CCP § 1021.5 (attorney fees in cases resulting in public benefit), codifies the private attorney general theory. Whether a plaintiff has proved each of the three statutory prerequisites for an award of trial fees is a question best decided by the trial court. Its judgment will not be disturbed unless the appellate court is convinced that it is clearly wrong and constitutes an abuse of discretion. Planned Parenthood of Santa Barbara, etc. v. Aakhus (1993, Cal App 2d Dist) 14 Cal App 4th 162, 17 Cal Rptr 2d 510, 1993 Cal App LEXIS 265, review denied (1993, Cal) 1993 Cal LEXIS 3060.

A trial court's determination that a party is entitled to attorney fees under the private attorney general doctrine (CCP § 1021.5) may not be disturbed on appeal absent a showing that the court abused its discretion in awarding attorney fees, that is, the record establishes there is no reasonable basis for the award. The pertinent question is whether the grounds given by the court for its grant of an award are consistent with the substantive law of § 1021.5 and, if so, whether their application to the facts of the case is within the range of discretion conferred on the trial courts under § 1021.5, read in light of the purposes and policy of the statute. Feminist Women's Health Center v. Blythe (1995, Cal App 3d Dist) 32 Cal App 4th 1641, 39 Cal Rptr 2d 189, 1995 Cal App LEXIS 218, cert den Reali v. Feminist Women's Health Ctr. (1995) 516 US 987, 133 L Ed 2d 423, 116 S Ct 514, 1995 US LEXIS 7837.

It is not an abuse of discretion for the trial court to deny a request for private attorney general fees based on a finding that plaintiff failed to satisfy one of the statutory criteria set forth in CCP § 1021.5. If the court finds that all the criteria are met, it may balance or weigh them in making the ultimate determination whether fee-shifting is appropriate. In a case where the court finds that one of the statutory criteria is not met, it is unnecessary to make findings concerning the remaining criteria. Satrap v. Pacific Gas & Electric Co. (1996, 1st Dist) 42 Cal App 4th 72, 49 Cal Rptr 2d 348, 1996 Cal App LEXIS 69.

In an action brought by an individual on behalf of himself and all others in the state who own or seek to rent or purchase ski bindings against a ski shop, a ski area operator, and six ski binding distributors, in which plaintiff unsuccessfully sought to outlaw the use of general releases of liability, the trial court did not err in denying plaintiff's motion for attorney fees against three defendants who, during the pendency of the litigation, had modified their releases, to conform to the law, to exclude product defect or strict liability claims. The trial court properly concluded that plaintiff was not the "prevailing party" under either CCP § 1021.5, or Civ. Code, § 1780, subd. (d). An award of attorney fees may be appropriate where the plaintiff's lawsuit was a catalyst motivating the defendants to provide the primary relief sought. A plaintiff will be considered a prevailing party where an important right is vindicated by activating the defendants to modify their behavior. Under the circumstances of this case, it was reasonable for the trial court to conclude that plaintiff did not obtain the primary relief sought, that being a prohibition against releases of liability, and did not vindicate an important right, inasmuch as skiing is not a matter of public interest. Moreover, since plaintiff prosecuted this action in propria persona, his eligibility to recover attorney fees was in doubt. Olsen v. Breeze, Inc. (1996, Cal App 3d Dist) 48 Cal App 4th 608, 55 Cal Rptr 2d 818, 1996 Cal App LEXIS 820.

In an unfair competition action brought by a private individual, an environmental rights organization, and the county district attorney against a ski resort, after defendant, while litigation was pending, cut down more than 1,800 trees to carry out its planned project to develop additional ski runs, the trial court did not abuse its discretion in awarding attorney fees to the two private plaintiffs under CCP § 1021.5, which authorizes an award of attorney fees under the private attorney general doctrine. In their motions for attorney fees, counsel for the private litigants outlined their involvement in the case. The district attorney submitted declarations stating that the scope of this litigation was simply too much for his office to handle, and that full-time prosecution of this case would have made prosecution of other offenses impossible. Primary responsibility for the litigation was therefore given to the private individual's attorney. Attorneys for the environmental rights organization, who had been involved in the earlier litigation against defendant, provided expertise in land use and forestry law, as well as the historical and factual background knowledge necessary to prosecute the case efficiently. Attorneys for all three parties attended trial and conferred on trial strategies. Hewlett v. Squaw Valley Ski Corp. (1997, Cal App 3d Dist) 54 Cal App 4th 499, 63 Cal Rptr 2d 118, 1997 Cal App LEXIS 310, superseded by statute as stated in UFW v. Dutra Farms (2000, Cal App 6th Dist) 83 Cal App 4th 1146, 100 Cal Rptr 2d 251, 2000 Cal App LEXIS 756.

Whether to award fees under CCP § 1021.5 (private attorney general doctrine), is a matter within the trial court's discretion and will not be disturbed on appeal absent a showing of abuse of that discretion. But discretion may not be exercised whimsically, and reversal is required where there is no reasonable basis for the ruling or when the trial court has applied the wrong test to determine if the statutory requirements were satisfied. Flannery v. California Highway Patrol (1998, Cal App 1st Dist) 61 Cal App 4th 629, 71 Cal Rptr 2d 632, 1998 Cal App LEXIS 114.

An order denying a motion for attorneys' fees under CCP § 1021.5 is appealable. However, an award of attorney fees under § 1021.5 lies within the trial court's discretion and will not be reversed on appeal absent a showing of abuse. As applied, this rule means that an appellate court should not reverse unless the record establishes that there is no reasonable basis for the trial court's action. Williams v. San Francisco Bd. of Permit Appeals (1999, 1st Dist) 71 Cal App 4th 442, 83 Cal Rptr 2d 756, 1999 Cal App LEXIS 327.

Appellate court concluded that the trial court did not abuse its discretion in denying the mother attorney fees in a visitation dispute with the child's paternal grandparents, as the trial court applied the appropriate criteria including that the financial burden on the mother, as well as the pro bono attorney who represented the mother could not be considered

out of proportion to the mother individual stake in the matter. Punsly v. Ho (2003, 4th Dist) 105 Cal App 4th 102, 129 Cal Rptr 2d 89, 2003 Cal App LEXIS 18.

Determining whether CCP § 1021.5 is applicable, and if so, the amount of attorneys' fees that are reasonable, is generally left to the sound discretion of the trial court; even in the absence of a specific remand from the appellate court, the trial court has jurisdiction to entertain a request for fees under CCP § 1021.5. Katz v. Los Gatos-Saratoga Joint Union High School Dist. (2004, Cal App 6th Dist) 117 Cal App 4th 47, 11 Cal Rptr 3d 546, 2004 Cal App LEXIS 384.

Where manufacturers challenged only a consumer's right to recover attorney fees, and not the amount approved by the trial court, the award had to be affirmed once the judgment was affirmed, even though the award appeared to be unnecessarily high. Benson v. Kwikset Corp. (2004, Cal App 4th Dist) 120 Cal App 4th 301, 15 Cal Rptr 3d 407, 2004 Cal App LEXIS 1053, rehearing granted, depublished (2004) 2004 Cal. App. LEXIS 1274.

Where an appellate court reverses a judgment ordering issuance of a writ of mandate, it follows that the trial court's CCP § 1021.5 attorney fees award must also be reversed. Klajic v. Castaic Lake Water Agency (2004, Cal App 2d Dist) 121 Cal App 4th 5, 16 Cal Rptr 3d 746, 2004 Cal App LEXIS 1243.

Where a city police officers association was no longer the successful litigant following the city's successful appeal of a judgment against it, the association was not entitled to recovery of its legal fees under the private attorney general statute, CCP § 1021.5. Sacramento Police Officers Assn. v. City of Sacramento (2007, Cal App 3d Dist) 147 Cal App 4th 311, 54 Cal Rptr 3d 167, 2007 Cal App LEXIS 122, rehearing denied (2007, Cal App 3d Dist) 2007 Cal App LEXIS 377, review denied and ordered not published (2007, Cal) 2007 Cal LEXIS 4652.

6. Particular Circumstances; Banks and Banking

The simplicity or complexity of the issues litigated relates to the determination of the proper amount, not the propriety, of an award of attorney fees under the private attorney general doctrine (CCP § 1021.5). Schmid v. Lovette (1984, 1st Dist) 154 Cal App 3d 466, 201 Cal Rptr 424, 1984 Cal App LEXIS 1901.

Successful plaintiffs in a class action challenging a bank's assessment of fees against credit card customers who failed to make timely payments or exceeded their credit limits, were properly awarded, along with attorney fees under the private attorney general doctrine (CCP § 1021.5), expert witness fees and other costs nonrecoverable as ordinary costs. The fact that such fees are not expressly authorized by § 1021.5, and are not "attorney fees" within the meaning of the statute, did not preclude their award consistent with the federal practice underlying the enactment of § 1021.5; expert witness fees and other nonrecoverable expenses incurred by counsel may be awarded under § 1021.5, if they represent expenses ordinarily billed to a client and are not included in the overhead component of counsel's hourly rate. This is so despite the fact that the federal precedent on which § 1021.5 was based was subsequently overturned. Beasley v. Wells Fargo Bank (1991, 1st Dist) 235 Cal App 3d 1407, 1 Cal Rptr 2d 459, 1991 Cal App LEXIS 1300.

An award of attorney fees under the private attorney general doctrine (CCP § 1021.5) is proper when, among other criteria, the necessity and financial burden of private enforcement makes the award appropriate. This financial burden criterion is met when the cost of the claimant's legal victory transcends his or her personal interest, that is, when the necessity for pursuing the lawsuit placed a burden on the plaintiff out of proportion to his or her individual stake in the matter. This requirement focuses not on a plaintiff's abstract personal stake, but on the financial incentives and burdens related to bringing suit. Indeed, in the absence of some concrete personal interest in the issue being litigated, the putative plaintiff would lack standing to bring an action. Feminist Women's Health Center v. Blythe (1995, Cal App 3d Dist) 32 Cal App 4th 1641, 39 Cal Rptr 2d 189, 1995 Cal App LEXIS 218, cert den Reali v. Feminist Women's Health Ctr. (1995) 516 US 987, 133 L Ed 2d 423, 116 S Ct 514, 1995 US LEXIS 7837.

7. --Budget and Appropriations

Provisions inserted by the Legislature in the 1980 and 1981 Budget Acts (Stats. 1980, ch. 510, § 4.5, p. 1335; Stats. 1981, ch. 99, § 4.50, p. 372), which prohibited the use of funds appropriated in the respective budget bills for the payment of court-awarded attorney fees unless payment of such fees was either specifically authorized and provided in an item or section of the budget act, or expressly authorized by a statutory provision other than CCP § 1021.5 (restatement of the "private attorney general" doctrine), could not be construed to preclude payment from operating expense appropriations for the Department of Education for those years of a judgment for attorney fees allowed public interest attorneys in an action successfully attacking the state public school financing system, entered in 1975, and affirmed by the Supreme Court. Under the separation of powers doctrine set forth in Cal. Const., art. III, § 3, the Legislature enjoys no constitutional prerogative to disregard the authority of final court judgments resolving specific controversies within the judiciary's domain. Insofar as the provisions purported to exclude the 1975 award from the relevant appropriations, they were invalid restrictions resting on a legislative readjudication of the merits of the final court judgment. Serrano v. Priest (1982, Cal App 2d Dist) 131 Cal App 3d 188, 182 Cal Rptr 387, 1982 Cal App LEXIS 1548.

A county was not entitled to reimbursement from the state, under Cal. Const., art. XIII B, § 6 (reimbursement for increased costs from state-mandated programs), for attorney's fees it paid under CCP 1021.5 (private enforcement of right affecting public interest), since CCP § 1021.5, is not a state-mandated program, which is defined as a program that carries out the governmental function of providing services to the public, or a law which, to implement a state policy, imposes unique requirements on local governments. Rather, CCP § 1021.5, may be applied against any individual or entity, whether public or private. The fact that CCP § 1021.5, prohibits an award of attorney's fees in favor of a public agency does not render it a state-mandated program, since a public agency, by definition, works for the public good, and the purpose of the statute is to encourage private enforcement of public policies. County of Fresno v. Lehman (1991, 5th Dist) 229 Cal App 3d 340, 280 Cal Rptr 310, 1991 Cal App LEXIS 351.

8. --Challenges to Courts

In mandamus proceedings against a municipal court in which petitioner prevailed in her challenge that the municipal court denied fundamental constitutional rights to defendants at arraignment sessions, and in which the trial court found that the proceedings met the criteria of CCP § 1021.5, authorizing an award of attorney fees under the private attorney general concept, the trial court erred in denying fees on the sole ground that the municipal court was not a "public entity" within the meaning of the statute. If judicial public entities were to be excluded from the broad statutory definition of public entity, the legislative purpose behind CCP § 1021.5, would be frustrated in a substantial way. Rhyne v. Municipal Court (1980, Cal App 4th Dist) 113 Cal App 3d 807, 170 Cal Rptr 312, 1980 Cal App LEXIS 2591.

Where an objector to a proposed class settlement did not act as the functional equivalent of a private attorney general pursuing an action resulting in the enforcement of important public rights, and the objector's efforts did not confer a significant benefit on the members of the putative class, the trial court properly denied the objector's motion for attorney fees under CCP § 1021.5. Consumer Cause, Inc. v. Mrs. Gooch's Natural Food Markets, Inc. (2005, Cal App 2nd Dist) 127 Cal App 4th 387, 25 Cal Rptr 3d 514, 2005 Cal App LEXIS 339.

9. --Challenges to Government Officials and Boards

After plaintiff obtained a judgment declaring members of a city council violated the Brown Act (Gov. Code, § 54960 et seq.) by taking official action in secret, the trial court committed reversible error in failing to properly exercise its discretion in denying plaintiffs' attorney fees under Gov. Code, § 54960.5, permitting such an award. There was no authority for the trial court to incorporate the standards of CCP § 1021.5, providing for fees in actions resulting in the enforcement of an important right affecting the public interest into the Brown Act, which was enacted two years earlier. The Brown Act provides specific legislative authorization for attorney fees in actions brought to enforce a public policy in a context in which actual recoverable damages are likely to be trivial, and attorney fees are presumptively appropriate unless the defendant can show special circumstances that would render such an award unjust. The statute does not

require that fees be awarded only when issues of statewide or federal significance are involved, but is intended to be applied in matters of local significance. Considerations which the trial court should weigh in exercising its discretion include the necessity for the lawsuit, lack of injury to the public, the likelihood the problem would have been solved by other means and the likelihood of recurrence of the unlawful act in the absence of the lawsuit. Common Cause v. Stirling (1981, Cal App 4th Dist) 119 Cal App 3d 658, 174 Cal Rptr 200, 1981 Cal App LEXIS 1775.

The "private attorney general" doctrine (CCP § 1021.5) entitled parties, who initiated an action in which the principle was vindicated that the Governor's power to personally veto legislation cannot be exercised to invalidate a part of a bill which is not part of an appropriation bill, to attorney fees, even though the parties themselves did not personally benefit from the decision. The decision will result in enforcement of an important right affecting the public interest, conferring a "significant benefit" on the general public in clarifying the extent of the Governor's veto power and emphasizing the inviolability by the Legislature of the one-subject rule. Harbor v. Deukmejian (1987) 43 Cal 3d 1078, 240 Cal Rptr 569, 742 P2d 1290, 1987 Cal LEXIS 426.

A police officer who prevailed in an action to suppress statements he made when he was questioned by his supervisor as part of an investigation concerning alleged on-duty misconduct, obtained in violation of his rights under the Public Safety Officers Procedural Bill of Rights Act (Gov. Code, § 3303 et seq.), was not entitled to attorney fees under the private attorney general doctrine (CCP § 1021.5). The officer did not establish an important right that benefited a large class of persons. Instead, he sought to exercise a right already established for his personal benefit. City of Los Angeles v. Superior Court (1997, Cal App 2d Dist) 57 Cal App 4th 1506, 67 Cal Rptr 2d 775, 1997 Cal App LEXIS 784, review denied (1997, Cal) 1997 Cal LEXIS 8580.

A rejected bidder for a state contract who successfully showed that its bid protest was not handled in conformity with Pub Con C § 12102(h) was not entitled to an award of attorney fees under CCP § 1021.5, where the rejected bidder brought the suit challenging the protest procedures in order to have a chance at obtaining a contract worth almost half a million dollars. An award of attorney fees under CCP § 1021.5 is not appropriate when the plaintiff brings suit to protect its property rights and not to further a significant public interest, or the public benefit gained is coincidental to plaintiff's strong personal economic interests. United Systems of Arkansas, Inc. v. Stamison (1998, Cal App 3d Dist) 63 Cal App 4th 1001, 74 Cal Rptr 2d 407, 1998 Cal App LEXIS 409, review denied United Sys. v. Stamison (1998, Cal) 1998 Cal LEXIS 5320.

Following approval by the California Coastal Commission of a local coastal program (LCP) for a large coastal development plan, several interested parties and public interest groups filed a petition for a writ of mandate challenging the LCP, and named the commission, landowners, and others as real parties in interest. The trial court did not abuse its discretion in awarding plaintiffs attorney fees under CCP § 1021.5 and allocating payment of fees between land owners and the commission. Although defendant land owners argued it was improper to award fees where the commission and not they made inadequate findings, both defendants vigorously defended the commission's findings in the trial court and on appeal. Although the commission contended that the imposition of attorney fees imposed an undue hardship on it, this was not a factor which courts are required to consider in awarding attorney fees against a public agency. Bolsa Chica Land Trust v. Superior Court (1999, Cal App 4th Dist) 71 Cal App 4th 493, 83 Cal Rptr 2d 850, 1999 Cal App LEXIS 332.

The award of private attorney general fees under CCP § 1021.5 is within the trial court's sound discretion. Thus, the award will be reversed only if it is clearly wrong or has no reasonable basis. Here, there was no abuse of discretion where the party to whom fees were awarded was unquestionably the successful party as she obtained the declaratory and writ relief she sought. Further, her action conferred a significant benefit on the general public; she produced undisputed evidence that the State Board of Control had a longstanding blanket practice of shirking its duty to subpoena full crime reports from law enforcement agencies refusing to voluntarily comply with former Gov C § 13968(d), and that it was practice and policy of the Board's staff to recommend denial of a victim's application for assistance if no crime report was submitted to, or obtained by staff. Gregory v. State Bd. of Control (1999, Cal App 4th Dist) 73 Cal App 4th 584, 86 Cal Rptr 2d 575, 1999 Cal App LEXIS 658, rehearing denied (1999, Cal App 4th Dist) 1999 Cal App

LEXIS 692.

Trial court did not abuse its discretion when it denied attorney fees to a harness race operator who argued that a contract with another operator violated California Exposition and State Fair's governing statutes. Although the litigation arguably resulted in the contract extensions being vacated and in additional revenue for the state, the operator received the opportunity to compete for a potentially lucrative future public contract and thus did not meet the financial burden criterion. Arnold v. California Exposition and State Fair (2004, Cal App 3d Dist) 125 Cal App 4th 498, 22 Cal Rptr 3d 790, 2004 Cal App LEXIS 2250.

Ensuring that a county fulfill its statutory duty under Gov C § 66016(a) to use a fee revenue surplus vindicated an important public right; thus, an attorney fee award under CCP § 1021.5 was proper. County of Orange v. Barratt American, Inc. (2007, Cal App 4th Dist) 150 Cal App 4th 420, 58 Cal Rptr 3d 542, 2007 Cal App LEXIS 671, rehearing denied (2007, Cal App 4th Dist) 2007 Cal App LEXIS 958, review denied (2007, Cal) 2007 Cal LEXIS 8521.

Party who successfully brought a taxpayer waste action and received an award of attorney fees after entry of a stipulated injunction could receive additional fees for providing assistance with enforcement of the injunction because her efforts were instrumental in implementing several aspects of the injunction. Vasquez v. State (2007, 4th Dist) 2007 Cal App LEXIS 1379.

In a case in which a trial court granted a union's petition for a writ of mandate that sought to vacate a decision by the Acting Director of the California Department of Industrial Relations (the department) that renovation performed by a contractor of an owner's building leased in part to a county was not a public works project under California's prevailing wage law, Lab C § 1720 et seq., the trial court did not err in awarding the union attorney fees against the department under CCP § 1021.5 because the department issued a policy determination that had been set aside, and the fact that the department was charged by law with settling the coverage dispute between the union and the contractor and the owner did not render § 1021.5 inapplicable. While the fact that the department designated its decision as precedential was not dispositive, it was one of the factors tending to show an important right extending a significant benefit to a large class of persons. Plumbers & Steamfitters, Local 290 v. Duncan (2007, 1st Dist) 2007 Cal App LEXIS 2012.

In a suit against a local redevelopment agency, an unincorporated association successfully and substantially altered the agency's contributions to a state-mandated fund for low cost housing and therefore was entitled to attorney fees under CCP § 1021.5. Although a $ 1.35 million reimbursement to the housing fund was only a portion of the total $ 5.6 million reimbursement sought, it was nonetheless a substantial amount and an amount that would not have been recovered in the absence of the litigation; the challenge was also the catalyst for the agency's agreement with the county to amend their tax sharing agreement. Hogar v. Community Development Com. of the City of Escondido (2007, 4th Dist) 2007 Cal App LEXIS 2025.

10. --Challenges to Statutes, Rules and Regulations

The plaintiff in a successful action to invalidate Sts & H C § 104.10 (providing for distribution to counties of rental income received by state as result of its acquisition of real property for highway purposes), on the ground that it conflicted with Cal. Const Art. XIX (former Cal Const Art XXVI), was not statutorily entitled to an award of attorney fees where the decision, which resulted in rediverting highway property rental income from local taxing agencies to the state highway fund, did not enforce an important right affecting the public interest (CCP § 1021.5). Bruno v. Bell (1979, Cal App 1st Dist) 91 Cal App 3d 776, 154 Cal Rptr 435, 1979 Cal App LEXIS 1623.

In an action against a school district in which plaintiff successfully challenged the constitutionality of former Ed. Code, §§ 7001, 7003, 7006 (loyalty oaths), the district could not avoid liability for attorney fees under CCP § 1021.5 (private attorney general doctrine), and 42 USCS § 1988 (Civil Rights Attorney's Fees Award Act of 1976), on the basis that Cal. Const., art. III, § 3.5, precluded it from declaring the loyalty oath provisions unconstitutional prior to an

appellate court determination to that effect. The former Education Code sections were patently unconstitutional following decisions rendered long ago by both state and federal authorities. Moreover, even if the district genuinely believed that the loyalty oath statutes had not effectively been determined to be unconstitutional by the appellate courts, there is no good faith exception to either the state private attorney general statute or its federal counterpart. Schmid v. Lovette (1984, 1st Dist) 154 Cal App 3d 466, 201 Cal Rptr 424, 1984 Cal App LEXIS 1901.

In an action against a school district in which plaintiff successfully challenged the constitutionality of former Ed. Code, §§ 7001, 7003, 7006 (loyalty oaths), plaintiff was entitled to an award of attorney fees under CCP § 1021.5 (private attorney general doctrine). The district was actively enforcing the former statutes and, but for the trial court's decision, would have continued to do so. Thus, it was within the court's discretion to determine that plaintiff's litigation resulted in a significant benefit to a sufficiently wide segment of the public to come within the provisions of § 1021.5. Further, since plaintiff had already signed the loyalty oath and had been hired by the district at the time that she initiated the litigation, she met the requirement that the costs of her legal victory transcend her personal interest. In addition, the simplicity of the constitutional issue did not eliminate the economic burden of private enforcement. Schmid v. Lovette (1984, 1st Dist) 154 Cal App 3d 466, 201 Cal Rptr 424, 1984 Cal App LEXIS 1901.

In an action by the executors of an estate against the state, in which, after the executors succeeded on appeal in their argument that the repeal by initiative of the state inheritance tax applied to the estates of those who died the day the initiative passed, the executors were awarded attorney fees pursuant to CCP § 1021.5 (private attorney general doctrine), the trial court's order directing the State Controller to pay the attorney fees violated the separation of powers doctrine. The current budget act appropriation limited expenditures for payment of attorney fees awards under § 1021.5 to a maximum hourly rate of recovery, and the award exceeded that maximum. Estate of Cirone (1987, 6th Dist) 189 Cal App 3d 1280, 234 Cal Rptr 749, 1987 Cal App LEXIS 1440.

In an action by residents of a water district challenging the constitutionality of Wat. Code, § 30700.6, which restricted voting in the district and eligibility for membership on the district board of directors to landowners, plaintiffs were entitled to attorney fees, notwithstanding that the trial court, which found in favor of plaintiffs, stayed its judgment pending outcome of the appeal, and in the meantime the Legislature amended the statute to provide for voting and board eligibility for both residents and landowners. The Legislature obviously recognized the merits of plaintiffs' contentions. Case law takes a pragmatic approach in defining "prevailing" or "successful" party within the meaning of CCP § 1021.5 (private attorney general doctrine). The critical fact is the impact of the action in achieving the desired result, not the manner of its resolution. The impact might include legislative changes, settlements, or amendments in policy. Whether plaintiffs were also entitled to fees for the appeal depended on whether their persistence affected the Legislature's decision to enfranchise the district's residents. If so, under CCP § 1021.5, plaintiffs were entitled to attorney fees on appeal attributable to those efforts. Bjornestad v. Hulse (1991, Cal App 3d Dist) 229 Cal App 3d 1568, 281 Cal Rptr 548, 1991 Cal App LEXIS 504, modified, rehearing denied (1991, 3rd Dist) 230 Cal App 3d 1431a, 1991 Cal App LEXIS 712, review denied (1991, Cal) 1991 Cal LEXIS 4089.

In an action by a foresters association against the California State Board of Forestry, challenging the board's emergency regulations, the trial court erred in granting plaintiff attorney fees under the private attorney general doctrine (CCP § 1021.5). In finding that the broad public interest advanced by the action considerably outweighed the economic interests of plaintiff and its members, the trial court applied the wrong test. Entitlement to an award does not turn on a balance of the litigant's private interests against those of the public, but on a comparison of the litigant's private interests with the anticipated costs of suit. Moreover, plaintiff's costs of the litigation were not out of proportion to its stake in the litigation. Plaintiff had a financial stake in pursuing this matter to the same extent as its members. Plaintiff's existence depended upon the economic vitality of its members and any benefit or burden derived by plaintiff from this lawsuit ultimately redounded to the membership. Also, the trial court's concern should have been whether plaintiff had an individual stake that was out of proportion to the costs of litigation, not whether it was financially able to bear the costs. Financial status is not the criterion. As the evidence demonstrated, plaintiff had a significant interest in eliminating the regulations. Further, notwithstanding any benefit to the public, the economic interest of plaintiff and its members was sufficient motivation for bringing the action. California Licensed Foresters Assn. v. State Bd. of Forestry (1994, Cal

App 3d Dist) 30 Cal App 4th 562, 35 Cal Rptr 2d 396, 1994 Cal App LEXIS 1205, review denied California v. California State Bd. of Forestry (1995, Cal) 1995 Cal LEXIS 602.

In an action in which a group of people affected by a city's municipal ordinance imposing licensing requirements on the sale of firearm dealerships successfully challenged, on state preemption grounds, a provision of the ordinance requiring that the sale of firearms be operated out of a secured facility, plaintiffs were entitled to a determination as to whether they were entitled to attorney fees under CCP § 1021.5 (private attorney general doctrine), and, if so, to an award of reasonable fees for successfully challenging the provision. By their lawsuit, plaintiffs limited the security measures that may be required of the city's firearm dealerships to just one of the methods specified under applicable state law. If, by this limitation, plaintiffs conferred a significant benefit on the general public or a large class of persons, they were entitled to an award of fees for the efforts of their attorneys in obtaining this ruling. The questions of whether the benefit resulting from these efforts was significant, or whether the class of persons it benefited was large enough to justify an award of fees, involved factual issues requiring resolution by the trial court. Suter v. City of Lafayette (1997, Cal App 1st Dist) 57 Cal App 4th 1109, 67 Cal Rptr 2d 420, 1997 Cal App LEXIS 729, review denied (1997, Cal) 1997 Cal LEXIS 8365.

In an action for reimbursement of benefits paid under the Aid to Families with Dependent Children (AFDC) program (former W & I C § 11350) (see now Fam C § 17402), where the county had paid the benefits to the defendant's minor daughter after the daughter had left the defendant's home and had a baby, and where the defendant was the successful party, the defendant was entitled to an award of attorney fees under CCP § 1021.5. The defendant's successful resistance to the county's attempt to recoup AFDC benefits from her under former W & I C § 11350 (see now Fam C § 17402), resulted in the enforcement of an important right affecting the public interest and a significant benefit was conferred on a large class of persons. Further, the necessity and financial burden of private enforcement made the award appropriate. Since this suit was brought by a public entity the necessity of private rather than public enforcement was evident. County of San Diego v. Lamb (1998, Cal App 4th Dist) 63 Cal App 4th 845, 73 Cal Rptr 2d 912, 1998 Cal App LEXIS 397, review denied (1998, Cal) 1998 Cal LEXIS 5329.

A litigant who sought to compel the publication of all California Court of Appeal opinions (CRC Rules 976, 977) was not entitled to attorney fees under the "private attorney general" statute (CCP § 1021.5), where the underlying action did not establish new law, but simply recognized that publication was constitutionally required in a narrow range of cases to avoid selective prospectivity. In other words, it was simply an explication of how the publication rules comported with applicable constitutional requirements. Nor did the action result in the enforcement of important rights affecting due process or equal protection because, insofar as the publication rules passed constitutional muster, the right against selective prospectivity needed no enforcing. The fact that all unpublished opinions were subsequently made available electronically did not compel a different result, since they were designated "not for publication." Electronic availability was not synonymous with "publication" under rule 976. Schmier v. Supreme Court (2002, 1st Dist) 96 Cal App 4th 873, 117 Cal Rptr 2d 497, 2002 Cal App LEXIS 2385.

While an order awarding attorney fees to plaintiffs fell with a reversal of the judgment on which it was based, the court left to the trial court a determination of whether fees should be awarded given the fact that a portion of plaintiffs' challenge to contracts based upon a county's charter was reversed due only to the mootness of the claim. Giles v. Horn (2002, Cal App 4th Dist) 100 Cal App 4th 206, 123 Cal Rptr 2d 735, 2002 Cal App LEXIS 4407, review denied (2002, Cal) 2002 Cal LEXIS 7252.

In a case in which a mobile home park owner challenged the validity of two rent control ordinances, the owner was not entitled to attorney fees under CCP § 1021.5 because the outcome benefited the owner, not a large class of persons or the general public. MHC Financing Limited Partnership Two v. City of Santee (2005, Cal App 4th Dist) 125 Cal App 4th 1372, 23 Cal Rptr 3d 622, 2005 Cal App LEXIS 84, modified, rehearing denied (2005) 2005 Cal. App. LEXIS 241, review denied (2005) 2005 Cal. LEXIS 5064.

Trial court did not improperly reward plaintiffs for participating in the political process when it awarded them

attorney fees, costs, and expenses in their suit challenging state officials' regulations and practices in distributing school bond monies for new construction on a first-come first-served basis, rather than based on a school district's need or priority; plaintiffs' litigation, even though it did not result in judicial relief, was a catalyst to the officials' changed behavior. Godinez v. Schwarzenegger (2005, 2nd Dist) 132 Cal App 4th 73, 33 Cal Rptr 3d 270, 2005 Cal App LEXIS 1338..

In a case in which plaintiff challenged statutory provisions pertaining to impoundment of vehicles that were either driven by unlicensed drivers or used in dangerous activities such as speed contests, plaintiff was not entitled to attorney fees as a successful party under CCP § 1021.5, where the trial court's judgment in favor of plaintiff was reversed on appeal. Samples v. Brown (2007, Cal App 1st Dist) 146 Cal App 4th 787, 53 Cal Rptr 3d 216, 2007 Cal App LEXIS 34, modified, rehearing denied (2007) 2007 Cal. App. LEXIS 112, review denied (2007, Cal) 2007 Cal LEXIS 4693.

In a case in which a vehicle owner successfully challenged the validity of an ordinance that provided for the forfeiture of any vehicle used to solicit or engage in an act of prostitution, the trial court properly awarded the owner attorney fees pursuant to CCP § 1021.5, although the owner's request for additional attorney fees on appeal was denied; the financial burden of the litigation outweighed the owner's personal financial interest in regaining his vehicle. City of Los Angeles v. 2000 Jeep Cherokee (2008, 2d Dist) 2008 Cal App LEXIS 207.

11. --Civil and Constitutional Rights

Attorney fees may properly be awarded under the private attorney general doctrine (CCP § 1021.5) when plaintiff's lawsuit, although not leading to a favorable final judgment, is a catalyst motivating defendants to provide the primary relief sought. However, in order to justify such a fee award, there must be a causal connection between the lawsuit and the relief obtained. Thus, in an action to compel a government official to issue final regulations implementing a civil rights statute (Gov. Code, §§ 11135, 11139.5) in which plaintiffs sought awards of attorney fees under § 1021.5, following defendant's voluntary issuance of proposed and final regulations, the trial court abused its discretion in granting the motions, where the record demonstrated defendant had already approved a final draft of the proposed regulations at the time the lawsuit was filed, and where there was no evidence indicating the lawsuit resulted in issuance of the final regulations even a day earlier than they otherwise would have been issued. Westside Community for Independent Living, Inc. v. Obledo (1983) 33 Cal 3d 348, 188 Cal Rptr 873, 657 P 2d 365, 1983 Cal LEXIS 146.

Litigation successfully challenging a market's refusal to permit plaintiffs to gather signatures for an oil profits initiative measure in front of the store conferred a significant benefit on the public, for purposes of determining the propriety of an award of attorney fees under CCP § 1021.5 (private attorney general theory). The fact that litigation enforces existing rights, and is not a "landmark" case, does not mean that a substantial benefit to the public cannot result, and, in any event, the underlying litigation clarified that existing law applied to small shopping centers as well as large ones. In addition, the general public benefitted from enforcement of the fundamental constitutional rights to speak freely and to petition the government. The litigation also directly affected a large class of persons, since plaintiffs were able to use the injunction they obtained to gain access to other shopping centers in the state. Even limiting the impact of the lawsuit to the access gained at the store at issue, a large class of persons were benefitted, since approximately 3,000 people signed plaintiffs' petitions. Countless others were educated about an important public issue, and plaintiffs were able to enlist volunteers and accept financial contributions. Press v. Lucky Stores, Inc. (1983) 34 Cal 3d 311, 193 Cal Rptr 900, 667 P 2d 704, 1983 Cal LEXIS 218.

Not all lawsuits enforcing constitutional guarantees warrant an award of attorney fees under CCP § 1021.5 (private attorney general theory). For example, an award was not warranted with respect to litigation that enforced plaintiffs' right to be free from an unconstitutional taking of their property and that advanced only plaintiffs' personal economic interests, since such litigation did not confer a significant benefit on a large class of persons. On the other hand, litigation enforcing the fundamental constitutional rights to speak freely and to petition the government necessarily confers a significant benefit on society as a whole. Press v. Lucky Stores, Inc. (1983) 34 Cal 3d 311, 193 Cal Rptr 900, 667 P 2d 704, 1983 Cal LEXIS 218.

Litigation successfully challenging a market's refusal to permit the gathering of signatures for an oil profits initiative measure in front of the store satisfied the mandate of CCP § 1021.5 (private attorney general theory), that the necessity and financial burden of private enforcement be such as to make an award of attorney fees appropriate. Since plaintiffs had no pecuniary interest in the outcome of the litigation, the financial burden was such that an award of attorney fees was appropriate in order to assure the effectuation of an important public policy. That plaintiffs' personal interests in the initiative were sufficient to induce them to bring the action was irrelevant, since the statutory mandate focuses not on plaintiffs' abstract personal stake, but on the financial incentives and burdens related to bringing suit. Indeed, in the absence of some concrete personal interest in the issue being litigated, the putative plaintiff would lack standing to bring an action. Press v. Lucky Stores, Inc. (1983) 34 Cal 3d 311, 193 Cal Rptr 900, 667 P 2d 704, 1983 Cal LEXIS 218.

In awarding attorney fees under CCP § 1021.5 (private attorney general theory) to plaintiffs who had successfully challenged a market's refusal to permit the gathering of signatures for an oil profits initiative measure in front of the store, the trial court abused its discretion in calculating the amount of the award, where, instead of using the required lodestar adjustment method, it arrived at the $112.98 award by reference to the ratio of the 3,000 petition signatures obtained at the store at issue to the 556,000 signatures obtained statewide. The trial court improperly intertwined the determination of the litigation's importance with the question of the amount to be awarded, which latter inquiry requires consideration of factors such as the skill of the attorneys, the difficulty of the case, and the contingencies involved. The fraction devised by the trial court was designed not to take such factors into account, but to reflect only the trial court's view of the results achieved by the litigation. In any event, the 3,000/556,000 ratio was an illogical measure of the results obtained, since the vindication of plaintiffs' freedom of speech and petition rights would have been complete even had plaintiffs obtained no signatures as a result of the underlying injunction. While a trial court has discretion to determine the proper amount of an award, the resulting fee must still bear some reasonable relationship to the lodestar figure and to the purpose of the private attorney general doctrine. Press v. Lucky Stores, Inc. (1983) 34 Cal 3d 311, 193 Cal Rptr 900, 667 P 2d 704, 1983 Cal LEXIS 218.

Petitioners, 12 parents and their children, who brought a proceeding seeking to bar certain conduct by a school district and 4 administrators of a particular school that violated petitioners' rights under various state statutes and the state and federal Constitutions were "successful" within the meaning of the private attorney general statute, CCP § 1021.5, though the trial court did not rule in their favor on every issue litigated, where judgment was entered in their favor on all but one issue, and they were successful in obtaining a peremptory writ prohibiting the respondents from requiring a parental loyalty oath as a condition of student admission to the school and inflicting corporal punishment without parental permission, from suspending students for academic deficiencies not permitted by statute, from suspending students without first exhausting other means, and from neglecting to notify parents when a student was in danger of failing a course. Slayton v. Pomona Unified School Dist. (1984, 2nd Dist) 161 Cal App 3d 538, 207 Cal Rptr 705, 1984 Cal App LEXIS 2684.

In determining whether an action has enforced "an important right affecting the public interest" within the meaning of the private attorney general statute (CCP § 1021.5), courts should generally realistically assess the significance of a right in terms of its relationship to the achievement of fundamental legislative goals. A proceeding brought by 12 parents and their children seeking to bar certain conduct by a school district and 4 administrators of a particular school that violated petitioners' rights under various state statutes and the state and federal Constitutions vindicated such rights where the trial court issued a peremptory writ ordering respondents to comply with the free speech guaranties of the First Amendment and Cal. Const., art. I, § 2, and to comply with specified sections of the Education Code (§§ 48900, 48900.2, 49067 and 49001). Vindication of constitutional rights clearly was "important" within the meaning of CCP § 1021.5. Particularly in view of the recognition given to the constitutional and statutory right to an education, enforcement of the Education Code provisions also vindicated "important rights." Slayton v. Pomona Unified School Dist. (1984, 2nd Dist) 161 Cal App 3d 538, 207 Cal Rptr 705, 1984 Cal App LEXIS 2684.

Under the private attorney general statute (CCP § 1021.5), the requirement that a "significant benefit" that may be either pecuniary or nonpecuniary be "conferred on the general public or a large class of persons," reflects recognition

that contributions rendered by public interest litigation may be reflected in nonmonetary advances (such as the effectuation of a fundamental constitutional or statutory policy). Thus, in a proceeding brought by 12 parents and their children seeking to bar certain conduct by a school district and administrators of a school that violated petitioners' rights under various state statutes and the state and federal Constitutions, a "significant benefit" was achieved by the trial court's issuance of a peremptory writ ordering compliance with specified statutory and constitutional provisions. "A large class of persons" was benefited by the proceeding because the writ imposed a continuing obligation on the school district that protected not only current students at the school and their parents but also future students and parents. Slayton v. Pomona Unified School Dist. (1984, 2nd Dist) 161 Cal App 3d 538, 207 Cal Rptr 705, 1984 Cal App LEXIS 2684.

A proceeding brought by 12 parents and their children seeking to bar certain conduct by a school district and four administrators of a particular school that violated petitioners' rights under various state statutes and the state and federal Constitutions met the requirement of the private attorney general statute (CCP § 1021.5) that "the necessity and financial burden of private enforcement as such as to make the award appropriate." The action proceeded against the only government agency that bore responsibility for the challenged practices, so the necessity of private endorsement was clear. Since petitioners had no pecuniary interest in the outcome of the litigation, the financial burden was such that an attorney fee award was appropriate to insure the effectuation of an important public policy. Slayton v. Pomona Unified School Dist. (1984, 2nd Dist) 161 Cal App 3d 538, 207 Cal Rptr 705, 1984 Cal App LEXIS 2684.

In motions for attorney fees and costs pursuant to CCP § 1021.5 (the private attorney general doctrine) by four community groups that had intervened in a school desegregation case after final judgment in the action, the trial court properly found that the groups were not prevailing parties within the meaning of the section and denied recovery. Since the desegregation plan approved by the trial court, involving the voluntary reassignment of pupils rather than busing, resulted from the passage of Proposition 1 (amending the Constitution to prohibit mandatory busing in school desegregation cases) (Cal. Const., art I, § 7, subd. (a)), the groups failed to demonstrate a causal relationship between their participation in the litigation and the desegregation plan or that their intervention added in an essential way to its adoption, independent of Proposition 1. Crawford v. Board of Education (1988, 2nd Dist) 200 Cal App 3d 1397, 246 Cal Rptr 806, 1988 Cal App LEXIS 408.

Plaintiffs, the successful party in a sex discrimination suit against a private mounted patrol and a county sheriff's department based on the patrol's refusal to admit women as members and on the sheriff's department's close relationship with the patrol, vindicated important rights by obtaining a permanent injunction severing the relationship between defendants, namely, the constitutional right of equal protection and the right to be free from state-sponsored invidious discrimination. They were thus entitled to attorney fees under the private attorney general doctrine codified in both 42 USCS § 1988 (Civil Rights Attorneys' Fees Awards Act), and CCP § 1021.5. The litigation necessarily conferred a significant benefit on society as a whole, as well as on the direct victims of sexual discrimination, and would deter other governmental entities from undertaking similar activities. Moreover, the financial burden on plaintiffs caused by their private enforcement of their fundamental rights was such as to make the award appropriate. Sokolow v. County of San Mateo (1989, 1st Dist) 213 Cal App 3d 231, 261 Cal Rptr 520, 1989 Cal App LEXIS 856.

In an action in which a city sought to enjoin a newspaper from violating an ordinance that prohibited door-to-door distribution of advertisements and unauthorized newspapers when the owner or occupant of a residence or business had posted a sign prohibiting such distribution, and also prohibited door-to-door distribution of campaign materials, advertisements, and unauthorized newspapers when it was reasonably apparent the previous day's distribution had not been removed or the property was vacant, defendant newspaper, which prevailed in its contention that the ordinance was unconstitutional, was entitled to an award of attorney fees under CCP § 1021.5 (attorney fees in cases resulting in public benefit). Litigation that enforces constitutional rights necessarily affects the public interest and confers a significant benefit on the general public. Further, it was necessary for defendant to incur the financial burden of private enforcement: once the city brought the action for an injunction, defendant had to assert its rights under U.S. Const., 1st Amend., in order to defend its right to engage in protected activity, and, even after judgment was entered against the city because it failed to prove a violation of the ordinance, defendant had to pursue declaratory relief to prevent future

legal action to enforce the ordinance. City of Fresno v. Press Communications, Inc. (1994, Cal App 5th Dist) 31 Cal App 4th 32, 36 Cal Rptr 2d 456, 1994 Cal App LEXIS 1289.

In determining whether an award of attorney fees to a successful party is justified pursuant to CCP § 1021.5, which provides for such award in an action that has resulted in the enforcement of an important right affecting the public interest, free speech rights are included among those recognized as important rights. However, the Legislature did not intend to authorize an award of attorney fees in every case in which first amendment issues are only marginally involved, or where the moving party merely raises first amendment defenses and then obtains an equivocal result. The Legislature did not intend § 1021.5 to authorize an attorney fee award in every case involving a violation of an important statutory or constitutional right. Family Planning Specialists Medical Group, Inc. v. Powers (1995, 1st Dist) 39 Cal App 4th 1561, 46 Cal Rptr 2d 667, 1995 Cal App LEXIS 1098, modified (1995, 1st Dist) 40 Cal App 4th 1632a, 1995 Cal App LEXIS 1272.

In an action by a former state highway patrol traffic officer against the highway patrol and others, asserting harassment and wrongful termination in violation of the Fair Employment and Housing Act (FEHA)(Gov. Code, § 12900 et seq.), in which the trial court entered judgment upon the jury's verdict in favor of plaintiff, plaintiff was not entitled to an attorney fee award under CCP § 1021.5 (private attorney general doctrine). The evidence did not support the trial court's finding that the lawsuit conferred a significant benefit on the general public or on a large class of persons within the meaning of CCP § 1021.5. While plaintiff's lawsuit was based on the important right to be free from unlawful discrimination, its primary effect was the vindication of her own personal right and economic interest. Moreover, since plaintiff's action alleged a violation of FEHA, which itself provides a mechanism authorizing a fee award, resort to CCP § 1021.5, was unnecessary. Flannery v. California Highway Patrol (1998, Cal App 1st Dist) 61 Cal App 4th 629, 71 Cal Rptr 2d 632, 1998 Cal App LEXIS 114.

CCP § 1021.5 does not authorize an award of fees when the record indicates that the primary effect of a lawsuit was to advance or vindicate the plaintiff's personal economic interest. CCP § 1021.5 was not designed as a method for rewarding litigants motivated by their own pecuniary interests who only coincidentally protect the public interest. Thus, in an action for sexual harassment under Gov C § 12940 brought by a secretary against a law firm and a partner in a law firm, the plaintiff was not entitled to attorney fees under CCP § 1021.5. The notoriety of the case may have brought the issue of sexual harassment in employment into the public eye, and the verdict may have sent the message that sexual harassment in the workplace will not be tolerated; however, the action was brought not to benefit the public, but as a means of vindicating the plaintiff's own personal rights and economic interest. Weeks v. Baker & McKenzie (1998, Cal App 1st Dist) 63 Cal App 4th 1128, 74 Cal Rptr 2d 510, 1998 Cal App LEXIS 396, rehearing denied (1998, Cal App 1st Dist) 1998 Cal App LEXIS 490, review denied (1998, Cal) 1998 Cal LEXIS 5722.

California law recognizes the catalyst theory and does not require a judicially recognized change in the legal relationship between the parties as a prerequisite for obtaining attorney fees under CCP § 1021.5. Tipton-Whittingham v. City of Los Angeles (2004) 34 Cal 4th 604, 21 Cal Rptr 3d 371, 101 P3d 174, 2004 Cal LEXIS 11335.

Attorney fees under Gov C § 12965 are intended to provide fair compensation to the parties involved in the litigation at hand and encourage litigation of claims that in the public interest merit litigation; in deciding whether to, and how to, award attorney fees under § 12965(b), courts will look to the rules set forth in cases interpreting CCP § 1021.5. Tipton-Whittingham v. City of Los Angeles (2004) 34 Cal 4th 604, 21 Cal Rptr 3d 371, 101 P3d 174, 2004 Cal LEXIS 11335.

Although the appeal of the neighbor of a bar produced a partial reversal of a permanent injunction against her and vindicated the neighbor's constitutional rights of free speech, from a practical perspective, the neighbor, and not the general public or a class of persons, was the recipient of any benefit the decision conferred; the neighbor therefore did not meet a requirement for recovering attorney fees under CCP § 1021.5. Balboa Island Village Inn, Inc. v. Lemen (2004, Cal App 4th Dist) 121 Cal App 4th 583, 17 Cal Rptr 3d 352, 2004 Cal App LEXIS 1307, review gr, depublished (2004) 22 Cal. Rptr. 3d 517, 102 P.3d 904, 2004 Cal. LEXIS 11901, 2004 Cal. Daily Op. Service 11077, aff'd,

superseded (2007) 40 Cal 4th 1141, 57 Cal Rptr 3d 320, 156 P3d 339, 2007 Cal LEXIS 4194.

Plaintiff sign company could not recover attorney fees and costs pursuant to CCP § 1021.5 in its action to determine the First Amendment constitutionality of defendant city's prior sign ordinance because the company did not establish that its litigation costs transcended its personal interest in the outcome of the litigation; the company stood to generate $378,000 in annual income from its signs, and the court was unpersuaded that the company was entitled to fees on the ground that the likelihood of obtaining the relief sought was very low at the outset of the litigation. Covenant Media of Cal., L.L.C. v. City of Huntington Park (2006, CD Cal) 434 F Supp 2d 785, 2006 US Dist LEXIS 37333.

12. --Criminal Prosecution or Defense

CCP § 1021.5, providing that under certain circumstances, a court upon motion may award attorney fees to a successful party against an opposing party in any action which has resulted in the enforcement of an important right affecting the public interest, does not apply to attorney fees incurred in the defense of a criminal prosecution. Thus, in a mandamus proceeding in which petitioner sought such fees for his defense in a criminal prosecution, the trial court did not err in denying petitioner relief, even though the criminal prosecution resulted in invalidation of a section of a city municipal code, and such result could have been obtained in a civil action for an injunction or for declaratory judgment. Fogelson v. Municipal Court for Los Angeles Judicial Dist. (1981, 2nd Dist) 120 Cal App 3d 858, 175 Cal Rptr 64, 1981 Cal App LEXIS 1886.

A special deputy attorney general, deputized to procure and defend the appointment of a receiver in proceedings (eventually dismissed) against a religious organization, which had been accused of wrongdoing in its financial affairs, was not entitled to attorney fees from the organization, considering that the dismissal had been favorable to it. There was no common fund established, and thus such fees could not be awarded under the equitable doctrine of the common fund principle. Moreover, the receivership resulted in a severe financial loss to the organization, and did not result in the conferral of a substantial benefit; thus, such fees were not available under the equitable doctrine of the substantial benefit theory. Finally, the private attorney general theory (codified in CCP § 1021.5) was not available as the basis for attorney fees, since the trial court, in terminating the receivership, implicitly and correctly failed to find that any public right had been vindicated. People ex re. People ex rel. Deukmejian v. Worldwide Church of God (1981, Cal App 2d Dist) 127 Cal App 3d 547, 178 Cal Rptr 913, 1981 Cal App LEXIS 2538.

In an unfair competition and false advertising case, a consumer could not recover expert witness fees under CCP § 1021.5, which provides for attorney fee awards; CCP § 1033.5 precludes recovery of expert witness fees in private attorney general actions. Benson v. Kwikset Corp. (2005, Cal App 4th Dist) 126 Cal App 4th 887, 24 Cal Rptr 3d 683, 2005 Cal App LEXIS 208, rehearing denied (2005) 2005 Cal. App. LEXIS 350, review gr, depublished (2005) 28 Cal. Rptr. 3d 2, 110 P.3d 1217, 2005 Cal. LEXIS 4587, transferred (2007) 2007 Cal LEXIS 3728.

13. --Elections

In a mandamus proceeding (former Elec C § 5025) challenging as false and misleading a ballot argument submitted by a voter in support of a local initiative measure, an award of attorney fees (CCP § 1021.5) to the prevailing plaintiffs did not violate the losing voter's U.S. Const., 1st Amend., rights of free speech. There is no First Amendment infirmity in an award of attorney fees under § 1021.5, to a successful petitioner in an former Elec C § 5025, action. Washburn v. City of Berkeley (1987, Cal App 1st Dist) 195 Cal App 3d 578, 240 Cal Rptr 784, 1987 Cal App LEXIS 2215.

In a mandamus proceeding (Elec. Code, § 5025) challenging as false and misleading a ballot argument submitted by a voter in support of a local initiative measure, an award of attorney fees (CCP § 1021.5) to the prevailing plaintiffs did not violate the losing voter's right to petition the government for a redress of grievances (Cal Const Art. I, § 3). The ballot arguments were addressed to the city's voters, not to any branch of government, but even if the ballot arguments did indirectly implicate the right to petition the government, that right did not bar the award of fees. Washburn v. City of Berkeley (1987, Cal App 1st Dist) 195 Cal App 3d 578, 240 Cal Rptr 784, 1987 Cal App LEXIS 2215.

CCP § 47, providing a privileged publication is one made in any legislative, judicial or other official proceeding authorized by law, did not preclude an award of attorney fees (CCP § 1021.5) to the prevailing plaintiffs in a mandamus proceeding (Elec C § 5025) challenging as false and misleading a ballot argument submitted by a voter in support of a local initiative measure. CC § 47, subd. 2, bars certain tort causes of action which are predicated on protected conduct, but a motion for attorney fees under CCP § 1021.5, is not analogous to tort causes of action. Washburn v. City of Berkeley (1987, Cal App 1st Dist) 195 Cal App 3d 578, 240 Cal Rptr 784, 1987 Cal App LEXIS 2215.

The trial court did not err by denying, without holding a hearing, attorney fees under CCP § 1021.5 (case resulting in public benefit), to a candidate contesting an election, even though the trial court annulled the election results, where the candidate was not a successful party. The trial court's judgment, to the extent it granted the relief the candidate sought in his contest, was reversed on appeal, so that it was inaccurate to characterize the trial court's ruling as enforcing an important public right or conferring a significant benefit. Stebbins v. Gonzales (1992, Cal App 3d Dist) 3 Cal App 4th 1138, 5 Cal Rptr 2d 88, 1992 Cal App LEXIS 205, review denied (1992, Cal) 1992 Cal LEXIS 2459.

An award of attorney's fees and costs under CCP § 1021.5 to referendum proponents, which was made on the basis that the referendum proponents had prevailed at trial in challenging the a county registrar's certification of insufficiency, was inappropriate in that the registrar's certification of insufficiency should have been upheld by the trial court, even though a court-ordered election occurred before the issues could be adjudicated on appeal. A party who should have lost on the merits at trial does not become the "successful party" under CCP § 1021.5 when the issues become moot on appeal. Mapstead v. Anchundo (1998, Cal App 6th Dist) 63 Cal App 4th 246, 73 Cal Rptr 2d 602, 1998 Cal App LEXIS 336, review denied (1998, Cal) 1998 Cal LEXIS 4809.

A voter who petitioned for a writ of mandate for the omission of material in a candidate's statement was entitled to attorney's fees under the private attorney general doctrine; the suit dealt with the scope of Elec C § 13307, rather than the typical mundane squabble, and resulted in the enforcement of an important public right. Hammond v. Agran (2002, Cal App 4th Dist) 99 Cal App 4th 115, 120 Cal Rptr 2d 646, 2002 Cal App LEXIS 4169, rehearing denied (2002, Cal App 4th Dist) 2002 Cal App LEXIS 4306.

Trial court properly denied attorney fees to the proponents of a ballot initiative because the county registrar and counsel were not opposing parties against the proponents since they did not oppose the proponents in any of the citizens' litigation challenging the proponents ballot initiative. Nestande v. Watson (2003, Cal App 4th Dist) 111 Cal App 4th 232, 4 Cal Rptr 3d 18, 2003 Cal App LEXIS 1241.

Fee award was proper because a lawsuit that obtained a favorable ruling on a claim that a town had violated the election laws resulted in the enforcement of an important right and conferred a significant benefit on the general public. Lindelli v. Town of San Anselmo (2006, Cal App 1st Dist) 139 Cal App 4th 1499, 43 Cal Rptr 3d 707, 2006 Cal App LEXIS 789.

14. --Employment, Unemployment, Benefits

In an action by two labor unions against the Employment Development Department in which plaintiffs obtained an injunction prohibiting the suspension of unemployment insurance benefits to continuing claim recipients who appeal unfavorable decisions regarding their eligibility, the trial court properly granted attorney fees to plaintiffs under the substantial benefit doctrine codified in CCP § 1021.5. The record indicated that the upholding of unemployed workers' rights to prompt payments under the Social Security Act was a significant benefit to both unemployed workers and the public at large. Furthermore, the fact that the attorney general represented defendants in the case necessitated private enforcement of unemployed workers' rights, and the financial burden involved in the litigation was too great for any individual claimant to carry. The fact that plaintiff unions were well able to meet the cost of the actions was irrelevant. The statute does not make the financial status of the prevailing party the criteria for awarding fees. American Federation of Labor v. Employment Dev. Dept. (1979, Cal App 2d Dist) 88 Cal App 3d 811, 152 Cal Rptr 193, 1979 Cal App LEXIS 1333.

A woman who successfully challenged, through suit, the practice of the Employment Development Department and the Unemployment Insurance Appeals Board of asking questions concerning apparent pregnancy and effect of the pregnancy on health in determining eligibility for unemployment insurance benefits, was entitled to attorney fees, both at the trial and the appellate levels, under the private attorney general doctrine codified in CCP § 1021.5. The record indicated that her suit resulted in the enforcement of the constitutional right to privacy in such circumstances. Also, a significant nonpecuniary benefit had been conferred by her suit on a large class of persons, namely, working women who became pregnant and unemployed. The woman pursued her appeal in forma pauperis, and was unable to bear the financial burden of the costs involved in the suit. Furthermore, her recovery of benefits amounted to very little money. Gunn v. Employment Development Dep't (1979, Cal App 2d Dist) 94 Cal App 3d 658, 156 Cal Rptr 584, 1979 Cal App LEXIS 1895.

The trial court has discretion to deny attorney fees pursuant to CCP § 1021.5 (private attorney general doctrine), on the ground that a plaintiff's personal stake in the outcome was not disproportionate to the burden of private enforcement, even where the litigation enforced an important right and conferred a significant benefit upon the public. Thus, the trial court did not abuse its discretion in denying attorney fees to an individual who prevailed in his action against a public utility for breach of contract, wrongful termination in violation of public policy, and invasion of privacy. In closing arguments, plaintiff's counsel argued that economic losses ranged from $1.1 million to $1.6 million, and suggested an award in the range of $1 million to $3 million for emotional distress damages. He further urged the jury to award punitive damages in the range of $10 million to $100 million. The settlement demand at the commencement of trial was $15 million, but, in the last week of trial, reduced to $3 million. This evidence supported the inference that, at the time important litigation decisions were being made, plaintiff's expected recovery was always more than enough to warrant incurring the costs of litigation ($1.2 million). It was appropriate for the trial court to rely on evidence of plaintiff's realistic expected recovery, rather than the amount actually recovered ($523,750). Even if the trial court considered only the lowest of these figures, i.e., the final $3 million settlement demand in the last week of trial, plaintiff's expected recovery was not so disproportionate to the fee incurred that it did not provide sufficient financial incentive to pursue the litigation. Satrap v. Pacific Gas & Electric Co. (1996, 1st Dist) 42 Cal App 4th 72, 49 Cal Rptr 2d 348, 1996 Cal App LEXIS 69.

In a proceeding in which the trial court granted workers a writ of mandate concerning the Labor Commissioner's policy with respect to the tolling of the statute of limitations for administrative claims for unpaid wages, the trial court did not abuse its discretion in determining the workers' award of attorney fees under CCP § 1021.5 (attorney fees to successful party in case resulting in public benefit). The court found that counsel did a good job, but that the hours claimed were excessive. Based on its experience, the trial court allowed 40 percent of the hours sought, set the lodestar amount, and then applied a multiplier of 1.5 to the lodestar sum in light of relevant factors, including the complexity of the issues and the benefit to the public. The trial court's action was not arbitrary. Not only did the court consider the amount of hours expended on the case, but it awarded fees to each of the attorneys based on the amount of their participation in the case. That the court chose to reduce the lodestar amount due to duplication of work among counsel did not reflect an abuse of discretion. Further, the trial court did not abuse its discretion in applying a multiplier to the lodestar amount, since it could not be concluded that the multiplier was arbitrary or that it bore no reasonable connection between the lodestar figure and the fee ultimately awarded. Cuadra v. Bradshaw (1997, 1st Dist) 53 Cal App 4th 869, 62 Cal Rptr 2d 102, 1997 Cal App LEXIS 209.

In an action by an employer against its workers' compensation insurer, the State Compensation Insurance Fund (SCIF), for tortious breach of the implied covenant of good faith and fair dealing, based on allegations that defendant's failure to estimate reasonable claim reserve levels resulted in plaintiff's paying higher premiums and receiving lower dividends, plaintiff was entitled to $333,319.65 in attorney fees and was not limited to fees on the B & P C § 17200 claim. The trial court did not see fit to apportion the fee award, and there was nothing in this case that persuaded the Court of Appeal that it was "clearly wrong." Notrica v. State Comp. Ins. Fund (1999, Cal App 2d Dist) 70 Cal App 4th 911, 83 Cal Rptr 2d 89, 1999 Cal App LEXIS 210, review denied (1999) 1999 Cal. LEXIS 4665, 99 D.A.R. 7207.

In an action by a football coach against a school district alleging a Brown Act violation and other causes of action,

the trial court abused its discretion in awarding attorney fees and costs under Gov C § 54960.5 without first apportioning out those fees and costs unrelated to the single Brown Act violation. Here the primary economic focus underlying the remaining 11 causes of action was wrongful termination and retaliatory firing. These causes of action and the Brown Act violation constituted two separate and distinct claims, one entitled to statutory fees and the other not. Not was the coach entitled to fees and costs under the private attorney general theory (CCP § 1021.5), since the primary focus of the litigation was personal. This was not a case where the plaintiff's expenses in bringing suit were disproportionate to his personal stake in the outcome, but rather one where the enforcement of the public interest was merely incidental to the obtaining of personal goals. People v. Jones (2000, Cal App 2d Dist) 82 Cal App 4th 663, 98 Cal Rptr 2d 724, 2000 Cal App LEXIS 590, review denied (2000, Cal) 2000 Cal LEXIS 8778.

In an action resulting in an injunction against off-duty drug testing of Caltrans employees on grounds that such testing violated their right to privacy, the trial court properly awarded attorney fees to plaintiffs under CCP § 1021.5, including the use of a 1.5 multiplier. The requirement of a substantial benefit to the public was met, since the case benefited all state employees who might be subject to drug testing, and there was no question that the financial burden of the litigation was disproportionate to plaintiffs' interest in the litigation. As to the multiplier, its application was supported by the fact that Caltrans continued to oppose the litigation even though plaintiffs offered to settle if Caltrans would follow its policy to test employees only while on duty. Edgerton v. State Personnel Bd. (2000, Cal App 1st Dist) 83 Cal App 4th 1350, 100 Cal Rptr 2d 491, 2000 Cal App LEXIS 766, review denied (2000, Cal) 2000 Cal LEXIS 9724.

In a class action lawsuit that was filed against a retailer for allegedly denying meal and rest breaks to its employees, the trial court properly denied a newspaper's request for attorney fees pursuant to CCP § 1021.5. The newspaper was not a party to the underlying action, and its motion to unseal court records was entirely unrelated to the lawsuit's objective, which was to challenge the retailer's labor practices. Savaglio v. Wal-Mart Stores, Inc. (2007, Cal App 1st Dist) 149 Cal App 4th 588, 57 Cal Rptr 3d 215, 2007 Cal App LEXIS 511, review denied (2007, Cal) 2007 Cal LEXIS 7293.

Award of attorney fees under CCP § 1021.5 in a class action to recover workers' necessary expenses from their employer was appropriate because the action benefited many workers; however, the amount of the award had to be reduced because equitable orders previously had been reversed on appeal, and any use of a multiplier on remand would have to be based on facts other than those triggering § 1021.5. Estrada v. FedEx Ground Package System, Inc. (2007, 2d Dist) 2007 Cal App LEXIS 1302.

In a dealer's class action in which a trial court awarded him attorney fees pursuant to Code Civ. Proc., § 1021.5, after finding that his casino employer had taken the tips given to its dealers and distributed a portion of that property to its agents, its shift managers, in violation of Lab. Code, § 351, the trial court did not err in finding that the lawsuit was brought to vindicate the public interests because not only did the current dealers benefit, but future dealers benefitted, as the trial court issued an injunction to prevent any policy requiring dealers to share their tips with shift managers, and the lawsuit also benefitted the public by preventing the casino from fraudulently taking money left as tips for the dealers from the public. However, because the trial court used the dealer's individual stake rather than the potential class recovery, the trial court had not used a proper method for assessing the element of disproportionate financial burden when it made its fee award. Grodensky v. Artichoke Joe's Casino (2009, 1st Dist) 2009 Cal App LEXIS 324.

15. -- --Public Employees

A judgment against a city and in favor of applicants for firefighter positions was reversed, insofar as it denied attorney fees to plaintiffs, and remanded for a determination whether they were entitled to fees under CCP § 1021.5. Though the record established that the action had "resulted in the enforcement of an important right affecting the public interest," and that a "significant benefit ha[d] been conferred on the general public," it did not disclose whether "[the] financial burden of private enforcement" was such as to make an attorney fee award appropriate under the rule that an award on the "private attorney general" theory is appropriate when the cost of the claimant's legal victory transcends his personal interest, i.e., when the necessity for pursuing the lawsuit has placed a burden on the plaintiff out of proportion

to his individual stake in the matter. Lucchesi v. City of San Jose (1980, Cal App 1st Dist) 104 Cal App 3d 323, 163 Cal Rptr 700, 1980 Cal App LEXIS 1680.

In a fireman's mandamus action to compel his city employer to pay him lost wages for the period of his wrongful discharge in which the trial court's denial of his petition for a writ of mandate was reversed on appeal, the fireman was entitled to attorney fees from the city under substantial benefit concepts and the private attorney general rule (CCP § 1021.5). The attorney fees were recoverable, where the appellate court ruled the fireman's discharge as a probationary employee on charges of stealing without any notice, opportunity to answer the charges, or hearing deprived him of his liberty guaranteed under the due process clause (U.S. Const., 14th Amend.), and where the appellate court's decision had an impact over a very wide area on virtually all employees in the public sector. The amount of attorney fees the fireman was entitled to under CCP § 1021.5, for attorney's services both at the trial and appellate level was a matter for the trial court's determination on remand to that court. Wilkerson v. Placentia (1981, 4th Dist) 118 Cal App 3d 435, 173 Cal Rptr 294, 1981 Cal App LEXIS 1662.

In a mandamus action by a civil service employee against the State Personnel Board in which the employee sought a writ of mandate directing the board to consider her applications for two higher civil service positions the board had previously rejected, the employee was entitled to reasonable attorney fees, even though the appellate court sustained the trial court's denial of the employee's petition for the writ where the appellate court reversed that part of the judgment denying the employee's request for a judicial declaration of the invalidity of the personnel policy the board had relied on in rejecting the applications. The employee was entitled to reasonable attorney fees under CCP § 1021.5 (providing for reasonable attorney fees in cases resulting in a public benefit), where an important public right was implicated and the appellate court remanded with directions to enter judgment declaring the personnel policy invalid for failure to comply with the Administrative Procedure Act. Ligon v. State Personnel Bd. (1981, Cal App 1st Dist) 123 Cal App 3d 583, 176 Cal Rptr 717, 1981 Cal App LEXIS 2082.

In granting a school district employee's petition for a writ of mandate compelling his reinstatement by the district to the position of school principal, the trial court erred in awarding plaintiff attorney fees under CCP § 1021.5. The facts of the case did not involve an important right affecting the public interest, as required for an award under that statute. Ellerbroek v. Saddleback Valley Unified School Dist. (1981, Cal App 4th Dist) 125 Cal App 3d 348, 177 Cal Rptr 910, 1981 Cal App LEXIS 2324.

Police officers who successfully challenged their reassignments to lower paying positions on grounds that they had not been afforded their appeal rights under the Public Safety Officers' Procedural Bill of Rights Act (Gov. Code, § 3300 et seq.) were entitled to recover attorney fees under the private attorney general doctrine (CCP § 1021.5), where the action resulted in securing for plaintiffs and many others the basic rights and protections of the act, which were matters of statewide concern, where a significant benefit had been conferred on the general public, and where the financial burden placed on plaintiffs was out of proportion to their personal stake in the case. Baggett v. Gates (1982) 32 Cal 3d 128, 185 Cal Rptr 232, 649 P2d 874, 1982 Cal LEXIS 215.

In an action by employees of a municipal fire department in which they successfully challenged the city's affirmative action program that resulted in reverse discrimination in the hiring and promotion of city employees, the trial court's failure to award plaintiffs attorney fees was reversible error, necessitating remand on appeal for further consideration in light of CCP § 1021.5, permitting attorneys fees in actions resulting in the enforcement of an important right affecting the public interest under certain circumstances, which was enacted during the pendency of the appeal. Hiatt v. City of Berkeley (1982, 1st Dist) 130 Cal App 3d 298, 181 Cal Rptr 661, 1982 Cal App LEXIS 1516.

An action by a police officers association seeking to invalidate three city charter amendments proposed by the city council and adopted by the voters, which concerned the terms and conditions of public employment, for failure of the council to comply with the "meet and confer" requirement (Gov. Code, § 3505) of the Meyers-Milias-Brown Act (Gov. Code, § 3500 et seq.), was an action which met the requirement of CCP § 1021.5. The police officers association was therefore entitled to recover attorney fees. People ex rel. Seal Beach Police Officers Ass'n v. City of Seal Beach (1984)

36 Cal 3d 591, 205 Cal Rptr 794, 685 P2d 1145, 1984 Cal LEXIS 205.

A teachers' association that successfully challenged the state's failure to fund the Teachers' Retirement Fund in accordance with former Ed C § 23401 et seq. (continuing appropriation statutes), was not entitled to an award of attorney fees pursuant to CCP § 1021.5 (private attorney general doctrine), where the necessity and financial burden of private enforcement were not such as to make an award appropriate. The large sums at issue would accrue to the direct benefit of fund members, a significant portion of whom were members of the association. In these unique circumstances, the magnitude of the benefit was such that the financial burden placed on the association was not out of proportion to the personal stake of its members. California Teachers Assn. v. Cory (1984, Cal App 3d Dist) 155 Cal App 3d 494, 202 Cal Rptr 611, 1984 Cal App LEXIS 2002.

A police officer who prevailed (on appeal) in his action against a city for back pay following his demotion without an opportunity for the administrative appeal mandated by Gov. Code, § 3304, subd. (b), was entitled to attorney fees under CCP § 1021.5 (private attorney general theory). The policeman's action vindicated rights under the policemen's bill of rights act, conferred a significant benefit on the general public, and the financial burden of prosecuting the case through two writ proceedings and two appeals was clearly out of proportion to the economic benefit the policeman gained. Henneberque v. City of Culver City (1985, Cal App 2d Dist) 172 Cal App 3d 837, 218 Cal Rptr 704, 1985 Cal App LEXIS 2566.

CCP § 1021.5, authorizes a court to award attorney fees to a successful party in an action resulting in the enforcement of an important right affecting the public interest if a significant benefit has been conferred on the general public or a large class of persons, the necessity and financial burden of private enforcement are such as to make the award appropriate, and such fees should not in the interest of justice be paid out of the recovery, if any. The statute applied to a proceeding brought by a teacher who was not a member of the union seeking review by writ of a decision concerning the rights of objecting nonmembers concerning involuntary service fees collected by the union from nonmembers. Cumero v. Public Employment Relations Bd. (1989) 49 Cal 3d 575, 262 Cal Rptr 46, 778 P2d 174, 1989 Cal LEXIS 1603.

A county employee who successfully challenged by administrative mandamus a county employees' retirement board denial of disability pension benefits and who was awarded his attorney fees therein under Gov. Code, § 31536, was not entitled to attorney fees pursuant to CCP § 1021.5 (private attorney general doctrine), on the board's appeal from the part of the judgment awarding the employee prejudgment interest. The employee was enforcing his individual right to interest on the damages award, and § 1021.5's policy of encouraging public interest lawsuits is not promoted by awarding fees to persons having strong personal economic interests in litigating matters. Austin v. Board of Retirement (1989, Cal App 2d Dist) 209 Cal App 3d 1528, 258 Cal Rptr 106, 1989 Cal App LEXIS 405, review denied (1989, Cal) 1989 Cal LEXIS 3246.

Sheriff's deputies and a sheriff's association who incurred $ 32,500 in attorney fees to bring an administrative appeal of misconduct findings were not entitled to attorney fees under Cal. Code Civ. Proc. 1021.5; the amount spent in attorney fees did not transcend the deputies' and the association's interest in the litigation. Caloca v. County of San Diego (2002, Cal App 4th Dist) 102 Cal App 4th 433, 126 Cal Rptr 2d 3, 2002 Cal App LEXIS 4694.

Where a reviewing court reversed a trial court's substantive order, an order awarding attorney fees under CCP § 1021.5 also had to be vacated. San Leandro Teachers Assn. v. Governing Board of the San Leandro Unified School Dist. (2007, 1st Dist) 2007 Cal App LEXIS 1415.

Where there was no evidence in the record to support a trial court's finding that three school psychologist employees were entitled to private attorney general attorney fees and no other statutory authority for those fees, there was thus no reasonable basis for an award of attorney fees under CCP § 1021.5, and accordingly the trial court's order awarding attorney fees based on the improper layoff of the employees by a city elementary school district, its superintendent, and its governing board (the district) was outside the scope of its discretion when considered in light of

the purposes and policy of the statute. Even assuming that the employees obtained enforcement of an important right to be laid off only in accordance with Ed C § 44955, a substantial benefit had not inured to the public or a large class of district employees, and because attorney fees were not authorized for layoffs initiated under Ed C § 44955, the trial court properly declined to award fees to the employees on that ground. Roybal v. Governing Bd. of the Salinas City Elementary School Dist. (2008, 6th Dist) 2008 Cal App LEXIS 184.

16. --Family Law Proceedings

A father's actions in establishing that the three-year period of limitations for liabilities created by statute under CCP, § 338, subd (1), applied to a county's action against him for reimbursement of child support did not result in the enforcement of an important right affecting the public interest within the meaning of CCP, § 1021.5, providing that a court may award attorney fees in an action which has resulted in the enforcement of an important right affecting the public interest, and thus the father was not entitled to attorney fees. Amie v. Superior Court (1979, Cal App 4th Dist) 99 Cal App 3d 421, 160 Cal Rptr 271, 1979 Cal App LEXIS 2441.

On appeal of an action by a parent to approve the compromise of her children's personal injury claims, in which the parent was successful in reversing the trial court's order requiring deposit of the compromise funds (Prob. Code, § 3611) in accounts without fixed maturity dates pursuant to local court policy, the parent was entitled to attorney fees under CCP § 1021.5 (attorney fees in cases benefiting public). The action served to promote the fundamental legislative goal of § 1021.5 of insuring that the funds be prudently invested. The action benefited all minors seeking the court's approval to dispose of compromise funds and to maximize their investment returns. Also, the children's benefit in bringing the action did not justify the costs they had incurred. Christensen v. Superior Court (1987, 4th Dist) 193 Cal App 3d 139, 239 Cal Rptr 143, 1987 Cal App LEXIS 1878.

In a dispute affirming second parent adoption procedure, the private attorney general doctrine did not permit an award of fees for legal services on appeal because the second parent had a strong, objectively ascertainable private interest and the trial court improperly focused on counsel's motivations and interests. Adoption of Joshua S. (2005, 4th Dist) 132 Cal App 4th 561, 33 Cal Rptr 3d 776, 2005 Cal App LEXIS 1401.

Attorney fees could not be awarded under CCP § 1021.5 against a birth mother who unsuccessfully challenged the adoption of her son by her former same-sex partner because she did nothing harmful to the public interest, although the case resulted in an important appellate decision clarifying the rights of same-sex adoptive parents. Adoption of Joshua S. (2008, Cal) 2008 Cal LEXIS 785.

17. --Health and Safety

A coalition of organizations, health care providers and taxpayers who successfully challenged the constitutionality of budget act restrictions on Medi-Cal abortion funding were entitled to recover their costs, including reasonable attorney fees pursuant to CCP § 1021.5 (private attorney general doctrine), even though the budget acts at issue prohibited the payment of court-awarded attorney fees unless specifically authorized by a statutory provision other than § 1021.5. Section 1021.5 remained as explicit statutory authority for a "private attorney general" fee award, and the budget act restrictions could not be read as an amendment by implication of such statute. Committee to Defend Reproductive Rights v. Cory (1982, 1st Dist) 132 Cal App 3d 852, 183 Cal Rptr 475, 1982 Cal App LEXIS 1670.

In an action seeking temporary and permanent injunctive relief against a reproductive counseling center, alleging false advertising and unfair business practices, the trial court erred in denying plaintiffs attorney fees under CCP § 1021.5 (private attorney general doctrine), on the ground that plaintiffs' failure to contact the district attorney before filing their complaint, and the district attorney's subsequent filing of a similar suit which was consolidated for trial with plaintiffs' action, precluded a finding of necessity of private enforcement. Although a private party acting as plaintiff in a public interest lawsuit is not, ipso facto, eligible for attorney fees in every case in which that party colitigates the action with a governmental entity, attorney fees are not foreclosed merely because the private plaintiff has not first

solicited the public entity to file suit or because the public entity initiates a similar action which is consolidated with the plaintiff's action. Committee to Defend Reproductive Rights v. Free Pregnancy Center (1991, 1st Dist) 229 Cal App 3d 633, 280 Cal Rptr 329, 1991 Cal App LEXIS 384.

In an abortion clinic's action against individuals and an anti-abortion group, for damages and an injunction against defendants' allegedly disruptive conduct on the clinic's property, in which the parties had stipulated to a judgment in plaintiff's favor, the trial court, in ruling on plaintiff's subsequent request for attorney fees under CCP § 1021.5 (private attorney general doctrine), properly found that plaintiff's action resulted in the enforcement of an important public right, thus satisfying the first element of the statute. The case involved a violation of the right of plaintiff's clients to choose whether to bear children, which is a fundamental right under the privacy guaranty of Cal. Const., art. I, § 1. Although the case also involved trespass to private property, that issue was inextricably tied to an important public right, since plaintiff's private property was entered upon for the purpose of disrupting the exercise of the right to have an abortion. Planned Parenthood of Santa Barbara, etc. v. Aakhus (1993, Cal App 2d Dist) 14 Cal App 4th 162, 17 Cal Rptr 2d 510, 1993 Cal App LEXIS 265, review denied (1993, Cal) 1993 Cal LEXIS 3060.

In an abortion clinic's action against individuals and an anti-abortion group, for damages and an injunction against defendants' allegedly disruptive conduct on the clinic's property, in which the parties had stipulated to a judgment in plaintiff's favor, the trial court, in subsequently ruling on plaintiff's request for attorney fees under CCP § 1021.5 (private attorney general doctrine), properly found that plaintiff's action conferred a significant benefit on the public, thus satisfying the second element of the statute, even though there was no evidence on how many women obtained abortions at the clinic. While fundamental constitutional rights are by nature individual rights, their enforcement benefits the entire public, and such benefit may be conceptual or doctrinal, rather than actual and concrete. The judgment conveyed a message that the right to oppose abortion does not include the right to burden the lawful exercise of the abortion right, thus benefiting all women of the state. Planned Parenthood of Santa Barbara, etc. v. Aakhus (1993, Cal App 2d Dist) 14 Cal App 4th 162, 17 Cal Rptr 2d 510, 1993 Cal App LEXIS 265, review denied (1993, Cal) 1993 Cal LEXIS 3060.

In an abortion clinic's action against individuals and an anti-abortion group, for damages and an injunction against defendants' allegedly disruptive conduct on the clinic's property, in which the parties had stipulated to a judgment in plaintiff's favor, the trial court, in subsequently ruling on plaintiff's request for attorney fees under CCP § 1021.5 (private attorney general doctrine), properly found that the cost of plaintiff's litigation was disproportionate to its individual stake in the outcome, thus satisfying the third element of the statute, even though plaintiff did have a business reason for maintaining the action. The district attorney had refused to prosecute defendants without a state court injunction, and plaintiff had obtained no monetary recovery. Moreover, plaintiff's interest in rendering reproductive medical care was inseparable from its clients' interests in receiving such care. Defendants' actions were not legitimate exercises of the free speech right, and the award was a reminder that the right is not unlimited and that legal liability may attach to acts that injure the rights of others. Planned Parenthood of Santa Barbara, etc. v. Aakhus (1993, Cal App 2d Dist) 14 Cal App 4th 162, 17 Cal Rptr 2d 510, 1993 Cal App LEXIS 265, review denied (1993, Cal) 1993 Cal LEXIS 3060.

The trial court did not err in awarding a clinic attorney fees under CCP § 1021.5 (attorney fees in cases resulting in public benefit). The clinic had brought an action against anti-abortion demonstrators for damages, injunctive relief, and attorney fees, arising from the demonstrators' confrontational conduct at the clinic. The parties stipulated to a judgment permanently enjoining the demonstrators from certain activities on the clinic's property, but left to the court the determination of the attorney fees issue. The award of attorney fees fulfilled all the requirements of § 1021.5. The action was brought to enforce an important right (the constitutional right to privacy), the clinic's action conferred a significant benefit on the public, and the clinic was required to bear the burden of litigation. The clinic was a successful party, notwithstanding the stipulated judgment in which the demonstrators admitted no liability, since the clinic obtained the injunctive relief it sought. Moreover, the stipulated judgment did not chill the demonstrators' free speech rights, since the clinic's private property was not open to the general public. Planned Parenthood of Santa Barbara, etc. v. Aakhus (1993, Cal App 2d Dist) 14 Cal App 4th 162, 17 Cal Rptr 2d 510, 1993 Cal App LEXIS 265, review denied (1993, Cal)

1993 Cal LEXIS 3060.

In granting a women's health care organization summary judgment in the organization's action against a city for declaratory and injunctive relief, the trial court did not err in denying the organization attorney fees under the private attorney general doctrine (CCP § 1021.5). The organization had applied to the city for a grant to construct a new clinic. The city approved the grant on the condition that no abortions be performed at the new clinic. The organization brought its action seeking an order that the grant condition was unconstitutional and enjoining the city from imposing abortion-related restrictions. Although the controversy touched upon the constitutional right of privacy, the interests of the organization's patients and the general public were incidental to the organization's primary objective of obtaining grant money. No evidence was presented that the litigation transcended the organization's financial interests and imposed a burden disproportionate to its individual stake in the matter. Planned Parenthood v. City of Santa Maria (1993, 2nd Dist) 16 Cal App 4th 685, 20 Cal Rptr 2d 391, 1993 Cal App LEXIS 626.

In an action by a medical patient for damages caused by dissemination of his positive HIV status, the trial court erred in granting the request of the administrator of the patient's estate for attorney fees pursuant to CCP § 1021.5 (private attorney general doctrine), as to all defendants, where defendants had prevailed on a motion for summary judgment, where the patient then died, and where on appeal the summary judgment was affirmed except as to a single cause of action, for violation of the right of privacy, against defendant physician. For an award of attorney fees pursuant to § 1021.5, a party must be a "successful party." Although to achieve that status the party need not achieve a favorable final judgment, the patient confined his tort action to a prayer for civil damages; he did not request a declaration of privacy rights of other similarly situated people, nor did he seek injunctive relief to protect such rights. There was no change in the conduct of defendant lawyers or defendant insurance company resulting from the affirmance of the summary judgment in their favor, and thus the administrator was not a "successful party" as to them. Urbaniak v. Newton (1993, 1st Dist) 19 Cal App 4th 1837, 24 Cal Rptr 2d 333, 1993 Cal App LEXIS 1137, modified (1993, 1st Dist) 20 Cal App 4th 1001a, 1993 Cal App LEXIS 1242.

In an action by a medical patient for damages caused by dissemination of his positive HIV status, the trial court erred in granting the request of the administrator of the patient's estate for attorney fees pursuant to CCP § 1021.5 (private attorney general doctrine), as to defendant physician, after all defendants prevailed on a motion for summary judgment, the patient died, and on appeal the summary judgment was affirmed except as to a single cause of action, for violation of the right of privacy, against defendant physician. Defendant physician then prevailed at the subsequent trial, and the administrator appealed. Although a case need not be completely final prior to an award of § 1021.5 fees, the benefit obtained must be "secure." Nothing in the way of relief to the estate was secure following issuance of the Court of Appeal's opinion reversing the entry of a summary judgment. Such reversal leaves the parties in the same position they would have occupied if they had simply defeated the defendants' motion in the trial court. Merely reversing a summary judgment and remanding a matter for trial does not establish the showing necessary to support an award of fees under § 1021.5. Urbaniak v. Newton (1993, 1st Dist) 19 Cal App 4th 1837, 24 Cal Rptr 2d 333, 1993 Cal App LEXIS 1137, modified (1993, 1st Dist) 20 Cal App 4th 1001a, 1993 Cal App LEXIS 1242.

The trial court did not abuse its discretion in awarding attorney fees under the private attorney general doctrine (CCP § 1021.5) to a women's health clinic that obtained a permanent injunction restricting the activities of anti-abortion protesters at the clinic. The clinic's action resulted in the enforcement of an important right affecting the public interest and a significant benefit was conferred on a large class of persons. Also, the clinic did not have a sufficient financial interest in the litigation to preclude an award of attorney fees under § 1021.5. Its financial burden of litigation exceeded its net income for a three-year period. Moreover, that the clinic did not seek to recover lost revenues, but sought relief in a representative capacity on behalf of women attempting to obtain abortion services at the clinic, demonstrated that its primary motive in pursuing the action was not to protect its personal financial interest, but to ensure its ability to continue providing medical and abortion services to women. Further, the protesters' status as private individuals did not preclude the award of attorney fees. Feminist Women's Health Center v. Blythe (1995, Cal App 3d Dist) 32 Cal App 4th 1641, 39 Cal Rptr 2d 189, 1995 Cal App LEXIS 218, cert den Reali v. Feminist Women's Health Ctr. (1995) 516 US 987, 133 L Ed 2d 423, 116 S Ct 514, 1995 US LEXIS 7837.

An award of attorney fees under the private attorney general doctrine (CCP § 1021.5) to a women's health clinic that obtained a permanent injunction restricting the activities of anti-abortion protesters at the clinic did not operate to chill the protesters' rights to free speech, since the protesters' conduct exceeded the protection afforded by U.S. Const., 1st Amend., and by Cal. Const., art. I, § 2, and interfered with the exercise by others of the constitutional right to abortion. The First Amendment does not offer a sanctuary for violators. The injunction was sought because the protesters obstructed access to the clinic and its parking lot, and harassed clinic patients, and, after a temporary restraining order and a preliminary injunction had been issued, the clinic attempted to settle the matter by stipulating to an injunction that would be less objectionable to the protesters. Thus, the attorney fees were necessitated by the protesters' refusal to limit their conduct to that protected by the federal and state Constitutions. Further, the attorney fee award did not operate to chill the protesters' rights to freedom of speech because it did not prevent them from continuing to demonstrate and exercise their free speech rights within the lawful limits set forth in the injunction. Feminist Women's Health Center v. Blythe (1995, Cal App 3d Dist) 32 Cal App 4th 1641, 39 Cal Rptr 2d 189, 1995 Cal App LEXIS 218, cert den Reali v. Feminist Women's Health Ctr. (1995) 516 US 987, 133 L Ed 2d 423, 116 S Ct 514, 1995 US LEXIS 7837.

An award of attorney fees under the private attorney general doctrine (CCP § 1021.5) to a women's health clinic that obtained a permanent injunction restricting the activities of anti-abortion protesters at the clinic was not improper, even though the trial court did not parse out the legal from the illegal conduct or fix the responsibility individually for illegal acts and the proportionate impact of illegal conduct on plaintiff's litigation costs. The clinic commenced the action to enjoin the protesters' unlawful and unprotected conduct, the injunction granted was proper, and all of the protesters engaged in the unprotected activities that caused the clinic to seek the injunction. A trial court has discretion to apportion an attorney fee award under § 1021.5 based on the relative culpability of the defendants. However, because the clinic was compelled to retain counsel to secure an order enjoining unprotected conduct engaged in by all of the protesters, it was proper to hold all of them accountable for the attorney fees. Feminist Women's Health Center v. Blythe (1995, Cal App 3d Dist) 32 Cal App 4th 1641, 39 Cal Rptr 2d 189, 1995 Cal App LEXIS 218, cert den Reali v. Feminist Women's Health Ctr. (1995) 516 US 987, 133 L Ed 2d 423, 116 S Ct 514, 1995 US LEXIS 7837.

An award of attorney fees under the private attorney general doctrine (CCP § 1021.5) to a women's health clinic that obtained a permanent injunction restricting the activities of anti-abortion protesters at the clinic was not improper, despite the protesters' claim that prior to the injunction's prohibition of such, they had believed they had a constitutional right to conduct their activities in the clinic's private parking lot. The activities engaged in by the protesters were not established constitutional rights at the time of their demonstrations. There were no cases holding that private property similar to the clinic's parking lot is a public forum which must be made available for the exercise of free speech rights. Nor was there any case law that would have led the protesters to believe they had a constitutional right to ignore the "no trespassing" signs posted on the parking lot and to enter the lot to convey their anti-abortion message. Further, even if they honestly thought the parking lot was a quasi-public forum, they had no basis to believe they had a constitutional right to enter the lot to interfere with the conduct of the clinic's business and use of the property, to impede the movement of customers or business tenants, to block access, to create noisy disturbances, or to harass uninterested patrons. Feminist Women's Health Center v. Blythe (1995, Cal App 3d Dist) 32 Cal App 4th 1641, 39 Cal Rptr 2d 189, 1995 Cal App LEXIS 218, cert den Reali v. Feminist Women's Health Ctr. (1995) 516 US 987, 133 L Ed 2d 423, 116 S Ct 514, 1995 US LEXIS 7837.

The trial court did not err in awarding a women's health clinic full compensation for its attorney fees under the private attorney general doctrine (CCP § 1021.5), after the clinic obtained a permanent injunction restricting the activities of anti-abortion protesters, even though the clinic did not prevail in its attempt to increase a speech-free zone to an area within the line of sight of the front and rear entrances to the medical building in which the clinic was located. The clinic did not avidly pursue a line of sight restriction, and indicated it readily would accept a more limited speech-free zone. In its trial brief, the clinic even suggested the court "put the picketers where the women can see them and voluntarily approach them if interested (away from the front of the building)." Thus, the trial court reasonably could have concluded that an insignificant portion of plaintiff's attorney fees were expended in litigating a line of sight

restriction. Although a reduced fee award is appropriate when a claimant achieves only limited success, the clinic got virtually all it asked for. Feminist Women's Health Center v. Blythe (1995, Cal App 3d Dist) 32 Cal App 4th 1641, 39 Cal Rptr 2d 189, 1995 Cal App LEXIS 218, cert den Reali v. Feminist Women's Health Ctr. (1995) 516 US 987, 133 L Ed 2d 423, 116 S Ct 514, 1995 US LEXIS 7837.

The trial court erred in awarding attorney fees under the private attorney general doctrine (CCP § 1021.5) to a women's health clinic that obtained a permanent injunction restricting the activities of anti-abortion protesters at the clinic, to the extent the award imposed fees on defendants who had not answered the clinic's complaint and against whom defaults had been entered. Under CCP § 580, a trial court has no jurisdiction to grant a plaintiff more relief against a defaulting defendant than is asked for in the complaint. However, the clinic did not demand attorney fees in its complaint, and it failed to request attorney fees as costs in its requests to enter default. If the clinic believed it was entitled by statute to attorney fees, it had to allege that fact in its complaint and demand the fees in the prayer in order to obtain such relief against any defaulting defendants. Moreover, the rule that a request for attorney fees under CCP § 1021.5, need not be made until after the judgment is final does not apply to a defaulting defendant. Feminist Women's Health Center v. Blythe (1995, Cal App 3d Dist) 32 Cal App 4th 1641, 39 Cal Rptr 2d 189, 1995 Cal App LEXIS 218, cert den Reali v. Feminist Women's Health Ctr. (1995) 516 US 987, 133 L Ed 2d 423, 116 S Ct 514, 1995 US LEXIS 7837.

In an action for libel and intentional interference with business brought by obstetrician-gynecologists against an anti-abortion protester who distributed a flier labeling them as "baby killers" and alleging that they specialized in late-term abortions, the trial court did not abuse its discretion in denying defendant's request for attorney fees pursuant to CCP § 1021.5, which provides for an award of attorney fees to a successful party who enforced an important right affecting the public interest. Defendant failed to show that his defense actually resulted in the enforcement of his or anyone else's free speech rights; thus, defendant did not enforce an important right affecting the public interest. Furthermore, the trial court's denial of defendant's motion to strike the complaint pursuant to CCP § 425.16, demonstrated that plaintiffs' evidence was sufficient to show that defendant's conduct fell outside the protective scope of the first amendment, and gave rise to meritorious claims for monetary relief. To the extent defendant could claim he succeeded in vindicating his free speech rights, the trial court was justified in finding that his purported success was very narrow, benefiting only himself. Family Planning Specialists Medical Group, Inc. v. Powers (1995, 1st Dist) 39 Cal App 4th 1561, 46 Cal Rptr 2d 667, 1995 Cal App LEXIS 1098, modified (1995, 1st Dist) 40 Cal App 4th 1632a, 1995 Cal App LEXIS 1272.

Contractor was entitled to attorney fees in an asbestos exposure lawsuit because he prevailed on a significant issue by obtaining injunctive relief; moreover, because litigation costs far exceeded the estimated value of the case, the contractor lacked sufficient personal incentive to bring the litigation. Lyons v. Chinese Hospital Assn. (2006) 136 Cal App 4th 1331, 39 Cal Rptr 3d 550, 2006 Cal App LEXIS 236.

Because a contractor who brought an asbestos exposure lawsuit against a property owner obtained no monetary recovery, the "interest of justice" provision of CCP § 1021.5, subd. (c), was not relevant to determining whether he should receive an award for attorney fees incurred in obtaining injunctive relief, and the trial court erred in considering it. Lyons v. Chinese Hospital Assn. (2006) 136 Cal App 4th 1331, 39 Cal Rptr 3d 550, 2006 Cal App LEXIS 236.

In a case in which a touch-up paint manufacturer successfully defended against plaintiff's allegations that the manufacturer had violated Proposition 65' s warning requirement, the trial court did not abuse its discretion by denying an award of attorney fees to the manufacturer pursuant to CCP § 1021.5 based upon a finding that the manufacturer did not confer a significant benefit upon the public. The record indicated that the principal objective and consequence of the defense of the Proposition 65 suit was to advance or vindicate the manufacturer's economic interests. DiPirro v. Bondo Corp. (2007, Cal App 1st Dist) 153 Cal App 4th 150, 62 Cal Rptr 3d 722, 2007 Cal App LEXIS 1157, modified (2007, Cal App 1st Dist) 2007 Cal App LEXIS 1297.

17.5. --Insurance

In an action against insurers under the Unfair Competition Law (UCL), B & P C §§ 17200 et seq., the trial court's finding that the lodestar fees submitted by plaintiff's attorney were reasonable and should be increased by a multiplier of 1.5 was within its discretion, even though plaintiff originally sought restitution but obtained only injunctive relief. Krumme v. Mercury Ins. Co. (2004, Cal App 1st Dist) 123 Cal App 4th 924, 20 Cal Rptr 3d 485, 2004 Cal App LEXIS 1832, review denied Krumme v. Mercury Insurance Co. (2005, Cal) 2005 Cal LEXIS 597.

Insurance commissioner, as the conservator of the insolvent insurer, could recover attorney fees under the insurer's private contracts with defendants and the business of insurance was affected with a public interest for purposes of CCP § 1021.5. Low v. SDI Vendome (2003, CD Cal) 2003 US Dist LEXIS 27603.

18. --Land Use; Zoning; Environmental Protection

In an action by a private association against a city in which plaintiffs obtained a judgment ruling that because a city had not adopted an open space plan as required by the Open Space Lands Act (Gov C §§ 65560-65570), and therefore could not take any action to acquire, regulate, or restrict open space land or to approve a subdivision map, the trial court committed reversible error in not evaluating plaintiff's motion for attorney fees under the private attorney general's theory in terms of the factors specified in CCP § 1021.5, which authorizes attorney fees in any action which results in the enforcement of an important right affecting the public interest. Save El Toro Asso. v. Days (1979, 1st Dist) 98 Cal App 3d 544, 159 Cal Rptr 577, 1979 Cal App LEXIS 2298.

Under CCP § 1021.5, providing for the award of attorney fees to a successful litigant in actions vindicating the public interest, a landowner whose action succeeded in setting aside a building permit issued for the construction of a manufacturing complex in a combined zoning district with classifications of heavy industrial and scenic highway, without the county's preparation and consideration of an environmental impact report, was entitled to an award of attorney fees. Starbird v. County of San Benito (1981, Cal App 1st Dist) 122 Cal App 3d 657, 176 Cal Rptr 149, 1981 Cal App LEXIS 2058.

In a mandamus proceeding challenging the legality of an environmental impact report and seeking to set aside a city council's certification thereof, the trial court properly denied plaintiffs' request for attorney fees pursuant to CCP § 1021.5 (private attorney general doctrine), where plaintiffs prevailed only on a technical point and where they did not present adequate evidence that a public interest was affected. Thus, it could not be said that a significant benefit had been conferred on the general public or a large class of persons. Stevens v. City of Glendale (1981, Cal App 2d Dist) 125 Cal App 3d 986, 178 Cal Rptr 367, 1981 Cal App LEXIS 2386.

Owners of beachfront property who successfully challenged a permit condition which required them to dedicate a lateral easement for public access were not entitled to appellate attorney fees under CCP § 1021.5 (private attorney general doctrine). The dismissal of defendant Coastal Commission's appeal obviated the need for any further action on the merits. Additionally, trial counsel had requested fees only under Gov. Code, § 800 (costs of suit challenging administrative action), and the trial court therefore made no findings on the existence of the criteria set forth in CCP § 1021.5. Moreover, the record demonstrated that the primary effect of the judgment was to invalidate the particular permit condition and the decision vindicated only the rights of the property owners of the single parcel at issue; such did not result in conferring a "significant benefit" on a large class of persons, as required by CCP § 1021. 5 Pacific Legal Foundation v. California Coastal Com. (1982) 33 Cal 3d 158, 188 Cal Rptr 104, 655 P 2d 306, 1982 Cal LEXIS 262.

In a proceeding in which the trial court granted a writ of mandamus setting aside the decision of a city council to issue an oil company a conditional use permit allowing the company to drill an exploratory core hole, based solely on a negative declaration (Cal. Admin. Code, tit. 14, § 15083) rather than an environmental impact report (Cal. Admin. Code, tit. 14, § 15084, subd. (b)), the trial court did not abuse its discretion in refusing to grant petitioner's motion for attorney fees sought pursuant to CCP § 1021.5, providing for the award of attorney fees to a successful litigant in an action resulting in the enforcement of an important right affecting the public interest. Although the considerations inherent in the California Environmental Liability Act of 1970, under the provisions of which the case was commenced,

constitute important rights affecting the public interest, the trial court expressly found that the litigation neither conferred a significant benefit on a large class of persons nor imposed a financial burden out of proportion to the benefits received, contrary to the statutory provisions. The trial court considered evidence presented on the motion, made findings, and based on those findings, resolved the motion adversely to petitioner. The trial court's ruling represented a pure act of judicial discretion and there was no abuse of that discretion since the ruling was not clearly wrong. Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles (1982, Cal App 2d Dist) 134 Cal App 3d 491, 184 Cal Rptr 664, 1982 Cal App LEXIS 1789.

In a successful action against a regional planning department to compel compliance with the Subdivision Map Act (Gov. Code, § 66410 et seq.) in which plaintiffs sought attorney fees pursuant to CCP § 1021.5 (private attorney general doctrine), the trial court did not err in admitting evidence of attorney fees awarded to plaintiffs' counsel in other public interest litigation, which evidence included the reasonable value of the attorneys' services in each case. The basic hourly rates sought by and awarded to counsel in the other cases were the basic rates charged by lawyers in the firm. Factors such as the novelty of the issue and the skill displayed were not part of the basic hourly rate and were not included in the evidence presented to the trial court. As such, the figures were relevant, particularly in determining the reasonable value of services rendered by a public interest law firm. In any event, the trial court did not rely on fees awarded in other cases in reaching its decision. Margolin v. Regional Planning Com. (1982, 2nd Dist) 134 Cal App 3d 999, 185 Cal Rptr 145, 1982 Cal App LEXIS 1871.

A trial court has authority to award attorney fees to the successful party in an action which has resulted in the enforcement of an important right affecting the public interest if the court makes findings that a significant benefit has been conferred on the general public, that the financial burdens of private enforcement are such as to make the award appropriate, and that such fees should not in the interest of justice be paid out of recovery. Thus, in a successful mandamus action by the owners of timberland against a county, challenging the county's refusal to grant timberland preserve zoning status under the Forest Taxation Reform Act of 1976 (FTRA) (Gov. Code, § 51110 et seq.) to their property, which refusal was based on the owners' failure to obtain a county use permit for commercial harvesting of the timber, the trial court properly exercised its discretion in awarding the owners attorney fees against the county under the private attorney general fee doctrine (CCP § 1021.5). The proper application of the FTRA by each county is integral to the State's plan for protecting valuable forest resources, and the right of the timberland owner to the tax benefits under the FTRA for timberland preserve zoned property bears a significant relationship to the legislative goal of the FTRA. Moreover, timberland preserve zoning of the owners' large parcel, together with other parcels eligible for timberland preserve zoning, will necessarily result in scenic and environmental benefits and a potential source of timber to the general public because the owners are restricted to uses compatible with the growing and harvesting of timber (Gov. Code, § 51111). Finally, the owners were the moving force in securing the benefits which the county had a statutory duty to provide for the good of the general public. State of California v. County of Santa Clara (1983, Cal App 1st Dist) 142 Cal App 3d 608, 191 Cal Rptr 204, 1983 Cal App LEXIS 1668.

In an administrative mandamus proceeding by an Audubon society challenging the validity of a county board of supervisor's approval of a site plan for a public cemetery and the adequacy of an environmental impact report certified by the board, the trial court did not abuse its discretion in awarding attorney fees to the society, as the successful party, under CCP § 1021.5, despite the county's claim that the board did not "totally disregard" statutory requirements, and did not act in bad faith. Litigation brought to enforce the provisions of the California Environmental Quality Act and compliance with planning and zoning laws involves important rights affecting the public interest, and the private attorney general theory as codified in § 1021.5 applies to such suits. Whether or not the county acted in good faith was irrelevant; § 1021.5 was intended to encourage public interest litigation by providing compensation to successful counsel. San Bernardino Valley Audubon Society, Inc. v. County of San Bernardino (1984, 4th Dist) 155 Cal App 3d 738, 202 Cal Rptr 423, 1984 Cal App LEXIS 2027.

In an administrative mandamus proceeding by an Audubon society challenging the validity of a county board of supervisor's approval of a site plan for a public cemetery and the adequacy of the environmental impact report certified by the board, the trial court's award of attorney fees under CCP § 1021.5 (award of attorney fees to successful party in

action to enforce important public right), was not excessive, though the court used hourly rates in excess of the society's counsel's standard billing rates to compute the amount of the award. The society suggested hourly rates at $110 and $90 for its two counsel, and there was evidence that these were reasonable rates for similar work in the community. Using these rates, the society figured the total "lodestar" amount to be $14,575. Then, taking into account established guidelines, the society suggested a multiplier of 1.5, requesting a total of $21,663 in attorney fees. The trial court awarded $20,796. Although the judgment was not supported by findings, because the amount requested was appropriate and the court's award was well within that amount, the amount was not excessive, and although the society did not prevail on its third cause of action it would be presumed that the discrepancy between the amount requested and the amount awarded represented the amount the court attributed to the work done on the third cause of action, and that the court properly deducted that amount from the total award. San Bernardino Valley Audubon Society, Inc. v. County of San Bernardino (1984, 4th Dist) 155 Cal App 3d 738, 202 Cal Rptr 423, 1984 Cal App LEXIS 2027.

In an administrative mandamus proceeding by an Audubon society challenging the validity of a county board of supervisor's approval of a site plan for a public cemetery and the adequacy of the environmental impact report certified by the board, the trial court did not err in requiring the cemetery developer, as real party in interest, to share in paying the attorney fees awarded to the society. CCP § 1021.5, authorizing an award of attorney fees to a successful party in an action resulting in the enforcement of an important right affecting the public interest, expressly states a court may award attorney fees to a successful party against one or more opposing parties. The developer was a major party, actively litigating from the inception of the action in order to protect its interests. As the real party in interest, it had the most to gain. When a private party is a real party in interest and actively participates in litigation along with the governmental agency, it is fair for that party to bear half the fees. San Bernardino Valley Audubon Society, Inc. v. County of San Bernardino (1984, 4th Dist) 155 Cal App 3d 738, 202 Cal Rptr 423, 1984 Cal App LEXIS 2027.

In an action by a concerned citizen against county agencies and officials with regard to the county's failure to properly revise its general plan as required by the Government Code (Gov. Code, §§ 65300.7, 65301.5, 65302.1 and 65302.6), the trial court did not abuse its discretion in denying the citizen attorney fees under CCP § 1021.5, providing for attorney fees in cases resulting in the enforcement of an important right affecting the public interest (private attorney general concept). No important right affecting the public interest had been vindicated, even though the court found that the county failed to properly revise its general plan. Attorney fees under § 1021.5 will not be awarded unless the plaintiff seeking such fees had reasonably endeavored to enforce the important right affecting the public interest without litigation and its attendant expense. Thus, before commencing his action, a "private attorney general" such as plaintiff must be required reasonably to point out to the responsible county official or administrative or legislative body such a claimed shortcoming of a general plan, so as to avoid such public expense. Grimsley v. Board of Supervisors (1985, 1st Dist) 169 Cal App 3d 960, 213 Cal Rptr 108, 1985 Cal App LEXIS 2340.

In a mandamus proceeding in which two private citizens and a nonprofit corporation obtained a writ of mandate compelling a city to rescind its approval of a subdivision map for a subdivision bordering on a navigable river, on the ground that the offsite easements for public parking and access to the river provided by the developer did not comply with the requirements of Gov. Code, §§ 66478.1-66478.14, relating to public access to public resources, the trial court did not abuse its discretion in awarding petitioners attorney fees under the "private attorney general" doctrine (CCP § 1021.5). The purpose of the private attorney general doctrine is to encourage suits effectuating a strong public policy, which purpose was advanced by the trial court's award. The Legislature has expressed its intent to implement and extend the state constitutional right of access to the rivers of California. (Cal. Const., art. X, § 4; Gov. Code, §§ 66478.1-66478.3.) When a local agency, like the city, fails to enforce this law, private suits like the present one are the only practical way to effectuate the policy, so attorney fee awards are appropriate. Kern River Public Access Com. v. City of Bakersfield (1985, Cal App 5th Dist) 170 Cal App 3d 1205, 217 Cal Rptr 125, 1985 Cal App LEXIS 2370.

In a mandamus proceeding in which two private citizens and a nonprofit corporation obtained a writ of mandate compelling a city to rescind its approval of a subdivision map for a subdivision bordering on a navigable river, on the ground that the offsite easements for public parking and access to the river provided by the developer did not comply with the requirements of Gov. Code, §§ 66478.1-66478.14, relating to public access to public resources, the judgment

conferred a "significant benefit" on the public, thus supporting an award of attorney fees under the private attorney general doctrine (CCP § 1021.5). There was an examination and enforcement of the public's right of access to the river's banks within the subdivision. This would establish a precedent for future development along the river. Having been appealed, the case would have a significant benefit of clarifying the law statewide. In addition, the city council would be ordered to comply with the law by making appropriate findings on safety aspects of a public easement, another significant benefit. Kern River Public Access Com. v. City of Bakersfield (1985, Cal App 5th Dist) 170 Cal App 3d 1205, 217 Cal Rptr 125, 1985 Cal App LEXIS 2370.

Environmental organizations that prevailed on two of their claims on appeal from a trial court order denying their petition for a writ of mandate challenging a county's approval of a development plan and environmental impact report were entitled to an award of attorney fees under CCP § 1021.5 (case resulting in public benefit). Sierra Club v. Contra Costa County (1992, Cal App 1st Dist) 10 Cal App 4th 1212, 13 Cal Rptr 2d 182, 1992 Cal App LEXIS 1299.

In an action by a property owner challenging the adequacy of an environmental impact report (EIR) prepared in connection with a landfill expansion, in which the landowner prevailed as to some issues (failure of the EIR to adequately address the issue of water quality and inadequacy of the mitigation monitoring plan), the landowner's property interests nevertheless constituted grounds for denial of an award of attorney fees under the private attorney general doctrine (CCP § 1021.5). Before the hearing in the case, the county already was under notice that it must prepare a more detailed analysis of the water impacts, so that the judgment in the landowner's favor did not itself confer a public benefit. It was also reasonable to view the requirement of the judgment that the responsible enforcement agent be identified as not significant within the meaning of the private attorney general statute. The trial court also reasonably assessed the landowner's private interest in the litigation. Christward Ministry v. County of San Diego (1993, 4th Dist) 13 Cal App 4th 31, 16 Cal Rptr 2d 435, 1993 Cal App LEXIS 121.

The private attorney general theory authorizes an award of attorney fees when (1) the action has resulted in the enforcement of an important right affecting the public interest, (2) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, and (3) the necessity and financial burden of private enforcement are such as to make the award appropriate. The trial court, using its traditional equitable discretion, must realistically assess the litigation and determine, from a practical perspective, whether the action served to vindicate an important right so as to justify an attorney fee award under a private attorney general theory. Here the trial court did not abuse its discretion in failing to award attorney fees to a landowner whose actions resulted in the staying of permits allowing the construction of a large building on adjacent property due to the city's failure to comply with its own planning code. While such result was admirable, it was incidental to the landowner's desire not to have an unsightly structure in his view. Williams v. San Francisco Bd. of Permit Appeals (1999, 1st Dist) 71 Cal App 4th 442, 83 Cal Rptr 2d 756, 1999 Cal App LEXIS 327.

Following approval by the California Coastal Commission of a local coastal program (LCP) for a large coastal development plan, several interested parties and public interest groups filed a petition for a writ of mandate challenging the LCP, and named the commission, landowners, and others as real parties in interest. The trial court did not abuse its discretion in awarding plaintiffs attorney fees under CCP § 1021.5 and allocating payment of fees between land owners and the commission. Although defendant land owners argued it was improper to award fees where the commission and not they made inadequate findings, both defendants vigorously defended the commission's findings in the trial court and on appeal. Although the commission contended that the imposition of attorney fees imposed an undue hardship on it, this was not a factor which courts are required to consider in awarding attorney fees against a public agency. Bolsa Chica Land Trust v. Superior Court (1999, Cal App 4th Dist) 71 Cal App 4th 493, 83 Cal Rptr 2d 850, 1999 Cal App LEXIS 332.

An order denying a motion for attorneys' fees under CCP § 1021.5 is appealable. An award of attorney fees under § 1021.5 lies within the trial court's discretion and will not be reversed on appeal absent a showing of abuse. As applied, this rule means that there should be no reversal unless the record establishes there is no reasonable basis for the trial court's action. Here, where plaintiff property owner had unsuccessfully sought a stay order to prevent construction of an

apartment building next to his Victorian home, the trial court did not abuse its discretion in denying plaintiff's motion for attorney fees. While plaintiff's actions had conferred a benefit on his neighborhood and, arguably, city residents in general, he also had a large personal stake in the matter in preventing construction of a structure which was incompatible with the Victorian character of his neighborhood. As a consequence, the ultimate result of requiring the city to comply with its own Planning Code, while admirable, was incidental to plaintiff's desire not to have the unsightly structure in his view. Williams v. San Francisco Bd. of Permit Appeals (1999, 1st Dist) 74 Cal App 4th 961, 88 Cal Rptr 2d 565, 1999 Cal App LEXIS 817.

In a successful action against landowners and an irrigation district to declare a public easement for use of a road along the side of an irrigation canal, the trial court properly awarded attorney's fees pursuant to CCP § 1021.5, since the right to public ownership of public property is an important public right and the benefit conferred was significant enough to warrant an award. The measure of the benefit of maintaining public access to a trail segment is far more than the mere segment viewed in isolation. Friends of the Trails v. Blasius (2000, Cal App 3d Dist) 78 Cal App 4th 810, 93 Cal Rptr 2d 193, 2000 Cal App LEXIS 140, review denied (2000, Cal) 2000 Cal LEXIS 4954.

In an environmental land use dispute, the trial court abused its discretion in denying plaintiffs' motions for attorney fees under the private attorney general theory (CCP § 1021.5), improperly concluding that they had failed to show their financial burden in bringing the suit was out of proportion to their financial interest in the suit. The plaintiffs' nonfinancial interests, including their aesthetic interests, were a relevant factor to consider in whether to award attorney fees under § 1021.5. Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors (2000, 3rd Dist) 79 Cal App 4th 505, 94 Cal Rptr 2d 205, 2000 Cal App LEXIS 237.

An aesthetic or environmental interest will not be considered sufficient to block an award of attorney fees under the "financial burden" criterion of the private attorney general theory (CCP § 1021.5) unless certain conditions are met. That interest must be specific, concrete and significant, and these attributes must be based on objective evidence. For an aesthetic or environmental interest to block an award of attorney fees under the "financial burden" criterion, that interest must function essentially in the same way in the comparative analysis as a financial interest, clearly an objective interest. A subjective, vaguely grounded aesthetic interest, even if "heartfelt," will not be considered sufficient; nor will a mere abstract interest in aesthetic integrity or environmental preservation suffice to block an award of attorney fees. Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors (2000, 3rd Dist) 79 Cal App 4th 505, 94 Cal Rptr 2d 205, 2000 Cal App LEXIS 237.

For purposes of awarding attorney fees under the private attorney general theory (CCP § 1021.5), a so-called "nimby" ("not in my backyard") personal interest does not automatically disqualify the party asserting it from meeting the "financial burden" criterion of § 1021.5(b). Under the legal standard regarding an aesthetic or environmental interest, there must be a specific and concrete aesthetic or environmental interest as demonstrated by objective evidence, the interest functioning essentially in the same way in the comparative analysis as a financial interest. Section 1021.5, by its design, forces "nimby" parties to look beyond their parochial interests to the greater public good. Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors (2000, 3rd Dist) 79 Cal App 4th 505, 94 Cal Rptr 2d 205, 2000 Cal App LEXIS 237.

An environmental organization that prevailed on a writ petition challenging an environmental impact report (EIR) and then unsuccessfully challenged the subsequent EIR brought before the trial court on a return to the writ was not entitled to attorney fees under CCP § 1021.5 pertaining solely to the fees incurred in challenging the second EIR, since it was not a "successful" party within the meaning of § 1021.5. Although a party may be considered a successful party if its efforts had the effect of ensuring compliance with the trial court's prior order, here the organization's litigation challenging the return EIR did not help ensure compliance with a prior court order or in any other way succeed in securing a public benefit. National Parks & Conservation Assn. v. County of Riverside (2000, 4th Dist) 81 Cal App 4th 234, 96 Cal Rptr 2d 576, 2000 Cal App LEXIS 438.

In an unsuccessful action seeking to compel a city to set aside its approval of the expansion of a Lutheran high

school on grounds that it failed to comply with the California Environmental Quality Act, the trial court did not abuse its discretion in denying the high school's motion for attorney fees under CCP § 1021.5, despite the claim that it advanced an important public interest in education, since it made no showing that the cost of its legal victory transcended its personal interest. Jobe v. City of Orange (2001, 4th Dist) 88 Cal App 4th 412, 105 Cal Rptr 2d 782, 2001 Cal App LEXIS 271.

In a case brought by plaintiff, the Director of the Department of Conservation, concerning defendant county's approval of reclamation plans and financial assurances for surface mining operations, the trial court's award of attorney fees to defendants was error because the lawsuit did not result in the enforcement of an important right affecting the public interest; defendants' legal victory was only a procedural victory whether the Director had standing. People ex rel. Department of Conservation v. El Dorado County (2003, Cal App 3d Dist) 108 Cal App 4th 672, 133 Cal Rptr 2d 780, 2003 Cal App LEXIS 699, rehearing denied (2003, Cal App 3d Dist) 2003 Cal App LEXIS 841, rev'd People ex rel. Dept. of Conservation v. El Dorado County (2005) 36 Cal 4th 971, 32 Cal Rptr 3d 109, 116 P3d 567, 2005 Cal LEXIS 8591.

Environmental groups that challenged a conditional use permit for surface mining were "successful" for purposes of attorney fee award under CCP § 1021.5, even though the appellate decision in their favor was based on the lack of an adequate record rather than the merits. The finding as to the record was tantamount to a determination that the certification could not stand, and prompting complete recordkeeping was a public benefit. Protect Our Water v. County of Merced (2005, Cal App 5th Dist) 130 Cal App 4th 488, 30 Cal Rptr 3d 202, 2005 Cal App LEXIS 987.

Citizens group that challenged the approval by a city of the proposed construction of a retail warehouse facility by alleging a failure to comply with the California Environmental Quality Act (CEQA), Pub Res C § 21000 et seq., was not entitled to attorney fees under CCP § 1021.5, where the citizens group did not establish a precedent that applied statewide; rather, it successfully asserted a defect in CEQA's process, the correction of which was not likely to change the project. Concerned Citizens of La Habra v. City of La Habra (2005, Cal App 4th Dist) 131 Cal App 4th 329, 31 Cal Rptr 3d 599, 2005 Cal App LEXIS 1166, review denied Concerned Citizens of La Habra v. City of Habra (Costco Wholesale Corp.) (2005, Cal) 2005 Cal LEXIS 10919.

After prevailing in an action under the California Environmental Quality Act, Pub Res C § 21000 et seq., the real party in interest, a developer, could not recover costs for preparing the administrative record because defendant city improperly delegated the task to the developer. The court rejected plaintiffs' strained argument that the cost bill was analogous to a strategic lawsuit against public participation (SLAPP suit) and therefore exercised its discretion to deny attorney fees on appeal. Hayward Area Planning Assn. v. City of Hayward (2005, Cal App 1st Dist) 128 Cal App 4th 176, 26 Cal Rptr 3d 783, 2005 Cal App LEXIS 534, review denied Hayward Area Planning Ass. v. City of Hayward (Hayward 1900, Inc.) (2005, Cal) 2005 Cal LEXIS 7627.

Trial court abused its discretion by denying attorney fees to the opponents of a developer's petition for a writ of mandate, which sought to preclude or delay a referendum vote challenging the city council's decision to allow the developer to build a second store in the city. In opposing the petition, the opponents achieved a substantial victory qualifying them as prevailing parties; the opposition to the developer's petition to thwart the vote, or at least delay it, protected the rights of thousands of registered voters to proceed in accordance with state law. Wal-Mart Real Estate Business Trust v. City Council of San Marcos (2005, Cal App 4th Dist) 132 Cal App 4th 614, 33 Cal Rptr 3d 817, 2005 Cal App LEXIS 1406.

Award of attorney fees of more than $ 540,000 was unconscionable in an action by a shell entity that alleged exposure to carcinogens that were commonly present pretty much everywhere, such as in furniture and paint and electric lights. The court confirmed its conclusion by reference to the seven traditional factors provided by CCP § 1021.5 for gauging attorney fee award in private attorney general cases. Consumer Defense Group v. Rental Housing Industry Members (2006, Cal App 4th Dist) 137 Cal App 4th 1185, 40 Cal Rptr 3d 832, 2006 Cal App LEXIS 407, review denied (2006, Cal) 2006 Cal LEXIS 8861.

County was a successful party entitled to attorney fees under CCP, § 1021.5 because the county's lawsuit against state agencies challenging a proposed conversion of agricultural land into wildlife habitat resulted in an agreed modification of a conservation easement to allow agricultural use; the county's action enforced the important public interest set forth in Gov C § 51220 of preserving agricultural land, and open space use must be consistent with agricultural use as provided in Gov C §§ 51238, 51238.1. County of Colusa v. California Wildlife Conservation Bd. (2006, Cal App 3d Dist) 145 Cal App 4th 637, 52 Cal Rptr 3d 1, 2006 Cal App LEXIS 1921.

Trial court did not err in awarding attorney fees pursuant to CCP § 1021.5 to a homeowner as the successful party in a mandamus proceeding that she brought under the California Environmental Quality Act, Pub Res C § 21000 et seq., where the financial burden of the litigation on the homeowner was great, as she declared that the demands of the litigation caused her to deplete her retirement savings and that she was forced to refinance her home to support the litigation. It could not be concluded, based on the present record, that the trial court's finding that the homeowner's personal interest did not outweigh the financial burden of private enforcement was manifestly unreasonable. Mejia v. City of Los Angeles (2007, 2d Dist) 67 Cal Rptr 3d 228, 156 Cal App 4th 151, 2007 Cal App LEXIS 1723.

Corporation that filed suit to preserve an experimental marine forest was not entitled to CCP § 1021.5 attorney fees; it was not the prevailing party after reversal of a judgment in its favor, and it could not obtain fees under the catalyst theory because a statutory amendment prompted by the suit was not the primary relief sought. Marine Forests Society v. California Coastal Com. (2008, 3d Dist) 2008 Cal App LEXIS 309.

In an unincorporated association's challenge of a nonprofit development corporation's project consisting of a 120-unit senior housing facility, a one-story community senior center, and a four-acre public park, the trial court did not abuse its discretion in awarding the association attorney fees under CCP § 1021.5 after granting mandate relief to the association under the California Environmental Quality Act (CEQA) because although the association's members might have had strong personal interests in litigating the case, the association's CEQA lawsuit also benefited the community as a whole by compelling the corporation to minimize environmental impacts on the community, including traffic, light, and noise impacts, and enhancing the project aesthetically by reducing the size, height, and density of the senior housing facility, and requiring planting a barrier of trees. Bringing the lawsuit placed a burden on the association out of proportion to its members' individual stakes in the matter, and it was necessary for the association to bring the lawsuit in order to enforce compliance CEQA. Citizens for Responsible and Open Government v. City of Grand Terrace (2008, 4th Dist) 160 Cal App 4th 1323, 73 Cal Rptr 3d 202, 2008 Cal App LEXIS 359.

Private environmental groups that acted in concert with public water agencies in obtaining mandamus relief against the state to require implementation of a water flow plan for protection of salmon were entitled to receive attorney fees, even though the agencies might have succeeded without their assistance. State Water Resources Control Bd. Cases (2008, 3d Dist) 2008 Cal App LEXIS 407.

19. --Prisoners' Actions

In a habeas corpus proceeding in which a county jail inmate was granted some of the substantive relief he sought on behalf of himself and other similarly situated jail inmates, the trial court properly denied the motion of the inmate, who was not an attorney and had not employed or retained an attorney, for attorney fees under the "private attorney general" doctrine for his own services in the proceeding. Though CCP § 1021.5, and 42 USCS § 1988, relied on by the inmate, clearly allow, in proper cases, orders for payment of reasonable attorney fees to the prevailing or successful party of a lawsuit, they just as clearly imply that such party will thereby be reimbursed for attorney fees paid, or relieved of his personal obligation to pay them, or in any event that the attorney not go unpaid for the services resulting in public benefit as found by the trial court. In re Dormio (1981, 1st Dist) 127 Cal App 3d 788, 179 Cal Rptr 669, 1981 Cal App LEXIS 2501.

Attorney fees may properly be awarded under CCP § 1021.5 (private attorney general doctrine), when the vindication of jail inmates' rights to reasonable exercise periods and other conditions of detention also benefit other

inmates similarly situated. Daniels v. McKinney (1983, 5th Dist) 146 Cal App 3d 42, 193 Cal Rptr 842, 1983 Cal App LEXIS 2050.

Litigation successfully establishing exercise privileges for inmates of a county jail resulted in the enforcement of an important right affecting the public interest, for purposes of determining plaintiffs' entitlement to attorney fees under CCP § 1021.5 (private attorney general doctrine), since the maintenance of humane jail conditions is an important responsibility of the state and its political subdivisions. Daniels v. McKinney (1983, 5th Dist) 146 Cal App 3d 42, 193 Cal Rptr 842, 1983 Cal App LEXIS 2050.

Litigation successfully establishing exercise privileges for inmates of a county jail conferred a significant benefit on a large class of persons, for purposes of determining plaintiffs' entitlement to attorney fees under CCP § 1021.5 (private attorney general doctrine), where the litigation resulted in exercise privileges for a minimum of three hours each week for all pretrial detainees then and thereafter confined in the county jail at issue and in other county jails throughout the state. Daniels v. McKinney (1983, 5th Dist) 146 Cal App 3d 42, 193 Cal Rptr 842, 1983 Cal App LEXIS 2050.

In deciding whether public or private enforcement of rights is required, for purposes of determining the propriety of an award of attorney fees under CCP § 1021.5 (private attorney general doctrine), the focus is not on the status of counsel as private or public lawyers, but on the persons initiating the action and the governmental agency or agencies that bear responsibility for the denial of the plaintiff's rights. When the plaintiff must act on his own behalf because no governmental agency exists which is empowered to protect his rights or when the appropriate agency has failed or refused to act to protect plaintiff's rights, private enforcement is necessary. Thus, litigation against a county sheriff by jail inmates in order to secure exercise privileges required private action, where the very governmental agency charged with plaintiffs' custody and required to protect their rights was the party against whom enforcement was required to be sought. Even had plaintiffs been represented by the public defender (Gov. Code, § 27706, subd. (g)), he would not have been acting as a public officer representing the public interest, but rather would have been an attorney representing his client according to the same high standard of professional ethics required of an attorney in private practice. Daniels v. McKinney (1983, 5th Dist) 146 Cal App 3d 42, 193 Cal Rptr 842, 1983 Cal App LEXIS 2050.

Under CCP § 1021.5, authorizing an award of attorney fees to a successful party in an action resulting in the enforcement of an important right affecting the public interest, attorneys for three prison inmates who successfully challenged in habeas corpus proceedings the procedure of the Department of Corrections in implementing the work furlough program (Pen. Code, §§ 6260-6265) were entitled to attorney fees. The fact the vindication of rights was obtained in habeas corpus proceedings rather than in a purely civil proceeding, such as mandamus or declaratory relief, both of which would have been proper, did not preclude an award of attorney fees. That habeas corpus proceedings are governed by provisions of the Penal Code was beside the point; an action on behalf of a prisoner or prisoners to enforce rights under §§ 6260-6265 bears none of the indicia of a criminal prosecution. In re Head (1986) 42 Cal 3d 223, 228 Cal Rptr 184, 721 P 2d 65, 1986 Cal LEXIS 215.

In a taxpayer waste action, a union official was entitled to attorney fees pursuant to the private attorney general doctrine of CCP § 1021.5 because the union official obtained a stipulated injunction to enforce the prison labor wage provisions in Pen C §§ 2717.1 et seq., the action vindicated a variety of important societal interests, a significant benefit was conferred on the public, and private enforcement was necessary. Vasquez v. State of California (2006, Cal App 4th Dist) 138 Cal App 4th 550, 41 Cal Rptr 3d 556, 2006 Cal App LEXIS 517, rehearing denied (2006, Cal App 4th Dist) 2006 Cal App LEXIS 707, review gr, depublished (2006, Cal) 49 Cal Rptr 3d 208, 142 P3d 1184, 2006 Cal LEXIS 9527.

20. --Public Facilities; Streets and Highways

Under Code of Civ. Proc., § 1021.5, the right to attorney fees is limited to the successful litigant. Where such fees are not authorized by statute or contract, a necessary precondition for an award is either the rendition of a judgment in favor of the parties seeking fees or the conferral, through the litigation, of substantial benefits on an opposing party.

Fees may also be awarded to plaintiffs in actions brought for the benefit of a number of persons entitled in common to a specific fund, where such an action results in creation or preservation of that fund, or to those who bring suits which bring about benefits to a broad class of citizens. Thus, plaintiffs in an action challenging approval of the construction of a public facility were not entitled to attorney fees, where they did not prevail and totally failed to bring themselves within the purview of any of those theories. Residents Ad Hoc Stadium Com. v. Board of Trustees (1979, Cal App 3d Dist) 89 Cal App 3d 274, 152 Cal Rptr 585, 1979 Cal App LEXIS 1378.

The private attorney general theory, as codified in CCP § 1021.5, authorizes awards of attorney fees where an action has resulted in the enforcement of an important right affecting the public interest and has conferred a significant benefit on a large class of persons, and where the necessity and financial burden of private enforcement are such as to make an award appropriate. Thus, in an action challenging the failure of a municipality to prepare an environmental impact report in connection with a street improvement project, findings by the trial court that the action had effectuated the strong state policy expressed in the California Environmental Quality Act of 1970, had resulted in the enforcement of important environmental laws, and had conferred substantial benefits upon a large class of people sufficiently established the first two statutory requirements for an award of attorney fees. However, where the trial court did not render a determination on the third statutory requirement, the case would be remanded for a determination as to whether the necessity and financial burden of the lawsuit had placed burden on plaintiffs which was disproportionate to their individual interest and which made an attorney fee award appropriate. Friends of "B" Street v. City of Hayward (1980, Cal App 1st Dist) 106 Cal App 3d 988, 165 Cal Rptr 514, 1980 Cal App LEXIS 1932.

Following affirmance of a judgment of the trial court granting the petition of individuals and a citizens' association for a writ of mandate directing a city to remove barriers it had placed on its streets for the purpose of controlling traffic, plaintiffs were entitled to remand to the trial court for a determination whether they were entitled to an award of trial and appellate attorney fees under the private-attorney-general fee theory codified in CCP § 1021.5, and the reasonable amount of any award. The statute was applicable since it became effective during the pendency of the appeal. Rumford v. City of Berkeley (1982) 31 Cal 3d 545, 183 Cal Rptr 73, 645 P2d 124, 1982 Cal LEXIS 185.

In an action challenging certain county allocations to street and road projects of funds collected under the Transportation Development Act of 1971 (Gov. Code, §§ 29530-29536; Pub. Util. Code, §§ 99200-99407), in which the parties entered into a settlement agreement by which plaintiffs promised to dismiss the action with prejudice on substantial performance of defendants' promise to establish four transit systems, the trial court properly found that the litigation was demonstrably influential in defendants' decision to institute the public transit systems and hence that plaintiffs were successful parties within the meaning of CCP § 1021.5 (authorizing awards of attorney fees in accordance with private attorney general doctrine). The fact that defendants' motion for partial summary judgment was in part resolved in their favor and the settlement of the action before trial did not bar an award under § 1021.5, since the determination of success depends on the impact of the action, and not on mere appearance or the manner of resolution. In addition, plaintiffs vindicated legislative intent, rather than merely diverting public funds from one purpose to another, and thus benefitted the citizenry as a whole. Folsom v. Butte County Assn. of Governments (1982) 32 Cal 3d 668, 186 Cal Rptr 589, 652 P 2d 437, 1982 Cal LEXIS 240.

The requirements for an award of attorney fees under the private attorney general theory (CCP 1021.5), that the action advance a significant or important public right or policy and confer a significant benefit on a large class was met, where plaintiff, in filing a mandamus action, secured the opportunity for a large number of fellow residents and affected property owners to voice their concerns and objections to a cogeneration plant which was scheduled to be constructed without the necessary compliance by a city with the California Environment Quality Act, and where the action not only insured the city's compliance with the act, but permitted a large class of persons to contribute their input towards the city's ultimate decision. Schwartz v. City of Rosemead (1984, 2nd Dist) 155 Cal App 3d 547, 202 Cal Rptr 400, 1984 Cal App LEXIS 2006.

In view of the requirement of CCP § 1021.5, that an award of attorney fees under the private attorney general theory is only authorized when the cost of the claimant's legal victory transcends his personal interest, a property owner

who obtained a writ of mandate requiring a city to conduct an environmental assessment before permitting the construction of a cogeneration plant on property adjacent to plaintiff's was properly denied attorney fees. Plaintiff initiated the suit to prevent the threat of damage or depreciation to his property, which was valued at $700,000. He claimed the plant would diminish that value by $100,000, and he claimed attorney fees of $22,000. Given the amount and the evidence of plaintiff's motives in initiating the suit, there was no abuse of discretion in the denial of attorney fees. Moreover, plaintiff's failure to timely serve the Attorney General with a copy of the pleadings within 10 days of the filing of his action (former CCP § 389.6 (see now CCP § 388)), to enable the Attorney General to prosecute the action also precluded a showing of the necessity and financial burden of private enforcement of the suit. Schwartz v. City of Rosemead (1984, 2nd Dist) 155 Cal App 3d 547, 202 Cal Rptr 400, 1984 Cal App LEXIS 2006.

In an action by a merchant to enjoin enforcement of a resolution establishing a preferential parking program restricting beach parking by the general public, the trial court did not abuse its discretion in denying him an award of attorney fees as a private attorney general (CCP § 1021.5), where plaintiff did not receive a favorable final judgment, where, although he succeeded in enjoining the enforcement of the new resolution pending Coastal Commission approval, the city's application for a coastal permit was a direct result of a letter from the Coastal Commission stating that a permit was required and plaintiff's urging the commission to send the letter did not provide the necessary causal connection with the lawsuit, and where plaintiff's success in enjoining the city from issuing further permits to persons residing outside the area was limited, as the trial court did not require the city to cancel those permits already issued to outside residents. The award of attorney fees is for a decision which results in the enforcement of an important right affecting the public interest. Boccato v. City of Hermosa Beach (1984, Cal App 2d Dist) 158 Cal App 3d 804, 204 Cal Rptr 727, 1984 Cal App LEXIS 2358.

Enforcement of established rights, as well as creation of new rights, can justify an award of attorney fees under CCP § 1021.5. Thus, in an action against three individuals and three organizations that, out of political concerns, allegedly interfered with the construction of a nuclear power plant, damaging property of the state, the county, and the public utility that owned the plant and increasing the expense of constructing the plant, the trial court did not err in awarding defendants attorney fees when it dismissed most of the plaintiffs, notwithstanding plaintiffs' contention that new concepts were involved in the litigation; further, plaintiffs' alleged intention not to interfere with lawful protest was irrelevant, since the inevitable effect of the continuation of the action would have been to chill large protests by substantially escalating the risks involved. County of San Luis Obispo v. Abalone Alliance (1986, Cal App 2d Dist) 178 Cal App 3d 848, 223 Cal Rptr 846, 1986 Cal App LEXIS 2706.

The financial burden criterion of CCP § 1021.5 (allowing an award of attorney fees to the successful party in an action resulting in the enforcement of an important right affecting the public interest), is met when the cost of the claimant's legal victory transcends his personal interest. Thus, in an action against three individuals and three organizations that allegedly interfered with the construction of a nuclear power plant, damaging property of the state, the county, and the public utility that owned the plant and increasing the expense of constructing the plant, defendants met the financial burden criterion, where their motivation for defending the suit could not be attributed exclusively to a desire by defendants to protect their own pocketbooks, in that they were political activists concerned with terminating the facility as a nuclear power plant. County of San Luis Obispo v. Abalone Alliance (1986, Cal App 2d Dist) 178 Cal App 3d 848, 223 Cal Rptr 846, 1986 Cal App LEXIS 2706.

The trial court did not abuse its discretion in denying plaintiff's request, pursuant to CCP § 1021.5 (private attorney general doctrine), for attorney fees in an action aimed at preventing the destruction of buildings plaintiff believed should be preserved as part of a city's architectural heritage. The theory argued by plaintiff in the litigation was identical to that advanced by the California Coastal Commission in a separate, but essentially identical, action. Although he claimed that the evidence he provided--examples of other projects that were restored--was essential to the relief obtained, any benefit from the litigation was not the temporary restraining order plaintiff believed such evidence caused the judge to issue, but was, rather, statutory clarification, which was unrelated to whether this particular property was temporarily spared. Further, even if the trial court had considered factors plaintiff asserted were relevant--whether similar results would have been obtained "but for" the contribution of the private party, and whether private counsel provided substantial

assistance to the state--the result would have been the same. Ciani v. San Diego Trust & Savings Bank (1994, 4th Dist) 25 Cal App 4th 563, 30 Cal Rptr 2d 581, 1994 Cal App LEXIS 537.

In an action directed at preventing the destruction of buildings plaintiff believed should be preserved as part of a city's architectural heritage, the trial court, in denying plaintiff's request, under CCP § 1021.5 (private attorney general doctrine), for attorney fees incurred in the lawsuit and in a postlitigation administrative appeal to the California Coastal Commission, did not err in focusing on the lawsuit and in ignoring plaintiff's participation in the administrative appeal. The question of whether the administrative appeal was required to be considered turned on whether plaintiff's administrative activities were useful and necessary and directly contributed to the resolution of the lawsuit. They clearly did not. The benefit conferred for purposes of § 1021.5 was the statutory interpretation in the Court of Appeal's opinion, which affirmed the continuing appellate jurisdiction of the California Coastal Commission. That benefit arose and was complete regardless of subsequent administrative proceedings. Ciani v. San Diego Trust & Savings Bank (1994, 4th Dist) 25 Cal App 4th 563, 30 Cal Rptr 2d 581, 1994 Cal App LEXIS 537.

In a mandamus proceeding, following a determination that a city could not close one of its streets at the border with a neighboring city, the trial court properly denied the neighboring city's application for attorney fees. The city was not entitled to attorney fees under CCP § 1021.5 (private attorney general doctrine). The record established that the neighboring city and its citizens received a substantial benefit when the proposed street closure was blocked. However, while the judgment was of regional benefit, there was no showing that the burden of the litigation transcended the neighboring city's interest in the controversy. Furthermore, because the neighboring city prevailed in the mandamus proceeding, its cause of action under 42 USCS § 1983, was dropped. Hence, its application for attorney fees under 42 USCS § 1988, was properly denied. City of Hawaiian Gardens v. City of Long Beach (1998, Cal App 2d Dist) 61 Cal App 4th 1100, 72 Cal Rptr 2d 134, 1998 Cal App LEXIS 166.

City's prayer for attorneys' fees under CCP § 1021.5 was stricken because the city was not eligible for attorneys' fees under § 1021.5. The court declined to amend the city's complaint in the manner requested, as attorneys' fees were not normally recoverable in California, and the city could not invoke CC § 1882.2 as a statutory source for attorneys' fees. In re Methyl Tertiary Butyl Ether Prods. Liab. Litig. (2005, SDNY) 402 F Supp 2d 434, 2005 US Dist LEXIS 10781.

21. --Records Maintenance or Destruction

A party who successfully vindicated the constitutionality of legislation requiring law enforcement agencies, on request, to destroy records of arrests or convictions for certain marijuana offenses (Health & Safe. Code, § 11361.5, subd. (b)), in an action against the state, was entitled to attorney fees under CCP § 1021.5, providing a court may award attorney fees to a successful party in an action resulting in the enforcement of an important right affecting the public interest, in an amount negotiated by the parties. Mack v. Younger (1980) 27 Cal 3d 687, 165 Cal Rptr 876, 612 P 2d 966, 1980 Cal LEXIS 193.

Directors prevailed and were entitled to attorney fees under CCP § 1021.5 in a suit for access to a public benefit corporation's documents because a settlement gave them the access they had been denied, which enforced the document access policy in Corp C § 6334 and the open public records policy in Cal Const Art I, § 3. Choi v. Orange County Great Park Corp. (2009, 4th Dist) 2009 Cal App LEXIS 1071.

22. --Schools and School Programs

On appeal from a writ of mandate granted to a unified school district setting aside a Department of Education hearing officer's decision that the individualized educational program provided by the district to an emotionally handicapped child was insufficient and that the child required a full-time residential-educational program funded by the district, the department was not entitled to recover attorney fees on the private Attorney General theory (CCP § 1021.5), but was entitled to restitution of tuition costs for the child's placement. San Francisco Unified School Dist. v. State of

California (1982, Cal App 1st Dist) 131 Cal App 3d 54, 182 Cal Rptr 525, 1982 Cal App LEXIS 1577.

In an action arising out of a determination that an Australian student was ineligible to participate in extracurricular California Interscholastic Federation (CIF) athletics, the trial court abused its discretion in awarding the student attorney fees (CCP § 1021.5), since the lawsuit did not confer a significant benefit on a large class of people or cost him disproportionately to his personal interest in the matter. The trial court's ruling on the merits did not constitute a ringing declaration of the rights of all high school student athletes. Rather, governed by its unique factual circumstances, this case was simply a substantial evidence matter involving the student's personal interests. Although litigation like this almost invariably caused a party like CIF to act differently under like circumstances in the future, that was insufficient under the circumstances to warrant the imposition of fees. This was a case where the enforcement of the public interest was merely coincidental to the obtaining of personal goals. Ryan v. California Interscholastic Federation (2001, 4th Dist) 94 Cal App 4th 1033, 114 Cal Rptr 2d 787, 2001 Cal App LEXIS 3667.

In a case in which a community organization challenged a school district's decision to close two elementary schools, the organization was not entitled to attorney fees under CCP § 1021.5, where it was not the successful party in the litigation. San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist. (2006, Cal App 6th Dist) 139 Cal App 4th 1356, 44 Cal Rptr 3d 128, 2006 Cal App LEXIS 801.

23. --Shareholder Actions

A corporate shareholder who had been awarded attorney fees under the "common fund" principle on the basis of a successful settlement of a minority shareholder class action against the corporation was not entitled to an additional fee award against the corporation under the "private attorney general" theory set forth in CCP § 1021.5, on the basis of benefits allegedly procured for other minority shareholders who had settled their claims while the litigation was pending but before the class was certified. Vindicating the pecuniary interests of the minority shareholders could not be regarded, within the meaning of the statute, as "affecting the public interest" or conferring "a significant benefit... on the general public or a large class of persons," and the "interest of justice" would not militate against paying the "fees... out of the recovery." Jutkowitz v. Bourns, Inc. (1981, 2nd Dist) 118 Cal App 3d 102, 173 Cal Rptr 248, 1981 Cal App LEXIS 1627.

24. --Taxation

The record on appeal of a taxpayers' action indicated that on remand to the trial court, plaintiffs were entitled to have the trial court consider the propriety of their motion for an award of attorney fees under both the substantial benefit doctrine and CCP § 1021.5, providing for an award of attorney fees under the private attorney general doctrine. The record indicated that the suit saved $9,600 of public funds, and that it established that the type of construction project proposed by defendant city was subject to review by the state under the terms of a statute. The record also indicated that CCP § 1021.5, became effective during the pendency of the appeal in the present case. Northington v. Davis (1979) 23 Cal 3d 955, 154 Cal Rptr 524, 593 P 2d 221, 1979 Cal LEXIS 239.

In a successful taxpayer's action challenging a county marshal's policy of evicting all occupants when enforcing a writ of execution after an unlawful detainer judgment, whether or not they were named in the writ, the trial court properly awarded plaintiff attorney fees pursuant to CCP § 1021.5 (private attorney general doctrine), for litigating the substantive issues. The award was consistent with applicable case law and a number of issues were clearly in dispute. Arrieta v. Mahon (1982) 31 Cal 3d 381, 182 Cal Rptr 770, 644 P2d 1249, 1982 Cal LEXIS 179.

In an action by a city to declare the validity of a special tax assessment district to be formed to raise the unfunded construction costs for three elementary schools, the trial court erred in denying an award under CCP § 1021.5 (attorney fees in cases resulting in public benefit), to a defendant raising the argument, accepted by the trial court, that assessment for the planned purpose was not authorized by the legislation upon which the city was relying. The trial court's grounds for such denial were that the result sought by defendant "presumably" would have been reached regardless of his

participation in the suit. These grounds were predicated upon the incorrect factual assumption that defendant did not bring about enforcement of an important right affecting the public interest. Further, the statutory requirement of "necessity... of private enforcement" addresses the issue of the comparative availability of public enforcement, not the causal relationship between the action and the result. City of Sacramento v. Drew (1989, 3rd Dist) 207 Cal App 3d 1287, 255 Cal Rptr 704, 1989 Cal App LEXIS 105.

In an action by a city to declare the validity of a special tax assessment district to be formed to raise the unfunded construction costs for three elementary schools, an award of attorney fees under CCP § 1021.5 (attorney fees in cases resulting in public benefit), to a defendant raising the argument, accepted by the trial court, that assessment for the planned purpose was not authorized by the legislation upon which the city was relying, was not inappropriate, notwithstanding the contention that in a validation action a public entity is responsible for the adjudication benefiting the public and should be rewarded for taking the initiative. The public entity does not come before the court as a disinterested supplicant seeking legal advice; it comes as an advocate. It cannot preempt § 1021.5 by a first strike when the prospect of litigation looms. City of Sacramento v. Drew (1989, 3rd Dist) 207 Cal App 3d 1287, 255 Cal Rptr 704, 1989 Cal App LEXIS 105.

In an action brought by insurance companies against the State Board of Equalization challenging the board's calculations pursuant to Rev & Tax C § 12202.1, of increases in the insurance premiums tax rate for 1989 and 1990, the trial court's award of attorney fees to plaintiffs was not justified. The court's reliance on Rev. & Tax. Code, § 7156, to justify the award was error, since that section pertains only to suits involving sales and use taxes. Additionally, the court's reliance on the private attorney general statute (CCP § 1021.5) was error. Plaintiffs collectively sought over $600,000 in tax refunds for 1989 and 1990, and claimed attorney fees of $168,338. Thus, the award was not justified under CCP § 1021.5, because the public benefit allegedly to be gained from plaintiffs' suit was coincidental to plaintiffs' personal monetary gain. Pacific Mutual Life Ins. Co. v. State Bd. of Equalization (1996, 2nd Dist) 41 Cal App 4th 1153, 49 Cal Rptr 2d 99, 1996 Cal App LEXIS 30.

In a case in which taxpayers filed a motion for attorney fees in connection with a reassessment of their property, which was made following their unsuccessful mandamus action against a city and its tax officials that sought to compel them to investigate an unreported change in ownership of a city property and reassess it, the taxpayers' request for $16,000,000 from the public coffers of the city was hardly reasonable or equitable when the sum total of the legal work on behalf of the taxpayers in the proceeding was to file three petitions; oppose the motions to dismiss and one demurrer; file several miscellaneous motions, including to amend, to stay, and to consolidate; and prepare some status conference statements. However, it was a special circumstance permitting the trial court to deny an award altogether. Abouab v. City & County of San Francisco (2006, 1st Dist) 141 Cal App 4th 643, 46 Cal Rptr 3d 206, 2006 Cal App LEXIS 1098.

By its terms, Rev & Tax C § 19717 plainly applies to a tax refund case brought under Rev & Tax C § 19382, but Rev & Tax C § 19717 is not the only provision by which a party in a tax refund action may recover for its attorney fees, and moreover § 19717 contains no express prohibition against a taxpayer seeking attorney fees pursuant to CCP § 1032(b); accordingly, in a proceeding in which a trial court awarded a foreign LLC attorney fees under CCP § 1021.5 after finding that the foreign LLC was entitled to a refund of amounts paid pursuant to the levy imposed by former Rev & Tax C § 17942, the trial court did not err in concluding that the litigation resulted in a significant benefit to a large class of persons and the California Franchise Tax Board had failed to establish that the requirements for an award of attorney fees under CCP § 1021.5 were not met. Northwest Energetic Services, LLC v. California Franchise Tax Bd. (2008, 1st Dist) 159 Cal App 4th 841, 71 Cal Rptr 3d 642, 2008 Cal App LEXIS 162, modified, rehearing denied (2008, Cal. App. 1st Dist.) 2008 Cal. App. LEXIS 303, review denied Northwest Energetic Services LLC. v. California Franchise Tax Board (2008, Cal.) 2008 Cal. LEXIS 6988.

In tax refund suit brought by a foreign LLC against the Franchise Tax Board, postjudgment order awarding the LLC attorney fees in the amount of $215,016 pursuant to CCP § 1021.5 was reversed on appeal; in light of a partial reversal of trial court's judgment which held that the LLC was entitled to a full refund, it could not be said with certainty that trial court would have exercised its discretion in the same manner had the LLC not prevailed on its contention that

it was entitled to a full refund. Ventas Finance I, LLC v. Franchise Tax Bd. (2008, 1st Dist) 165 Cal App 4th 1207, 2008 Cal App LEXIS 1224.

Rev & Tax C § 19717 is not the exclusive means of obtaining attorney fees in a tax refund suit, as such fees may be awarded pursuant to this section if the criteria specified herein are otherwise established. Ventas Finance I, LLC v. Franchise Tax Bd. (2008, 1st Dist) 165 Cal App 4th 1207, 2008 Cal App LEXIS 1224.

25. Actions Under Unfair Competition Law

After plaintiff obtained modest relief in her action brought under the unfair competition law to ensure that health club membership contracts used by a corporation conformed precisely with the statutory requirements relating to health studio contracts, the trial court properly refused to award attorney fees for the miniscule benefit the litigation conferred on the public; while plaintiff might have had the right to bring the action, and prevailed in establishing that the corporation's contracts were not in full compliance with all statutory requirements, it did not follow as a matter of law that the litigation had conferred a significant benefit on anyone, much less on a large segment of the public, and the record reflected that as a matter of fact it did not. Baxter v. Salutary Sportsclubs, Inc. (2004, Cal App 1st Dist) 122 Cal App 4th 941, 19 Cal Rptr 3d 317, 2004 Cal App LEXIS 1612.

In a false advertising case, the trial court erred in ordering restitution under Bus. & Prof. Code, §§ 17203, 17535, and Civ. Code, § 1780, subd. (a)(3), without substantial evidence supporting the amount awarded; thus, the trial court's injunctive order could not require restitution, and an attorney fee award under Code Civ. Proc., § 1021.5, could not include amounts related to the erroneous restitution award. Colgan v. Leatherman Tool Group, Inc. (2006, Cal App 2d Dist) 135 Cal App 4th 663, 38 Cal Rptr 3d 36, 2006 Cal App LEXIS 19, modified, rehearing denied (2006) 2006 Cal. App. LEXIS 123, review denied (2006) 2006 Cal. LEXIS 4096.

Because CCP § 1021.5 does not mention costs, the legislature has intended CCP § 1033.5, the general costs statute, to apply. Accordingly, because the legislature clearly intended to authorize recovery of attorney fees in private attorney general actions, but limited the recovery of other expenses to the costs generally allowed in litigation, in an action in which it was alleged that a manufacturer of locksets violated statutory provisions prohibiting the marketing or sale of merchandise with "Made in U.S.A" or similar labels when the merchandise either contained foreign-made parts or involved foreign manufacture, the trial court properly denied plaintiff's request for his expert witness fees and other expenses not authorized as recoverable litigation costs. Benson v. Kwikset Corp. (2007, 4th Dist) 152 Cal App 4th 1254, 2007 Cal App LEXIS 1103.

26. Pre-litigation attempt at settlement

Limited liability company (LLC) was not entitled to attorney fees under CCP § 1021.5 in the LLC's action against the City of San Diego arising from a city official's denial of the LLC's applications for permits to post signs because the LLC's submission of the applications was not a reasonable pre-litigation attempt at settlement. The LLC did not notify the City of the LLC's grievances and proposed remedies and give the City opportunity to meet the LLC's demands within a reasonable time. Get Outdoors II, LLC v. San Diego (2005) 2005 US Dist LEXIS 36806.

In an action that successfully challenged statutory affirmative-action programs, an amicus curiae group that advocated on behalf of those programs could not be held liable for attorney fees under the private attorney general statute because the group, although it played an active role, was not an opposing party under CCP § 1021.5. Connerly v. State Personnel Bd. (2006) 37 Cal 4th 1169, 39 Cal Rptr 3d 788, 129 P3d 1, 2006 Cal LEXIS 2871.

Because a disabled individual did not make use of the catalyst theory in his motion seeking attorneys' fees after reaching a settlement agreement with a hotel in an action arising from the hotel's alleged noncompliance with federal and state accessibility laws, the district court erred in concluding that the individual could not seek attorneys' fees under CCP § 1021.5 because he had not attempted settlement prior to filing suit; the catalyst theory did not apply because the

individual's litigation resulted in a judicially-sanctioned and court-enforceable settlement agreement. Skaff v. Meridien N. Am. Beverly Hills, LLC (2007, CA9 Cal) 2007 US App LEXIS 25516.

In a taxpayer action brought by plaintiff who alleged that the state had permitted employers, in violation of Proposition 139, to pay less than comparable wages to prison inmates, plaintiff was not required first to attempt to settle the matter short of litigation in order to recover attorney fees under CCP § 1021.5. Vasquez v. State of California (2008, Cal) 45 Cal 4th 243, 2008 Cal LEXIS 13628.

27. Amounts Recoverable

Successful challenger to a redevelopment agency's method of contributing to a state-mandated fund for low cost housing was entitled to attorney fees under CCP § 1021.5 that were incurred prior to filing the complaint because the challenger met its burden of demonstrating how that activity contributed to the success of the litigation. Hogar v. Community Development Com. of the City of Escondido (2007, 4th Dist) 2007 Cal App LEXIS 2025.

Successful litigant was entitled to recover compensation for all the hours its attorneys spent in prosecuting a successful attorney fees motion. Hogar v. Community Development Com. of the City of Escondido (2007, 4th Dist) 2007 Cal App LEXIS 2025.

Because CCP § 1021.5 did not permit an award of expert witness fees, a court of appeal did not err in modifying the portion of a trial court's judgment that awarded plaintiffs attorney fees and expert witness fees after the trial court declared plaintiffs to be the successful parties under CCP § 1021.5 in their action against a nonprofit mutual benefit corporation, in which plaintiffs prevailed on several of their electoral process claims and obtained a judgment mandating a number of election reforms. Olson v. Automobile Club of Southern California (2008, Cal) 2008 Cal LEXIS 2331.

Prevailing plaintiff is not entitled to an award of expert witness fees in addition to attorney fees under CCP § 1021.5; expert witness fees are not typically considered a subset of attorney fees, but rather attorney fees and expert witness fees are viewed as distinct and independent subsets of the costs of litigation pursuant to CCP § 1033.5(a)(10), (b)(1). Olson v. Automobile Club of Southern California (2008, Cal) 2008 Cal LEXIS 2331.

Regardless of the merit of an argument that policy considerations support the conclusion that CCP § 1021.5 authorizes an award of expert witness fees, public policy alone is insufficient to permit the Supreme Court of California to craft such a rule in direct contravention of the statute's plain meaning, which simply does not support the position that CCP § 1021.5 permits an award of expert witness fees. Olson v. Automobile Club of Southern California (2008, Cal) 2008 Cal LEXIS 2331.

In a private attorney general action involving violations of a living wage ordinance, employees could not recover expert witness fees because CCP § 1021.5 does not authorize such an award and employees offered no other statutory basis for recovery of these fees; hence, these sums were not allowable as costs under CCP § 1033.5(b). Amaral v. Cintas Corp. No. 2 (2008, 1st Dist) 2008 Cal App LEXIS 864.

28. Related Proceedings

Attorney fees could be awarded under CCP § 1021.5 to a class action representative for opposing an amicus curiae brief in a related lawsuit that resolved the issue in the present case. The amicus curiae participated out of its own interest, rather than advocacy to benefit the public interest, and the proceedings were directly related; moreover, counsel's time records and the nature of the services sufficed to show that the work could be billed. Ramon v. County of Santa Clara (2009, 6th Dist) 2009 Cal App LEXIS 685.

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CH. 25 OF THE 2009-2010 3d EX. SESS., THE GOVERNOR'S REORGANIZATION PLAN #1 OF
2009, EFF. MAY 10, 2009, & PROP. 1F APPROVED, EFF. MAY 20, 2009

EDUCATION CODE
Title 1. General Education Code Provisions
Division 1. General Education Code Provisions
Part 11. Libraries
Chapter 1. Board of Library Examiners

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Ed Code § 18000 (2009)

§§ 18000, 18001. [Sections repealed 1981.]

HISTORY:

Enacted Stats 1976 ch 1010 § 2, operative April 30, 1977. Repealed Stats 1981 ch 604 § 2. The repealed sections related to Board of Library Examiners.

NOTES:

Note

Stats 1981 ch 604 provides:

SECTION 1. The Legislature finds and declares that the boards, commissions, committees, and councils to which the remaining sections of this act apply, are redundant, superfluous, and unnecessary for the protection of the peace, health, safety, or general welfare of the people of the State of California. The Legislature therefore finds and declares that the California Design Awards Committee, the Colorado River Toll Bridge Authority, the Committee to Fix Interest on Registered Warrants, the State Board of Library Examiners, the State Council of Educational Planning and Coordination, the Scenic Highway Advisory Committee, the advisory committee to the State Department of Health Services on drug manufacturing, the California Commission on Interstate Co-operation, the Senate Committee on Interstate Co-operation, and the Assembly Committee on Interstate Co-operation should be abolished.

Hierarchy Notes:

Tit. 1, Div. 1, Pt. 11 Note

Tit. 1, Div. 1, Pt. 11, Ch. 1 Note

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EDUCATION CODE
Title 1. General Education Code Provisions
Division 1. General Education Code Provisions
Part 12. Foundations and State Committees and Commissions
Chapter 1. Foundations, Trusts, and Institutions of Arts and Sciences
Article 1. Foundations and Trusts

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Ed Code § 21000 (2009)

§§ 21000, 21001. [Sections repealed 1981.]

HISTORY:

Enacted Stats 1976 ch 1010 § 2, operative April 30, 1977. Repealed Stats 1981 ch 604 § 3. The repealed sections related to establishment, composition and function of the State Council of Educational Planning and Coordination.

NOTES:

Note

Stats 1981 ch 604 provides:

SECTION 1. The Legislature finds and declares that the boards, commissions, committees, and councils to which the remaining sections of this act apply, are redundant, superfluous, and unnecessary for the protection of the peace, health, safety, or general welfare of the people of the State of California. The Legislature therefore finds and declares that the California Design Awards Committee, the Colorado River Toll Bridge Authority, the Committee to Fix Interest on Registered Warrants, the State Board of Library Examiners, the State Council of Educational Planning and Coordination, the Scenic Highway Advisory Committee, the advisory committee to the State Department of Health Services on drug manufacturing, the California Commission on Interstate Co-operation, the Senate Committee on Interstate Co-operation, and the Assembly Committee on Interstate Co-operation should be abolished.

Hierarchy Notes:

Tit. 1, Div. 1, Pt. 12, Ch. 1 Note

Tit. 1, Div. 1, Pt. 12, Ch. 1, Art. 1 Note

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FISH AND GAME CODE
Division 2. Department of Fish and Game
Chapter 6. Fish and Wildlife Protection and Conservation

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Fish & G Code § 1610 (2009)

§ 1610. Application of chapter

(a) Except as provided in subdivision (b), this chapter does not apply to any of the following:

(1) Immediate emergency work necessary to protect life or property.

(2) Immediate emergency repairs to public service facilities necessary to maintain service as a result of a disaster in an area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code.

(3) Emergency projects undertaken, carried out, or approved by a state or local governmental agency to maintain, repair, or restore an existing highway, as defined in Section 360 of the Vehicle Code, within the existing right-of-way of the highway, that has been damaged as a result of fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, within one year of the damage. Work needed in the vicinity above and below a highway may be conducted outside of the existing right-of-way if it is needed to stop ongoing or recurring mudslides, landslides, or erosion that pose an immediate threat to the highway, or to restore those roadways damaged by mudslides, landslides, or erosion to their predamage condition and functionality. This paragraph does not exempt from this chapter any project undertaken, carried out, or approved by a state or local governmental agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide. The exception provided in this paragraph does not apply to a highway designated as an official state scenic highway pursuant to Section 262 of the Streets and Highways Code.

(b) The entity performing the emergency work described in subdivision (a) shall notify the department of the work, in writing, within 14 days of beginning the work. Any work described in the emergency notification that does not meet the criteria for the emergency work described in subdivision (a) is a violation of this chapter if the entity did not first notify the department in accordance with Section 1602.

HISTORY:

Added Stats 2003 ch 736 § 2 (SB 418).

NOTES:

Hierarchy Notes:

Fish & G Code Note

Div. 2 Note

Div. 2, Ch. 6 Note

NOTES OF DECISIONS 1. Generally

1. Generally

Property owner's grading without a permit was not excused under F & G C § 1610(a) because a spillway that washed out in heavy rains was not an emergency as defined by Pub Res C § 21060.3. Martin v. Riverside County Dept. of Code Enforcement (2008, 4th Dist) 166 Cal App 4th 1406, 83 Cal Rptr 3d 624, 2008 Cal App LEXIS 1444.

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GOVERNMENT CODE
Title 2. Government of the State of California
Division 4. Fiscal Affairs
Part 2. State Funds
Chapter 3. Investments
Article 4.5. Treasury Pooled Money Investments

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Gov Code § 16481.1 (2009)

§ 16481.1. Succession to powers of Committee to Fix Interest on Registered Warrants

The Pooled Money Investment Board shall succeed to and is vested with all of the powers, duties, purposes, responsibilities, and jurisdiction in matters now or hereafter vested by law in the committee which fixes the rate of interest paid on registered warrants pursuant to Article 2 (commencing with Section 17220) of Chapter 2 of Part 4 of Division 4 of Title 2, or any officer or employee thereof. Whenever reference is made to the committee to fix interest paid on registered warrants, it shall be deemed to be a reference to the Pooled Money Investment Board. The board shall have possession and control of all records, books, papers, and other property, real, personal, and mixed, now or hereafter held for the benefit or use of the committee.

HISTORY:

Added Stats 1981 ch 604 § 6.

NOTES:

Note

Stats 1981 ch 604 provides:

SECTION 1. The Legislature finds and declares that the boards, commissions, committees, and councils to which the remaining sections of this act apply, are redundant, superfluous, and unnecessary for the protection of the peace, health, safety, or general welfare of the people of the State of California. The Legislature therefore finds and declares

that the California Design Awards Committee, the Colorado River Toll Bridge Authority, the Committee to Fix Interest on Registered Warrants, the State Board of Library Examiners, the State Council of Educational Planning and Coordination, the Scenic Highway Advisory Committee, the advisory committee to the State Department of Health Services on drug manufacturing, the California Commission on Interstate Co-operation, the Senate Committee on Interstate Co-operation, and the Assembly Committee on Interstate Co-operation should be abolished.

Hierarchy Notes:

Tit. 2, Div. 4 Note

Tit. 2, Div. 4, Pt. 2 Note

Tit. 2, Div. 4, Pt. 2, Ch. 3, Art. 4.5 Note

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GOVERNMENT CODE
Title 2. Government of the State of California
Division 4. Fiscal Affairs
Part 4. Warrants
Chapter 2. Registered Warrants
Article 2. Registration

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Gov Code § 17220 (2009)

§ 17220. Definitions

As used in this chapter:

(a) "Unapplied money" means money in the General Fund in the treasury for which outstanding warrants have not already been drawn and which would remain in the General Fund if all outstanding warrants theretofore drawn were paid.

(b) "Committee" means the Pooled Money Investment Board.

HISTORY:

Added Stats 1945 ch 120 § 2.5. Amended Stats 1981 ch 604 § 7.

NOTES:

Amendments:

1981 Amendment:

Substituted "Pooled Money Investment Board" for "Governor, Treasurer and Controller, acting as a committee" in subd (b).

Historical Derivation:

Former Pol C § 441, as added Stats 1933 ch 605 § 1, amended Stats 1935 ch 205 § 1, Stats 1937 ch 774 § 1.

Note

Stats 1981 ch 604 provides:

SECTION 1. The Legislature finds and declares that the boards, commissions, committees, and councils to which the remaining sections of this act apply, are redundant, superfluous, and unnecessary for the protection of the peace, health, safety, or general welfare of the people of the State of California. The Legislature therefore finds and declares that the California Design Awards Committee, the Colorado River Toll Bridge Authority, the Committee to Fix Interest on Registered Warrants, the State Board of Library Examiners, the State Council of Educational Planning and Coordination, the Scenic Highway Advisory Committee, the advisory committee to the State Department of Health Services on drug manufacturing, the California Commission on Interstate Co-operation, the Senate Committee on Interstate Co-operation, and the Assembly Committee on Interstate Co-operation should be abolished.

Cross References:

General Fund: Gov C §§ 16300 et seq.

Warrants: Gov C §§ 17000 et seq.

Hierarchy Notes:

Tit. 2, Div. 4 Note

Tit. 2, Div. 4, Pt. 4 Note

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GOVERNMENT CODE
Title 5. Local Agencies
Division 1. Cities and Counties
Part 1. Powers and Duties Common to Cities and Counties
Chapter 6.5. Open-Space Easements

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Gov Code § 51056 (2009)

§ 51056. Finding of consistency with general plan and public interest; Conditions; Conclusiveness of resolution

No grant of an open-space easement shall be accepted by a city or county, unless the governing body, by resolution, finds:

(a) That the preservation of the land as open space is consistent with the general plan of the city and county; and

(b) That the preservation of the land as open space is in the best interest of the state, county, or city and is important to the public for the enjoyment of scenic beauty, for the use of natural resources, for recreation, or for the production of food or fiber and specifically because one or more of the following reasons exist:

(1) It is likely that at some time the public may acquire the land for a park or other public use.

(2) The land is unimproved and has scenic value to the public as viewed from a public highway or from public or private buildings.

(3) The retention of the land as open space will add to the amenities of living in adjoining or neighboring urbanized areas.

(4) The land lies in an area which in the public interest should remain rural in character and the retention of the land as open space will help preserve the rural character of the area.

(5) It is in the public interest that the land remain in its natural state, including the trees and other natural growth, as a means of preventing floods or because of its value as watershed.

(6) The land lies within an established scenic highway corridor.

(7) The land is valuable to the public as a wildlife preserve or sanctuary and the instrument contains appropriate covenants to that end.

(8) The public interest will otherwise be served in a manner recited in the resolution and consistent with the purposes of this subdivision and Article XXVIII of the Constitution of the State of California.

The resolution of the governing body shall establish a conclusive presumption that the conditions set forth in subdivisions (a) and (b) have been satisfied.

HISTORY:

Added Stats 1969 ch 762 § 1.

NOTES:

Editor's Notes

Cal. Const. Art. XXVIII, consisting of §§ 1, 2, referred to above, relating to open space conservation, was adopted November 8, 1966, and repealed Stats November 5, 1974. See Cal. Const. Art. XIII § 8, relating to valuation of open space land and historic property.

Cross References:

Manner of acceptance of grant: Gov C § 51055.

Referral to planning department or planning commission: Gov C § 51057.

Valuation of open space land and historic property: Const Art XIII § 8.

Collateral References:

Cal. Legal Forms, (Matthew Bender) § 28D.31[3].

Hierarchy Notes:

Tit. 5, Div. 1, Pt. 1, Ch. 6.5 Note

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GOVERNMENT CODE
Title 5. Local Agencies
Division 1. Cities and Counties
Part 1. Powers and Duties Common to Cities and Counties
Chapter 7. Agricultural Land
Article 1. General Provisions

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Gov Code § 51201 (2009)

§ 51201. Definitions

As used in this chapter, unless otherwise apparent from the context, the following terms have the following meanings:

(a) "Agricultural commodity" means any and all plant and animal products produced in this state for commercial purposes, including, but not limited to, plant products used for producing biofuels.

(b) "Agricultural use" means use of land, including but not limited to greenhouses, for the purpose of producing an agricultural commodity for commercial purposes.

(c) "Prime agricultural land" means any of the following:

(1) All land that qualifies for rating as class I or class II in the Natural Resource Conservation Service land use capability classifications.

(2) Land which qualifies for rating 80 through 100 in the Storie Index Rating.

(3) Land which supports livestock used for the production of food and fiber and which has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture.

(4) Land planted with fruit- or nut-bearing trees, vines, bushes, or crops which have a nonbearing period of less than five years and which will normally return during the commercial bearing period on an annual basis from the production of unprocessed agricultural plant production not less than two hundred dollars ($200) per acre.

(5) Land which has returned from the production of unprocessed agricultural plant products an annual gross value of not less than two hundred dollars ($200) per acre for three of the previous five years.

(d) "Agricultural preserve" means an area devoted to either agricultural use, as defined in subdivision (b), recreational use as defined in subdivision (n), or open-space use as defined in subdivision (o), or any combination of those uses and which is established in accordance with the provisions of this chapter.

(e) "Compatible use" is any use determined by the county or city administering the preserve pursuant to Section 51231, 51238, or 51238.1 or by this act to be compatible with the agricultural, recreational, or open-space use of land within the preserve and subject to contract. "Compatible use" includes agricultural use, recreational use or open-space use unless the board or council finds after notice and hearing that the use is not compatible with the agricultural, recreational or open-space use to which the land is restricted by contract pursuant to this chapter.

(f) "Board" means the board of supervisors of a county which establishes or proposes to establish an agricultural preserve or which enters or proposes to enter into a contract on land within an agricultural preserve pursuant to this chapter.

(g) "Council" means the city council of a city which establishes or proposes to establish an agricultural preserve or which enters or proposes to enter into a contract on land within an agricultural preserve pursuant to this chapter.

(h) Except where it is otherwise apparent from the context, "county" or "city" means the county or city having jurisdiction over the land.

(i) A "scenic highway corridor" is an area adjacent to, and within view of, the right-of-way of:

(1) An existing or proposed state scenic highway in the state scenic highway system established by the Legislature pursuant to Article 2.5 (commencing with Section 260) of Chapter 2 of Division 1 of the Streets and Highways Code and which has been officially designated by the Department of Transportation as an official state scenic highway; or

(2) A county scenic highway established pursuant to Article 2.5 (commencing with Section 260) of Chapter 2 of Division 1 of the Streets and Highways Code, if each of the following conditions have been met:

(A) The scenic highway is included in an adopted general plan of the county or city; and

(B) The scenic highway corridor is included in an adopted specific plan of the county or city; and

(C) Specific proposals for implementing the plan, including regulation of land use, have been approved by the Advisory Committee on a Master Plan for Scenic Highways, and the county or city highway has been officially designated by the Department of Transportation as an official county scenic highway.

(j) A "wildlife habitat area" is a land or water area designated by a board or council, after consulting with and considering the recommendation of the Department of Fish and Game, as an area of importance for the protection or enhancement of the wildlife resources of the state.

(k) A "saltpond" is an area which, for at least three consecutive years immediately prior to being placed within an agricultural preserve pursuant to this chapter, has been used for the solar evaporation of seawater in the course of salt production for commercial purposes.

(l) A "managed wetland area" is an area, which may be an area diked off from the ocean or any bay, river or stream to which water is occasionally admitted, and which, for at least three consecutive years immediately prior to being placed within an agricultural preserve pursuant to this chapter, was used and maintained as a waterfowl hunting preserve or game refuge or for agricultural purposes.

(m) A "submerged area" is any land determined by the board or council to be submerged or subject to tidal action and found by the board or council to be of great value to the state as open space.

(n) "Recreational use" is the use of land in its agricultural or natural state by the public, with or without charge, for any of the following: walking, hiking, picnicking, camping, swimming, boating, fishing, hunting, or other outdoor games or sports for which facilities are provided for public participation. Any fee charged for the recreational use of land as defined in this subdivision shall be in a reasonable amount and shall not have the effect of unduly limiting its use by the public. Any ancillary structures necessary for a recreational use shall comply with the provisions of Section 51238.1.

(o) "Open-space use" is the use or maintenance of land in a manner that preserves its natural characteristics, beauty, or openness for the benefit and enjoyment of the public, to provide habitat for wildlife, or for the solar evaporation of seawater in the course of salt production for commercial purposes, if the land is within:

(1) A scenic highway corridor, as defined in subdivision (i).

(2) A wildlife habitat area, as defined in subdivision (j).

(3) A saltpond, as defined in subdivision (k).

(4) A managed wetland area, as defined in subdivision (l).

(5) A submerged area, as defined in subdivision (m).

(6) An area enrolled in the United States Department of Agriculture Conservation Reserve Program or Conservation Reserve Enhancement Program.

(p) "Development" means, as used in Section 51223, the construction of buildings or the use of the restricted property if the buildings or use are unrelated to the agricultural use, the open-space use, or uses compatible with either agricultural or open-space uses of the property, or substantially impair the agricultural, open-space, or a combination of the agricultural and open-space uses of the property. Agricultural use, open-space use, uses compatible with either agricultural or open-space uses, or the acquisition of land or an interest in land are not development.

HISTORY:

Added Stats 1965 ch 1443 § 1. Amended Stats 1967 ch 1004 § 1, ch 1371 § 1.1; Stats 1968 ch 413 § 1; Stats 1969 ch 1372 § 1, ch 1473 § 1; Stats 1970 ch 1281 § 1; Stats 1978 ch 1120 § 1; Stats 1994 ch 1251 § 2 (AB 2663); Stats 1998 ch 690 § 1 (SB 1835); Stats 1999 ch 1018 § 2 (SB 985); Stats 2005 ch 605 § 5 (AB 365), effective January 1, 2006; Stats 2008 ch 136 § 1 (AB 1764), ch 503 § 1 (AB 2921) (ch 503 prevails), effective January 1, 2009.

NOTES:

Amendments:

1967 Amendment (ch 1004):

Substituted the section for the former section which read: "As used in this chapter, unless otherwise apparent from the context:

"(a) 'Agricultural commodity' means any and all plant and animal products produced in this state for commercial purposes.

"(b) 'Agricultural use' means use of land for the purpose of producing an agricultural commodity for commercial purposes.

"(c) 'Prime agricultural land' means (1) all land which qualifies for rating as class I or as class II in the Soil Conservation Service Land Use capability classifications, or (2) land which has returned from the production of unprocessed agricultural plant products an annual gross value of not less than two hundred dollars ($200) per acre for three of the previous five years.

"(d) 'Agricultural preserve' means an area devoted to agricultural and compatible uses as designated by a city or county, and established in the same manner as a general plan referred to in Section 65460 of the Government Code. Such preserves, when established, shall be for the purpose of subsequently placing restrictions upon the use of land within them, or supplementing existing restrictions, pursuant to the purposes of this chapter. Such preserve may contain land other than prime agricultural land, but the use of any land not under contract within the preserve shall subsequently be restricted in such a way as to not be incompatible with the agricultural use of the prime agricultural land the use of which is limited by contract in accordance with this chapter. Such preserve may also be established even if it contains no prime agricultural land, provided that the land within the preserve is subsequently restricted to agricultural and compatible uses by agreement as provided in Section 51255, or by any other suitable means.

"(e) Except as otherwise defined by this act, 'compatible use' shall be determined by the city or county administering the agricultural preserve according to uniform rules. "Compatible use" shall include the erection, construction, alteration, or maintenance of gas, electric, water, or communication utility facilities, unless the governing board makes a finding after notice and hearing that any or all such facilities are not a compatible use. No land occupied by gas, electric, water, or communication utility facilities shall be excluded from a preserve by reason of such use.

"(f) 'Uniform rules' means rules that are adopted by a city or county administering an agricultural preserve and which shall be uniform throughout that preserve."

1967 Amendment (ch 1371):

(1) Amended subd (c) to read: "(c) 'Prime agricultural land' means (1) all land which qualifies for rating as Class I or as class II in the Soil Conservation Service land use capability classifications, (2) land which qualifies to rating 80 through 100 in the Storie Index Rating, (3) land which supports livestock used for the production of food and fiver, and which has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture, (4) land planted with fruit- or nut-bearing trees, vines, bushes or crops which have a nonbearing period of less than five years and during the commercial bearing period will normally return on an annual basis from the production not less than two hundred dollars ($200) per acre, or (5) land which has returned from the production of unprocessed agricultural plant products an annual gross value of not less than two hundred dollars ($200) per acre for three of the previous five years."; **(2)** substituted "by resolution of the governing body of a city or county after a public hearing" for "in the same manner as a general plan referred to in Section 65460 of the Government Code" in subd (d); **(3)** added the former second through fifth sentences (subsequently designated as the third through sixth sentences) of subd (d) which read: "Notice of the hearing shall be published pursuant to section 6061 of the Government Code. The governing body may, by resolution, provide procedures for initiating, filing and processing requests to establish agricultural preserves. The same procedure to establish an agricultural preserve shall be used to enlarge or diminish the size of an agricultural preserve including disestablishment of an agricultural preserve. In the event any proposed alteration of the boundary of an agricultural preserve or proposed disestablishment of an agricultural preserve will remove land under contract or agreement from an agricultural preserve, notice of the proposed alteration or disestablishment and hearing date shall be furnished by the county or city to the owner by registered United States mail directed to him at his latest address known to the county or city and such notice shall be furnished in a like manner to each owner of land in that preserve which has a common boundary with the land to be removed from the agricultural

preserve."; and **(4)** substituted a former subd (f) which read: " 'Uniform rules' means rules adopted by a city or county for the administration of each agricultural preserve including waiver of compensation pursuant to Section 51261, and such rules shall be uniform throughout the agricultural preserve for which the rules are adopted" for subd (f) as added.

1968 Amendment:

Deleted the former second sentence of subd (d) which read: "When a county proposes to establish an agricultural preserve it shall give written notice at least two weeks before the hearing to the Local Agency Formation Commission and to every city within one mile of the exterior boundaries of the preserve."

1969 Amendment:

(1) Amended subd (d) to read: "(d) 'Agricultural preserve' means an area devoted to agricultural and compatible uses as designated by a city or county, and established by resolution of the governing of a city or county after a public hearing."; **(2)** substituted subd (f) for former subd (f); and **(3)** added subds (g)-(n).

1970 Amendment:

(1) Added "any of the following" in the introductory paragraph of subd (c); **(2)** substituted subd (d) for former subd (d); **(3)** added ", recreational," after "agricultural" in subd (e); **(4)** added the last sentence in subd (e); **(5)** added subd (n); and **(6)** redesignated former subd (n) to be subd (o).

1978 Amendment:

(1) Amended subd (d) by **(a)** adding "as defined in subdivision (b)," and **(b)** substituting "and which is established in accordance with the provisions of this chapter" for ", and compatible uses as designated by a city or county, and established by resolution of the governing body of a city or county after a public hearing"; and **(2)** substituted "Department of Transportation" for "Director of the Department of Public Works" in subds (i)(1) and (i)(2)(C).

1994 Amendment:

In addition to making technical changes, **(1)** substituted "Section 51231 or Section 51238" for "Section 51231, 51238, or 51238.1" in subd (e); and **(2)** substituted "that preserves" for "as to preserve" in subd (o).

1998 Amendment:

Amended subd (c)(1) by substituting "that" for "which" near the beginning; and **(2)** "Natural Resources" for "Soil".

1999 Amendment:

(1) Substituted "seawater" for "sea water" after "evaporation of" in subd (k) and in the introductory clause of subd (o); and **(2)** amended subd (n) by adding **(a)** "in its agricultural or natural state" near the beginning; and **(b)** the third sentence.

2005 Amendment:

Added ", including but not limited to greenhouses," after "land" in subd (b).

2008 Amendment:

(1) Added ", the following terms have the following meanings" in the introductory clause; (2) added ", including, but not limited to, plant products used for producing biofuels" in subd (a); (3) added the comma after "vines, bushes" in subd (c)(4); (4) substituted "area of importance" for "area of great importance" in subd (j); (5) substituted "habitat for wildlife" for "essential habitat for wildlife" in the introductory clause of subd (o); and (6) added subds (o)(6) and (p).

Note

Stats 1969 ch 1372 provides:

SEC. 43. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SEC. 44. The provisions of this act shall be given prospective application only and shall not be construed in a manner which would impair the obligation of any existing contract or agreement entered into pursuant to the California Land Conservation Act of 1965, prior to the effective date of this act. However, this section is not intended to prevent the provisions of this act from being incorporated by reference into existing contracts or agreements, if such existing contracts or agreements provide for incorporation by reference of amendments subsequently enacted by the Legislature; provided further, however, that this act shall not, by incorporation by reference or otherwise, invalidate any restrictions, terms, or conditions, including payments and fees, more restrictive than or in addition to those required by this chapter.

Cross References:

Department of Transportation: Gov C §§ 14000 et seq.

Open-space subvention to local government for "prime agricultural land": Gov C § 16142.

Prohibition against unmerger of contiguous parcels when one is agricultural: Gov C § 66451.30.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 579 "Zoning And Planning".

Cal. Legal Forms, (Matthew Bender) §§ 28D.10[1], 28D.10[2], 28D.10[3], 28D.11[1][a], 28D.11[1][b], 28D.12[1],

28D.12[2], 28D.13[2], 28D.14[5], 28D.15[2], 28D.15[3][a], 28D.100, 28D.111, 28D.120[1], 28D.120[2], 28D.200[2], 28D.130[2], 28D.220[1][c], 37.14[1].

Law Review Articles:

"Urban" fringe, and Land Conservation Act. 19 Hast LJ 432.

Review of Selected 1978 California Legislation. 10 Pacific LJ 557.

Attorney General's Opinions:

Validity of methods of assessing land subject to provisions of California Land Conservation Act of 1965, application and effect of statutes governing taxation. 47 Ops. Cal. Atty. Gen. 171.

Right of county to adopt rules for creation of agricultural preserves requiring minimum capital outlay for agricultural capital investments; propriety of rules governing requirements as to income from agricultural production and pursuits. 56 Ops. Cal. Atty. Gen. 160.

Hierarchy Notes:

Tit. 5, Div. 1, Pt. 1, Ch. 7 Note

Tit. 5, Div. 1, Pt. 1, Ch. 7, Art. 1 Note

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THE 2009-2010 REG. SESS., CH. 12 OF THE 2009-2010 2d EX. SESS., EFF. 5/21/09,
CH. 25 OF THE 2009-2010 3d EX. SESS., THE GOVERNOR'S REORGANIZATION PLAN #1 OF
2009, EFF. MAY 10, 2009, & PROP. 1F APPROVED, EFF. MAY 20, 2009

GOVERNMENT CODE
Title 5. Local Agencies
Division 1. Cities and Counties
Part 1. Powers and Duties Common to Cities and Counties
Chapter 7. Agricultural Land
Article 1. General Provisions

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Gov Code § 51205 (2009)

§ 51205. Inclusion within agricultural preserve; "Agricultural land"

Notwithstanding any provisions of this chapter to the contrary, land devoted to recreational use or land within a scenic highway corridor, a wildlife habitat area, a saltpond, a managed wetland area, or a submerged area may be included within an agricultural preserve pursuant to this chapter. When such land is included within an agricultural preserve, the city or county within which it is situated may contract with the owner for the purpose of restricting the land to recreational or open space use and uses compatible therewith in the same manner as provided in this chapter for land devoted to agricultural use. For purposes of this section, where the term "agricultural land" is used in this chapter, it shall be deemed to include land devoted to recreational use and land within a scenic highway corridor, a wildlife habitat area, a saltpond, a managed wetland area, or a submerged area, and where the term "agricultural use" is used in this chapter, it shall be deemed to include recreational and open space use.

HISTORY:

Added Stats 1969 ch 1473 § 3. Amended Stats 1970 ch 1281 § 2.

NOTES:

Amendments:

1970 Amendment:

Added **(1)** "land devoted to recreational use or"; **(2)** "recreational or"; **(3)** "land devoted to recreational use and"; and **(4)** "recreational and".

Cross References:

"Agricultural use": Gov C § 51201(b).

"Agricultural preserve": Gov C § 51201(d).

"Scenic highway corridor": Gov C § 51201(i).

"Wildlife habitat area": Gov C § 51201(j).

"Saltpond": Gov C § 51201(k).

"Managed wetland area": Gov C § 51201(*l*).

"Submerged area": Gov C § 51201(m).

"Recreational use": Gov C § 51201(n).

"Open space use": Gov C § 51201(o).

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 28D.10[2], 28D.10[3], 28D.13[2], 28D.120[2], 28D.210[2].

Hierarchy Notes:

Tit. 5, Div. 1, Pt. 1, Ch. 7 Note

Tit. 5, Div. 1, Pt. 1, Ch. 7, Art. 1 Note

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GOVERNMENT CODE
Title 5. Local Agencies
Division 1. Cities and Counties
Part 1. Powers and Duties Common to Cities and Counties
Chapter 7. Agricultural Land
Article 1. General Provisions

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Gov Code § 51205.1 (2009)

§ 51205.1. Inclusion of land within scenic highway corridor in agricultural preserve

Notwithstanding any provisions of this chapter to the contrary, land within a scenic highway corridor, as defined in subdivision (i) of Section 51201, shall, upon the request of the owner, be included in an agricultural preserve pursuant to this chapter. When such land is included within an agricultural preserve, the city or county within which it is situated shall contract with the owner for the purpose of restricting the land to agricultural use as defined in subdivision (b), recreational use as defined in subdivision (n), open-space use as defined in subdivision (o), compatible use as defined in subdivision (e), or any combination of such uses.

HISTORY:

Added Stats 1978 ch 1120 § 2.

NOTES:

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 28D.10[3], 28D.11[1][a], 28D.11[1][b], 28D.13[2], 28D.111.

Law Review Articles:

Review of Selected 1978 California Legislation. 10 Pacific LJ 557.

Hierarchy Notes:

Tit. 5, Div. 1, Pt. 1, Ch. 7 Note

Tit. 5, Div. 1, Pt. 1, Ch. 7, Art. 1 Note

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GOVERNMENT CODE
Title 5. Local Agencies
Division 1. Cities and Counties
Part 1. Powers and Duties Common to Cities and Counties
Chapter 7. Agricultural Land
Article 2. Declaration

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Gov Code § 51220 (2009)

§ 51220. Legislative findings

The Legislature finds:

(a) That the preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state's economic resources, and is necessary not only to the maintenance of the agricultural economy of the state, but also for the assurance of adequate, healthful and nutritious food for future residents of this state and nation.

(b) That the agricultural work force is vital to sustaining agricultural productivity; that this work force has the lowest average income of any occupational group in this state; that there exists a need to house this work force of crisis proportions which requires including among agricultural uses the housing of agricultural laborers; and that such use of agricultural land is in the public interest and in conformity with the state's Farmworker Housing Assistance Plan.

(c) That the discouragement of premature and unnecessary conversion of agricultural land to urban uses is a matter of public interest and will be of benefit to urban dwellers themselves in that it will discourage discontiguous urban development patterns which unnecessarily increase the costs of community services to community residents.

(d) That in a rapidly urbanizing society agricultural lands have a definite public value as open space, and the preservation in agricultural production of such lands, the use of which may be limited under the provisions of this chapter, constitutes an important physical, social, esthetic and economic asset to existing or pending urban or metropolitan developments.

(e) That land within a scenic highway corridor or wildlife habitat area as defined in this chapter has a value to the state because of its scenic beauty and its location adjacent to or within view of a state scenic highway or because it is of great importance as habitat for wildlife and contributes to the preservation or enhancement thereof.

(f) For these reasons, this chapter is necessary for the promotion of the general welfare and the protection of the public interest in agricultural land.

HISTORY:

Added Stats 1965 ch 1443 § 1. Amended Stats 1968 ch 1138 § 1; Stats 1969 ch 1473 § 4; Stats 1980 ch 1219 § 1.

NOTES:

Amendments:

1968 Amendment:

Deleted "prime" before "agricultural" in subds (a) and (b).

1969 Amendment:

(1) Added subd (d); **(2)** redesignated former subd (d) to be subd (e); and **(3)** deleted "prime" before "agricultural land" in subd (e).

1980 Amendment:

(1) Added subd (b); and **(2)** redesignated former subds (b)-(e) to be subds (c)-(f).

Cross References:

Farmworker Housing Grant Program: H & S C § 50517.5.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 28D.10[1], 28D.15[1], 28D.51.

Law Review Articles:

Development and the environment: Reforming procedures for industrial siting and other major land developments. 61 ABAJ 449.

Protecting the right to farm: Statutory limits on nuisance actions against the farmer. 1983 Wisc LR 95.

Attorney General's Opinions:

Authority of county board to bring action to prevent owner of 1,200 acre farm, placed in agricultural preserve and under contract with county, from selling off 20 acre parcels for use as homesites even though zoned for 20 acre parcels. 54 Ops. Cal. Atty. Gen. 90.

Right of county to adopt rules for creation of agricultural preserves requiring minimum capital outlay for agricultural capital investments; propriety of rules governing requirements as to income from agricultural production and pursuits. 56 Ops. Cal. Atty. Gen. 160.

Annotations:

Validity, construction, and application of right-to-farm acts. 8 ALR6th 465.

NOTES OF DECISIONS 1. Generally

County was a successful party entitled to attorney fees under CCP, § 1021.5 because the county's lawsuit against state agencies challenging a proposed conversion of agricultural land into wildlife habitat resulted in an agreed modification of a conservation easement to allow agricultural use; the county's action enforced the important public interest set forth in Gov C § 51220 of preserving agricultural land, and open space use must be consistent with agricultural use as provided in Gov C §§ 51238, 51238.1. County of Colusa v. California Wildlife Conservation Bd. (2006, Cal App 3d Dist) 145 Cal App 4th 637, 52 Cal Rptr 3d 1, 2006 Cal App LEXIS 1921.

1. Generally

Hierarchy Notes:

Tit. 5, Div. 1, Pt. 1, Ch. 7 Note

Tit. 5, Div. 1, Pt. 1, Ch. 7, Art. 2 Note

29 of 400 DOCUMENTS

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GOVERNMENT CODE
Title 7. Planning and Land Use
Division 1. Planning and Zoning
Chapter 1.5. Office of Planning and Research
Article 4. Powers and Duties

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Gov Code Tit. 7, Div. 1, Ch. 1.5, Art. 4 Note (2009)

Tit. 7, Div. 1, Ch. 1.5, Art. 4 Note

HISTORY:

[Added Stats 1970 ch 1534 § 2.]

NOTES:

Note

Stats 1970 ch 1534, as amended by Stats 1971 ch 250 § 1, also provides:

§ 4. The Office of Planning and Research shall give immediate and high priority to the development of land use policy. As a first component of such policy, the office shall develop, in conjunction with appropriate state departments and federal, regional and local agencies, a statewide plan and implementation program for protecting land and water resources of the state which are of statewide significance in terms of the state's natural resource base and the preservation and enhancement of environmental quality and are threatened due to urban expansion, incompatible public or private use or development or other circumstances.

The planning program shall consider, but not be limited to:

1. Areas of outstanding scientific, scenic and recreation value.

2. Areas which are required as habitat for significant fish and wildlife resources, including rare and endangered species.

3. Forest and agricultural lands which are judged to be of major importance in meeting future needs for food, fiber and timber.

4. Areas which provide green space and open areas in and around high-density metropolitan development.

5. Areas which are required to provide needed access to coastal beaches, lakeshores, and riverbanks.

6. Areas which require special development regulation because of hazardous or special conditions, such as earthquake fault zones, unstable slide areas, flood plains, and watersheds.

7. Areas which serve as connecting links between major public recreation and open-space sites, such as utility easements, streambanks, trails, and scenic highway corridors.

8. Areas of major historic or cultural interest.

§ 5. The planning and implementation program shall consider the full range of powers, programs and actions by which state government may influence the use and development of land and water resources, including public acquisition, zoning, tax incentives, development regulations and acquisition of development rights.

Cross References:

Definitions: Gov C §§ 65025 et seq.

Hierarchy Notes:

Tit. 7 Note

Tit. 7, Div. 1 Note

Tit. 7, Div. 1, Ch. 1.5 Note

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GOVERNMENT CODE
Title 7. Planning and Land Use
Division 1. Planning and Zoning
Chapter 3. Local Planning
Article 5. Authority for and Scope of General Plans

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Gov Code § 65302 (2009)

§ 65302. Elements of general plan

The general plan shall consist of a statement of development policies and shall include a diagram or diagrams and text setting forth objectives, principles, standards, and plan proposals. The plan shall include the following elements:

(a) A land use element that designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, including agriculture, natural resources, recreation, and enjoyment of scenic beauty, education, public buildings and grounds, solid and liquid waste disposal facilities, and other categories of public and private uses of land. The location and designation of the extent of the uses of the land for public and private uses shall consider the identification of land and natural resources pursuant to paragraph (3) of subdivision (d). The land use element shall include a statement of the standards of population density and building intensity recommended for the various districts and other territory covered by the plan. The land use element shall identify and annually review those areas covered by the plan that are subject to flooding identified by flood plain mapping prepared by the Federal Emergency Management Agency (FEMA) or the Department of Water Resources. The land use element shall also do both of the following:

(1) Designate in a land use category that provides for timber production those parcels of real property zoned for timberland production pursuant to the California Timberland Productivity Act of 1982 (Chapter 6.7 (commencing with Section 51100) of Part 1 of Division 1 of Title 5).

(2) Consider the impact of new growth on military readiness activities carried out on military bases, installations, and operating and training areas, when proposing zoning ordinances or designating land uses covered by the general plan for land, or other territory adjacent to military facilities, or underlying designated military aviation routes and airspace.

(A) In determining the impact of new growth on military readiness activities, information provided by military facilities shall be considered. Cities and counties shall address military impacts based on information from the military and other sources.

(B) The following definitions govern this paragraph:

(i) "Military readiness activities" mean all of the following:

(I) Training, support, and operations that prepare the men and women of the military for combat.

(II) Operation, maintenance, and security of any military installation.

(III) Testing of military equipment, vehicles, weapons, and sensors for proper operation or suitability for combat use.

(ii) "Military installation" means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the United States Department of Defense as defined in paragraph (1) of subsection (e) of Section 2687 of Title 10 of the United States Code.

(b)

(1) A circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, any military airports and ports, and other local public utilities and facilities, all correlated with the land use element of the plan.

(2)

(A) Commencing January 1, 2011, upon any substantive revision of the circulation element, the legislative body shall modify the circulation element to plan for a balanced, multimodal transportation network that meets the needs of all users of streets, roads, and highways for safe and convenient travel in a manner that is suitable to the rural, suburban, or urban context of the general plan.

(B) For purposes of this paragraph, "users of streets, roads, and highways" means bicyclists, children, persons with disabilities, motorists, movers of commercial goods, pedestrians, users of public transportation, and seniors.

(c) A housing element as provided in Article 10.6 (commencing with Section 65580).

(d)

(1) A conservation element for the conservation, development, and utilization of natural resources including water and its hydraulic force, forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals, and other natural resources. The conservation element shall consider the effect of development within the jurisdiction, as described in the land use element, on natural resources located on public lands, including military installations. That portion of the conservation element including waters shall be developed in coordination with any countywide water agency and with all district and city agencies, including flood management, water conservation, or groundwater agencies that have developed, served, controlled, managed, or conserved water of any type for any purpose in the county or city for which the plan is prepared. Coordination shall include the discussion and evaluation of any water supply and demand information described in Section 65352.5, if that information has been submitted by the water agency to the city or county.

(2) The conservation element may also cover all of the following:

(A) The reclamation of land and waters.

(B) Prevention and control of the pollution of streams and other waters.

(C) Regulation of the use of land in stream channels and other areas required for the accomplishment of the conservation plan.

(D) Prevention, control, and correction of the erosion of soils, beaches, and shores.

(E) Protection of watersheds.

(F) The location, quantity and quality of the rock, sand and gravel resources.

(3) Upon the next revision of the housing element on or after January 1, 2009, the conservation element shall identify rivers, creeks, streams, flood corridors, riparian habitats, and land that may accommodate floodwater for purposes of groundwater recharge and stormwater management.

(e) An open-space element as provided in Article 10.5 (commencing with Section 65560).

(f)

(1) A noise element that shall identify and appraise noise problems in the community. The noise element shall recognize the guidelines established by the Office of Noise Control and shall analyze and quantify, to the extent practicable, as determined by the legislative body, current and projected noise levels for all of the following sources:

(A) Highways and freeways.

(B) Primary arterials and major local streets.

(C) Passenger and freight on-line railroad operations and ground rapid transit systems.

(D) Commercial, general aviation, heliport, helistop, and military airport operations, aircraft overflights, jet engine test stands, and all other ground facilities and maintenance functions related to airport operation.

(E) Local industrial plants, including, but not limited to, railroad classification yards.

(F) Other ground stationary noise sources, including, but not limited to, military installations, identified by local agencies as contributing to the community noise environment.

(2) Noise contours shall be shown for all of these sources and stated in terms of community noise equivalent level (CNEL) or day-night average level (Ldn). The noise contours shall be prepared on the basis of noise monitoring or following generally accepted noise modeling techniques for the various sources identified in paragraphs (1) to (6), inclusive.

(3) The noise contours shall be used as a guide for establishing a pattern of land uses in the land use element that minimizes the exposure of community residents to excessive noise.

(4) The noise element shall include implementation measures and possible solutions that address existing and foreseeable noise problems, if any. The adopted noise element shall serve as a guideline for compliance with the state's noise insulation standards.

(g)

(1) A safety element for the protection of the community from any unreasonable risks associated with the effects of seismically induced surface rupture, ground shaking, ground failure, tsunami, seiche, and dam failure; slope instability leading to mudslides and landslides; subsidence, liquefaction, and other seismic hazards identified pursuant

to Chapter 7.8 (commencing with Section 2690) of Division 2 of the Public Resources Code, and other geologic hazards known to the legislative body; flooding; and wildland and urban fires. The safety element shall include mapping of known seismic and other geologic hazards. It shall also address evacuation routes, military installations, peakload water supply requirements, and minimum road widths and clearances around structures, as those items relate to identified fire and geologic hazards.

(2) The safety element, upon the next revision of the housing element on or after January 1, 2009, shall also do the following:

(A) Identify information regarding flood hazards, including, but not limited to, the following:

(i) Flood hazard zones. As used in this subdivision, "flood hazard zone" means an area subject to flooding that is delineated as either a special hazard area or an area of moderate or minimal hazard on an official flood insurance rate map issued by the Federal Emergency Management Agency. The identification of a flood hazard zone does not imply that areas outside the flood hazard zones or uses permitted within flood hazard zones will be free from flooding or flood damage.

(ii) National Flood Insurance Program maps published by FEMA.

(iii) Information about flood hazards that is available from the United States Army Corps of Engineers.

(iv) Designated floodway maps that are available from the Central Valley Flood Protection Board.

(v) Dam failure inundation maps prepared pursuant to Section 8589.5 that are available from the Office of Emergency Services.

(vi) Awareness Floodplain Mapping Program maps and 200-year flood plain maps that are or may be available from, or accepted by, the Department of Water Resources.

(vii) Maps of levee protection zones.

(viii) Areas subject to inundation in the event of the failure of project or nonproject levees or floodwalls.

(ix) Historical data on flooding, including locally prepared maps of areas that are subject to flooding, areas that are vulnerable to flooding after wildfires, and sites that have been repeatedly damaged by flooding.

(x) Existing and planned development in flood hazard zones, including structures, roads, utilities, and essential public facilities.

(xi) Local, state, and federal agencies with responsibility for flood protection, including special districts and local offices of emergency services.

(B) Establish a set of comprehensive goals, policies, and objectives based on the information identified pursuant to subparagraph (A), for the protection of the community from the unreasonable risks of flooding, including, but not limited to:

(i) Avoiding or minimizing the risks of flooding to new development.

(ii) Evaluating whether new development should be located in flood hazard zones, and identifying construction methods or other methods to minimize damage if new development is located in flood hazard zones.

(iii) Maintaining the structural and operational integrity of essential public facilities during flooding.

(iv) Locating, when feasible, new essential public facilities outside of flood hazard zones, including hospitals and health care facilities, emergency shelters, fire stations, emergency command centers, and emergency communications facilities or identifying construction methods or other methods to minimize damage if these facilities are located in flood hazard zones.

(v) Establishing cooperative working relationships among public agencies with responsibility for flood protection.

(C) Establish a set of feasible implementation measures designed to carry out the goals, policies, and objectives established pursuant to subparagraph (B).

(3) After the initial revision of the safety element pursuant to paragraph (2), upon each revision of the housing element, the planning agency shall review and, if necessary, revise the safety element to identify new information that was not available during the previous revision of the safety element.

(4) Cities and counties that have flood plain management ordinances that have been approved by FEMA that substantially comply with this section, or have substantially equivalent provisions to this subdivision in their general plans, may use that information in the safety element to comply with this subdivision, and shall summarize and incorporate by reference into the safety element the other general plan provisions or the flood plain ordinance, specifically showing how each requirement of this subdivision has been met.

(5) Prior to the periodic review of its general plan and prior to preparing or revising its safety element, each city and county shall consult the California Geological Survey of the Department of Conservation, the Central Valley Flood Protection Board, if the city or county is located within the boundaries of the Sacramento and San Joaquin Drainage District, as set forth in Section 8501 of the Water Code, and the Office of Emergency Services for the purpose of including information known by and available to the department, the office, and the board required by this subdivision.

(6) To the extent that a county's safety element is sufficiently detailed and contains appropriate policies and programs for adoption by a city, a city may adopt that portion of the county's safety element that pertains to the city's planning area in satisfaction of the requirement imposed by this subdivision.

HISTORY:

Added Stats 1965 ch 1880 § 5. Amended Stats 1967 ch 1657 § 1, operative November 1, 1968, ch 1657 § 4, operative July 1, 1969, ch 1658 § 4, effective and operative July 1, 1969; Stats 1969 ch 932 § 1; Stats 1970 ch 65 § 1, ch 717 § 1, ch 1553 § 3, ch 1590 § 1.5; Stats 1971 ch 149 § 1, ch 150 § 1, ch 775 § 1, ch 1632 § 1, ch 1803 § 1.5; Stats 1972 ch 251 § 1, effective June 30, 1972, ch 348 § 1, ch 1353 § 3; Stats 1973 ch 120 § 2, effective June 29, 1973; Stats 1975 ch 1104 § 1, ch 1124 § 1.5; Stats 1976 ch 1063 § 1, effective September 21, 1976; Stats 1978 ch 953 § 1; Stats 1979 ch 591 § 1; Stats 1980 ch 1143 § 2, operative October 1, 1981; Stats 1981 ch 714 § 192; Stats 1982 ch 1263 § 1, effective September 22, 1982; Stats 1984 ch 1009 § 5; Stats 1985 ch 114 § 4, effective June 28, 1985, ch 1199 § 4; Stats 1989 ch 1255 § 1; Stats 1992 ch 823 § 1 (AB 908); Stats 1995 ch 881 § 1 (SB 901); Stats 2002 ch 971 § 3 (SB 1468); Stats 2004 ch 907 § 5 (SB 926), effective September 30, 2004, ch 951 § 1.7 (AB 3065); Stats 2006 ch 869 § 3 (SB 668), effective January 1, 2007; Stats 2007 ch 369 § 1.5 (AB 162), effective January 1, 2008; Stats 2008 ch 657 § 4 (AB 1358), effective January 1, 2009.

NOTES:

Former Sections:

Former § 65302, relating to the creation of a planning commission, was added Stats 1953 ch 1355 § 2 and repealed Stats 1965 ch 1880 § 8.

Original § 65302 was added Stats 1951 ch 334 § 1 and repealed Stats 1953 ch 1355 § 1.

Amendments:

1967 Amendment (ch 1657 § 1):

Added "natural resources" in subd (a).

1967 Amendment (ch 1658):

Added subd (c).

1969 Amendment:

Added the third sentence in subd (a).

1970 Amendment:

Added (1) ", open space, including" in subd (a); (2) ", and enjoyment of scenic beauty," in subd (a); (3) "solid and liquid waste disposal facilities," in subd (a); (4) subds (d)(1)-(d)(7); and (5) subd (e).

1971 Amendment:

(1) Added "to be developed pursuant to regulations established under Section 37041 of the Health and Safety Code," in subd (c); (2) deleted "endeavor to" after "plan shall" in subd (c); (3) substituted "10.5" for "10" in subd (e); (4) substituted "65560" for "65350" in subd (e); (5) added subds (f)-(h); and (6) added the last paragraph.

1972 Amendment (ch 251):

Added the second paragraph of subd (d)(7).

1972 Amendment (ch 1353):

Added the second paragraph of subd (f).

1973 Amendment:

Substituted "December 31" for "June 30" in the second paragraph of subd (d)(7).

1975 Amendment:

(1) Substituted "41134" for "37041" in subd (c); (2) substituted subd (g) for former subd (g) which read: "(g) A noise element in quantitative, numerical terms, showing contours of present and projected noise levels associated with all existing and proposed major transportation elements. These include but are not limited to the following:

"(1) Highways and freeways,

"(2) Ground rapid transit systems,

"(3) Ground facilities associated with all airports operating under a permit from the State Department of Aeronautics.

"These noise contours may be expressed in any standard acoustical scale which includes both the magnitude of noise and frequency of its occurrence. The recommended scale is sound level A, as measured with A-weighting network of a standard sound level meter, with corrections added for the time duration per event and the total number of events per 24-hour period.

"Noise contours shall be shown in minimum increments of five decibels and shall be continued down to 65 db(A). For regions involving hospitals, rest homes, long-term medical or mental care, or outdoor recreational areas, the contours shall be continued down to 45 db(A).

"Conclusions regarding appropriate site or route selection alternatives or noise impact upon compatible land uses shall be included in the general plan.

"The state, local, or private agency responsible for the construction or maintenance of such transportation facilities shall provide to the local agency producing the general plan, a statement of the present and projected noise levels of the facility, and any information which was used in the development of such levels."; and (3) added subd (i).

1976 Amendment:

Substituted "46050.1" for "39350.1" in the first paragraph in subd (g).

1978 Amendment:

Added (1) the third through fifth paragraphs of subd (f); and (2) the second paragraph of subd (i).

1979 Amendment:

Amended subd (c) by (1) substituting "Section 50459" for "Section 41134" in the first sentence; and (2) adding the last sentence.

1980 Amendment:

(1) Substituted subd (c) for former subd (c) which read: "(c) A housing element, to be developed pursuant to regulations established under Section 50459 of the Health and Safety Code, consisting of standards and plans for the improvement of housing and for provision of adequate sites for housing. This element of the plan shall make adequate provision for the housing needs of all economic segments of the community. Such element shall consider all aspects of current housing technology, to include provisions for not only site-built housing, but also manufactured housing, including mobilehomes and modular homes."; and **(2)** deleted the former second paragraph which read: "The elements of the general plan may, at the discretion of the county or city, be combined; provided, however, the county or city complies with all requirements regarding the content and adoption of general plan elements of this article and Article 6 (commencing with Section 65350) of this chapter."

1981 Amendment:

Routine code maintenance.

1982 Amendment:

In addition to making technical changes, substituted "shall" for "must" after "hazards that" in the second paragraph of subd (f).

1984 Amendment:

(1) Amended subd (a) by **(a)** deleting "also" before "identify areas" in the third sentence; and **(b)** adding the last sentence; **(2)** redesignated former subd (d)(2) to be subd (d)(7) and subds (d)(3)-(d)(7) to be subds (d)(2)-(d)(6); **(3)** deleted former subd (f) which read: "(f) A seismic safety element consisting of an identification and appraisal of seismic hazards such as susceptibility to surface ruptures from faulting, to ground shaking, to ground failures, or to effects of seismically induced waves such as tsunamis and seiches. "The seismic safety element shall also include an appraisal of mudslides, landslides, and slope stability as necessary geologic hazards that shall be considered simultaneously with other hazards such as possible surface ruptures from faulting, ground shaking, ground failure, and seismically induced waves. "To the extent that a county's seismic safety element is sufficiently detailed containing appropriate policies and programs for adoption by a city, a city may adopt that portion of the county's seismic safety element that pertains to the city planning area within the county's jurisdiction, in satisfaction of this subdivision. "In adopting a county seismic safety element, a city shall follow all requirements regarding the content and adoption of general plan elements as set forth in this article and Article 6 (commencing with Section 65350). "Each county and city shall submit to the Division of Mines and Geology of the Department of Conservation one copy of the seismic safety element and any technical studies used for developing the seismic safety element."; **(4)** redesignated former subd (g) to be subd (f); **(5)** amended subd (f) by **(a)** substituting the introductory clause for the former introductory clause which read: "A noise element, which shall recognize guidelines adopted by the Office of Noise Control pursuant to Section 46050.1 of the Health and Safety Code, and which quantifies the community noise environment in terms of noise exposure contours for both near-and long-term levels of growth and traffic activity. Such noise exposure information shall become a guideline for use in development of the land use element to achieve noise compatible land use and also to provide baseline levels and noise source identification for local noise ordinance enforcement. The sources of environmental noise considered in this analysis shall include, but are not limited to, the following:"; and **(b)** substituting the second, third, and fourth paragraphs for the former third through eighth paragraphs which read: "The noise exposure information shall be presented in terms of noise contours expressed in community noise equivalent level (CNEL) or day-night average level

(L [D][N]). CNEL means the average equivalent A-weighted sound level during a 24-hour day, obtained after addition of five decibels to sound levels in the evening from 7 p.m. to 10 p.m. and after addition of 10 decibels to sound levels in the night before 7 a.m. and after 10 p.m. L [D][N]means the average equivalent A-weighted sound level during a 24-hour day, obtained after addition of 10 decibels to sound levels in the night before 7 a.m. and after 10 p.m. "The contours shall be shown in minimum increments of 5db and shall continue down to 60db. For areas deemed noise sensitive, including, but not limited to, areas containing schools, hospitals, rest homes, long-term medical or mental care facilities, or any other land-use areas deemed noise sensitive by the local jurisdiction, the noise exposure shall be determined by monitoring. "A part of the noise element shall also include the preparation of a community noise exposure inventory, current and projected, which identifies the number of persons exposed to various levels of noise throughout the community. "The noise element shall also recommend mitigating measures and possible solutions to existing and foreseeable noise problems. "The state, local, or private agency responsible for the construction, maintenance, or operation of those transportation, industrial, or other commercial facilities specified in paragraph 2 of this subdivision shall provide to the local agency producing the general plan, specific data relating to current and projected levels of activity and a detailed methodology for the development of noise contours given this supplied data, or they shall provide noise contours as specified in the foregoing statements. "It shall be the responsibility of the local agency preparing the general plan to specify the manner in which the noise element will be integrated into the city or county's zoning plan and tied to the land use and circulation elements and to the local noise ordinance. The noise element, once adopted, shall also become the guideline for determining compliance with the state's noise insulation standards, as contained in Section 1092 of Title 25 of the California Administrative Code."; **(6)** deleted former subd (h) which read: "(h) A scenic highway element for the development, establishment, and protection of scenic highways pursuant to the provisions of Article 2.5 (commencing with Section 260) of Chapter 2 of Division 1 of the Streets and Highways Code; ."; and **(7)** substituted subd (g) for former subd (i) which read: "(i) A safety element for the protection of the community from fires and geologic hazards including features necessary for such protection as evacuation routes, peakload water supply requirements, minimum road widths, clearances around structures, and geologic hazard mapping in areas of known geologic hazards. "The elements of the general plan may, at the discretion of the county or city, be combined if the county or city complies with all requirements regarding the content and adoption of general plan elements of this article and Article 6 (commencing with Section 65350). "The requirements of this section shall apply to charter cities."

1985 Amendment:

Amended subd (a) by substituting **(1)** "those" for "such" after "with respect to" in the third sentence; and **(2)** "land use element shall designate, in a land use category that provides for timber production, those parcels of real property zoned for timberland production" for "diagram for the land use element shall designate those parcels of real property for timberland production which have been so zoned" in the fourth sentence. (As amended by Stats 1985, ch 1199, compared to the section as it read prior to 1985. This section was also amended by an earlier chapter, ch 114. See Gov C § 9605.)

1989 Amendment:

Amended subd (g) by **(1)** adding the last sentence in the first paragraph; and **(2)** substituting the third paragraph for the former third paragraph which read: "Each county and city shall submit to the Division of Mines and Geology of the Department of Conservation one copy of the safety element and any technical studies used for developing the safety element."

1992 Amendment:

Added ", liquefaction and other seismic hazards identified pursuant to Chapter 7.8 (commencing with Section 2690) of the Public Resources Code," in subd (g).

1995 Amendment:

(1) Added the third sentence in subd (d); and **(2)** deleted the comma after "adoption of the" in the third sentence of the last paragraph.

2002 Amendment:

(1) Amended subd (a) by **(a)** substituting "that" for "which" after "element" in the first sentence; and **(b)** added "also do both of the following:" at the end of the last sentence; **(2)** added subdivision designation (a)(1); **(3)** amended subd (a)(1) by **(a)** adding "Designate" at the beginning of the paragraph; and **(b)** deleting the comma after "designate" and "production" in the first sentence; **(4)** added subds (a)(2)-(a)(2)(B)(ii); **(5)** added "any military airports and ports," in subd (b); **(6)** amended subd (d) by **(a)** adding the second sentence; **(b)** substituting "that" for "which" after "city agencies" in the third sentence; and **(c)** adding "the following:" at the end of the last sentence; **(7)** added ", including, but not limited to, military installations," in subd (f)(6); and **(8)** added "military installations," in the third sentence of subd (g).

2004 Amendment (ch 907):

Substituted "from the military and other sources" for "that the military provides" in subd (a)(2)(A).

2004 Amendment (ch 951):

(1) added subdivision designations (g)(1) and (g)(2); and **(2)** deleted the former last paragraph which read: "At least 45 days prior to adoption or amendment of the safety element, each county and city shall submit to the Division of Mines and Geology of the Department of Conservation one copy of a draft of the safety element or amendment and any technical studies used for developing the safety element. The division may review drafts submitted to it to determine whether they incorporate known seismic and other geologic hazard information, and report its findings to the planning agency within 30 days of receipt of the draft of the safety element or amendment pursuant to this subdivision. The legislative body shall consider the division's findings prior to final adoption of the safety element or amendment unless the division's findings are not available within the above prescribed time limits or unless the division has indicated to the city or county that the division will not review the safety element. If the division's findings are not available within those prescribed time limits, the legislative body may take the division's findings into consideration at the time it considers future amendments to the safety element. Each county and city shall provide the division with a copy of its adopted safety element or amendments. The division may review adopted safety elements or amendments and report its findings. All findings made by the division shall be advisory to the planning agency and legislative body."

2006 Amendment:

(1) Deleted the former second sentence in subd (d)(7) which read: "The conservation element shall be prepared and adopted no later than December 31, 1973."; and (2) substituted "California Geological Survey" for "Division of Mines and Geology" after "shall consult the" in subd (g)(1).

2007 Amendment:

(1) Designated former subd (d) to be subds (d)(1) and (d)(2); (2) amended subd (d)(1) by (a) adding ", including flood management, water conservation, or groundwater agencies"; (b) adding ", managed," after "developed, served, controlled"; (c) adding "of any type" after "conserved water"; and (d) substituting "in" for "for" after "for any purpose"; (3) redesignated former subds (d)(1)-(d)(6) to be subds (d)(2)(A)-(d)(2)(F); (4) deleted former subd (d)(7) which read: "(7) Flood control."; (5) added subd (d)(3); (6) added subdivision designations (f)(1)-(f)(4); (7) substituted "State Department of Health Care Services" for "State Department of Health Services" in subd (f)(1); (8) redesignated former subds (f)(1)-(f)(6) to be subds (f)(1)(A)-(f)(1)(F); (9) designated former subd (g) to be subd (g)(1); (10) deleted former subd (g)(1) which read: "(1) Prior to the periodic review of its general plan and prior to preparing or revising its safety element, each city and county shall consult the California Geological Survey of the Department of Conservation and the Office of Emergency Services for the purpose of including information known by and available to the department and the office required by this subdivision."; (11) substituted subd (g)(2) for former subd (g)(2) which read: "(2) To the extent that a county's safety element is sufficiently detailed and contains appropriate policies and programs for adoption by a city, a city may adopt that portion of the county's safety element that pertains to the city's planning area in satisfaction of the requirement imposed by this subdivision."

2008 Amendment:

(1) Substituted "(Chapter 6.7 (commencing with Section 51100) of Part 1 of Division 1 of Title 5)" for ", Chapter 6.7 (commencing with Section 51100) of Part 1 of Division 1 of Title 5" in subd (a)(1); (2) designated former subd (b) to be subd (b)(1); (3) added subd (b)(2); (4) amended the introductory paragraph of subd (f)(1) by (a) substituting "that" for "which" after "A noise element"; and (b) deleting "in the State Department of Health Care Services" after "Office of Noise Control"; and (5) substituted "flooding; and wildland" for "flooding; and wild land" in the first sentence of subd (g)(1).

Note

Stats 1984 ch 1009 provides:

SEC. 43. It is the intent of the Legislature in enacting this act to consolidate and simplify statutes relating to local planning. It is not the intent of the Legislature to mandate new programs or higher levels of service on cities and counties.

The amendments made to Section 65302 of the Government Code by this act do not expand the requirements for any element of the general plan of any city, county, or city and county, and do not require any city, county, or city and county to amend its general plan in order to comply with this act.

SEC. 45. If any provision of this act or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Stats 2002 ch 971, as amended Stats 2004 ch 907 § 8 provides:

Sec. 8. A city or county shall not be required to comply with the amendments made by this act to Sections 65302, 65302.3, 65560, and 65583 of the Government Code, relating to military readiness activities, military personnel, military airports, and military installations, until the city or county undertakes its next general plan revision.

Stats 2008 ch 657 provides:

SECTION 1. This act shall be known and may be cited as the California Complete Streets Act of 2008.

SEC. 2. The Legislature finds and declares all of the following:

(a) The California Global Warming Solutions Act of 2006, enacted as Chapter 488 of the Statutes of 2006, sets targets for the reduction of greenhouse gas emissions in California to slow the onset of human-induced climate change.

(b) The State Energy Resources Conservation and Development Commission has determined that transportation represents 41 percent of total greenhouse gas emissions in California.

(c) According to the United States Department of Transportation's 2001 National Household Travel Survey, 41 percent of trips in urban areas nationwide are two miles or less in length, and 66 percent of urban trips that are one mile or less are made by automobile.

(d) Shifting the transportation mode share from single passenger cars to public transit, bicycling, and walking must be a significant part of short- and long-term planning goals if the state is to achieve the reduction in the number of vehicle miles traveled and in greenhouse gas emissions required by current law.

(e) Walking and bicycling provide the additional benefits of improving public health and reducing treatment costs for conditions associated with reduced physical activity including obesity, heart disease, lung disease, and diabetes. Medical costs associated with physical inactivity were estimated by the State Department of Health Care Services to be $28 billion in 2005.

(f) The California Blueprint for Bicycling and Walking, prepared pursuant to the Supplemental Report of the Budget Act of 2001, sets the goal of a 50 percent increase in bicycling and walking trips in California by 2010, and states that to achieve this goal, bicycling and walking must be considered in land use and community planning, and in all phases of transportation planning and project design.

(g) In order to fulfill the commitment to reduce greenhouse gas emissions, make the most efficient use of urban land and transportation infrastructure, and improve public health by encouraging physical activity, transportation planners must find innovative ways to reduce vehicle miles traveled and to shift from short trips in the automobile to biking, walking, and use of public transit.

(h) It is the intent of the Legislature to require in the development of the circulation element of a local government's general plan that the circulation of users of streets, roads, and highways be accommodated in a manner suitable for the respective setting in rural, suburban, and urban contexts, and that users of streets, roads, and highways include bicyclists, children, persons with disabilities, motorists, movers of commercial goods, pedestrians, public transportation, and seniors.

Cross References:

California Timberland Productivity Act: Gov C §§ 51100 et seq.

Development and adoption of guidelines for preparation and content of mandatory elements in city and county general plans: Gov C § 65040.2.

Wildland fire protection: Gov C § 65302.5.

Requirements of findings where mandatory general plan operates to limit the number of newly constructed housing units: Gov C § 65302.8.

Additional elements: Gov C § 65303.

Open-Space lands: Gov C §§ 65560 et seq.

Housing elements: Gov C §§ 65580 et seq.

Application of section to adoption by planning commission or legislative body of master or general community redevelopment plan: H & S C § 33302.

Requirement for implementation of home financing program, of compliance with land use and housing elements: H & S C § 52021.

Consideration of recreational trails in development of general plan: Pub Res C § 5076.

Measurement of noise level generated in schools by freeway traffic: Sts & H C § 216.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 579 "Zoning And Planning".

8 Witkin Summary (10th ed) Constitutional Law §§ 1012, 1013, 1014, 1051.

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Law Review Articles:

Development and the environment: Reforming procedures for industrial siting and other major land developments. 61 ABAJ 449.

Parochialism on the Bay: An analysis of land use planning in the San Francisco Bay Area. 55 CLR 836.

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Should CEQA Require Local Governments to Analyze the Impacts of Development Displaced by Restrictive Land Use Planning?. 33 Ecology LQ 1015.

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Growth control in California; ultra vires issue with respect to statutory land use scheme. 5 Pacific LJ 589.

The Local "General Plan" in California. 9 San Diego LR 1.

Unintended Consequences: Eminent Domain and Affordable Housing. 46 Santa Clara LR 841.

Low cost housing; California Environmental Quality Act and the expanding role of impact statements. 46 SCLR 765.

Saving San Francisco Bay: A case study in environmental legislation. 23 Stan LR 349.

Cost-benefit analysis and the National Environmental Policy Act of 1969. 24 Stan LR 1092.

Development of the California and federal water pollution control programs. 5 UCD LR 234.

Comments on the California rule-making process and the effects thereon of the California Environmental Quality Act of 1970. 5 UCD LR 309.

Practice Tips: The Challenges of Infill Housing. 27 Los Angeles Lawyer 12 (January).

Attorney General's Opinions:

Authority and duty of Commission of Housing and Community Development to promulgate regulations setting forth standards and plans for improvement of housing and for provision of adequate sites for housing. 55 Ops. Cal. Atty. Gen. 380.

Limiting density of population or structures within proposed subdivision; approval or disapproval of map in view of access to subdivision site afforded by streets. 56 Ops. Cal. Atty. Gen. 274.

Incompatibility of offices of county planning commissioner and school district trustee, in view of the offices' respective duties. 56 Ops. Cal. Atty. Gen. 488.

Incompatibility of offices of county planning commissioner, hospital district director, and water district director being occupied by the same person at the same time. 58 Ops. Cal. Atty. Gen. 323.

Parcel specific map is not required for land use element of general plan adopted by city or county. 67 Ops. Cal. Atty. Gen. 75.

A county may incorporate the land use designations and other provisions of its zoning ordinances into its general plan. If it does, it may repeal its zoning ordinances and replace them with a single ordinance that requires all land use activity in the county to conform to its general plan including the incorporated zoning ordinances. 81 Ops. Cal. Atty. Gen. 57.

The holding simultaneously of the positions of planning commissioner of the City of Victorville and director of the Victor Valley Water District presents substantial questions of fact and law concerning the application of the incompatible public offices doctrine that warrants the granting of leave to sue in quo warranto. 82 Ops. Cal. Atty. Gen. 68.

A community may establish its maximum number of housing units by income category that can be constructed, rehabilitated, and conserved over the next five-year period below the number of housing units that would meet the community?s goal of achieving its share of the regional housing needs established pursuant to the Planning and Zoning Law if the community finds that its available resources in the aggregate, including but not limited to federal and state funds for its housing programs, its own local funds, tax or density credits, and other affordable housing programs, are insufficient to meet those needs. 88 Ops. Cal Atty. Gen. 84.

Annotations:

Prohibiting or regulating removal or exploitation of oil and gas, minerals, soil, or other natural products within municipal limits. 10 ALR3d 1226.

Hierarchy Notes:

Tit. 7 Note

Tit. 7, Div. 1 Note

Tit. 7, Div. 1, Ch. 3 Note

Tit. 7, Div. 1, Ch. 3, Art. 5 Note

NOTES OF DECISIONS

In an action by taxpayers for declaratory and injunctive relief to compel a transit district to locate a station in the particular place shown in an engineering report, the demurrer of a county joined as a defendant was properly sustained without leave to amend, where the county's only connection with the matter was its adoption of a traffic circulation plan contemplating a new station location designated by the district, where adoption of the circulation plan was within the statutory authority of the county, where no procedural defect in adopting the plan was suggested, and where the wisdom of such a plan was clearly a matter of legislative discretion. Mills v. San Francisco Bay Area Rapid Transit Dist. (1968, Cal App 1st Dist) 261 Cal App 2d 666, 68 Cal Rptr 317, 1968 Cal App LEXIS 1790.

In a property owner's action against a county and its officials for declaratory relief on the theory that the county, by adopting a general plan jointly with a city showing proposed streets extending through plaintiff's lands, effected a taking of property, it was proper to sustain defendants' demurrer, where the complaint failed to disclose any concrete dispute between the parties which admitted of definitive and conclusive relief by judgment. Selby Realty Co. v. San Buenaventura (1973) 10 Cal 3d 110, 109 Cal Rptr 799, 514 P2d 111, 1973 Cal LEXIS 145.

Gov C § 65302 does not require a town to provide housing for non-residents even though the non-residents may live in the broader urban community (a county herein) of which the town is a part. Ybarra v. Los Altos Hills (1974, 9th Cir Cal) 503 F2d 250, 1974 US App LEXIS 6970.

A city's general zoning plan did not fulfill the requirements of Gov. Code, § 65302, listing nine variables which mandatory open space plans must consider, where the general plan failed to contain in its open space portion five of the variables listed in that statute. Save El Toro Assn. v. Days (1977, Cal App 1st Dist) 74 Cal App 3d 64, 141 Cal Rptr 282, 1977 Cal App LEXIS 1895.

Gov. Code, § 65302, requires that cities adopt a general plan containing specified mandatory elements and, by implication, also requires that any municipal public works project conform to such a general plan. Moreover, because Gov. Code, § 65302, does not prescribe a remedy for failure to comply with its requirements, a court may employ any appropriate legal or equitable remedy to enforce the legislative intent expressed by the statute. Thus, in an action challenging the legality of a municipal street improvement project, the trial court grant injunctive relief both on the basis of the project's inconsistency with the municipal general plan and on the basis of the city's failure to include a noise element in its general plan. Street v. City of Hayward (1980, Cal App 1st Dist) 106 Cal App 3d 988, 165 Cal Rptr 514, 1980 Cal App LEXIS 1932.

In regulating condominium conversion or land use generally, the police power is in direct confrontation with Cal. Const., art. I, § 1, concerning the right to acquire or possess property, and Cal. Const., art. I, § 4, prohibiting the taking of private property without just compensation. In areas of such critical importance and sensitivity as impairing private property rights and mandating the expenditure of public funds, the delegation of legislative authority to an administrative agency would violate the doctrine of separation of powers in Cal. Const., art. I, § 14, and would be invalid. Accordingly, guidelines promulgated by the State Department of Housing and Community Development concerning land use and housing are not self-executing and do not have the binding effect of law. The subject of conversion of condominiums is of such importance to property owners and tenants alike that the authority of the local government to regulate in the area should not hinge on subjective interpretation by courts or administrative boards of vague or general language to be found in the planning and land use law (Gov. Code, § 65000 et seq.) Bownds v. City of Glendale (1980, Cal App 2d Dist) 113 Cal App 3d 875, 170 Cal Rptr 342, 1980 Cal App LEXIS 2597.

In an action by low income persons seeking declaratory and injunctive relief against a city alleging that the city's land use ordinances and regulations excluded from the city housing for low and moderate income people in violation of the Constitutions and laws of the United States and California, the trial court was not bound to follow the federal standing requirement of an allegation specifying a particular proposed housing project that would have been built but for the city's zoning practices. Accordingly, the trial court erred by applying the federal standing requirement and creating too large an obstacle to plaintiffs' opportunity to challenge the city's zoning practices, where plaintiffs alleged they were members of the class discriminated against, that the restrictive zoning practices adversely affected the regional housing market so that their housing costs were increased, and where the complaint alleged facts showing that plaintiffs were aggrieved and had a real personal interest in the outcome of the litigation. State courts may decide federal constitutional questions on the merits even when the parties do not satisfy federal standing requirements. Stocks v. City of Irvine (1981, Cal App 4th Dist) 114 Cal App 3d 520, 170 Cal Rptr 724, 1981 Cal App LEXIS 1292.

Standing to challenge exclusionary zoning practices in California does not depend on plaintiffs showing a "substantial probability" that their injuries would not exist but for those practices. It is sufficient that they show a causal relationship by alleging that the city's zoning practices have excluded them from desired residency in that city or that those practices have raised their housing costs outside that city by adversely affecting the regional housing market. Such allegations show membership in a class discriminated against and the "real" and "personal" interest that entitles plaintiff to bring the action. To require more would deny access to the courts to plaintiffs with legitimate justiciable causes. However, because standing to sue is not the same as prevailing on the merits, a plaintiff must still prove their injuries at trial and prove that those injuries were the result of a breach of duty by the city. Stocks v. City of Irvine (1981, Cal App 4th Dist) 114 Cal App 3d 520, 170 Cal Rptr 724, 1981 Cal App LEXIS 1292.

In a mandamus proceeding challenging the legal sufficiency of a city's general plan and the housing element contained therein, substantial evidence supported the trial court's determinations that the plan and its housing element complied with Gov. Code, § 65302 (setting forth required elements of general plan), as of the time of the approval of

the revised tentative tract map at issue, where it contained standards and plans for the improvement of housing and for adequate housing sites and made adequate provisions for the housing needs of all economic segments of the community. In addition, when read as a whole, the housing element coordinated with the other elements of the general plan and complied with the housing element administrative guidelines (Cal. Admin. Code, tit. 25, § 6300 et seq.). Stevens v. City of Glendale (1981, Cal App 2d Dist) 125 Cal App 3d 986, 178 Cal Rptr 367, 1981 Cal App LEXIS 2386.

While the Planning and Zoning Law (Gov. Code, §§ 65000 et seq.), makes it mandatory for counties and cities to adopt a general plan which includes a housing element (Gov. Code, § 65302, subd. (c)), the housing element guidelines promulgated pursuant to such law are advisory and are not binding on communities. Stevens v. City of Glendale (1981, Cal App 2d Dist) 125 Cal App 3d 986, 178 Cal Rptr 367, 1981 Cal App LEXIS 2386.

A proceeding wherein an environmental association and a county taxpayer filed a petition for writ of mandate and injunctive relief, alleging that the county had no valid general plan as mandated by Gov. Code, § 65302, and that therefore the approval of certain minor land divisions and the enactment of zoning ordinances were necessarily invalid because they could not conform to a nonexistent plan, was a traditional mandate proceeding subject to the 180-day period of limitations provided by Gov. Code, § 66499.37, rather than an administrative mandate proceeding subject to the 90-day period of limitations contained in Code Civ. Proc., § 1094.6, subd. (b). The proceeding was a traditional mandate proceeding since judicial review of the factual basis of the county's quasi-judicial decision was not sought; rather, it was alleged that the county had no discretion, but was required to disapprove the subdivisions and to refrain from enacting any zoning ordinances. Resource Defense Fund v. County of Santa Cruz (1982, Cal App 1st Dist) 133 Cal App 3d 800, 184 Cal Rptr 371, 1982 Cal App LEXIS 1758.

In 1980, Gov. Code, § 65302, subd. (a), required a general plan to include a land use element which designated the proposed general distribution and general location and extent of the uses of the land, and required the land use element to include "a statement of the standards of population density and building intensity" recommended for the various districts covered by the plan. The reasonable interpretation of the term "population density" as used in § 65302 is one which refers to numbers of people in a given area and not to dwelling units per acre, unless the basis for correlation between the measure of the dwelling units per acre and the numbers of people is set forth explicitly in the plan. Accordingly, a general plan which stated "densities" for "urban residential" uses in terms of the maximum number of "dwelling units per gross acre," which stated densities with respect to nonurban designations of "residential/agricultural" and "resource" lands in terms of minimum lot sizes, and which stated no densities for areas designated "commercial," "open space," "industrial," "park and recreation," or "public/institutional/ school," reflecting the fact that no residential development was permitted on those lands, and which contained no statement relating dwelling units to numbers of people, was deficient insofar as it lacked an appropriate statement of standards for population density based upon numbers of people. Twain Harte Homeowners Assn. v. County of Tuolumne (1982, Cal App 5th Dist) 138 Cal App 3d 664, 188 Cal Rptr 233, 1982 Cal App LEXIS 2271.

A county general plan did not comply with the requirements of Gov. Code, § 65302, subd. (b), which requires a general plan to include a "circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, and other local public utilities and facilities, all correlated with the land use element of the plan." Assuming that the information contained in the general plan outlining existing and proposed roads designated as "arterial," "major collector," or "minor collector," and in the enironmental impact report documentation, describing the existing road system and existing public transportation, together with a table listing "typical generation rates by type of land use," constituted an adequate description of existing roadways and facilities, it did not appear that the circulation element was in any substantial way correlated with land use. The circulation element did not attempt to describe or discuss the changes or increases in demands on the various roadways or transportation facilities of the county as a result of changes in uses of land which will or may result from implementation of the decision system and the general plan. Twain Harte Homeowners Assn. v. County of Tuolumne (1982, Cal App 5th Dist) 138 Cal App 3d 664, 188 Cal Rptr 233, 1982 Cal App LEXIS 2271.

The housing element of a county's general plan was sufficient to meet the requirements of Gov. Code, § 65302,

subd. (c), as it existed in 1980, which provided that the general plan should include a housing element consisting of standards and plans for the improvement of housing and for provision of adequate sites for housing and making adequate provision for the housing needs of all economic segments of the community. The housing inventory in the general plan was most complete, and an assessment of needs was found therein. Both the inventory and the needs assessment were based upon 1970 federal census data, a 1974 special census for the county and other documents prepared more recently, including an areawide housing element prepared by a regional planning council for its member counties and cities. The lack of 1980 census data did not render the housing element deficient. There was a comprehensive and complete inventory of housing, based on the best data available at the time, and a thorough needs analysis. Finally, at the time the general plan was adopted in 1980 it was not required to contain a specific "action" program in order for the housing element to meet the requirements of § 65302, subd. (c). Twain Harte Homeowners Assn. v. County of Tuolumne (1982, Cal App 5th Dist) 138 Cal App 3d 664, 188 Cal Rptr 233, 1982 Cal App LEXIS 2271.

The standard of judicial review of the mandatory housing element (Gov. Code, § 65302, subd. (c)) of a city's physical development plan (Gov. Code, § 65300) is not limited to whether there is a "complete" or "substantial" failure of a city to adopt a plan which "approximates the Legislature's expressed desires," but whether there is "actual compliance" with specified requirements. Buena Vista Gardens Apartments Assn. v. City of San Diego Planning Dept. (1985, Cal App 4th Dist) 175 Cal App 3d 289, 220 Cal Rptr 732, 1985 Cal App LEXIS 2835.

The appropriate standard of appellate review of the mandatory housing element (Gov. Code, § 65302, subd. (c)) of a city's physical development plan (Gov. Code, § 65300) is whether the local adopting agency has acted "arbitrarily, capriciously, or without evidentiary basis" and because the question of substantial compliance with the requirements of the Legislature is one of law, the appellate court need not give deference to the conclusion of the trial court. Buena Vista Gardens Apartments Assn. v. City of San Diego Planning Dept. (1985, Cal App 4th Dist) 175 Cal App 3d 289, 220 Cal Rptr 732, 1985 Cal App LEXIS 2835.

The general plan of a charter city must, under state planning law, be internally consistent. Gov. Code, § 65700, subd. (a), requires that charter cities adopt general plans containing the "mandatory elements" in Gov. Code, § 65300 et seq. (authority for and scope of general plans), and Gov. Code, § 65300, requires that charter cities adopt general plans containing the mandatory elements specified in Gov. Code, § 65302 (elements of plans). The broad language of Gov. Code, § 65700, subd. (a), requiring that general plans contain the mandatory elements of Gov. Code, § 65300 et seq., as opposed to only those mandatory elements set forth in Gov. Code, § 65302, compels the conclusion that the "mandatory elements" of Gov. Code, § 65302, are qualified by the other provisions of Gov. Code, § 65300 et seq., including Gov. Code, § 65300.5, which states a legislative intent for the general plan and its elements to comprise an integrated, internally consistent, and compatible statement of policies. Under that directive, the "mandatory elements" of Gov. Code, § 65300.5, must be understood as being "internally consistent mandatory elements." Garat v. City of Riverside (1991, Cal App 4th Dist) 2 Cal App 4th 259, 3 Cal Rptr 2d 504, 1991 Cal App LEXIS 1488, overruled Morehart v. County of Santa Barbara (1994) 7 Cal 4th 725, 29 Cal Rptr 2d 804, 872 P2d 143, 1994 Cal LEXIS 2194.

For purposes of Gov. Code, § 65302, which sets forth seven general elements that must be addressed in a local government's general plan, each element must be addressed to the extent that the subject matter of the element exists in the planning area. The degree of specificity and the level of detail of the discussion must reflect local circumstances. In addition, the general plan and its elements must comprise an integrated, internally consistent, and compatible statement of policies for the adopting agency. Judicial review of general plans is limited to an examination of the agency's proceedings to determine whether its action was arbitrary, capricious, or entirely lacking in evidentiary support, or whether the agency failed to follow the procedure and give the notices required by law. Save Stanislaus Area Farm Economy v. Board of Supervisors (1993, Cal App 5th Dist) 13 Cal App 4th 141, 16 Cal Rptr 2d 408, 1993 Cal App LEXIS 132.

City's finding that a proposed transportation improvement migration plan was infeasible only because the city could not guarantee the necessary funding from other governmental sources was not a definitive statement that the funds

would not be available; the finding was not part of the city's general plan and therefore could not make the general plan internally inconsistent or non-correlative. Federation of Hillside & Canyon Assns. v. City of Los Angeles (2004, Cal App 2d Dist) 126 Cal App 4th 1180, 24 Cal Rptr 3d 543, 2004 Cal App LEXIS 2328, review denied Federation of Hillside & Canyon Assns v. City of Los Angeles (2005, Cal) 2005 Cal LEXIS 1703.

City's acceptance of a settlement agreement and stipulated judgment resolving a lawsuit that challenged the city's adoption of its general plan did not constitute an improper surrender of its police power because the city had not bargained away its power to enact legislation or to regulate in the future. The settlement agreement and stipulated judgment did not grant anyone veto power over future general plan amendments, and the city's agreement to interpret its general plan in a particular fashion did not amount to an impermissible "amendment" of the general plan. 108 Holdings, LTD. v. City of Rohnert Park (2006, Cal App 1st Dist) 136 Cal App 4th 186, 38 Cal Rptr 3d 589, 2006 Cal App LEXIS 121, review denied (2006, Cal) 2006 Cal LEXIS 5569.

Prior caselaw suggests that a general plan amendment is a change in a locality's most basic and fundamental land use policies. If a city agrees to take action that does no more than carry out policies already established in the city's general plan, it would seem that such action would not constitute a general plan amendment. 108 Holdings, LTD. v. City of Rohnert Park (2006, Cal App 1st Dist) 136 Cal App 4th 186, 38 Cal Rptr 3d 589, 2006 Cal App LEXIS 121, review denied (2006, Cal) 2006 Cal LEXIS 5569.

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GOVERNMENT CODE
Title 7. Planning and Land Use
Division 1. Planning and Zoning
Chapter 3. Local Planning
Article 10.5. Open-Space Lands

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Gov Code § 65560 (2009)

§ 65560. "Local open-space plan"; "Open-space land"

(a) "Local open-space plan" is the open-space element of a county or city general plan adopted by the board or council, either as the local open-space plan or as the interim local open-space plan adopted pursuant to Section 65563.

(b) "Open-space land" is any parcel or area of land or water that is essentially unimproved and devoted to an open-space use as defined in this section, and that is designated on a local, regional or state open-space plan as any of the following:

(1) Open space for the preservation of natural resources including, but not limited to, areas required for the preservation of plant and animal life, including habitat for fish and wildlife species; areas required for ecologic and other scientific study purposes; rivers, streams, bays and estuaries; and coastal beaches, lakeshores, banks of rivers and streams, and watershed lands.

(2) Open space used for the managed production of resources, including but not limited to, forest lands, rangeland, agricultural lands and areas of economic importance for the production of food or fiber; areas required for recharge of groundwater basins; bays, estuaries, marshes, rivers and streams which are important for the management of commercial fisheries; and areas containing major mineral deposits, including those in short supply.

(3) Open space for outdoor recreation, including but not limited to, areas of outstanding scenic, historic and cultural value; areas particularly suited for park and recreation purposes, including access to lakeshores, beaches, and rivers and streams; and areas which serve as links between major recreation and open-space reservations, including utility easements, banks of rivers and streams, trails, and scenic highway corridors.

(4) Open space for public health and safety, including, but not limited to, areas which require special management or regulation because of hazardous or special conditions such as earthquake fault zones, unstable soil areas, flood plains, watersheds, areas presenting high fire risks, areas required for the protection of water quality and water reservoirs and areas required for the protection and enhancement of air quality.

(5) Open space in support of the mission of military installations that comprises areas adjacent to military installations, military training routes, and underlying restricted airspace that can provide additional buffer zones to military activities and complement the resource values of the military lands.

(6) Open space for the protection of places, features, and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code.

HISTORY:

Added Stats 1972 ch 251 § 2, effective June 30, 1972. Amended Stats 2002 ch 971 § 5 (SB 1468); Stats 2004 ch 905 § 9 (SB 18), ch 907 § 6 (SB 926), effective September 29, 2004, operative until January 1, 2005, ch 907 § 6.3 (SB 926), effective September 29, 2004, operative January 1, 2005; Stats 2005 ch 670 § 4 (SB 922), effective October 7, 2005.

NOTES:

Former Sections:

Former § 65560, similar to the present section, was added by Stats 1970 ch 1590 § 15 and repealed by Stats 1972 ch 251 § 1.5, effective June 30, 1972.

Amendments:

2002 Amendment:

(1) Amended subd (b) by **(a)** substituting "that" for "which" after "water"; and **(b)** substituting "that" for "which" after "section, and"; and **(2)** added "areas adjacent to military installations, military training routes, and restricted airspace that can provide additional buffer zones to military activities and complement the resource values of the military lands;" in subd (b)(1).

2004 Amendment (§ 6):

(1) Deleted "areas adjacent to military installations, military training routes, and restricted airspace that can provide additional buffer zones to military activities and complement the resource values of the military lands;" in subd (b)(1); and **(2)** added subd (b)(5). (As amended Stats 2004 ch 907, compared to the section as it read prior to 2004. This section was also amended by an earlier chapter, ch 905. See Gov C § 9605.)

2004 Amendment (§ 6.3):

Added subd (b)(6)

2005 Amendment:

Substituted "5097.993" for "5097.995" in subd (b)(6).

Historical Derivation:

Former § 65560, as added Stats 1970 ch 1590 § 15.

Note

Stats 2002 ch 971, as amended Stats 2004 ch 907 § 8, provides:

SEC. 8. A city or county shall not be required to comply with the amendments made by this act to Sections 65302, 65302.3, 65560, and 65583 of the Government Code, relating to military readiness activities, military personnel, military airports, and military installations, until the city or county undertakes its next general plan revision.

Cross References:

Preparation, adoption, and submission of local open-space plans: Gov C § 65563.

Action program: Gov C § 65564.

Inventory of agricultural lands: Gov C § 65570.

Collateral References:

8 Witkin Summary (10th ed) Constitutional Law §§ 1012, 1019.

12 Witkin Summary (10th ed) Real Property § 881.

Cal. Legal Forms, (Matthew Bender) §§ 28D.30[1][a], 28D.31[3], 28D.41[1], 28D.112.

Cal. Legal Forms, (Matthew Bender) § 28D.100.

Law Review Articles:

Addressing California's Uncertain Water Future by Coordinating Long-Term Land Use and Water Planning: Is a Water Element in the General Plan the Next Step? 31 Ecology LQ 117.

Review of Selected 1972 Code Legislation. 4 Pacific LJ 521.

Speak out against the madness: A look at how to control growth in California. 15 Western St LR 335.

Practice Tips: The Challenges of Infill Housing. 27 Los Angeles Lawyer 12 (January).

Hierarchy Notes:

Tit. 7 Note

Tit. 7, Div. 1 Note

Tit. 7, Div. 1, Ch. 3 Note

Tit. 7, Div. 1, Ch. 3, Art. 10.5 Note

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GOVERNMENT CODE
Title 7.2. San Francisco Bay Conservation and Development Commission
Chapter 4. Powers and Duties of the Commission

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Gov Code § 66632.2 (2009)

§ 66632.2. Construction and repair of public service facilities without permit

(a) The owner or operator of any public service facilities need not obtain a permit from the commission for the construction within or upon any public highway or street of any public service facilities to provide service to persons or property located within the area of the commission's jurisdiction. The public service facilities referred to in this subdivision shall be limited to those which are necessary for and are customarily used to provide direct and immediate service to the persons or property requiring that service.

(b) The owner or operator of public service facilities or a public street or road located anywhere within the area of the commission's jurisdiction may, without first obtaining a permit from the commission, make emergency repairs to those facilities as may be necessary to maintain service if the emergency requires repairs before an emergency permit can be obtained under subdivision (f) of Section 66632 and if that notification is given to the commission not later than the first working day following the undertaking.

(c) "Public service facilities," as used in this section, means any facilities used or intended to be used to provide water, gas, electric, or communications service and any pipelines, and appurtenant facilities, for the collection or transmission of sewage, flood or storm waters, petroleum, gas, or any liquid or other substance.

(d) Any agency that intends to undertake, carry out, or approve an emergency project to maintain, repair, or restore an existing highway, as defined in Section 360 of the Vehicle Code, except for a highway designated as an official state scenic highway pursuant to Section 262 of the Streets and Highways Code, within the existing right-of-way of the highway, damaged as a result of fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, within one year of the damage, need not obtain a permit from the commission, if notification is given to the commission not later than the first working day following the commencement of the undertaking or action. This subdivision does not exempt from this section any agency that is required to obtain from the commission a permit to undertake, carry out, or approve a project to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual

earth movement, or landslide.

HISTORY:

Added Stats 1969 ch 713 § 9.5. Amended Stats 1996 ch 825 § 5 (AB 2963).

NOTES:

Amendments:

1996 Amendment:

In addition to making technical changes, **(1)** amended subd (b) by **(a)** substituting "if the emergency requires" for ", provided, that the emergency is such as to require"; **(b)** deleting "the provisions of" after "be obtained under"; and **(c)** substituting "if" for ", provided further" after "Section 66632 and"; and **(2)** added subd (d).

Collateral References:

Cal. Legal Forms, (Matthew Bender) § 30B.114.

Hierarchy Notes:

Tit. 7.2 Note

Tit. 7.2, Ch. 4 Note

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PUBLIC RESOURCES CODE
Division 5. Parks and Monuments
Chapter 1. State Parks and Monuments
Article 6. California Recreational Trails

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Pub Resources Code § 5077.2 (2009)

§ 5077.2. Routes given priority for designation as heritage corridors

In addition to utilizing criteria and standards for the design, interpretation, and implementation of heritage corridor routes and complementary facilities, as provided in subdivisions (b) and (c) of Section 5071.3 and paragraphs (1), (2), (3), and (4) of subdivision (a) of Section 5075.3, the director shall include in the plan required by Section 5070.7 the following routes which shall be given priority for designation as heritage corridors:

(a) Routes which connect urban areas with the cross-section of landscape provided in parks and recreation and outdoor resource areas in California.

(b) Routes incorporating existing and planned facilities for ready accessibility for physically disabled persons utilizing coordinated accessibility to several areas and experiences such as trails, water, visitor centers, campsites, parking, and rest rooms.

(c) Existing and planned scenic highways.

(d) Looping routes radiating out of centers of population to allow optimum use.

(e) Routes nominated by local governmental jurisdictions and local volunteer groups.

(f) Routes providing access to the maximum number of recreational trails and other recreational facilities.

(g) Routes intended to direct the public away from areas where trespass or damage to public or private property or natural resources is likely.

HISTORY:

Added Stats 1979 ch 844 § 7.

NOTES:

Former Sections:

Former § 5077.2, relating to replacing property under former Article 6, was added Stats 1972 ch 1403 § 1 and repealed Stats 1974 ch 1461 § 1.

Hierarchy Notes:

Div. 5 Note

Div. 5, Ch. 1 Note

Div. 5, Ch. 1, Art. 6 Note

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PUBLIC RESOURCES CODE
Division 5.8. California Wildlife, Coastal, and Park Land Conservation Act
Chapter 2. California Wildlife, Coastal, and Park Land Conservation Program

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Pub Resources Code § 5907 (2009)

§ 5907. Availability of funds for expenditure for specified purposes

All money deposited in the fund shall be available for expenditure, in accordance with Section 5921, for the purposes set forth below, in amounts not to exceed the following:

(a) One hundred sixty-six million dollars ($166,000,000) to the Department of Parks and Recreation for grants to counties, cities, cities and counties, districts, and nonprofit organizations for acquisition, development, rehabilitation, or restoration of real property for parks, beaches, wildlife habitat, natural lands, recreation, or preservation of historical resources, including an amount not to exceed two million four hundred ninety thousand dollars ($2,490,000) for state administrative costs, in accordance with the following schedule:

(1) One hundred twenty million dollars ($120,000,000) for grants to counties, cities, and districts on a per capita basis for the acquisition, development, rehabilitation, or restoration of real property for parks, beaches, wildlife habitat, natural lands, and recreation, except that each county is entitled to not less than one hundred thousand dollars ($100,000).

(2) Twenty million dollars ($20,000,000) for expenditure by the Department of Parks and Recreation for the purpose of the Roberti-Z'berg-Harris Urban Open Space and Recreation Program Act (Chapter 3.2 (commencing with Section 5620) of Division 5 of the Public Resources Code).

(3) Ten million dollars ($10,000,000) for competitive grants for park, beach, and recreational purposes to public agencies which provide significant park and recreational opportunities to the general public and are not eligible for grants pursuant to paragraph (1).

(4) Eleven million dollars ($11,000,000) for competitive grants to public agencies and nonprofit organizations for acquisition, development, rehabilitation, or restoration of historical or archeological resources and for historical and

archeological resources preservation projects and costs of planning and interpretation. Not less than one million dollars ($1,000,000) shall be used for archeological resources preservation purposes.

(5) Five million dollars ($5,000,000) for competitive grants to public agencies and nonprofit organizations for acquisition and development of land and rights-of-way for bicycle, horse, hiking, and handicapped access trails.

(b) Three hundred thirty-eight million seven hundred thousand dollars ($338,700,000) to the Department of Parks and Recreation for acquisition of parklands, wildlife habitat, coastal, and natural lands in California, and for grants to local agencies and nonprofit organizations, including an amount not to exceed five million eighty thousand five hundred dollars ($5,080,500) for state administrative costs, in accordance with the following schedule:

(1) Ninety-eight million six hundred thousand dollars ($98,600,000) to the Department of Parks and Recreation for acquisition of real property in accordance with the following schedule:

(A) Twelve million dollars ($12,000,000) for acquisition of land for the California Redwood State Parks, including, but not limited to, Big Basin Redwoods, Butano, Calaveras Big Trees, Forest of Nisene Marks, Hendy Woods, Humboldt Lagoons, Humboldt Redwoods, Jedediah Smith Redwoods, Portola, Prairie Creek Redwoods, Richardson Grove, and Sinkyone Wilderness State Parks; Benbow Lake State Recreation Area, Fort Ross State Historical Park, and Paul M. Dimmick State Wayside Campground; provided that each dollar up to at least ten million dollars ($10,000,000) from the funds to be spent pursuant to this subparagraph shall be matched with an equal amount in money or property from private gifts, city or county appropriations, or alternative sources other than the State of California.

(B) Five million dollars ($5,000,000) for acquisition of land within and adjacent to Anza-Borrego Desert State Park.

(C) Nineteen million dollars ($19,000,000) for acquisition of land in the Palm Canyon and Andreas Canyon region near Palm Springs for a park for the preservation of Indian heritage and of native palms.

(D) Seven million dollars ($7,000,000) for acquisition of lands in accordance with the general plan for the Chino Hills State Park, including the lands north of Highway 142.

(E) Ten million dollars ($10,000,000) for acquisition of land for additions to the Santa Susana Mountain Project to preserve historic and scenic sites, for hiking and equestrian trails, or for wildlife habitat and migration routes; provided that all acquisitions shall be located within the Rim of the Valley Corridor as defined in Section 33105.5 within the Simi Hills or Santa Susana Mountains in Los Angeles and Ventura Counties.

(F) Two million dollars ($2,000,000) for acquisitions within and adjacent to Big Basin Redwoods State Park and Castle Rock State Park in the Santa Cruz Mountains.

(G) Three million dollars ($3,000,000) for acquisition of lands in Santa Clara County within and adjacent to Henry Coe State Park and for lands in Stanislaus County within the park.

(H) One million dollars ($1,000,000) for acquisition of natural lands for expansion of Pescadero Marsh Natural Preserve at Pescadero State Beach.

(I) Twenty-five million dollars ($25,000,000) for acquisition of land for an East Bay Shoreline State Park in the Counties of Alameda or Contra Costa, or both, generally in accordance with the East Bay Shoreline feasibility study.

(J) Four million dollars ($4,000,000) for acquisition of natural lands within and adjacent to Mt. Diablo State Park.

(K) Four million dollars ($4,000,000) for implementation of the Frank's Tract State Recreation Area General

Plan with first priority given to the western portion, providing secondary wave protection benefits to adjacent islands.

(L) One million six hundred thousand dollars ($1,600,000) for acquisition of wetlands in and adjacent to the Delta Meadows Project.

(M) Two million dollars ($2,000,000) for acquisition of natural lands within and adjacent to Robert Louis Stevenson State Park.

(N) One million dollars ($1,000,000) for expansion of Anderson Marsh State Historic Park.

(O) Two million dollars ($2,000,000) for expansion of the South Yuba Project along the South Fork of the Yuba River to protect scenic vistas and riparian habitat and to provide for recreational trails.

(2) Fifty-four million seven hundred thousand dollars ($54,700,000) for acquisition, development, rehabilitation, or restoration of real property in the state park system in accordance with the following schedule:

(A) Four million seven hundred thousand dollars ($4,700,000) for acquisitions of real property inside the boundaries of existing projects or units or as additions to existing projects or units.

(B) Fourteen million dollars ($14,000,000) for development, rehabilitation, or restoration of coastal resources, other than coastal resources in or on San Francisco Bay, in accordance with the following schedule:

(i) Eight million dollars ($8,000,000) within San Diego County through Santa Barbara County.

(ii) Four million dollars ($4,000,000) within San Luis Obispo County through the City and County of San Francisco.

(iii) Two million dollars ($2,000,000) within Marin County through Del Norte County.

(C) Three million dollars ($3,000,000) for development, rehabilitation, or restoration of resources in or on San Francisco Bay.

(D) Eight million dollars ($8,000,000) for development, rehabilitation, or restoration of inland resources.

(E) Two million dollars ($2,000,000) for development, rehabilitation, or restoration at lakes, reservoirs, and waterways, including the State Water Facilities, as defined in paragraphs (1) to (4), inclusive, of subdivision (d) of Section 12934 of the Water Code.

(F) One million dollars ($1,000,000) for the repair of storm damage and construction to prevent future storm damage.

(G) Three million dollars ($3,000,000) for planning, development, rehabilitation, restoration, or interpretive facilities in support of volunteer community action projects for the state park system.

(H) Ten million dollars ($10,000,000) for the increased stewardship of the public investment in the protection of the most critical natural and scenic features of the existing state park system.

(I) Five million dollars ($5,000,000) for rehabilitation and restoration of historical resources of the state park system.

(J) Three million dollars ($3,000,000) for development and rehabilitation of trails within the state park system or connecting units of the state park system.

(K) One million dollars ($1,000,000) for acquisition and development of trailheads for the Sno-Park program

pursuant to Chapter 1.27 (commencing with Section 5091.01) of Division 5, including access to the Tahoe Rim Trail.

(3) One hundred eighty-five million four hundred thousand dollars ($185,400,000) to the Department of Parks and Recreation for grants to local agencies in accordance with the following schedule:

(A) Thirty million dollars ($30,000,000) for a grant to San Diego County in accordance with the following schedule:

(i) Ten million dollars ($10,000,000) for acquisition of natural lands in the San Dieguito River Valley.

(ii) Ten million dollars ($10,000,000) for acquisition of natural lands in the Tijuana River Valley.

(iii) Ten million dollars ($10,000,000) for acquisition of San Diego County resource conservation areas and urban canyons in accordance with the resource element of the County General Plan.

(B) Ten million dollars ($10,000,000) for a grant to the City of Laguna Beach for acquisition of, and for grants by the city to nonprofit organizations for acquisition of, natural lands within and contiguous to the Laguna Greenbelt as described in the Orange County General Plan.

(C) Four million dollars ($4,000,000) for a grant to the City of Irvine for acquisition of natural lands in the open space spine designated in the City of Irvine General Plan.

(D) Eleven million dollars ($11,000,000) for a grant to the City of Riverside in accordance with the following schedule:

(i) One million dollars ($1,000,000) for acquisition of natural lands in Sycamore Canyon Wilderness Park in accordance with the City of Riverside Specific Plan.

(ii) Ten million dollars ($10,000,000) for acquisition of land in and near the California Citrus State Historic Park located in the Arlington Heights area of Riverside.

(E) Two million four hundred thousand dollars ($2,400,000) for a grant to the County of Riverside in accordance with the following schedule:

(i) Four hundred thousand dollars ($400,000) for acquisition of land to expand Hurkey Creek Park.

(ii) One million dollars ($1,000,000) for acquisition of land for trails in the Santa Ana River Corridor.

(iii) One million dollars ($1,000,000) for acquisition of land for trails suitable for equestrian and hiking uses in Riverside County, including the Temescal Canyon Trail.

(F) Twenty million dollars ($20,000,000) for a grant to the County of San Bernardino for acquisition of land primarily through the use of conservation easements within the Chino Agricultural Preserve.

(G) Twenty-five million dollars ($25,000,000) for a grant to Los Angeles County in accordance with the following schedule:

(i) Ten million dollars ($10,000,000) for acquisition or development of noncommercial visitor use and access facilities, and/or renovation of existing facilities at county, state, or city beaches operated by Los Angeles County.

(ii) Ten million dollars ($10,000,000) for acquisition of land for the Baldwin Hills State Recreation Area in accordance with the general plan for Baldwin Hills State Recreation Area.

(iii) Five million dollars ($5,000,000) for acquisition of natural lands to establish the Brea Heights Regional

County Park.

(H) Seven million dollars ($7,000,000) for a grant to the County of Santa Barbara for acquisition of natural lands, wildlife habitat, wetlands, and agricultural land preservation, in incorporated and unincorporated areas, in accordance with the following schedule, except that expenditures for nonagricultural lands shall be limited to acquisition of lands in the Coastal Zone and shall be of sufficient size to be a major natural or low intensity community recreational resource:

(i) Four million eight hundred thousand dollars ($4,800,000) for nonagricultural lands located south of the ridge line of the Santa Ynez Mountain Range.

(ii) One million two hundred thousand dollars ($1,200,000) for nonagricultural lands north of the ridge line of the Santa Ynez Mountain Range.

(iii) One million dollars ($1,000,000) for the preservation of agricultural land in Santa Barbara County as identified for agricultural use in the Santa Barbara County Comprehensive Plan. These funds shall be used primarily for the acquisition of conservation easements.

(I) Four million dollars ($4,000,000) for a grant to the County of Monterey for acquisition of conservation easements in Monterey County on agricultural lands in the Salinas and Pajaro Valleys.

(J) Two million dollars ($2,000,000) for a grant to the Monterey Peninsula Regional Park District to expand the Garland Ranch Regional Park and for acquisition of natural lands and wildlife and riparian habitat in the Bixby Creek watershed.

(K) One million dollars ($1,000,000) for a grant to the County of Santa Cruz for acquisition of conservation easements in Santa Cruz County on commercially viable agricultural lands in the Pajaro Valley and the coastal terrace north of the City of Santa Cruz, consistent with Section 2.3.1 of the Santa Cruz County General Plan.

(L) Fifteen million dollars ($15,000,000) for acquisition of those greenbelt lands known as the Pogonip property located in the City of Santa Cruz and the County of Santa Cruz, as defined in the 1979 City of Santa Cruz Greenbelt Ordinance. This acquisition shall be accomplished through grants to the following entities listed in order of priority: (1) the City of Santa Cruz and (2) a park and open-space district or a park and recreation district formed by the local electorate.

(M) Ten million dollars ($10,000,000) for a grant to the Midpeninsula Regional Open Space District for acquisition in accordance with the following schedule:

(i) One million dollars ($1,000,000) for acquisition of land between property managed by the district and Castle Rock State Park and Portola State Park.

(ii) Nine million dollars ($9,000,000) for expansion of Rancho San Antonio, Sierra Azul, El Sereno, El Corte de Madera Creek, and Windy Hill Open Space Preserves and for acquisition of Teague Hill Open Space Preserve.

(N) Thirteen million dollars ($13,000,000) for a grant to the East Bay Regional Park District in accordance with the following schedule:

(i) Ten million dollars ($10,000,000) for expenditure in accordance with the East Bay Regional Park District Master Plan, for expansion of Morgan Territory Regional Park and Briones Regional Park, acquisitions of natural lands along the Carquinez Straits and on Pleasanton Ridge, and shoreline access and trail acquisitions adjacent to the San Francisco Bay.

(ii) One million five hundred thousand dollars ($1,500,000) for acquisition of lands in the southern portion of

Walpert Ridge in Hayward in central Alameda County.

(iii) One million five hundred thousand dollars ($1,500,000) for expansion of the Carquinez Shoreline Park in Port Costa.

(O) Five million dollars ($5,000,000) for a grant to the Marin County Open Space District for acquisition of natural lands on Loma Alta Mountain, Big Rock Ridge, and other wetlands, wildlife habitat, and natural lands in accordance with the Environmental Quality and Open Space Elements of the Marin Countywide Plan.

(P) Fifteen million dollars ($15,000,000) for a grant to the County of Marin for preservation of, and for grants by the county to nonprofit organizations for preservation of agricultural lands in the Marin County coastal zone and inland rural corridor, in accordance with the Marin County Agricultural Land Preservation Program. Funds provided in this subparagraph shall be used primarily to acquire agricultural conservation easements.

(Q) One million six hundred thousand dollars ($1,600,000) for a grant to the City of Mill Valley for acquisition of natural lands on the Northridge and spurs of Mount Tamalpais, in accordance with the Open Space Elements in the Marin Countywide Plan or the Mill Valley General Plan, or both.

(R) One million dollars ($1,000,000) for a grant to the City of Vacaville for acquisition of natural lands along the ridgelands of the Vaca Mountains, Blue Ridge Mountains, and English Hills, including Old Rocky, for a ridgeline park in accordance with the Vacaville City General Plan.

(S) Two million dollars ($2,000,000) for a grant to the City of Davis for acquisition of, or for grants from the city to nonprofit organizations for acquisition of, wildlife and riparian habitat, wetlands, and potential wetlands within the 1987 Davis General Plan Study Area.

(T) Six million dollars ($6,000,000) for a grant to the County of Sacramento, to be shared by the county with the City of Sacramento on a per capita basis, for acquisition of parklands, wetlands, wildlife habitat, and related greenbelt areas in the county along Morrison Creek, Dry Creek, Snodgrass Slough, Cosumnes River, Laguna Creek, Sacramento River, and American River, consistent with the County Park System Master Plan.

(U) Four hundred thousand dollars ($400,000) for a grant to Lake County for acquisition of a county park that provides wildlife habitat, riparian areas, and recreational benefits near Middletown.

(c) Eighty-one million three hundred thousand dollars ($81,300,000) to the Wildlife Conservation Board for programs involving the acquisition of land pursuant to the Wildlife Conservation Law of 1947, subject to Section 2625 of the Fish and Game Code and consistent with the purposes of this division, and for grants to local agencies, including an amount not to exceed one million two hundred nineteen thousand five hundred dollars ($1,219,500) for state administrative costs, in accordance with the following schedule:

(1) Thirty-eight million dollars ($38,000,000) for projects involving the acquisition, preservation, protection, restoration, enhancement, or development of wetlands for wildfowl and other wildlife habitat, in accordance with the following schedule:

(A) Thirteen million dollars ($13,000,000) for acquisition or restoration of wetlands within or adjacent to (1) the areas subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission or (2) the boundaries of historic San Francisco Bay wetlands as designated in the 1985 United States Fish and Wildlife Service National Wetland Inventory Maps for the San Francisco Bay Area or in subsequent updates with not less than eight million dollars ($8,000,000) for acquisition or restoration of wetlands south of the San Mateo Bridge.

(B) Twenty-five million dollars ($25,000,000) for wetlands outside the coastal zone as defined in Section 30103 and other than within the area defined in subparagraph (A).

(2) Two million dollars ($2,000,000) for acquisition of monarch butterfly habitat.

(3) Ten million dollars ($10,000,000) for acquisition of riparian habitat that drains into the Pacific Ocean within the Counties of San Diego, Orange, Los Angeles, and Ventura.

(4) Four million dollars ($4,000,000) for acquisition of land containing Tecate Cypress forest and associated rare species in Coal Canyon in Orange County.

(5) Five million dollars ($5,000,000) for acquisition of wildlife habitat and natural lands along the San Joaquin River between Friant Dam and Highway 99 in the Counties of Fresno and Madera.

(6) Three hundred thousand dollars ($300,000) for acquisition of valley oak riparian forest and wetlands along the Mokelumne River near Galt in San Joaquin County.

(7) Two million dollars ($2,000,000) for acquisition of wetlands, riparian habitat, vernal pools, and immediately adjacent natural uplands in the vicinity of the Stanislaus, Tuolumne, Merced, and San Joaquin Rivers and their tributaries in Stanislaus, San Joaquin, and Merced Counties for open-space, habitat protection, or riparian restoration.

(8) Four million dollars ($4,000,000) for acquisition of riparian habitat along the Sacramento River from Shasta Dam to Collinsville.

(9) One million dollars ($1,000,000) for acquisition of riparian habitat along the Feather River from Oroville to the mouth of the river.

(10) Four million dollars ($4,000,000) for acquisition of inland, San Pablo Bay, and coastal wetlands in Sonoma County, including the Laguna de Santa Rosa.

(11) Two million dollars ($2,000,000) for acquisition within the Napa Marsh and associated wetlands.

(12) One million dollars ($1,000,000) for acquisition of wildlife habitat in northern Napa County as identified by the Department of Fish and Game.

(13) Four million dollars ($4,000,000) for acquisition of sensitive riparian areas, meadows, critical wildlife habitat, and recreation lands in the Hope Valley area just south of Lake Tahoe in Alpine County. Portions of these lands which could provide compatible recreational opportunities may be managed by the Department of Parks and Recreation under an interagency agreement with the Department of Fish and Game.

(14) Four million dollars ($4,000,000) for acquisition of old growth redwoods, mixed forest, and wildlife habitat near the town of Whitethorn in the Mattole River watershed in Humboldt and Mendocino Counties.

(d) Fifty-eight million dollars ($58,000,000) to the State Coastal Conservancy pursuant to Division 21 (commencing with Section 31000), consistent with the purposes of this division, for acquisition, enhancement, or restoration of natural lands and development of public accessways in coastal areas and the San Francisco Bay region; and for preservation of agriculture in coastal areas, and for grants to local agencies and nonprofit organizations, and for related state administrative costs, in accordance with the following schedule:

(1) Thirty-four million dollars ($34,000,000) to the State Coastal Conservancy for acquisition, enhancement, or restoration of natural lands, and development of public accessways in coastal areas and the San Francisco Bay region; and for preservation of agriculture in coastal areas, pursuant to Division 21 (commencing with Section 31000). These funds include the five million eight hundred fifty thousand dollars ($5,850,000) advanced by the Coastal Conservancy to the Santa Monica Mountains Conservancy for the Circle X acquisition in the Santa Monica Mountains. Up to one million five hundred thousand dollars ($1,500,000) of the total funds available pursuant to this paragraph shall be spent on expansion of the Bolsa Chica Linear Park in Orange County or for disbursement to the City of Huntington Beach or

other appropriate agencies for this purpose, or for restoration, enhancement, or expansion of the Bolsa Chica wetlands that is not otherwise required for mitigation, or both. Up to four million dollars ($4,000,000) of the total funds available pursuant to this paragraph shall be spent for the purposes of paragraph (2) if the funds allocated in paragraph (2) prove to be insufficient to achieve the purposes of that paragraph.

(2) Ten million dollars ($10,000,000) for acquisition of natural lands to preserve coastal resources in the coastal dunes and wetlands from Mussel Point to Grover City west of Highway 1 in San Luis Obispo and Santa Barbara Counties. Up to seven hundred fifty thousand dollars ($750,000) may be spent for dunes restoration and public access consistent with coastal resources preservation.

(3) One million five hundred thousand dollars ($1,500,000) for acquisition of coastal natural lands and wetlands in Monterey County between Monterey Wharf #2 and the Salinas River.

(4) Eight million dollars ($8,000,000) for acquisition of, and for grants to public agencies or nonprofit organizations for acquisition of, coastal lands within San Mateo County that meet three or more of the following criteria, with preference given to lands meeting the largest number of criteria: (1) ocean frontage, (2) state or county scenic corridor, (3) designated in the County General Plan as agriculture, (4) sensitive habitat areas or wetlands, (5) close proximity to urban areas, or (6) adjacent to other permanently dedicated public or private natural lands. These funds shall not be used for urban waterfronts or for lot consolidation projects as defined in Chapters 5 (commencing with Section 31200) and 7 (commencing with Section 31300) of Division 21.

(5) Four million dollars ($4,000,000) for acquisitions in Sonoma County of coastal natural lands and coastal wetlands south of Stewart Point, and for acquisition of San Pablo Bay wetlands and natural lands.

(6) Five hundred thousand dollars ($500,000) for acquisition of, and for grants to nonprofit organizations for acquisition of, land containing old growth Douglas fir on Mill Creek, a tributary of the Mattole River in Humboldt County, and for public access to the lands acquired.

(e) Eighty-two million dollars ($82,000,000) to the following agencies, and for grants to local agencies and nonprofit organizations, including state administrative costs, for the following purposes:

(1) Seventeen million dollars ($17,000,000) to the Department of Fish and Game, including an amount not to exceed two hundred fifty-five thousand dollars ($255,000) for state administrative costs, in accordance with the following schedule:

(A) Ten million dollars ($10,000,000) for restoration and enhancement of salmon streams in accordance with the recommendations of the Commercial Salmon Stamp Advisory Committee and the Advisory Committee on Salmon and Steelhead Trout.

(B) Six million dollars ($6,000,000) for restoration and enhancement of wild trout and native steelhead habitat; for capital outlay to design, develop, and construct an experimental wild trout and native steelhead propagation facility; for acquisition of land important for the perpetuation of wild trout and native steelhead; and to provide public access to wild trout and native steelhead waters.

(C) One million dollars ($1,000,000) for marine patrol boats and other equipment for enforcement of fish and game regulations to protect fish, marine birds, and marine mammals from Point Conception to Fort Bragg.

(2) Five million dollars ($5,000,000) to the Department of Forestry for urban forestry programs, and for related state administrative costs not to exceed two hundred fifty thousand dollars ($250,000), in accordance with Section 4799.12.

(3) Five million dollars ($5,000,000) to the Department of Water Resources for grants to counties, cities, cities

and counties, districts, and nonprofit organizations for the acquisition or restoration of natural lands which contain urban streams, creeks, and riparian areas, and for related state administrative costs not to exceed two hundred fifty thousand dollars ($250,000), in accordance with Section 7048 of the Water Code.

(4) Thirty million dollars ($30,000,000) to the Santa Monica Mountains Conservancy for land acquisition and for grants to nonprofit organizations for land acquisition in the Santa Monica Mountains, and for related state administrative costs, pursuant to Division 23 (commencing with Section 33000) and consistent with the purposes of this division. Five million dollars ($5,000,000) of this amount shall be for grants to nonprofit organizations pursuant to Section 33204.2.

(5) Twenty-five million dollars ($25,000,000) to the County of Monterey to be transferred directly to the 1988 Bond Act Account of the Big Sur Preservation Fund of Monterey County to support implementation of "critical viewshed" policies of the county's Big Sur Coast Land Use Plan which was certified by the California Coastal Commission on April 9, 1986, as a component of the Big Sur Local Coastal Program.

The intent of this paragraph is to ensure that the exceptional vistas seen from Scenic Highway One along the Big Sur Coast in Monterey County will be preserved in a manner that ensures the continuation of existing state and local jurisdiction over the Big Sur area.

HISTORY:

Addition adopted by voters, Prop 70 § 2, effective June 8, 1988. Amended Stats 1990 ch 738 § 1 (AB 3611), effective September 10, 1990. Amended Stats 1993 ch 1251 § 1 (SB 464), effective October 11, 1993.

NOTES:

Amendments:

1990 Amendment:

(1) Substituted "cities, cities and counties, districts," for "cities and counties, districts" in the introductory clause of subd (a); **(2)** substituted "system" for "systems" at the end of subd (b)(2)(G); **(3)** substituted "in northern Napa County" for "along the East Shore of Lake Berryessa" in subd (c)(12); and **(4)** substituted "Section 31000)" for "Section 3100)" at the end of the first sentence of subd (d)(1).

1993 Amendment:

Added "for open--space, habitat protection, or riparian restoration" in subd (c)(7).

Note

Stats 1992 ch 588, effective September 4, 1992, provides:

SEC. 5. (a) For the development of land within California Citrus State Historic Park, the City of Riverside may encumber not more than one million six hundred thousand dollars ($1,600,000) of the amount that has been granted to the city pursuant to clause (ii) of subparagraph (D) of paragraph (3) of subdivision (b) of Section 5907 of the Public Resources Code.

(b) The amount of the funds to be encumbered for purposes of subdivision (a), together with any conditions imposed upon the expenditure of the funds, including, but not limited to, the amount of any matching funds to be provided by other public agencies and private entities, shall be determined by resolution of the City Council of the City of Riverside.

SEC. 6. Section 5 of this act is an amendment of the California Wildlife, Coastal, and Park Land Conservation Act (Division 5.8 (commencing with Section 5900) of the Public Resources Code) within the meaning of Section 6 of that act, and is consistent with the purposes of that act.

Stats 1996 ch 326, effective July 29, 1996, provides:

SECTION 1. (a) For the development of land and other improvements within the California Citrus State Historic Park, and for the acquisition of land in and near the California Citrus State Historic Park, located in the Arlington Heights area of Riverside, the City of Riverside may encumber money granted to the city pursuant to clause (ii) of subparagraph (D) of paragraph (3) of subdivision (b) of Section 5907 of the Public Resources Code.

(b) The amount of the funds to be encumbered for purposes of subdivision (a) shall be determined by resolution of the City Council of the City of Riverside.

(c) Any funds expended pursuant to this section shall be for purposes that are consistent with the general plan for the California Citrus State Historic Park.

SEC. 2. Section 1 of this act is an amendment to the California Wildlife, Coastal, and Park Land Conservation Act (Division 5.8 (commencing with Section 5900) of the Public Resources Code) within the meaning of Section 6 of that act, and is consistent with the purposes of that act.

Editor's Notes

Stats 2002 ch 291, effective August 27, 2002, provides that notwithstanding any other provision of law, the City of Goleta may convert to a different use up to 36 acres of the Santa Barbara Shores Park, which was partially acquired with state grant funds made available for various purposes related to the acquisition, development, enhancement, rehabilitation, protection, or restoration of park, wildlife, coastal, and natural lands in California pursuant to Pub Res C §§ 5900 et seq. in exchange for approximately 135 acres known as the Ellwood Mesa, under certain specified conditions.

Stats 2004 ch 377, effective August 30, 2004, in order that the people of the state may have the benefit of a more appropriate use of existing park and open-space lands, authorizes the County of San Bernardino, pursuant to Pub Res C § 5919 (a)(2), to sell property it owns within the Chino Agricultural Preserve that was purchased with grant funds from the California Wildlife, Coastal, and Park Land Conservation Act, Pub Res C §§ 5900 et seq., for the acquisition of replacement land within the Chino Agricultural Preserve, provided that the sale meets certain conditions.

Hierarchy Notes:

Div. 5.8 Note

Div. 5.8, Ch. 2 Note

DEERING'S CALIFORNIA CODES ANNOTATED
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* THIS DOCUMENT REFLECTS ALL URGENCY LEGISLATION ENACTED THROUGH CH. 18 OF *
THE 2009-2010 REG. SESS., CH. 12 OF THE 2009-2010 2d EX. SESS., EFF. 5/21/09,
CH. 25 OF THE 2009-2010 3d EX. SESS., THE GOVERNOR'S REORGANIZATION PLAN #1 OF
2009, EFF. MAY 10, 2009, & PROP. 1F APPROVED, EFF. MAY 20, 2009

PUBLIC RESOURCES CODE
Division 5.8. California Wildlife, Coastal, and Park Land Conservation Act
Chapter 3. Miscellaneous Provisions

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Pub Resources Code § 5928 (2009)

§ 5928. Monterey County's acquisition of lands

(a) Funds available pursuant to paragraph (5) of subdivision (e) of Section 5907 shall be used solely for Monterey County's acquisition, as specified in subdivision (b) of Section 5920, of critical viewshed properties along the Big Sur Coast, and shall be expended in strict compliance with the policies of the 1988 Bond Act Account, which was established by resolution by the County of Monterey on March 17, 1987. The policies of the 1988 Bond Act Account shall not be modified or amended. Monterey County shall make an annual report to the Director of Finance on the disbursement of these funds. The Director of Finance shall assure that the County of Monterey expends the funds in accordance with this division.

(b) All lands acquired with these funds shall remain as natural lands in their present state in perpetuity and shall not be developed in any manner by any person or entity, public or private, except that this subdivision shall not apply to California Department of Transportation projects which are essential to maintain Highway One in its existing use as a rural, two lane, Scenic Highway.

HISTORY:

Addition adopted by voters, Prop 70 § 2, effective June 8, 1988.

NOTES:

Cross References:

Director of Finance: Gov C §§ 13001 et seq.

Hierarchy Notes:

Div. 5.8 Note

Div. 5.8, Ch. 3 Note

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PUBLIC RESOURCES CODE
Division 13. Environmental Quality
Chapter 2.5. Definitions

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Pub Resources Code § 21061 (2009)

§ 21061. "Environmental impact report"

"Environmental impact report" means a detailed statement setting forth the matters specified in Sections 21100 and 21100.1; provided that information or data which is relevant to such a statement and is a matter of public record or is generally available to the public need not be repeated in its entirety in such statement, but may be specifically cited as the source for conclusions stated therein; and provided further that such information or data shall be briefly described, that its relationship to the environmental impact report shall be indicated, and that the source thereof shall be reasonably available for inspection at a public place or public building. An environmental impact report also includes any comments which are obtained pursuant to Section 21104 or 21153, or which are required to be obtained pursuant to this division.

An environmental impact report is an informational document which, when its preparation is required by this division, shall be considered by every public agency prior to its approval or disapproval of a project. The purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.

In order to facilitate the use of environmental impact reports, public agencies shall require that such reports contain an index or table of contents and a summary. Failure to include such index, table of contents, or summary shall not constitute a cause of action pursuant to Section 21167.

HISTORY:

Added Stats 1972 ch 1154 § 1, effective December 5, 1972. Amended Stats 1976 ch 1312 § 5.

NOTES:

Amendments:

1976 Amendment:

(1) Substituted the first paragraph for the former first paragraph which read: " 'Environmental impact report' means a detailed statement setting forth the matters specified in Section 21100. It includes any comments on an environmental impact report which are obtained pursuant to Section 21104 or 21153, or which are required to be obtained pursuant to this division."; **(2)** amended the last sentence of the second paragraph by **(a)** adding "and the public in general" before "with detailed"; **(b)** substituting "the significant" for "any adverse" before "effects"; and **(c)** substituting "indicate" for "suggest" before "alternatives"; and **(3)** added the third paragraph.

Cross References:

Contents of reports on proposed projects: Pub Res C § 21100.

Limitation on requirement of certain findings: Pub Res C § 21100.1.

Consultation of state lead agency with other public agencies before completing report: Pub Res C § 21104.

Consultation of local lead agency with other public agencies before completing report: Pub Res C § 21153.

Collateral References:

12 Witkin Summary (10th ed) Real Property § 840.

Cal Jur 3d (Rev) Pollution and Conservation Laws §§ 484, 492, 521.

Regulations on guidelines for the California Environmental Quality Act: 6 Cal Code Reg §§ 15000 et seq.

Environmental Impact Statements under National Environmental Policy Act: 42 USCS § 4332(2)(C).

Miller & Starr, Cal Real Estate 3d §§ 25:182, 25:188, 25:190.

Law Review Articles:

Should CEQA Require Local Governments to Analyze the Impacts of Development Displaced by Restrictive Land Use Planning?. 33 Ecology LQ 1015.

Impact statements and low cost housing; the post-friends of Mammoth Legislative Compromise. 46 SCLR 777.

Attorney General's Opinions:

Neither the California Environmental Quality Act (CEQA) nor the National Environmental Policy Act (NEPA) require preparation of an Environmental Impact Report (EIR), in connection with the development of the California

Coastal Zone Conservation Plan (PLAN) because the Plan does not constitute a project with the meaning of CEQA and is not considered a "major Federal action" within the meaning of NEPA. 58 Ops. Cal. Atty. Gen. 814.

Annotations:

Necessity and sufficiency of environmental impact statements under § 102(2)(C) of National Environmental Policy Act of 1969 (42 USCS § 4332(2)(C) in cases involving highway projects. 64 ALR Fed 15.

Governmental entity's standing to challenge omission or adequacy of environmental impact statement required by § 102(2)(C) of National Environmental Policy Act of 1969 (42 USCS § 4332(2)(C)). 64 ALR Fed 521.

Hierarchy Notes:

Div. 13 Note

Div. 13, Ch. 2.5 Note

NOTES OF DECISIONS

Though an environmental impact report is referred to as an "informational document" in Pub. Resources Code, § 21061, and does not require a public agency to act in any particular manner, such a report has a significant evidentiary use; it constitutes evidence that must be considered by the agency together with other evidence that may be presented to it. Carmel Valley View, Ltd. v. Board of Supervisors (1976, Cal App 1st Dist) 58 Cal App 3d 817, 130 Cal Rptr 249, 1976 Cal App LEXIS 1590.

It is not mandatory for a lead agency to conduct every test and perform all research, study and experimentation recommended to it to determine true and full environmental impact before a proposed project is approved. Given the purpose of an environmental impact report to provide environmental information only, with discretion reserved in an involved agency to accept or reject the information, it is inconsistent with the legislative objective to cease all further consideration of a project unless all recommended testing is performed. Society for California Archaeology v. County of Butte (1977, Cal App 3d Dist) 65 Cal App 3d 832, 135 Cal Rptr 679, 1977 Cal App LEXIS 1092.

The dissemination of information to the general public as a statutory objective of the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.), prior to the amendment of Pub. Resources Code, § 21061, declaring that the purpose of an environmental impact report was to provide "the public in general" with information, and such amendment did no more than articulate a preexisting implied statutory demand. County of Inyo v. City of Los Angeles (1977, Cal App 3d Dist) 71 Cal App 3d 185, 139 Cal Rptr 396, 1977 Cal App LEXIS 1603.

A cease and desist order is merely an enforcement technique, and it is the first step by which a regional water quality control board may seek to enforce a waste discharge requirement previously promulgated by the regional board or the state board. Ordinarily, all environmental consequences flow from the original order promulgating requirements, and a subsequent cease and desist order will have no environmental effects beyond those resulting from the original order. Thus, since waste discharge requirements orders are exempt from the prior preparation of an environmental impact report, it would be nonsensical to require preparation of an environmental impact report as a prerequisite to the issuance of a cease and desist order. Moreover, under Pub. Resources Code, § 21061, defining an environmental impact report as an informational document which shall be considered by every public agency prior to its approval or

disapproval of a project, it would be ridiculous to require preparation of an environmental impact report prior to the issuance of a cease and desist order. Pacific Water Conditioning Assn., Inc. v. City Council (1977, Cal App 4th Dist) 73 Cal App 3d 546, 140 Cal Rptr 812, 1977 Cal App LEXIS 1871, superseded by statute as stated in Heninger v. Board of Supervisors (1986, Cal. App. 1st Dist.) 186 Cal. App. 3d 601, 231 Cal. Rptr. 11, 1986 Cal. App. LEXIS 2135.

A conditional use permit granted by a county to a landowner for construction of a manufacturing complex on land in a combined zoning district with classifications of heavy industrial and scenic highway was invalid where no environmental impact report was prepared or considered by the county, and where it could not be said the project would be without a significant effect on the environment. Under Pub. Resources Code, § 21061, a local agency must obtain and consider an environmental impact report when engaging in a discretionary project such as the issuance of conditional use permits unless it determines the proposed project does not have a significant effect on the environment. The landowner had no unconditional right to a building permit for a heavy industrial manufacturing use under the "combined" classifications of the zoning ordinance. Starbird v. County of San Benito (1981, Cal App 1st Dist) 122 Cal App 3d 657, 176 Cal Rptr 149, 1981 Cal App LEXIS 2058.

The Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) requires that environmental impact reports must report on the impact of the proposed plans on the existing environment. Thus, the requirements of the act were not satisfied where the environmental impact reports prepared for consideration of amendments to a general county plan compared environmental impacts of the proposed amendments to the existing plan itself rather than to the existing environment, as shown by comparisons of populations and growth inducements under the amended plan and existing plan, where the amended plan actually called for substantial increases in population in each area rather than the illusory decreases indicated by comparing the amended plan with the general plan, and where information concerning certain physical impacts had to be painstakingly ferreted out of the reports. Environmental Planning & Information Council v. County of El Dorado (1982, Cal App 3d Dist) 131 Cal App 3d 350, 182 Cal Rptr 317, 1982 Cal App LEXIS 1563.

The purposes of environmental impact reports are to serve both public officials and the public. They are to inform other governmental agencies, and the public generally, of the environmental impact of a proposed project and to demonstrate to an apprehensive citizenry that the agency has in fact analyzed and considered the ecological implications of its action. Environmental Planning & Information Council v. County of El Dorado (1982, Cal App 3d Dist) 131 Cal App 3d 350, 182 Cal Rptr 317, 1982 Cal App LEXIS 1563.

The Legislature has made clear that an environmental impact report (EIR), required by the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.), is an informational document and that the purpose of the EIR is to provide public agencies and the public in general with detailed information about the effect a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized, mitigated, or avoided; and to identify alternatives to such a project. The core of an EIR is the part that addresses mitigation and alternatives. A major function of an EIR is to ensure that all reasonable alternatives to proposed projects are thoroughly assessed by the responsible official or board. Stand Tall on Principles v. Shasta Union High Sch. Dist. (1991, Cal App 3d Dist) 235 Cal App 3d 772, 1 Cal Rptr 2d 107, 1991 Cal App LEXIS 1239, rehearing denied (1991, 3rd Dist) 235 Cal App 3d 1583a, 1991 Cal App LEXIS 1350, review denied Stand Tall on Principles v. Shasta Union High School Dist. (1992, Cal) 1992 Cal LEXIS 193.

The timing of the preparation of an environmental impact report (EIR), pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.), which can present a delicate problem, is basically an administrative decision to be made by a public agency consistent with the overall objectives of CEQA. In order to achieve the salutary objectives of CEQA the determination of the earliest feasible time to prepare an EIR is to be made initially by the agency itself, which decision must be respected in the absence of manifest abuse. Such abuse is shown if the agency fails to proceed in a manner required by law. Stand Tall on Principles v. Shasta Union High Sch. Dist. (1991, Cal App 3d Dist) 235 Cal App 3d 772, 1 Cal Rptr 2d 107, 1991 Cal App LEXIS 1239, rehearing denied (1991, 3rd Dist) 235 Cal App 3d 1583a, 1991 Cal App LEXIS 1350, review denied Stand Tall on Principles v. Shasta Union High School Dist. (1992, Cal) 1992 Cal LEXIS 193.

City properly certified a development project's environmental impact report, which indicated that the proposed project restored coastal sage scrub and managed sage scrub habitat in perpetuity. Because the project was consistent with the city's existing policies, a review of alternative sites was not necessary. Mira Mar Mobile Community v. City of Oceanside (2004, Cal App 4th Dist) 119 Cal App 4th 477, 14 Cal Rptr 3d 308, 2004 Cal App LEXIS 913.

Water district should have issued an Environmental Impact Report on its plan to place an aluminum cover on a reservoir because there was substantial evidence provided by a homeowners association to show that there was a significant environmental impact based on a mitigated negative declaration's failure to adopt measures to mitigate contamination or dam failure and the possible significant aesthetic implications. Ocean View Estates Homeowners Assn., Inc. v. Montecito Water Dist. (2004, Cal App 2d Dist) 116 Cal App 4th 396, 10 Cal Rptr 3d 451, 2004 Cal App LEXIS 247.

Department of Transportation did not improperly segment the review of a freeway interchange from that of the hotel and casino under Pub Res C §§ 21061, 21100, 21065, 21083. The environmental impact report (EIR) properly analyzed specifically the most pronounced impacts resulting from the interchange and the hotel/casino together (traffic-related transportation, noise, and air quality impacts) as if those impacts were direct effects of the interchange combined with the hotel/casino, and the EIR examined the growth-inducing and cumulative impacts of the interchange and the hotel/casino. County of El Dorado v. Department of Transportation (2005, Cal App 3d Dist) 133 Cal App 4th 1376, 35 Cal Rptr 3d 533, 2005 Cal App LEXIS 1731, modified, rehearing denied (2005, Cal App 3d Dist) 2005 Cal App LEXIS 1871, review denied and ordered not published El Dorado County v. Department Of Transportation et al. (Lakes Entertainment, Inc.) (Shingle Springs Band of Miwok Indians et al.) (2006, Cal) 2006 Cal LEXIS 2224.

Because an environmental impact report for a mining project discussed existing production levels but did not address the effects of peak production, it did not provide an adequate analysis under Pub Res C §§ 21061, 21100(b) and Cal. Code Regs. tit. 14, §§ 15126.2(a), 15151 of potential impacts on water use and roadway wear. San Joaquin Raptor Rescue Center v. County of Merced (2007, Cal App 5th Dist) 149 Cal App 4th 645, 57 Cal Rptr 3d 663, 2007 Cal App LEXIS 516.

While an environmental impact report (EIR) prepared for a large, mixed-use development project adequately informed decision makers and the public of a county's plan for near-term provision of water to the development, it failed to do so as to the long-term provision and hence failed to disclose the impacts of providing the necessary supplies in the long term. While the EIR identified the intended water sources in general terms, it did not clearly and coherently explain, using material properly stated or incorporated in the EIR, how the long-term demand was likely to be met with those sources, the environmental impacts of exploiting those sources, and how those impacts were to be mitigated, as required by Pub Res C § 21100(b). Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal 4th 412, 53 Cal Rptr 3d 821, 150 P3d 709, 2007 Cal LEXIS 748, modified, rehearing denied Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (Sunrise Douglas Property Owners Assn.) (2007, Cal) 2007 Cal LEXIS 4121.

Ultimate question under the California Environmental Quality Act, Pub Res C § 21000 et seq., is not whether an environmental impact report prepared for a land use project establishes a likely source of water, but whether it adequately addresses the reasonably foreseeable impacts of supplying water to the land use project. Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal 4th 412, 53 Cal Rptr 3d 821, 150 P3d 709, 2007 Cal LEXIS 748, modified, rehearing denied Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (Sunrise Douglas Property Owners Assn.) (2007, Cal) 2007 Cal LEXIS 4121.

Because, at the relatively early stage of program design, CALFED, a consortium formed by 18 federal and state agencies to address pollution problems of California's Bay-Delta region, properly applied the rule of reason when it decided to consider in its final program environmental impact statement/environmental impact report (PEIS/R) only alternatives that had the potential to both achieve ecosystem restoration goals and meet current and projected water export demands, and that would provide balanced progress in all four of the program areas, failure to include a reduced

exports alternative thus was not an abuse of discretion. Because CALFED's goal of water supply reliability encompassed all beneficial uses of delta water, it could not be achieved by an alternative that benefited some groups of water users at the expense of other users, and although the PEIS/R did not analyze a reduced exports alternative, it did analyze no-additional-storage alternatives that would avoid any adverse environmental consequences of constructing new dams or enlarging existing ones, and, under the California Environmental Quality Act, Pub Res C § 21000 et seq., that was sufficient. In re Bay-delta Programmatic Environmental Impact Report Coordinated Proceedings (2008, Cal) 43 Cal 4th 1143, 77 Cal Rptr 3d 578, 184 P 3d 709, 2008 Cal LEXIS 6737.

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PUBLIC RESOURCES CODE
Division 13. Environmental Quality
Chapter 2.6. General

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Pub Resources Code § 21080.33 (2009)

§ 21080.33. Applicability to, and exemption from, division

This division does not apply to any emergency project undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway, as defined in Section 360 of the Vehicle Code, except for a highway designated as an official state scenic highway pursuant to Section 262 of the Streets and Highways Code, within the existing right-of-way of the highway, damaged as a result of fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, within one year of the damage. This section does not exempt from this division any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.

HISTORY:

Added Stats 1996 ch 825 § 6 (AB 2963).

NOTES:

Collateral References:

12 Witkin Summary (10th ed) Real Property § 836.

Hierarchy Notes:

Div. 13 Note

Div. 13, Ch. 2.6 Note

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PUBLIC RESOURCES CODE
Division 13. Environmental Quality
Chapter 2.6. General

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Pub Resources Code § 21084 (2009)

§ 21084. Guidelines' list of classes of exempt projects

(a) The guidelines prepared and adopted pursuant to Section 21083 shall include a list of classes of projects which have been determined not to have a significant effect on the environment and which shall be exempt from this division. In adopting the guidelines, the Secretary of the Resources Agency shall make a finding that the listed classes of projects referred to in this section do not have a significant effect on the environment.

(b) No project which may result in damage to scenic resources, including, but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway designated as an official state scenic highway, pursuant to Article 2.5 (commencing with Section 260) of Chapter 2 of Division 1 of the Streets and Highways Code, shall be exempted from this division pursuant to subdivision (a). This subdivision does not apply to improvements as mitigation for a project for which a negative declaration has been approved or an environmental impact report has been certified.

(c) No project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code shall be exempted from this division pursuant to subdivision (a).

(d) The changes made to this section by Chapter 1212 of the Statutes of 1991 apply only to projects for which applications have not been deemed complete on or before January 1, 1992, pursuant to Section 65943 of the Government Code.

(e) No project that may cause a substantial adverse change in the significance of an historical resource, as specified in Section 21084.1, shall be exempted from this division pursuant to subdivision (a).

HISTORY:

Added Stats 1972 ch 1154 § 2.3, effective December 5, 1972. Amended Stats 1976 ch 1312 § 10.5; Stats 1991 ch 1212 § 2 (AB 869); Stats 1992 ch 1075 § 7 (AB 2881).

NOTES:

Amendments:

1976 Amendment:

(1) Designated the former section to be subd (a); and **(2)** added subd (b).

1991 Amendment:

(1) Amended subd (a) by **(a)** deleting "the provisions of" after "be exempt from"; and **(b)** substituting "listed classes" for "list or classification" after "finding that the"; **(2)** substituted subd (b) for former subd (b) which read: "(b) No project of the Department of Transportation which will result in damage to scenic resources, including, but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within an official state scenic highway, as designated pursuant to Section 262 of the Streets and Highways Code, shall be exempted from this division pursuant to subdivision (a)."; and **(3)** added subds (c) and (d).

1992 Amendment:

(1) Substituted "Chapter 1212 of the Statutes of 1991" for "the act amending this section, which takes effect January 1, 1992," in subd (d); and **(2)** added subd (e).

Cross References:

Responsibility of lead agency to determine whether environmental impact report or negative declaration required: Pub Res C § 21080.1.

Guidelines for evaluation of projects and preparation of environmental impact statements: Pub Res C § 21083.

"Historical resource": Pub Res C § 21084.1.

Secretary of the Resources Agency: Gov C § 12807.

Secretary of Resources Agency as member of State Environmental Quality Study Council: Gov C § 16051.

Designation of highway as official state scenic highway: St & H C § 262.

Collateral References:

12 Witkin Summary (10th ed) Real Property §§ 836, 837.

Cal Jur 3d (Rev) Pollution and Conservation Laws §§ 489, 495.

Regulations on guidelines for the California Environmental Quality Act: 6 Cal Code Reg §§ 15000 et seq.

Miller & Starr, Cal Real Estate 3d § 25:186.

Law Review Articles:

California's Environmental Quality Act; categorical exemptions. 5 Pacific LJ 39.

Hierarchy Notes:

Div. 13 Note

Div. 13, Ch. 2.6 Note

NOTES OF DECISIONS

The requirement of Pub. Resources Code, § 21084, that guidelines for implementation of the Environmental Quality Act include a list of exempt projects is in recognition of the fact that there will be projects which are so de minimus in terms of environmental impact that it would cause unwarranted delay and expense to invoke the elaborate requirements of the act. Hixon v. County of Los Angeles (1974, Cal App 2d Dist) 38 Cal App 3d 370, 113 Cal Rptr 433, 1974 Cal App LEXIS 1060.

The "wildlife preservation activities of the State Department of Fish and Game," categorically exempted from the provisions of the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) by Cal. Admin. Code, tit. 14, § 15107, pursuant to Pub. Resources Code, §§ 21083, 21084, do not include the fixing of hunting and fishing seasons by the Fish and Game Commission, to which, because of its potential for significant environmental impact, both favorable and unfavorable, no valid categorical exemption may be extended by the Secretary of the Resources Agency. Wildlife Alive v. Chickering (1976) 18 Cal 3d 190, 132 Cal Rptr 377, 553 P2d 537, 1976 Cal LEXIS 345.

Pub. Resources Code, §§ 21083, 21084 (providing for categorical exemptions from the provisions of the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) of projects that the Office of Planning and Research determines had no "significant effect" on the environment), contemplates significant effects favorable or unfavorable, not merely significant adverse effects. Wildlife Alive v. Chickering (1976) 18 Cal 3d 190, 132 Cal Rptr 377, 553 P2d 537, 1976 Cal LEXIS 345.

A three-tiered structure has been established by the Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) and the Environmental Impact Report Guidelines (Cal. Admin. Code, tit. 14, § 15000 et seq.) to govern an agency's determination as to whether or not a pending project requires an environmental impact report: If a project falls within a category exempt by administrative regulations (Pub. Resources Code, §§ 21084, 21085), or it can be seen with certainty that the activity in question will not have a significant effect on the environment (Cal. Admin. Code, tit. 14, § 15060), no further agency evaluation is required. If there is a possibility that the project may have a significant effect, the agency undertakes an initial threshold study (Cal. Admin. Code, tit. 14, § 15080), and if that study demonstrates that the project will not have a significant effect, the agency may so declare in a brief negative declaration. (Cal. Admin. Code, tit. 14, § 15083). If the project is one that may have a significant effect on the environment, an environmental

impact report is required. (Pub. Resources Code, §§ 21100, 21151). Myers v. Board of Supervisors (1976, Cal App 1st Dist) 58 Cal App 3d 413, 129 Cal Rptr 902, 1976 Cal App LEXIS 1527.

Industry-wide wage orders adopted by the Industrial Welfare Commission did not violate provisions of the Environmental Quality Act relating to the preparation of an environmental impact report or a negative declaration. Pub. Resources Code, § 21084, directs the Secretary of the California Resources Agency to promulgate a list of classes of projects determined not to have a significant effect on the environment which shall be exempt from such provision, and the secretary has, in Cal. Admin. Code, tit. 14, § 15124, categorically exempted wage orders of the Industrial Welfare Commission. Since the commission's regulations governing the wages, hours and working conditions of employees have no obvious effect on the environment, the secretary acted within his statutory authority in exempting them from the requirements of the act. Industrial Welfare Com. v. Superior Court of Kern County (1980) 27 Cal 3d 690, 166 Cal Rptr 331, 613 P2d 579, 1980 Cal LEXIS 194, cert den San Joaquin Nisei Farmers League v. Industrial Welfare Com. (1980) 449 US 1034, 101 S Ct 610, 66 L Ed 2d 496, 1980 US LEXIS 4278, dismissed California Mfrs. Asso. v. Industrial Welfare Com. (1980) 449 US 1029, 101 S Ct 602, 66 L Ed 2d 492, 1980 US LEXIS 4247.

Pub. Resources Code, § 21084, properly construed, does not limit to relatively minor projects the exemptions from the California Environmental Quality Act of 1970 (Pub. Resources Code, § 21000 et seq.) that the Secretary for Resources may permit. The more reasonable inference to be drawn with respect to size limitations of a proposed project for which an exemption is sought under one of the exemption categories contained in the administrative guidelines for implementation of the act is that where no size limitation is stated under the exemption category, no size limitation is intended. Dehne v. County of Santa Clara (1981, Cal App 1st Dist) 115 Cal App 3d 827, 171 Cal Rptr 753, 1981 Cal App LEXIS 1399.

In a writ proceeding challenging the California Coastal Commission's approval of applications by the California Department of Parks and Recreation for permits to install parking fee collection devices at 16 state park beaches, the trial court did not err in concluding that the imposition of parking fees and the installation of the devices were exempt from the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.). Pub. Resources Code, § 21080, subd. (b)(8), prescribes an exemption for the approval of fees charged by public agencies for the purpose of meeting operating expenses. There is also a categorical exemption for the construction of small structures (Pub. Resources Code, § 21084, subd. (a); Cal. Code Regs., tit. 14, § 15303). Although an exception to categorical exemptions applies where there is a reasonable possibility of a significant effect on the environment due to unusual circumstances, any causal effect in this case would not have been from the construction of the small structures, but the underlying imposition of the fees, which was statutorily exempt. Surfrider Foundation v. California Coastal Com. (1994, Cal App 1st Dist) 26 Cal App 4th 151, 31 Cal Rptr 2d 374, 1994 Cal App LEXIS 689, review denied Surfrider Found. v. California Coastal Comm'n (1994, Cal) 1994 Cal LEXIS 3800.

The Fish and Game Commission's decision to remove the Mojave ground squirrel from the threatened species list, pursuant to the California Endangered Species Act, was not categorically exempt from the California Environmental Quality Act (CEQA). While the Legislature has directed the Secretary of the Resources Agency to promulgate a list of classes of projects that have no significant effect on the environment (Pub. Resources Code, § 21084; Cal. Code Regs., tit. 14, § 15300 et seq.), and a project falling within such a categorical exemption is not subject to CEQA, the commission's regulations and the CEQA regulations make it clear that the removal of a species from the endangered or threatened species list is an activity that may have a significant effect on the environment. Thus, a delisting cannot be categorically exempt. Nor could a delisting action be fairly included within the exempt class of "actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment" (Cal. Code Regs., tit. 14, §§ 15307, 15308), since a delisting removes rather than secures statutory protections. Exemption categories are not to be expanded beyond the reasonable scope of their statutory language. Mountain Lion Foundation v. Fish & Game Com. (1997) 16 Cal 4th 105, 65 Cal Rptr 2d 580, 939 P2d 1280, 1997 Cal LEXIS 4191.

Under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.), categorical

exemptions may be provided only for "classes of projects which have been determined not to have a significant effect on the environment" (Pub. Resources Code, § 21084, subd. (a)). These exemptions should be construed in the light of that authorization. Hence, a term that does not have a clearly established meaning, such as the exemption for existing "facilities," should not be so broadly interpreted as to include a class of businesses that will not normally satisfy the statutory requirements for a categorical exemption, even if the premises on which such businesses are conducted might otherwise come within the vague concept of a "facility." This principle of interpretation is embodied in the CEQA guidelines, which state that CEQA should be interpreted to afford the fullest possible protection to the environment within the reasonable scope of the statutory language. Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster (1997, Cal App 2d Dist) 52 Cal App 4th 1165, 61 Cal Rptr 2d 447, 1997 Cal App LEXIS 111, review denied Azusa Land Reclamation Co. v. Main San Gabriel Basis Watermaster (1997, Cal) 1997 Cal LEXIS 2874.

A company's 1994 proposal to reopen its landfill located in an empty sand and gravel pit atop the Main San Gabriel Groundwater Basin for the deposit of 3,200,000 tons of municipal solid waste was not exempted from the requirements of the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) by a CEQA guideline (Cal. Code Regs., tit. 14, § 15261, subd. (b)(3)), even though the landfill had been granted an earlier operating permit in 1960. That guideline provided that private projects that had been granted governmental approval for part of the project before Apr. 5, 1973, would be subject to CEQA for approvals after that date only if those later approvals involved a greater degree of responsibility or control over the project as a whole than did the approval or approvals prior to that date. The guideline exceeded the scope of CEQA and was, to that extent, invalid, since Pub. Resources Code, § 21169, provided only for exemptions for private projects that predated Apr. 5, 1973. Furthermore, the guideline was unauthorized and conflicted with Pub. Resources Code, § 21084, which gave the authority for granting CEQA exemptions to the Secretary of the Resources Agency, not the Office of Planning and Research, which prepared the guideline. Even if it were valid, this guideline must be interpreted narrowly, consistent with the purpose of CEQA. Since the 1995 regional water quality control board order that approved the company's 1994 waste disposal project entailed a greater degree of responsibility and control, given enactment of the Porter-Cologne Water Quality Act (Wat. Code, § 13000 et seq.) and subsequent regulations, the exemption did not apply. Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster (1997, Cal App 2d Dist) 52 Cal App 4th 1165, 61 Cal Rptr 2d 447, 1997 Cal App LEXIS 111, review denied Azusa Land Reclamation Co. v. Main San Gabriel Basis Watermaster (1997, Cal) 1997 Cal LEXIS 2874.

In categorical exemption cases where the agency establishes that the project is within an exempt class, the burden shifts to the party challenging the exemption to show that the project is not exempt because it falls within one of the exceptions listed in Cal Code Regs Guidelines § 15300.2. The most commonly raised exception provides that an activity which would otherwise be categorically exempt is not exempt if there are unusual circumstances which create a reasonable possibility that the activity will have a significant effect on the environment. A challenger must therefore produce substantial evidence showing a reasonable possibility of adverse environmental impact sufficient to remove the project from the categorically exempt class. Fairbank v. City of Mill Valley (1999, Cal App 1st Dist) 75 Cal App 4th 1243, 89 Cal Rptr 2d 233, 1999 Cal App LEXIS 1050.

Where a project is categorically exempt, it is not subject to CEQA requirements and may be implemented without any CEQA compliance whatsoever. In keeping with general principles of statutory construction, exemptions are construed narrowly and will not be unreasonably expanded beyond their terms. Strict construction allows CEQA to be interpreted in a manner affording the fullest possible environmental protections within the reasonable scope of statutory language. It also comports with the statutory directive that exemptions may be provided only for projects which have been determined not to have a significant environmental effect (Pub Res C § 21084(a)). County of Amador v. El Dorado County Water Agency (1999, Cal App 3d Dist) 76 Cal App 4th 931, 91 Cal Rptr 2d 66, 1999 Cal App LEXIS 1065, review denied (2000, Cal) 2000 Cal LEXIS 1116.

There is no inconsistency between Cal. Code Regs. tit. 14, § 15332, which creates a categorical exemption from the California Environmental Quality Act (CEQA), Cal. Pub. Res. Code § 21000 et seq., environmental impact reporting requirements for certain urban in-fill development projects and Cal. Pub. Res. Code § 21084's requirement that projects

listed as a categorical exemption must not have a significant effect on the environment. Guideline § 15332 does not violate CEQA. Communities For a Better Environment v. California Resources Agency (2002, Cal App 3d Dist) 103 Cal App 4th 98, 126 Cal Rptr 2d 441, 2002 Cal App LEXIS 4867.

County's findings that a project to build a house within a riparian area had possible adverse impacts on the habitat of threatened or endangered species and created possible disharmonies with a creek disqualified the project for a categorical exemption under the California Environmental Quality Act (CEQA); the possibility of impacts on a county designated resource of critical concern necessitated review under CEQA, at which time mitigation measures could be considered in evaluating the actual environmental impact of the project. Salmon Protection & Watershed Network v. County of Marin (2004, Cal App 1st Dist) 125 Cal App 4th 1098, 23 Cal Rptr 3d 321, 2004 Cal App LEXIS 2314, modified, rehearing denied (2005, Cal App 1st Dist) 2005 Cal App LEXIS 59, review denied Salmon Protection & Watershed Network v. County of Marin (Hedlund) (2005, Cal) 2005 Cal LEXIS 3180.

Only those projects having no significant effect on the environment are categorically exempt from review under the California Environmental Quality Act. Salmon Protection & Watershed Network v. County of Marin (2004, Cal App 1st Dist) 125 Cal App 4th 1098, 23 Cal Rptr 3d 321, 2004 Cal App LEXIS 2314, modified, rehearing denied (2005, Cal App 1st Dist) 2005 Cal App LEXIS 59, review denied Salmon Protection & Watershed Network v. County of Marin (Hedlund) (2005, Cal) 2005 Cal LEXIS 3180.

Substantial evidence supported a city's determination that the proposed development of a 14-story residential building in a densely populated area across a street from a park was exempt from the California Environmental Quality Act in accordance with Pub Res C § 21084(a) as an urban in-fill development project under the guidelines set forth in Cal. Code Regs. tit. 14, § 15332; the park was an urban park, the project was consistent with the general plan, no significant effects relating to traffic were shown, and there were no unusual circumstances within the meaning of Cal. Code Regs. tit. 14, § 15300.2(c). Banker's Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego (2006, Cal App 4th Dist) 139 Cal App 4th 249, 42 Cal Rptr 3d 537, 2006 Cal App LEXIS 684.

As a matter of law, a water credit transfer from a demolished building to a new structure was not exempt from the California Environmental Quality Act under the categorical exemption for replacement or reconstruction of existing facilities in Cal. Code Regs. tit. 14, § 15302. Save Our Carmel River v. Monterey Peninsula Water Management Dist. (2006, Cal App 6th Dist) 141 Cal App 4th 677, 46 Cal Rptr 3d 387, 2006 Cal App LEXIS 1124.

Because a water credit transfer is neither a structure nor a facility, it does not fit the elements of the categorical exemption for replacement or reconstruction of existing facilities in Cal. Code Regs. tit. 14, § 15302. Save Our Carmel River v. Monterey Peninsula Water Management Dist. (2006, Cal App 6th Dist) 141 Cal App 4th 677, 46 Cal Rptr 3d 387, 2006 Cal App LEXIS 1124.

Proposed acquisition to convert property into a wetland habitat was not exempt from environmental review under Pub Res C § 21084(a) because the property was not existing habitat as required by Cal. Code Regs. tit. 14, §§ 15304, 15313, 15325 and the common sense exemption in Cal. Code Regs. tit. 14, § 15061(b)(3) did not apply. California Farm Bureau Federation v. California Wildlife Conservation Bd. (2006, Cal App 3d Dist) 143 Cal App 4th 173, 49 Cal Rptr 3d 169, 2006 Cal App LEXIS 1468.

The Class 13 categorical exemption provided for in Pub Res C § 21084(a) and set forth in Cal. Code Regs. tit. 14, § 15313 for acquisitions for conservation purposes applies only to existing habitat. California Farm Bureau Federation v. California Wildlife Conservation Bd. (2006, Cal App 3d Dist) 143 Cal App 4th 173, 49 Cal Rptr 3d 169, 2006 Cal App LEXIS 1468.

City properly issued a grading permit without conducting an environmental review of the permit's impact, pursuant to the California Environmental Quality Act, Pub Res C § 21000 et seq., upon reasonably finding that the use of imported fill was a minor alteration in the condition of land under Cal. Code Regs. tit. 14, § 15304(a). Madrigal v. City

of Huntington Beach (2007, Cal App 4th Dist) 147 Cal App 4th 1375, 55 Cal Rptr 3d 209, 2007 Cal App LEXIS 263.

Categorical exemption from the California Environmental Quality Act pursuant to Pub Res C § 21080(b) was unavailable for the purpose of attaching a fence to a historic wall; this was not a minor alteration of a land-use limitation within the meaning of Cal. Code Regs. tit. 14, § 15305, and the city failed to consider potential harm to the wall under Pub Res C § 21084(e) and Cal. Code Regs., tit. 14, § 15300.2, subd. (f). Committee to Save the Hollywoodland Specific Plan and Hollywood Heritage v. City of Los Angeles (2008, 2d Dist) 161 Cal App 4th 1168, 74 Cal Rptr 3d 665, 2008 Cal App LEXIS 501, review denied Committee to Save the Hollywoodland Specific Plan v. City of Los Angeles/(Cutler) (2008, Cal.) 2008 Cal. LEXIS 8367.

In absence of any environmental review, the in-lieu fee program established by the El Dorado County Ecological Preserve Fee Program, El Dorado County Code, ch. 17.71, did not presumptively establish full mitigation for a given discretionary project, and for such a program to satisfy the California Environmental Quality Act, it must at some point pass muster under the act either at programmatic or individual project levels; therefore, where substantial evidence in the record supported a fair argument that a project would have a significant effect on rare plants, it was inappropriate to certify a mitigated negative declaration under the fee program and the county was required to prepare an environmental impact report to evaluate suitable mitigation, and here no environmental review had been conducted as to the ordinance which had been deemed to be categorically exempt from the act under Pub Res C § 21084(a). California Native Plant Society v. County of El Dorado (2009, 3d Dist) 170 Cal App 4th 1026, 88 Cal Rptr 3d 530, 2009 Cal App LEXIS 135.

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PUBLIC RESOURCES CODE
Division 20. California Coastal Act
Chapter 7. Development Controls
Article 1. General Provisions

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Pub Resources Code § 30600 (2009)

§ 30600. Coastal development permits; Local government

(a) Except as provided in subdivision (e), and in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, any person, as defined in Section 21066, wishing to perform or undertake any development in the coastal zone, other than a facility subject to Section 25500, shall obtain a coastal development permit.

(b)

(1) Prior to certification of its local coastal program, a local government may, with respect to any development within its area of jurisdiction in the coastal zone and consistent with the provisions of Sections 30604, 30620, and 30620.5, establish procedures for the filing, processing, review, modification, approval, or denial of a coastal development permit. Those procedures may be incorporated and made a part of the procedures relating to any other appropriate land use development permit issued by the local government.

(2) A coastal development permit from a local government shall not be required by this subdivision for any development on tidelands, submerged lands, or on public trust lands, whether filled or unfilled, or for any development by a public agency for which a local government permit is not otherwise required.

(c) If prior to certification of its local coastal program, a local government does not exercise the option provided in subdivision (b), or a development is not subject to the requirements of subdivision (b), a coastal development permit shall be obtained from the commission or from a local government as provided in subdivision (d).

(d) After certification of its local coastal program or pursuant to the provisions of Section 30600.5, a coastal development permit shall be obtained from the local government as provided for in Section 30519 or Section 30600.5.

(e) This section does not apply to any of the following projects, except that notification by the agency or public utility performing any of the following projects shall be made to the commission within 14 days from the date of the commencement of the project:

(1) Immediate emergency work necessary to protect life or property or immediate emergency repairs to public service facilities necessary to maintain service as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code.

(2) Emergency projects undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway, as defined in Section 360 of the Vehicle Code, except for a highway designated as an official state scenic highway pursuant to Section 262 of the Streets and Highways Code, within the existing right-of-way of the highway, damaged as a result of fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, within one year of the damage. This paragraph does not exempt from this section any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.

HISTORY:

Added Stats 1976 ch 1330 § 1. Amended Stats 1981 ch 1173 § 19. Amended Stats 1996 ch 825 § 7 (AB 2963).

NOTES:

Amendments:

1981 Amendment:

(1) Substituted "the commission or from a local government as provided in subdivision (d)" for "a regional commission, the commission on appeal, or the commission where there is no regional commission" at the end of subd (c); and **(2)** added "or pursuant to the provisions of Section 30600.5" and "or Section 30600.5" in subd (d).

1996 Amendment:

(1) Amended subd (a) by **(a)** adding "Except as provided in subdivision (e), and" in the beginning; **(b)** substituting "any person, as defined in Section 21066," for "on or after January 1, 1977, any person"; and **(c)** deleting "the provisions of" after "facility subject to"; **(2)** redesignated former subd (b) to be subd (b)(1); **(3)** substituted "Those" for "Such" in the beginning of the last sentence of subd (b)(1); and **(4)** added subds (b)(2) and (e).

Historical Derivation:

Former Pub Res C § 27400, as added by initiative act approved November 7, 1972.

Note

Stats 1981 ch 1066 provides:

SEC. 2. (a) Notwithstanding the provisions of Division 20 (commencing with Section 30000) of the Public Resources Code, no coastal development permit shall be required for the conversion of an existing hotel, motel, or similar visitor-serving facility to a time-share project, estate, or use, as defined in Section 11003.5 of the Business and Professions Code, if any such conversion fulfills all of the requirements of subdivision (b).

(b) Any conversion subject to the provisions of subdivision (a) shall meet all of the following:

(1) The conversion shall have been the subject of an application for a coastal development permit which was filed between January 1, 1980, and September 1, 1981.

(2) The application for a coastal development permit for the conversion is either pending or has been denied pursuant to the provisions of Division 20 (commencing with Section 30000) of the Public Resources Code; or in cases where a coastal development permit for a conversion was issued, the applicant shall not have substantially proceeded with such conversion prior to September 1, 1981.

(3) The person currently proposing the conversion shall demonstrate that arrangements have been made, either by the seller or by the buyer out of escrow, for the payment of 1 percent of the purchase price of each individual time-share project, use, or estate into the State Treasury to the credit of the State Parks and Recreation Fund.

All money thus credited shall be available for expenditure, when appropriated by the Legislature, by the Department of Parks and Recreation for the construction of, and conversion of existing structures to, hostel facilities within the coastal zone pursuant to the Collier-Keene State Hostel Facilities Act (Article 4 (commencing with Section 5050) of Chapter 1 of Division 5 of the Public Resources Code).

(c) Upon request of the person currently proposing a conversion, the executive director of the California Coastal Commission shall determine whether the proposed conversion meets the requirements of subdivision (b). The determination shall be made in writing, and if the requirements of subdivision (b) have not been met, the determination shall indicate which such requirements were unmet. The executive director's determination shall be made within 30 days of receipt of a request therefor.

(d) The provisions of this section shall apply only to those persons who, prior to February 1, 1982, submit to the executive director of the California Coastal Commission a request for the determination required by subdivision (c).

SEC. 3. The Legislature, through appropriate committees of each respective house, shall review the issues and concerns associated with the conversion of hotels, motels, and similar visitor-serving facilities, located within the coastal zone to time-share projects, estates, or uses as defined in Section 11003.5 of the Business and Professions Code. This legislative review shall identify those issues and concerns which impinge upon, or are relevant to, the policies and goals of Division 20 (commencing with Section 30000) of the Public Resources Code. The Legislature, at its second year of the 1981-82 Regular Session, shall enact amendments to Division 20 (commencing with Section 30000) of the Public Resources Code which are appropriate to resolve any issues or problems identified pursuant to this section.

Cross References:

Delegation of develop review of authority to local government: Pub Res C § 30519.

Findings necessary to certification of local coastal program: Pub Res C § 30604.

Coastal development permit procedures; commission: Pub Res C § 30620.

Coastal development permit procedures; local governments: Pub Res C § 30620.5.

Collateral References:

12 Witkin Summary (10th ed) Real Property § 863.

Law Review Articles:

Tidelands trust for modifiable public purposes; progress toward redefinition. 6 Loyola U of LA LR 521.

Land development and the environment: The Subdivision Map Act; state review and regional regulation of subdivisions. 5 Pacific LJ 77.

Regional planning under Coastal Zone Conservation Initiative; inter-governmental relations. 47 St BJ 430.

The implications of Strumsky and Topanga for judicial review of zoning decisions. 50 St BJ 26.

Attorney General's Opinions:

Status of buildings or projects constructed without permit from regional coastal zone conservation commission, with reference to specific dates; responsibility of city or county as to issuance of permits after November 7, 1972, and prior to February 1, 1973. 56 Ops. Cal. Atty. Gen. 200.

Application of permit requirements, under California Coastal Zone Conservation Act of 1972, to development on federally owned or leased land carried out by federal government itself; to development on land not owned or leased by federal government but carried out by federal agency; and to development on federally owned or leased land carried out by private parties. 57 Ops. Cal. Atty. Gen. 42.

City or county, by ordinance, including those adopted by referendum or initiative, may not lawfully authorize a use of land in coastal zone which is not permitted by local coastal program or land use plan certified by California Coastal Commission without approval of Commission; city or county may not lawfully prohibit a use of land in coastal zone which is permitted by local coastal program or land use plan certified by Commission by ordinance, including those adopted by referendum or initiative, without approval of Commission; Coastal Act's provisions for approval of amendments to certified local coastal program or land use plan by Commission are applicable to charter cities. 70 Ops. Cal. Atty. Gen. 220.

Hierarchy Notes:

Div. 20 Note

Div. 20, Ch. 7 Note

Div. 20, Ch. 7, Art. 1 Note

NOTES OF DECISIONS 1. Generally 2. Applicability 3. Error 4. Jurisdiction

1. Generally

Under the [former] Coastal Act ([former] Pub. Resources Code, §§ 27000-27650), providing a system for controlling interim coastal development, the jurisdiction of the state commission on appeal from a decision of the regional commission is not strictly of an appellate nature, in view of [former] Pub. Resources Code, § 27423, subd. (c), specifically requiring a de novo public hearing by the same manner and vote as the regional commission, and [former] Pub. Resources Code, §§ 27400 and 27224, requiring an affirmative vote by the majority of the authorized members of the state commission to grant a permit. Accordingly, if the appeal is from a denial of a permit, at least seven pro votes are required to "reverse" the regional commission so as to grant the permit; if the regional commission grants a permit, at least seven pro votes are required to "affirm" or "modify" the grant of the permit. On the other hand, if the appeal is from a denial of a permit, and less than seven pro votes are forthcoming, there is no affirmative vote for the granting of the permit, and the result is the same as an affirmance of the regional commission's denial, while if the appeal is from a permit which has been granted and no affirmative, majority vote is obtained on appeal, there can be no affirmance of the regional commission's decision to grant the permit. REA Enterprises v. California Coastal Zone Conservation Com. (1975, Cal App 2d Dist) 52 Cal App 3d 596, 125 Cal Rptr 201, 1975 Cal App LEXIS 1492.

The two major exemptions from the coastal zone permit requirement of [former] Pub. Resources Code, § 27400, for any new construction in the zone commencing on or after February 1,1973, are the "vested rights" exception created by [former] Pub. Resources Code, § 27404, applicable to a developer who has obtained a building permit and in good faith reliance on the permit has diligently commenced construction activity and performed substantial work on the development, and the judicially created exception for developers who have obtained building permits and have in good faith commenced actual construction of the structures, performed substantial work, and incurred substantial liability. Though the exceptions are subject to different quanta of construction work completed and different dates of vesting of the right to complete construction, both fall within the general rule that one who in good faith reliance on a building permit performs substantial work and incurs substantial liability in reliance thereon acquires a vested right to complete construction notwithstanding any intervening changes in the law that would otherwise preclude the construction. Sierra Club v. California Coastal Zone Conservation Com. (1976, Cal App 1st Dist) 58 Cal App 3d 149, 129 Cal Rptr 743, 1976 Cal App LEXIS 1558.

In view of Pub. Resources Code, § 30600, subd. (a), providing that any person wishing to perform or undertake any development in the coastal zone must obtain a coastal development permit, and Pub. Resources Code, § 30106, defining development as the placement or erection of any solid material or structure, greenhouses constitute a development under the coastal act for which requisite permits must be obtained. Delucchi v. County of Santa Cruz (1986, Cal App 6th Dist) 179 Cal App 3d 814, 225 Cal Rptr 43, 1986 Cal App LEXIS 1438, cert den (1986) 479 US 803, 93 L Ed 2d 8, 107 S Ct 46, 1986 US LEXIS 3228.

2. Applicability

Under the [former] Coastal Act ([former] Pub. Resources Code, §§ 27000-27650), providing a system for controlling interim coastal development, and specifically [former] Pub. Resources Code, § 27423, subd. (c), providing that appeals to the state commission from the regional commission "shall be scheduled for a de novo public hearing and shall be decided in the same manner and by the same vote as provided for decisions by the regional commissions," and [former] Pub. Resources Code, § 27400, providing that "no permit shall be issued without the affirmative vote of a majority of the total authorized membership of the regional commission, or of the [state] commission on appeal," and [former] Pub. Resources Code, § 27224, providing that "a majority affirmative vote of the total authorized membership shall be necessary to approve any action required or permitted.;.," not only is the state commission required to conduct a de novo public hearing on appeal, but it is also required to conduct the hearing in the same manner and by the same vote as the regional commission, and since there are twelve authorized members of the state commission, at least seven votes would be required for the issuance of a permit. Accordingly, on an appeal to the state commission from a decision of a regional commission granting a coastal zone development permit, a tie vote by the commission effectuated a denial of the issuance of the development permit, since the developer did not receive the statutorily required majority vote. REA Enterprises v. California Coastal Zone Conservation Com. (1975, Cal App 2d Dist) 52 Cal App 3d 596, 125 Cal Rptr

201, 1975 Cal App LEXIS 1492.

In denying a coastal development permit (Pub Res C § 30600) to remodel a commercial building located in the protected coastal zone to include a second floor restaurant, the regional commission property considered the cumulative environmental impact of future restaurants that might be built. Stanson v. San Diego Coast Regional Com. (1980, Cal App 4th Dist) 101 Cal App 3d 38, 161 Cal Rptr 392, 1980 Cal App LEXIS 1374.

Delivery to a city engineer of a final subdivision map did not extend the life of the tentative map under Gov C § 66452.6(a)(1) and (d) because the final map admittedly did not conform to the requirements of the vesting tentative map. At the time of delivery to the city engineer, the developer had not fulfilled the condition that it obtain a coastal development permit; that deficiency was significant because a coastal development permit was explicitly required under Pub Res C §§ 30600(a) and 30106. Ailanto Properties, Inc. v. City of Half Moon Bay (2006, Cal App 1st Dist) 142 Cal App 4th 572, 48 Cal Rptr 3d 340, 2006 Cal App LEXIS 1317.

Non-profit land preservation organization was entitled to summary judgment in a developer's action for declaratory relief, breach of contract, and breach of the implied covenant of good faith and fair dealing, which arose from the organization's refusal to execute an Internal Revenue Service Form 8283 (charitable donation) one year after the parties closed on the sale of a parcel of property that was sold to the organization in order to meet a development mitigation condition related to Pub Res C §§ 30514, 30600(d), and 30604(b); the agreement between the parties contained no express obligation to execute Form 8283, requiring the organization to execute Form 8283 would have contradicted the "No Tax Advice" provision of the agreement, the extrinsic evidence proved that the organization had no obligation to execute Form 8283, and the developer's equitable estoppel argument had no application. Headlands Reserve, LLC v. Ctr. for Natural Lands Mgmt. (2007, CD Cal) 523 F Supp 2d 1113, 2007 US Dist LEXIS 86870.

3. Error

The owner of a commercial building located within the protected coastal zone who wished to remodel the building to include a second floor restaurant and who, in reliance on a representation of the regional commission's agent that a coastal development permit (Pub Res C § 30600) was not necessary, obtained building permits, expended substantial sums of money in remodeling the building, and entered into other leases with rentals hinging upon the restaurant opening, acquired a fundamental vested right rooted in the constitutional protection against deprivation of property rights without due process of law. Thus, in a mandamus proceeding (CCP § 1094.5) that arose when the regional commission decided that a coastal development permit was in fact necessary and thereafter denied plaintiff's application therefor, the trial court erred in applying the substantial evidence test in reviewing the permit denial. The trial court should have exercised its independent judgment on the evidence presented. Stanson v. San Diego Coast Regional Com. (1980, Cal App 4th Dist) 101 Cal App 3d 38, 161 Cal Rptr 392, 1980 Cal App LEXIS 1374.

4. Jurisdiction

The California Coastal Commission's assumption of jurisdiction over stock cooperative conversions in the coastal zone pursuant to the California Coastal Act of 1976 (Pub. Resources Code, §§ 30000 et seq.), in a proceeding for a preliminary injunction did not contravene provisions of the Administrative Procedure Act (Gov. Code, §§ 11370 et seq.), governing the adoption of administrative agency regulations, where the commission's initiation of a lawsuit to obtain a preliminary injunction to restrain cooperative conversions without permits from the commission was not engendered to vindicate any regulations emanating from the commission's actions, but was an action to enforce the provisions of the Coastal Act, and where the action posed a pure question of law as to whether such conversions came within the jurisdiction of the coastal commission. A formal hearing in accordance with the Administrative Procedures Act is not a condition precedent to determine whether the commission was vested with jurisdiction over stock cooperative conversions. A lawsuit by any person sufficies to raise the issue involved. Under Pub. Resources Code, § 30600, subd. (a), the commission was empowered to bring the action to enjoin a stock cooperative conversion in the coastal zone when a coastal development permit had not been obtained. California Coastal Com. v. Quanta Investment

Corp. (1980, Cal App 2d Dist) 113 Cal App 3d 579, 170 Cal Rptr 263, 1980 Cal App LEXIS 2573.

In an application by the California Coastal Commission for a preliminary injunction to restrain the conversion of certain apartments to stock cooperatives in the coastal zone without permits from the coastal commission, the trial court properly determined that a stock cooperative conversion did not constitute a subdivision pursuant to the Subdivision Map Act (Gov. Code, § 66410 et seq.), and that the coastal commission therefore did not have jurisdiction to require permits for stock cooperative conversions under its authority to require permits for subdivisions in the coastal zone. The exercise of jurisdiction by the commission over stock cooperative conversions could be validated only if it was within the scope of the regulatory authority conferred by the Coastal Act of 1976. The failure of the Legislature to include stock cooperatives as part of the Subdivision Map Act, and the clear distinction that it consistently made between stock cooperatives and condominiums and community apartments strongly suggests that the stock cooperatives were deliberately excluded from the coverage of the Subdivision Map Act. Moreover, an amendment to Gov. Code, § 66424, enacted after the trial court's ruling, amending the act to apply to stock corporations, did not validate the stock cooperative conversions as developments under the coastal act. The clear import of the amendment was to validate what otherwise would have been a nugatory attempt at regulation, by validating regulation that had occurred "by legislative action" and "pursuant to a legislative enactment," but did not purport to validate map act regulations by administrative action like that of the coastal commission. California Coastal Com. v. Quanta Investment Corp. (1980, Cal App 2d Dist) 113 Cal App 3d 579, 170 Cal Rptr 263, 1980 Cal App LEXIS 2573.

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PUBLIC UTILITIES CODE
Division 1. Regulation of Public Utilities
Part 1. Public Utilities Act
Chapter 2. The Public Utilities Commission: Organization

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Pub Util Code § 320 (2009)

§ 320. Undergrounding of electric and communication facilities in proximity to state scenic highway

The Legislature hereby declares that it is the policy of this state to achieve, whenever feasible and not inconsistent with sound environmental planning, the undergrounding of all future electric and communication distribution facilities which are proposed to be erected in proximity to any highway designated a state scenic highway pursuant to Article 2.5 (commencing with Section 260) of Chapter 2 of Division 1 of the Streets and Highways Code and which would be visible from such scenic highways if erected above ground. The commission shall prepare and adopt by December 31, 1972, a statewide plan and schedule for the undergrounding of all such utility distribution facilities in accordance with the aforesaid policy and the rules of the commission relating to the undergrounding of facilities.

The commission shall coordinate its activities regarding the plan with local governments and planning commissions concerned.

The commission shall require compliance with the plan upon its adoption.

This section shall not apply to facilities necessary to the operation of any railroad.

HISTORY:

Added Stats 1971 ch 1697 § 1.

NOTES:

Cross References:

Undergrounding of facilities: Sts & H C §§ 5896.1 et seq.

Hierarchy Notes:

Pub Util Code Note

Div. 1, Pt. 1, Ch. 2 Note

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STREETS AND HIGHWAYS CODE
Division 1. State Highways
Chapter 1. Administration
Article 3. The Department of Transportation

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Sts & Hy Code § 154 (2009)

§ 154. Encouragement of construction and development by counties of county scenic highways; Designation; Revocation of authority to designate

The department shall encourage the construction and development by counties of portions of the county highways as official county scenic highways and may furnish to the counties any information or other assistance which will aid the counties in the construction or development of such scenic highways.

Whenever the department determines that any county highway meets the minimum standards prescribed by the department for official scenic highways, including the concept of the "complete highway," as described in Section 261, it may authorize the county in which the highway is located to designate the highway as an official county scenic highway and the department shall so indicate the highway in publications of the department and in any maps which are prepared by the department for distribution to the public which show the highway.

If the department determines that any county highway which has been designated as an official county scenic highway no longer meets the minimum standards prescribed by the department for official scenic highways, it may, after notice to the county and a hearing on the matter, if requested by the county, revoke the authority of the county to designate the highway as an official county scenic highway.

HISTORY:

Added Stats 1963 ch 1793 § 1. Amended Stats 1969 ch 234 § 1, ch 1352 § 1; Stats 1980 ch 777 § 30.5; Stats 2005 ch 77 § 31 (SB 64), effective January 1, 2006.

NOTES:

Amendments:

1969 Amendment:

Substituted "Scenic Highway Advisory Committee" for "Advisory Committee on Scenic Highways" after "the advice of the" in the second and third paragraphs.

1980 Amendment:

Routine code maintenance.

2005 Amendment:

Deleted ", with the advice of the Departmental Transportation Advisory Committee," after "department" at the beginning of the second and third paragraphs of the section.

Cross References:

State scenic highways: Sts & H C §§ 260 et seq.

Collateral References:

National scenic highway system: 23 USCS § 319 and note thereunder.

Hierarchy Notes:

Sts & Hy Code Note

Div. 1 Note

Div. 1, Ch. 1, Art. 3 Note

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STREETS AND HIGHWAYS CODE
Division 1. State Highways
Chapter 1. Administration
Article 3. The Department of Transportation

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Sts & Hy Code § 154.1 (2009)

§ 154.1. Designation of specific scenic highways; Designation requirements

(a) Notwithstanding Section 154 or any other provision of law and subject to subdivision (b), if the department determines that the County of Los Angeles is in compliance with the standards developed and established pursuant to Section 261 as to the Malibu Canyon-Las Virgenes Highway (N1), from Route 1 to Lost Hills Road in Los Angeles County, the department shall designate that portion of that county highway a county scenic highway.

(b) A designation pursuant to subdivision (a) may only be made by the department if the County of Los Angeles applies for the designation, and includes in its application a formally adopted resolution acknowledging its desire to designate that portion of the county highway a county scenic highway.

HISTORY:

Added Stats 2001 ch 758 § 1 (AB 1070).

NOTES:

Hierarchy Notes:

Sts & Hy Code Note

Div. 1 Note

Div. 1, Ch. 1, Art. 3 Note

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STREETS AND HIGHWAYS CODE
Division 1. State Highways
Chapter 1. Administration
Article 3. The Department of Transportation

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Sts & Hy Code § 155 (2009)

§ 155. Acceptance of gifts for memorials; Special Interest Stopping Place Fund; Signs; Consent to acquisition of property

The department may accept any gift of money or property from any person or group for the purpose of acquiring property for, and establishing and maintaining as a memorial to any person or group, a place adjacent to any state highway in the state scenic highway system established by Article 2.5 (commencing with Section 260) of Chapter 2, Division 1, at a point of special scenic, historical, or cultural interest, where motorists may stop to appreciate and enjoy the point of interest.

Any money which is received by the department pursuant to this section shall be deposited in the Special Interest Stopping Place Fund, which fund is hereby created in the State Treasury. Any money in the fund is continuously appropriated to the department without regard to fiscal years to carry out the purposes for which the money was received by the department.

The department shall, unless otherwise requested by the person or group from whom money or property is received for a stopping place, establish and maintain appropriate signs at the stopping places which indicate the name of the person or group in whose honor the place was established.

The right of eminent domain shall not be exercised by the department to acquire property, or any interest in property, pursuant to this section and the department may not acquire any real property for the purposes of this section unless the board of supervisors of the county in which such real property is located consents to such acquisition.

HISTORY:

Added Stats 1963 ch 1794 § 2. Amended Stats 1971 ch 1235 § 1.

NOTES:

Amendments:

1971 Amendment:

Deleted **(1)** "of this code" after "Division 1" in the first paragraph; and **(2)** the fifth paragraph which read: "No state highway funds shall be used for the maintenance or operation of any property acquired by the department pursuant to this section."

Note

Stats 1963 ch 1794 also provides:

SECTION 1. In various places in the United States, people have generously made money and property available to governmental agencies for the acquisition and development of places at points of special interest or scenic beauty along the highways where motorists may stop and enjoy the point of special interest or scenic beauty, as a memorial to a particular person or group. The acquisition and development of such stopping places along the state scenic highway system would add immeasurably to the enjoyment and pleasure of persons using the highways in that system and would spur the recreation and tourist industries upon which the economy of many areas of this State depend. The Legislature, therefore, finds that legislation which would provide for gifts of money and property to the State for the acquisition and development of stopping places along the state scenic highway system as memorials to persons or groups would serve the public interests of the State and aid in the development of highways in the state scenic highway system into official state scenic highways.

Cross References:

Eminent domain generally: CCP § 1230.010 et seq.; Const Art I § 19; Ev C §§ 810 et seq.; Gov C §§ 15850 et seq.

Historical markers: Pub Res C §§ 5020 et seq.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 247 "Eminent Domain And Inverse Condemnation".

Hierarchy Notes:

Sts & Hy Code Note

Div. 1 Note

Div. 1, Ch. 1, Art. 3 Note

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STREETS AND HIGHWAYS CODE
Division 1. State Highways
Chapter 1. Administration
Article 7. Safety Roadside Rests

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Sts & Hy Code § 223 (2009)

§ 223. Contracts for construction of traveler service information facilities and for maintenance of roadside rests

(a) The department may contract with other governmental agencies or private organizations or individuals for the construction and operation of traveler service information facilities and for the maintenance of all or any of these safety roadside rests where it deems it necessary or desirable.

(b) Notwithstanding subdivision (a), Section 19130 of the Government Code, or any other provision of law, the department may contract with public and private nonprofit organizations pursuant to Section 19404 of the Welfare and Institutions Code, for the operation of traveler service information facilities and for the maintenance of all or any of these safety roadside rests where it deems it necessary or desirable. Contracts entered into pursuant to this subdivision shall not cause displacement of civil service employees. For purposes of this section, "displacement" includes layoff, demotion, involuntary transfer to a new class, involuntary transfer to a new location requiring a change of residence, and time base reductions. "Displacement" does not include changes in shifts or days off, or reassignment to other positions within the same class and general location.

HISTORY:

Added Stats 1963 ch 992 § 1. Amended Stats 1968 ch 1133 § 2; Stats 1992 ch 1086 § 4 (SB 1417); Stats 1994 ch 146 § 215 (AB 3601).

NOTES:

Amendments:

1968 Amendment:

Added "construction and operation of traveler service information facilities and for the".

1992 Amendment:

(1) Designated the former section to be subd (a); **(2)** added "these" before "safety roadside" in subd (a); and **(3)** added subd (b).

1994 Amendment:

(1) Deleted "such" before "these safety roadside" in subd (a); and **(2)** substituted "or" for "nor does it include" in subd (b).

Editor's Notes

There was another section of this number which was added Stats 1963 ch 1788 § 2, and renumbered Sts & H C § 299.1 by Stats ch 155 § 5.

Cross References:

Determination of official county scenic highway: Sts & H C § 154.

Hierarchy Notes:

Sts & Hy Code Note

Div. 1 Note

Div. 1, Ch. 1, Art. 7 Note

NOTES OF DECISIONS 1. Restrictions on Contracting

1. Restrictions on Contracting

Sts & H Code, § 223, authorizes the state Department of Transportation to contract with private firms for the maintenance of roadsite rest stops, but only if the contracts fall within recognized exceptions to the constitutional restriction on contracting out. Cal. Const., Art. VII (public officers and employees), is a restriction on contracting out state work to the private sector. Accordingly, Sts & H Code, § 223, is subject to the constitutional restrictions found in Cal. Const., Art. VII, the judicial decisions that followed establishment of the civil service system, and the statutes that codified those decisions. The Constitution must be given effect as the paramount law of the state. Department of Transportation v. Chavez (1992, Cal App 3d Dist) 7 Cal App 4th 407, 9 Cal Rptr 2d 176, 1992 Cal App LEXIS 762,

review denied (1992, Cal) 1992 Cal LEXIS 4402.

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STREETS AND HIGHWAYS CODE
Division 1. State Highways
Chapter 1.5. Tourist Oriented Directional Signs

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Sts & Hy Code Div. 1, Ch. 1.5 Note (2009)

Div. 1, Ch. 1.5 Note

HISTORY:

[Added Stats 1994 ch 572 § 2. Former Chapter 1.5, consisting of §§ 227-229.1, entitled "Scenic Highway Advisory Committee", was added Stats 1964 ch 1788 § 2. Chapter heading amended Stats 1969 ch 1352 § 2. Repealed Stats 1981 ch 604 § 9.]

NOTES:

Cross References:

Encouragement of construction and development by counties of county scenic highways: Sts & H C § 154.

State scenic highways: Sts & H C §§ 260 et seq.

Hierarchy Notes:

Sts & Hy Code Note

Div. 1 Note

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2009, EFF. MAY 10, 2009, & PROP. 1F APPROVED, EFF. MAY 20, 2009

STREETS AND HIGHWAYS CODE
Division 1. State Highways
Chapter 1.5. Tourist Oriented Directional Signs
Article 2. Program Administration and standards

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Sts & Hy Code § 229.20 (2009)

§ 229.20. Signs not to be posted on scenic highways

No signs authorized by this chapter shall be posted on any scenic highway, unless the county board of supervisors of the county in which the sign will be placed grants approval. Approval shall be given upon a modification of, and shall be consistent with, any existing corridor protection ordinance.

HISTORY:

Added Stats 1994 ch 572 § 2 (AB 2339).

NOTES:

Hierarchy Notes:

Sts & Hy Code Note

Div. 1 Note

Div. 1, Ch. 1.5 Note

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CH. 25 OF THE 2009-2010 3d EX. SESS., THE GOVERNOR'S REORGANIZATION PLAN #1 OF
2009, EFF. MAY 10, 2009, & PROP. 1F APPROVED, EFF. MAY 20, 2009

STREETS AND HIGHWAYS CODE
Division 1. State Highways
Chapter 2. The State Highway System
Article 2.5. State Scenic Highways

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Sts & Hy Code Div. 1, Ch. 2, Art. 2.5 Note (2009)

Div. 1, Ch. 2, Art. 2.5 Note

HISTORY:

[Added Stats 1963 ch 1788 § 4, operative July 1, 1964. Article heading amended Stats 1969 ch 1352 § 4. Former Article 2.5, entitled "The Master Plan for Scenic State Highways," consisting of §§ 260-263, was added Stats 1963 ch 1788 § 3, and repealed Stats 1963 ch 1788 § 5, operative July 1, 1964.]

NOTES:

Cross References:

Acceptance of gifts for memorials to person or group, of a place adjacent to any state highway in the state scenic highway system established by this article: Sts & H C § 155.

A "scenic highway corridor" defined: Gov C § 51201(i).

General plan as including a scenic highway element for the development, establishment, and protection of scenic highways pursuant to the provisions of this article: Gov C § 65302.

Collateral References:

National scenic highway system: 23 USCS § 319 and note thereunder.

Hierarchy Notes:

Sts & Hy Code Note

Div. 1 Note

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CH. 25 OF THE 2009-2010 3d EX. SESS., THE GOVERNOR'S REORGANIZATION PLAN #1 OF
2009, EFF. MAY 10, 2009, & PROP. 1F APPROVED, EFF. MAY 20, 2009

STREETS AND HIGHWAYS CODE
Division 1. State Highways
Chapter 2. The State Highway System
Article 2.5. State Scenic Highways

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Sts & Hy Code § 260 (2009)

§ 260. Establishment and application of planning and design standards for scenic highways; Factors to be considered in connection therewith.

It is the intent of the Legislature in designating certain portions of the state highway system as state scenic highways to establish the State's responsibility for the protection and enhancement of California's natural scenic beauty by identifying those portions of the state highway system which, together with the adjacent scenic corridors, require special scenic conservation treatment. It is further declared to be the intent of the Legislature in designating such scenic highways to assign responsibility for the development of such scenic highways and for the establishment and application of specific planning and design standards and procedures appropriate thereto and to indicate, in broad statement terms, the location and extent of routes and areas requiring continuing and careful co-ordination of planning, design, construction, and regulation of land use and development, by state and local agencies as appropriate, to protect the social and economic values provided by the State's scenic resources.

HISTORY:

Added Stats 1963 ch 1788 § 4, operative July 1, 1964.

NOTES:

Former Sections:

Former § 260, similar to the present section, was added Stats 1963 ch 1788 § 3, and repealed Stats 1963 ch 1788 § 5, operative July 1, 1964.

Hierarchy Notes:

Sts & Hy Code Note

Div. 1 Note

Div. 1, Ch. 2, Art. 2.5 Note

NOTES OF DECISIONS 1. Construction of Statute

1. Construction of Statute

The trial court did not err in dismissing the petition of an individual for a writ of mandate to command defendants Department of Transportation, its director, and its district director, to cease building sound walls on a scenic highway and to remove those already installed. The scenic protection statutes (Sts. & Hy. Code, §§ 260-263.9) mandate special scenic conservation treatment, but do not guarantee an absolutely unimpaired view throughout the entire length of a designated highway, and Sts. & Hy. Code, §§ 215.5-216.1, mandate noise reduction barriers on freeways. Moreover, protection from air and noise pollution is a vital environmental concern when designing an improvement to a scenic highway. Thus, the scenic highway and noise abatement provisions of the Streets and Highways Code are not in conflict. Defendants reasonably harmonized the mandates of both statutes by erecting sound walls in a limited portion of the subject highway. Malick v. Department of Transportation (1993, Cal App 1st Dist) 17 Cal App 4th 1829, 22 Cal Rptr 2d 305, 1993 Cal App LEXIS 871, review denied (1993, Cal) 1993 Cal LEXIS 5546.

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CH. 25 OF THE 2009-2010 3d EX. SESS., THE GOVERNOR'S REORGANIZATION PLAN #1 OF
2009, EFF. MAY 10, 2009, & PROP. 1F APPROVED, EFF. MAY 20, 2009

STREETS AND HIGHWAYS CODE
Division 1. State Highways
Chapter 2. The State Highway System
Article 2.5. State Scenic Highways

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Sts & Hy Code § 261 (2009)

§ 261. Application of pertinent planning and design standards for development of official state scenic highway; "Complete highway"

The department shall establish and apply pertinent planning and design standards for development of official scenic highways.

In establishing and applying such standards for, and undertaking the development of, official scenic highways, the department shall take into consideration the concept of the "complete highway," which is a highway which incorporates not only safety, utility, and economy but also beauty. The department shall also take into consideration in establishing such standards that, in a "complete highway," pleasing appearance is a consideration in the planning and design process. In the development of official scenic highways, the department shall give special attention both to the impact of the highway on the landscape and to the highway's visual appearance. The standards for official scenic highways shall also require that local governmental agencies have taken such action as may be necessary to protect the scenic appearance of the scenic corridor, the band of land generally adjacent to the highway right-of-way, including, but not limited to, (1) regulation of land use and intensity (density) of development; (2) detailed land and site planning; (3) control of outdoor advertising; (4) careful attention to and control of earthmoving and landscaping; and (5) the design and appearance of structures and equipment.

HISTORY:

Added Stats 1963 ch 1788 § 4, operative July 1, 1964. Amended Stats 1969 ch 1352 § 5; Stats 1980 ch 777 § 59.5; Stats 2005 ch 77 § 32 (SB 64), effective January 1, 2006.

NOTES:

Former Sections:

Former § 261, similar to the present section, was added Stats 1963 ch 1788 § 3, and repealed Stats 1963 ch 1788 § 5, operative July 1, 1964.

Amendments:

1969 Amendment:

Substituted "Scenic Highway Advisory Committee" for "Advisory Committee on a Master Plan for Scenic Highways" in the first paragraph.

1980 Amendment:

Routine code maintenance.

2005 Amendment:

Deleted ", within the advice of the Departmental Transportation Advisory Committee," after "department shall" in the first sentence.

Cross References:

Designation of county highway as scenic when it is "complete highway": Sts & H C § 154.

Hierarchy Notes:

Sts & Hy Code Note

Div. 1 Note

Div. 1, Ch. 2, Art. 2.5 Note

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THE 2009-2010 REG. SESS., CH. 12 OF THE 2009-2010 2d EX. SESS., EFF. 5/21/09,
CH. 25 OF THE 2009-2010 3d EX. SESS., THE GOVERNOR'S REORGANIZATION PLAN #1 OF
2009, EFF. MAY 10, 2009, & PROP. 1F APPROVED, EFF. MAY 20, 2009

STREETS AND HIGHWAYS CODE
Division 1. State Highways
Chapter 2. The State Highway System
Article 2.5. State Scenic Highways

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Sts & Hy Code § 262 (2009)

§ 262. Designation of highway as official state scenic highway; Indication on maps; Signs; Revocation of designation

Whenever the department determines that the corridor protection program for any state highway in the state scenic highway system established by this article has been implemented by local governmental agencies and a plan and program has been developed by the department for bringing the highway up to the standards for official scenic highways established by the department, including the concept of the "complete highway," as described in Section 261, the department shall designate the highway as an official state scenic highway and shall so indicate the highway in any publications of the department or in any maps which are issued by the department to the public.

The department shall cause appropriate signs to be placed and maintained along the portions of the state scenic highway system which the department has designated as official state scenic highways that indicate that the highways are official state scenic highways.

If at any time the department determines that the corridor protection program of local governmental agencies, with respect to any highway which has been designated as an official state scenic highway, no longer adequately carries out responsibility of the local governmental agencies for the protection of the scenic corridor, it may revoke the designation of the highway as an official state scenic highway and remove the signs which so indicate the highway.

HISTORY:

Added Stats 1963 ch 1788 § 4, operative July 1, 1964. Amended Stats 1965 ch 1298 § 1; Stats 1969 ch 1352 § 6; Stats 1980 ch 777 § 59.6; Stats 2005 ch 77 § 33 (SB 64), effective January 1, 2006.

NOTES:

Former Sections:

Former § 262, similar to the present section, was added Stats 1963 ch 1788 § 3, and repealed Stats 1963 ch 1788 § 5, operative July 1, 1964.

Amendments:

1965 Amendment:

(1) Substituted "department determines that the corridor protection program for" for "develops" after "Whenever the" in the first paragraph; **(2)** substituted "has been implemented by local and governmental agencies and a plan and program has been developed by the department for bringing such highway up to" for "in accordance with the intent stated herein and" after "by this article" in the first paragraph; **(3)** added "the corridor protection program of local governmental agencies with respect to" after "determines that" in the last paragraph; and **(4)** substituted "adequately carries out responsibility of the local governmental agencies for the protection of the scenic corridor," for "meets the minimum standards for official scenic highways" after "highway no longer" in the last paragraph.

1969 Amendment:

Substituted "Scenic Highway Advisory Committee "for "Advisory Committee on a Master Plan for Scenic Highways" in the last paragraph.

1980 Amendment:

Routine code maintenance.

2005 Amendment:

Deleted ", with the advice of the Departmental Transportation Advisory Committee," after "If at any time the department" at the start of the third paragraph of the section.

Cross References:

Legislative declaration of intent concerning scenic highways: Sts & H C § 260.

Hierarchy Notes:

Sts & Hy Code Note

Div. 1 Note

Div. 1, Ch. 2, Art. 2.5 Note

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CH. 25 OF THE 2009-2010 3d EX. SESS., THE GOVERNOR'S REORGANIZATION PLAN #1 OF
2009, EFF. MAY 10, 2009, & PROP. 1F APPROVED, EFF. MAY 20, 2009

STREETS AND HIGHWAYS CODE
Division 1. State Highways
Chapter 2. The State Highway System
Article 2.5. State Scenic Highways

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Sts & Hy Code § 262.1 (2009)

§ 262.1. Coordination and approval of local agency's planning

A local agency, as defined in subdivision (c) of Section 65402 of the Government Code, shall coordinate its planning with, and obtain the approval from, the appropriate local planning agency on the location and construction of any new district facility that would be within the scenic corridor of any state scenic highway.

HISTORY:

Added Stats 1971 ch 1531 § 1.

NOTES:

Hierarchy Notes:

Sts & Hy Code Note

Div. 1 Note

Div. 1, Ch. 2, Art. 2.5 Note

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CH. 25 OF THE 2009-2010 3d EX. SESS., THE GOVERNOR'S REORGANIZATION PLAN #1 OF
2009, EFF. MAY 10, 2009, & PROP. 1F APPROVED, EFF. MAY 20, 2009

STREETS AND HIGHWAYS CODE
Division 1. State Highways
Chapter 2. The State Highway System
Article 2.5. State Scenic Highways

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Sts & Hy Code § 262.5 (2009)

§ 262.5. Designation of official state scenic highways in United States National Forest lands

(a) Whenever the department determines that any state highway within or traversing United States National Forest lands meets the standards for official state scenic highways, the department shall designate the highway as an official state scenic highway and shall so indicate the highway in any publications of the department or in any maps which are issued by the department to the public.

(b) The department shall cause appropriate signs to be placed and maintained along those portions of the highways which the department has designated pursuant to subdivision (a) as official state scenic highways that indicate that those portions of the highways are official state scenic highways.

(c) If at any time the department determines that a state highway, designated as an official state scenic highway pursuant to subdivision (a), no longer meets the standards for official state scenic highways, it may revoke the designation of the highway as an official state highway and remove the signs which so indicate the highway.

HISTORY:

Added Stats 1989 ch 157 § 1. Amended Stats 2005 ch 77 § 34 (SB 64), effective January 1, 2006.

NOTES:

Amendments:

2005 Amendment:

Deleted ", with the advice of the Departmental Transportation Advisory Committee," after "If at any time the department" at the start of subd (c).

Hierarchy Notes:

Sts & Hy Code Note

Div. 1 Note

Div. 1, Ch. 2, Art. 2.5 Note

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CH. 25 OF THE 2009-2010 3d EX. SESS., THE GOVERNOR'S REORGANIZATION PLAN #1 OF
2009, EFF. MAY 10, 2009, & PROP. 1F APPROVED, EFF. MAY 20, 2009

STREETS AND HIGHWAYS CODE
Division 1. State Highways
Chapter 2. The State Highway System
Article 2.5. State Scenic Highways

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Sts & Hy Code § 263 (2009)

§ 263. State Scenic Highway System; Establishment

The state scenic highway system is hereby established and shall be composed of the highways specified in this article. The highways listed in Sections 263.1 to 263.8, inclusive, are either eligible for designation as state scenic highways or have been so designated.

HISTORY:

Added Stats 1968 ch 282 § 16, effective June 11, 1968. Amended Stats 1991 ch 775 § 6 (SB 732).

NOTES:

Former Sections:

Former 263, relating to the establishment and composition of the state scenic highway system, was added Stats 1963 ch 1788 § 4, operative July 1, 1964, amended Stats 1965 ch 689 § 1, and repealed Stats 1968 ch 282 § 15, effective June 11, 1968.

Former § 263, similar to present section, was added Stats 1963 ch 1788 § 3, and repealed Stats 1963 ch 1788 § 5, operative July 1, 1964.

Amendments:

1991 Amendment:

Added the second sentence.

Hierarchy Notes:

Sts & Hy Code Note

Div. 1 Note

Div. 1, Ch. 2, Art. 2.5 Note

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CH. 25 OF THE 2009-2010 3d EX. SESS., THE GOVERNOR'S REORGANIZATION PLAN #1 OF
2009, EFF. MAY 10, 2009, & PROP. 1F APPROVED, EFF. MAY 20, 2009

STREETS AND HIGHWAYS CODE
Division 1. State Highways
Chapter 2. The State Highway System
Article 2.5. State Scenic Highways

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Sts & Hy Code § 263.1 (2009)

§ 263.1. Component highways

The state scenic highway system shall include:

Routes 28, 35, 38, 52, 53, 62, 74, 75, 76, 89, 96, 97, 127, 150, 151, 154, 156, 158, 161, 173, 197, 199, 203, 209, 221, 236, 239, 243, 247, 254, and 330 in their entirety.

HISTORY:

Added Stats 1968 ch 282 § 17, effective June 11, 1968. Amended Stats 1970 ch 772 § 1, ch 1473 § 22; Stats 1971 ch 1599 § 1; Stats 1972 ch 1216 § 7; Stats 1973 ch 735 § 4; Stats 1976 ch 1354 § 7; Stats 1984 ch 409 § 7; Stats 1994 ch 1220 § 27 (AB 3132), effective September 30, 1994.

NOTES:

Amendments:

1970 Amendment:

(1) Added "243," after "239,"; **(2)** deleted "268" after "247,"; and **(3)** added", and 580" before "in their entirety."

1971 Amendment:

Added **(1)** "52," after "38,"; and **(2)** "109," after "106."

1972 Amendment:

(1) Deleted "106, 109," before "127"; and **(2)** added "330," before "480."

1973 Amendment:

Added "254," after "247,".

1976 Amendment:

Added "75," after "74,".

1984 Amendment:

Deleted Routes 25, 208, and 580.

1994 Amendment:

Substituted "and 330" for "330, and 480".

Hierarchy Notes:

Sts & Hy Code Note

Div. 1 Note

Div. 1, Ch. 2, Art. 2.5 Note

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CH. 25 OF THE 2009-2010 3d EX. SESS., THE GOVERNOR'S REORGANIZATION PLAN #1 OF
2009, EFF. MAY 10, 2009, & PROP. 1F APPROVED, EFF. MAY 20, 2009

STREETS AND HIGHWAYS CODE
Division 1. State Highways
Chapter 2. The State Highway System
Article 2.5. State Scenic Highways

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Sts & Hy Code § 263.2 (2009)

§ 263.2. Additional inclusions; Routes 1-4

The state scenic highway system shall also include:

Route 1 from:

(a) Route 5 south of San Juan Capistrano to Route 19 near Long Beach.

(b) Route 187 near Santa Monica to Route 101 near El Rio.

(c) Route 101 at Las Cruces to Route 246 near Lompoc.

(d) Route 227 south of Oceano to Route 101 near Pismo Beach.

(e) Route 101 near San Luis Obispo to Route 35 near Daly City.

(f) Route 35 in San Francisco to Route 101 near the approach to the Golden Gate Bridge in San Francisco.

(g) Route 101 near Marin City to Route 101 near Leggett.

Route 2 from Route 210 in La Canada Flintridge to Route 138 via Wrightwood.

Route 3 from:

(a) Route 36 near Peanut to Route 299 near Douglas City.

(b) Route 299 near Weaverville to Montague.

Route 4 from:

(a) Route 160 near Antioch to Route 84 near Brentwood.

(b) Route 49 near Angels Camp to Route 89.

HISTORY:

Added Stats 1968 ch 282 § 18, effective June 11, 1968. Amended Stats 1969 ch 727 § 1; Stats 1975 ch 39 § 5; Stats 1981 ch 292 § 7; Stats 1984 ch 409 § 8; Stats 1990 ch 1187 § 3 (AB 2785); Stats 1991 ch 498 § 3 (SB 181).

NOTES:

Amendments:

1969 Amendment:

(1) Added subds (c) and (g) in Route 1; and **(2)** redesignated former subds (c)-(e) to be subds (d)-(f) in Route 1.

1975 Amendment:

Substituted "Montague" for "Route 5 near Yreka" in subd (b) of Route 3.

1981 Amendment:

Substituted "Route 160" for "Route 84" in subd (a) of Route 4.

1984 Amendment:

Substituted "Leggett" for "Rockport" in subd (g) of Route 1.

1990 Amendment:

(1) Substituted "in La Canada Flintridge to Route 138 via Wrightwood" for "near La Canada to Route 138 near Wrightwood" in subd Route 2; and **(2)** substituted "Route 160 near Antioch to Route 84 near Brentwood" for "Route 239 near Brentwood to Route 160 near Antioch" in subd (a) of Route 4.

1991 Amendment:

Substituted "Route 101 near the approach to the Golden Gate Bridge" for "Route 480" in subd (f).

Hierarchy Notes:

Sts & Hy Code Note

Div. 1 Note

Div. 1, Ch. 2, Art. 2.5 Note

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CH. 25 OF THE 2009-2010 3d EX. SESS., THE GOVERNOR'S REORGANIZATION PLAN #1 OF
2009, EFF. MAY 10, 2009, & PROP. 1F APPROVED, EFF. MAY 20, 2009

STREETS AND HIGHWAYS CODE
Division 1. State Highways
Chapter 2. The State Highway System
Article 2.5. State Scenic Highways

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Sts & Hy Code § 263.3 (2009)

§ 263.3. Additional inclusions; Routes 5, 8-10, 12-18, 20, 24, 25, 27, 29, 33 and 36

The state scenic highway system shall also include:

Route 5 from:

(a) The international boundary near Tijuana to Route 75 near the south end of San Diego Bay.

(b) San Diego opposite Coronado to Route 74 near San Juan Capistrano.

(c) Route 210 near Tunnel Station to Route 126 near Castaic.

(d) Route 152 west of Los Banos to Route 580 near Vernalis.

(e) Route 44 near Redding to the Shasta Reservoir.

(f) Route 89 near Mt. Shasta to Route 97 near Weed.

(g) Route 3 near Yreka to the Oregon state line near Hilts.

Route 8 from Sunset Cliffs Boulevard in San Diego to Route 98 near Coyote Wells.

Route 9 from:

(a) Route 1 near Santa Cruz to Route 236 near Boulder Creek.

(b) Route 236 near Boulder Creek to Route 236 near Waterman Gap.

(c) Route 236 near Waterman Gap to Route 35.

(d) Saratoga to Route 17 near Los Gatos.

(e) Blaney Plaza in Saratoga to Route 35.

Route 10 from Route 38 near Redlands to Route 62 near Whitewater.

Route 12 from Route 101 near Santa Rosa to Route 121 near Sonoma.

Route 13 from Route 24 to Route 580.

Route 14 from Route 58 near Mojave to Route 395 near Little Lake.

Route 15 from:

(a) Route 76 near the San Luis Rey River to Route 91 near Corona.

(b) Route 58 near Barstow to Route 127 near Baker.

Route 16 from Route 20 to Capay.

Route 17 from Route 1 near Santa Cruz to Route 9 near Los Gatos.

Route 18 from Route 138 near Mt. Anderson to Route 247 near Lucerne Valley.

Route 20 from:

(a) Route 1 near Fort Bragg to Route 101 near Willits.

(b) Route 101 near Calpella to Route 16.

(c) Route 49 near Grass Valley to Route 80 near Emigrant Gap.

Route 24 from the Alameda-Contra Costa county line to Route 680 in Walnut Creek.

Route 25 from Route 198 to Route 156 near Hollister.

Route 27 from Route 1 to Mulholland Drive.

Route 29 from:

(a) Route 37 near Vallejo to Route 221 near Napa.

(b) The vicinity of Trancas Street in northwest Napa to Route 20 near Upper Lake.

Route 33 from:

(a) Route 101 near Ventura to Route 150.

(b) Route 150 to Route 166 in Cuyama Valley.

(c) Route 198 near Coalinga to Route 198 near Oilfields.

Route 36 from:

(a) Route 101 near Alton to Route 3 near Peanut.

(b) Route 89 near Morgan Summit to Route 89 near Deer Creek Pass.

HISTORY:

Added Stats 1968 ch 282 § 19, effective June 11, 1968. Amended Stats 1969 ch 294 § 5, effective June 30, 1969; Stats 1972 ch 742 § 1; Stats 1973 ch 735 § 5; Stats 1975 ch 39 § 6; Stats 1981 ch 292 § 8; Stats 1984 ch 409 § 9; Stats 1994 ch 1220 § 28 (AB 3132), effective September 30, 1994; Stats 1998 ch 221 § 2 (AB 2388); Stats 2005 ch 101 § 1 (SB 1036), effective January 1, 2006.

NOTES:

Amendments:

1969 Amendment:

(1) Substitued "Hilts" for "Hilt" in subd (g) of Route 5; **(2)** added subds (a) and (b) in Route 15; and **(3)** redesignated former subds (a) and (b) to be subds (c) and (d) in Route 15.

1972 Amendment:

Added Route 24.

1973 Amendment:

Substituted **(1)** "Sunset Cliffs Boulevard" for "Route 5" in Route 8; **(2)** "330" for "106" in Route 30; **(3)** "10" for "18" in Route 30; and **(4)** "Redlands" for "Running Springs" in Route 30.

1975 Amendment:

Amended Route 15 by **(1)** substituting "91 near Corona" for "71 near Murrieta" in subd (a); **(2)** deleting former subd (b) which read: "Route 74 near Romoland to Route 74 near Perris."; and **(3)** redesignating former subds (c) and (d) to be subds (b) and (c).

1981 Amendment:

(1) Substituted "Route 1" for "Route 17" in subd (a) of Route 9; and **(2)** substituted "from Route 1 to Mullholland Drive" for "between Route 1 and Route 268" in Route 27.

1984 Amendment:

(1) Substituted Route 17 for former Route 17 which read: "Route 17 from: (a) Route 1 near Santa Cruz to Route 9 near Los Gatos. (b) Route 37 near Nicasio to Route 1 near Point Reyes Station."; **(2)** added Route 25; **(3)** substituted "The vicinity of Trancas Street in northwest" for "Route 221 near" in subd (b) of Route 29; and **(4)** substituted "Summit" for "Springs" in subd (b) of Route 36.

1994 Amendment:

Amended Route 15 by **(a)** deleting former subd (b) which read: "(b) Route 138 near Cajon Pass to Route 138 near Cajon Pass."; and **(b)** redesignating former subd (c) to be subd (b).

1998 Amendment:

Deleted Route 30 which read: "Route 30 from Route 330 near Highland to Route 10 near Redlands."

2005 Amendment:

Added "Route 13 from Route 24 to Route 580." after "Route 12 from Route 101 near Santa Rosa to Route 121 near Sonoma."

Hierarchy Notes:

Sts & Hy Code Note

Div. 1 Note

Div. 1, Ch. 2, Art. 2.5 Note

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CH. 25 OF THE 2009-2010 3d EX. SESS., THE GOVERNOR'S REORGANIZATION PLAN #1 OF
2009, EFF. MAY 10, 2009, & PROP. 1F APPROVED, EFF. MAY 20, 2009

STREETS AND HIGHWAYS CODE
Division 1. State Highways
Chapter 2. The State Highway System
Article 2.5. State Scenic Highways

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Sts & Hy Code § 263.4 (2009)

§ 263.4. Additional inclusions; Routes 37, 39, 40, 41, 44, 46, 49, 50, 57, 58, 68, 70 and 71

The state scenic highway system shall also include:

Route 37 from:

(a) Route 251 near Nicasio to Route 101 near Novato.

(b) Route 101 near Ignacio to Route 29 near Vallejo.

Route 39 from Route 210 near Azusa to Route 2.

Route 40 from Barstow to Needles.

Route 41 from:

(a) Route 1 near Morro Bay to Route 101 near Atascadero.

(b) Route 46 near Cholame to Route 33.

(c) Route 49 near Oakhurst to Yosemite National Park.

Route 44 from Route 5 near Redding to Route 89 near Old Station.

Route 46 from:

(a) Route 1 near Cambria to Route 101 near Paso Robles.

(b) Route 101 near Paso Robles to Route 41 near Cholame.

Route 49 from:

(a) Route 41 near Oakhurst to Route 120 near Moccasin.

(b) Route 120 to Route 20 near Grass Valley.

(c) Route 20 near Nevada City to Route 89 near Sattley.

Route 50 from Route 49 near Placerville to the Nevada state line near Lake Tahoe.

Route 57 from Route 90 to Route 60 near Industry.

Route 58 from Route 14 near Mojave to Route 15 near Barstow.

Route 68 from Monterey to Route 101 near Salinas.

Route 70 from Route 149 near Wicks Corner to Route 89 near Blairsden.

Route 71 from Route 91 near Corona to Route 83 north of Corona.

HISTORY:

Added Stats 1968 ch 282 § 21, effective June 11, 1968. Amended Stats 1969 ch 294 § 6, effective June 30, 1969; Stats 1970 ch 793 § 1; Stats 1971 ch 1199 § 1; Stats 1975 ch 39 § 7; Stats 1984 ch 409 § 10; Stats 1988 ch 106 § 12, effective May 13, 1988, operative January 1, 1989.

NOTES:

Former Sections:

Former § 263.4, including State Highway Route 68 from Monterey to Route 101 near Salinas in the state scenic highway system, was added Stats 1st Ex Sess 1966 ch 132 § 1, and repealed Stats 1968 ch 282 § 20, effective June 11, 1968.

Amendments:

1969 Amendment:

Substituted "15" for "395" in subd (a) of Route 71.

1970 Amendment:

Added **(1)** subd (a) in Route 46; and **(2)** "(B)" before "Route 101" in Route 46.

1971 Amendment:

Added Route 57.

1975 Amendment:

(**1)** Added Route 40; and **(2)** substituted the last paragraph for the former last paragraph which read: "Route 71 from:

"(a) Route 15 to Route 91 near Corona.

"(b) Route 91 near Corona to Route 83 north of Corona."

1984 Amendment:

Substituted **(1)** "Route 251" for "Route 17" in subd (a) of Route 37; and **(2)** "Moccasin" for "Moccasin Creek" in subd (a) of Route 49.

1988 Amendment:

Substituted Route 44 for former Route 44 which read: "Route 44 from:

"(a) Route 5 near Redding to Lassen Volcanic National Park.

"(b) Lassen Volcanic National Park to Route 89 near Old Station."

Hierarchy Notes:

Sts & Hy Code Note

Div. 1 Note

Div. 1, Ch. 2, Art. 2.5 Note

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CH. 25 OF THE 2009-2010 3d EX. SESS., THE GOVERNOR'S REORGANIZATION PLAN #1 OF
2009, EFF. MAY 10, 2009, & PROP. 1F APPROVED, EFF. MAY 20, 2009

STREETS AND HIGHWAYS CODE
Division 1. State Highways
Chapter 2. The State Highway System
Article 2.5. State Scenic Highways

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Sts & Hy Code § 263.5 (2009)

§ 263.5. Additional inclusions; Routes 78-80, 84, 88, 91, 92 and 94

The state scenic highway system shall also include:

Route 78 from Route 79 near Santa Ysabel to Route 86 passing near Julian.

Route 79 from:

(a) Route 8 near Descanso to Route 78 near Julian.

(b) Route 78 near Santa Ysabel to Route 371 near Aguanga.

Route 80 from:

(a) Route 280 near First Street in San Francisco to Route 61 in Oakland.

(b) Route 20 near Emigrant Gap to the Nevada state line near Verdi, Nevada.

Route 84 from Route 238 to Route 680 near Sunol.

Route 88 from Route 49 in Jackson to the Nevada state line via Pine Grove, Silver Lake, and Kirkwood.

Route 91 from Route 55 near Santa Ana Canyon to Route 15 near Corona.

Route 92 from Route 1 near Half Moon Bay to Route 280 near Crystal Springs Lake.

Route 94 from Route 125 near Spring Valley to Route 8 west of Jacumba.

HISTORY:

Added Stats 1968 ch 282 § 23, effective June 11, 1968. Amended Stats 1969 ch 1352 § 7; Stats 1970 ch 432 § 1; Stats 1972 ch 1216 § 9; Stats 1976 ch 1354 § 8; Stats 1981 ch 292 § 9; Stats 1988 ch 106 § 13, effective May 13, 1988, operative January 1, 1989; Stats 1989 ch 837 § 1.

NOTES:

Former Sections:

Former § 263.5, including State Highway Route 268 in the state scenic highway system, was added Stats 1965 ch 1769 § 1, and repealed Stats 1968 ch 282 § 22, effective June 11, 1968.

Amendments:

1969 Amendment:

Amended Route 75 by **(1)** adding "Route 5 via the Silver Strand and" after "San Diego Bay to"; and **(2)** substituting "Toll Bridge" for "Ferry in Coronado" after "the San Diego-Coronado."

1970 Amendment:

Added **(1)** "(a)" after "Route 88 from:"; and **(2)** (2) subd (b) in Route 88.

1972 Amendment:

Substituted "passing near Julian" for "near Kane Springs" Route 78.

1976 Amendment:

(1) Deleted former Route 75 which read: "Route 75 from Route 5 near the south end of San Diego Bay to Route 5 via the Silver Strand and the San Diego-Coronado Toll Bridge."; **(2)** substituted "371" for "71" in subd (b) of Route 79; and **(3)** substituted "15" for "71" in Route 91.

1981 Amendment:

Deleted Route 84 which read: "Route 84 from Route 4 near Antioch to Route 160 near Rio Vista."

1988 Amendment:

Substituted Route 88 for former Route 88 which read: "Route 88 from:

"(a) Route 49 near Jackson to Route 89 near Picketts.

"(b) Route 89 near Woodfords to the Nevada state line."

1989 Amendment:

Added Route 84.

Cross References:

Impact of inclusion of Route 84 in system pursuant to this section on use of railroad rights-of-way: Sts & H C § 384.1.

Hierarchy Notes:

Sts & Hy Code Note

Div. 1 Note

Div. 1, Ch. 2, Art. 2.5 Note

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STREETS AND HIGHWAYS CODE
Division 1. State Highways
Chapter 2. The State Highway System
Article 2.5. State Scenic Highways

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Sts & Hy Code § 263.6 (2009)

§ 263.6. Additional inclusions; Routes 101, 108, 111, 116, 118, 120, 121, 125 and 126

The state scenic highway system shall also include:

Route 101 from:

(a) Route 27 (Topanga Canyon Road) to Route 46 near Paso Robles.

(b) Route 156 near Prunedale northeasterly to Route 156.

(c) A point in Marin County opposite San Francisco to Route 1 near Marin City.

(d) Route 37 near Ignacio to Route 37 near Novato.

(e) Route 20 near Calpella to Route 20 near Willits.

(f) Route 1 near Leggett to Route 199 near Crescent City.

(g) Route 197 near Fort Dick to the Oregon state line.

Route 108 from Route 49 near Sonora to Route 395.

Route 111 from:

(a) Bombay Beach in Salton Sea State Park to Route 195 near Mecca.

(b) Route 74 near Palm Desert to Route 10 near Whitewater.

Route 116 from Route 101 near Cotati to Route 1 near Jenner.

Route 118 from Route 23 to DeSoto Avenue near Browns Canyon.

Route 120 from:

(a) Route 49 near Chinese Camp to Route 49 near Moccasin.

(b) The east boundary of Yosemite National Park to Route 395 near Mono Lake.

Route 121 from:

(a) Route 37 near Sears Point to Route 12 near Sonoma.

(b) Route 221 near Napa State Hospital to near the vicinity of Trancas Street in northeast Napa.

Route 125 from Route 94 near Spring Valley to Route 8 near La Mesa.

Route 126 from Route 150 near Santa Paula to Route 5 near Castaic.

HISTORY:

Added Stats 1968 ch 282 § 25, effective June 11, 1968. Amended Stats 1970 ch 832 § 1; Stats 1981 ch 292 § 10; Stats 1983 ch 238 § 1; Stats 1984 ch 409 § 11; Stats 1988 ch 654 § 1; Stats 1994 ch 1220 § 29 (AB 3132), effective September 30, 1994.

NOTES:

Former Sections:

Former § 263.6, including State Highway Route 9 from Route 236 near Boulder Creek to Route 236 near Waterman Gap and State Highway Route 152 from Route 1 to the Santa Clara County line at Hecker Pass within the state scenic highway system, was added Stats 1967 ch 1107 § 1, and repealed Stats 1968 ch 282 § 24, effective June 11, 1968.

Amendments:

1970 Amendments:

Added Route 118.

1981 Amendment:

Substituted "Whitewater" for "White Water" in subd (b) of Route 111.

1983 Amendment:

Added Route 116.

1984 Amendment:

Substituted **(1)** "Route 1" for "Route 208" in subd (f) of Route 101; **(2)** "Moccasin" for "Moccasin Creek" in subd (a) of Route 120; and **(3)** subd (b) of Route 121 for former subd (b) which read: "(b) Route 29 near Napa State Hospital to Route 221 near Napa."

1988 Amendment:

Added subd (h) to Route 101.

1994 Amendment:

Amended Route 101 by **(1)** substituting "27 (Topanga Canyon Road)" for "1 near El Rio" in subd (a); and **(2)** deleting subd (h) which read: "(h) Route 27 (Topanga Canyon Boulevard) to Beach Road at Gaviota State Park."

Hierarchy Notes:

Sts & Hy Code Note

Div. 1 Note

Div. 1, Ch. 2, Art. 2.5 Note

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2009, EFF. MAY 10, 2009, & PROP. 1F APPROVED, EFF. MAY 20, 2009

STREETS AND HIGHWAYS CODE
Division 1. State Highways
Chapter 2. The State Highway System
Article 2.5. State Scenic Highways

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Sts & Hy Code § 263.7 (2009)

§ 263.7. Additional inclusions; Routes 138-140, 142, 146, 152, 160, 163, 166, 168, 174, 178, 180, 190, and 266

The state scenic highway system shall also include:

Route 138 from Route 2 near Wrightwood to Route 18 near Mt. Anderson.

Route 139 from Route 299 near Canby to the Oregon state line near Hatfield.

Route 140 from Route 49 at Mariposa to Yosemite National Park near El Portal.

Route 142 from the Orange-San Bernardino county line to Peyton Drive.

Route 146 from Pinnacles National Monument to Route 25 in Bear Valley.

Route 152 from:

(a) Route 1 to the Santa Clara county line at Hecker Pass.

(b) Route 156 near San Felipe to Route 5.

Route 160 from Route 4 near Antioch to Sacramento.

Route 163 from Ash Street in San Diego to Route 8.

Route 166 from Route 101 near Santa Maria to Route 33 in Cuyama Valley.

Route 168 from:

(a) Route 65 near Clovis to Huntington Lake.

(b) Camp Sabrina to Route 395.

(c) Route 395 at Big Pine to Route 266 at Oasis.

Route 174 from the Bear River to the Grass Valley city limits.

Route 178 from the east boundary of Death Valley National Monument to Route 127 near Shoshone.

Route 180 from:

(a) Route 65 near Minkler to General Grant Grove section of Kings Canyon National Park.

(b) General Grant Grove section of Kings Canyon National Park to Kings Canyon National Park boundary near Cedar Grove.

Route 190 from Route 65 near Porterville to Route 127 near Death Valley Junction.

Route 266 from the Nevada state line easterly of Oasis to Route 168 at Oasis.

HISTORY:

Added Stats 1968 ch 282 § 27, effective June 11, 1968. Amended Stats 1971 ch 1599 § 2; Stats 1972 ch 1216 § 10; Stats 1976 ch 1354 § 9; Stats 1981 ch 292 § 11; Stats 1984 ch 409 § 12; Stats 1988 ch 106 § 14, effective May 13, 1988, operative January 1, 1989; Stats 1991 ch 775 § 7 (SB 732).

NOTES:

Former Sections:

Former § 263.7, relating to Route 9 from Blaney Plaza in Saratoga to Route 35 within the state scenic highway system, was added Stats 1967 ch 1108 § 1, and repealed Stats 1968 ch 282 § 26, effective June 11, 1968.

Amendments:

1971 Amendment:

Added Route 163.

1972 Amendment:

Deleted the former last paragraph which read: "Route 195 from Route 111 near Mecca to Route 10 near Chiriaco Summit."

1976 Amendment:

Substituted "12" for "84" in Route 160.

1981 Amendment:

(1) Added Route 142; **(2)** divided Route 152 into subdivisions by **(a)** adding ": (a)"; and **(b)** substituting ". (b)" for "and from"; and **(3)** amended Route 160 by adding **(a)** subd (a); and **(b)** "(b)".

1984 Amendment:

(1) Substituted Route 138 for former Route 138 which read: "Route 138 from: (a) Route 2 near Wrightwood to Route 15 near Cajon Pass. (b) Route 15 near Cajon Pass to Route 18 near Mt. Anderson."; **(2)** substituted "at" for "near" in Route 140; **(3)** substituted Route 160 for former Route 160 which read: "Route 160 from: (a) Route 4 near Antioch to Route 12 near Rio Vista. (b) Route 12 near Rio Vista to Sacramento."; and **(4)** amended Route 180 by **(a)** deleting former subd (a) which read: "(a) Route 156 near Hollister to Route 25 near Paicines."; **(b)** redesignating former subds (b) and (c) to be subds (a) and (b); and **(c)** substituting "Kings Canyon National Park boundary near Cedar Grove" for "Kings River Canyon".

1988 Amendment:

(1) Substituted subd (c) of Route 168 for former subd (c) which read: "(c) Big Pine to the Nevada state line via Oasis."; and **(2)** added Route 266.

1991 Amendment:

Added Route 174.

Hierarchy Notes:

Sts & Hy Code Note

Div. 1 Note

Div. 1, Ch. 2, Art. 2.5 Note

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STREETS AND HIGHWAYS CODE
Division 1. State Highways
Chapter 2. The State Highway System
Article 2.5. State Scenic Highways

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Sts & Hy Code § 263.8 (2009)

§ 263.8. Additional inclusions; Routes 198, 210, 215, 251, 280, 299, 395, 580 and 680

The state scenic highway system shall also include:

Route 198 from:

(a) Route 101 near San Lucas to Route 33 near Coalinga.

(b) Route 33 near Oilfields to Route 5.

(c) Route 99 near Goshen to the Sequoia National Park line.

Route 210 from:

(a) Route 5 near Tunnel Station to Route 134.

(b) Route 330 near Highland to Route 10 near Redlands.

Route 215 from Route 74 near Romoland to Route 74 near Perris.

Route 251 from Route 37 near Nicasio to Route 1 near Point Reyes Station.

Route 280 from Route 17 in Santa Clara County to Route 80 near First Street in San Francisco.

Route 299 from:

(a) Route 101 near Arcata to Route 96 near Willow Creek.

(b) Route 3 near Weaverville to Route 5 near Redding.

(c) Route 89 near Burney to Route 139 near Canby.

Route 395 from Route 14 near Little Lake to Route 89 near Coleville.

Route 580 from Route 5 southwest of Vernalis to Route 80.

Route 680 from the Santa Clara-Alameda county line to Route 24 in Walnut Creek.

HISTORY:

Added Stats 1968 ch 282 § 29, effective June 11, 1968. Amended Stats 1969 ch 294 § 7, effective June 30, 1969; Stats 1970 ch 434 § 1, ch 772 § 3; Stats 1972 ch 742 § 2; Stats 1975 ch 39 § 8; Stats 1982 ch 681 § 64.6; Stats 1984 ch 409 § 13; Stats 1998 ch 221 § 3 (AB 2388).

NOTES:

Former Sections:

Former § 263.8, including parts of Route 1 in the scenic highway system, was added Stats 1967 ch 1584 § 3, and repealed Stats 1968 ch 282 § 28, effective June 11, 1968.

Amendments:

1969 Amendment:

Deleted ": (a) Route 76 near the San Luis Rey River to Route 71 near Murrieta. (b) Route 74 near Romoland to Route 74 near Perris. (c)" after "Route 395 from."

1970 Amendment:

(1) Substituted "Route 17 in Santa Clara County" for ": (a) Route 92 near Crystal Springs Lake to Route 35 near San Andreas Lake. (d) Route 480 in San Francisco" in Route 280; **(2)** deleted "Route 580 from Route 5 southwest of Vernalis to Route 205 near Tracy." after "Route 89 near Coleville."; and **(3)** added the last sentence.

1972 Amendment:

Substituted "Route 24 in Walnut Creek" for "the Alameda-Contra Costa county line" at the end of the section.

1975 Amendment:

(1) Added Route 194; and **(2)** substituted "134" for "2 near La Canada" in Route 210.

1982 Amendment:

(1) Deleted Route 194; and **(2)** added Route 215.

1984 Amendment:

Added Routes 251 and 580.

1998 Amendment:

Amended the Route 210 designation by adding **(1)** the colon after "Route 210 from"; **(2)** subdivision designation (a); and **(3)** subd (b).

Hierarchy Notes:

Sts & Hy Code Note

Div. 1 Note

Div. 1, Ch. 2, Art. 2.5 Note

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STREETS AND HIGHWAYS CODE
Division 1. State Highways
Chapter 2. The State Highway System
Article 2.5. State Scenic Highways

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Sts & Hy Code § 263.9 (2009)

§ 263.9. [Section repealed 1973.]

HISTORY:

Added by Stats 1970 ch 881 § 1. Repealed Stats 1973 ch 735 § 6. The repealed section included Route 254, the Avenue of the Giants within the state scenic highway system.

NOTES:

Hierarchy Notes:

Sts & Hy Code Note

Div. 1 Note

Div. 1, Ch. 2, Art. 2.5 Note

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2009, EFF. MAY 10, 2009, & PROP. 1F APPROVED, EFF. MAY 20, 2009

STREETS AND HIGHWAYS CODE
Division 1. State Highways
Chapter 2. The State Highway System
Article 2.5. State Scenic Highways

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Sts & Hy Code § 280 (2009)

§ 280. California Historic Parkways system

(a) There is created within the state scenic highway system a system of California Historic Parkways.

(b) California Historic Parkways are freeways that meet all of the following criteria:

(1) The original construction was completed prior to 1945.

(2) The department or the Office of Historic Preservation in the Department of Parks and Recreation announces or recognizes features of historical significance, including notable landmarks, historical sites, or natural or human achievements that exist or that occurred during the original construction of the parkway or in the immediately adjacent land area through which the parkway currently passes.

(3) Any portion of the highway or corridor is bounded on one or both sides by federal, state, or local parkland, Native American lands or monuments, or other open space, greenbelt areas, natural habitat or wildlife preserves, or similar acreage used for or dedicated to historical or recreational uses.

(4) Any portion of the highway is traversed, at the time of designation and by the department's best count or estimate using existing information, by not less than 40,000 vehicles per day on an annual daily average basis.

HISTORY:

Added Stats 1993 ch 179 § 1 (AB 1247).

NOTES:

Hierarchy Notes:

Sts & Hy Code Note

Div. 1 Note

Div. 1, Ch. 2, Art. 2.5 Note

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CH. 25 OF THE 2009-2010 3d EX. SESS., THE GOVERNOR'S REORGANIZATION PLAN #1 OF
2009, EFF. MAY 10, 2009, & PROP. 1F APPROVED, EFF. MAY 20, 2009

STREETS AND HIGHWAYS CODE
Division 1. State Highways
Chapter 2. The State Highway System
Article 2.5. State Scenic Highways

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Sts & Hy Code § 281 (2009)

§ 281. Signs and markers for California Historic Parkways

(a) The department, in consultation with the Office of Historic Preservation in the Department of Parks and Recreation, shall design signs and markers for exclusive use on California Historic Parkways that are distinct in color or other easily recognizable features from standard forms of signs on other state highways.

(b) The department shall cause appropriate signs and markers to be placed and maintained along those portions of the highways which have been designated as California Historic Parkways.

(c) The department shall include all California Historic Parkways on any maps or publications it issues that describe or depict State Scenic Highways.

HISTORY:

Added Stats 1993 ch 179 § 2 (AB 1247).

NOTES:

Hierarchy Notes:

Sts & Hy Code Note

Div. 1 Note

Div. 1, Ch. 2, Art. 2.5 Note

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2009, EFF. MAY 10, 2009, & PROP. 1F APPROVED, EFF. MAY 20, 2009

STREETS AND HIGHWAYS CODE
Division 1. State Highways
Chapter 2. The State Highway System
Article 2.5. State Scenic Highways

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Sts & Hy Code § 282 (2009)

§ 282. Coordination of planning

A local agency, as defined in subdivision (c) of Section 65402 of the Government Code, shall coordinate its planning with, and obtain approval from, the appropriate local planning agency with regard to the construction of any agency facility that would be located within any California Historic Parkway.

HISTORY:

Added Stats 1993 ch 179 § 3 (AB 1247).

NOTES:

Hierarchy Notes:

Sts & Hy Code Note

Div. 1 Note

Div. 1, Ch. 2, Art. 2.5 Note

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CH. 25 OF THE 2009-2010 3d EX. SESS., THE GOVERNOR'S REORGANIZATION PLAN #1 OF
2009, EFF. MAY 10, 2009, & PROP. 1F APPROVED, EFF. MAY 20, 2009

STREETS AND HIGHWAYS CODE
Division 1. State Highways
Chapter 2. The State Highway System
Article 2.5. State Scenic Highways

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Sts & Hy Code § 283 (2009)

§ 283. Arroyo Seco Parkway

That part of the California highway system frequently referred to as the Pasadena Freeway, which is the section of Interstate Highway Route 110 lying between milepost 25.7 and milepost 31.9 is hereby designated a California Historic Parkway pursuant to Section 280, and is named the Arroyo Seco Parkway.

HISTORY:

Added Stats 1993 ch 179 § 4 (AB 1247).

NOTES:

Hierarchy Notes:

Sts & Hy Code Note

Div. 1 Note

Div. 1, Ch. 2, Art. 2.5 Note

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CH. 25 OF THE 2009-2010 3d EX. SESS., THE GOVERNOR'S REORGANIZATION PLAN #1 OF
2009, EFF. MAY 10, 2009, & PROP. 1F APPROVED, EFF. MAY 20, 2009

STREETS AND HIGHWAYS CODE
Division 1. State Highways
Chapter 2. The State Highway System
Article 2.5. State Scenic Highways

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Sts & Hy Code § 284 (2009)

§ 284. Cabrillo Freeway

That part of the California highway system frequently referred to as the Cabrillo Freeway, which is the segment of State Highway Route 163 between postmiles 0.5 and 3.0 through Balboa Park in the City of San Diego, is hereby designated a California Historic Parkway and is named the Cabrillo Parkway.

HISTORY:

Added Stats 2002 ch 965 § 3 (AB 3025), effective September 27, 2002.

NOTES:

Hierarchy Notes:

Sts & Hy Code Note

Div. 1 Note

Div. 1, Ch. 2, Art. 2.5 Note

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CH. 25 OF THE 2009-2010 3d EX. SESS., THE GOVERNOR'S REORGANIZATION PLAN #1 OF
2009, EFF. MAY 10, 2009, & PROP. 1F APPROVED, EFF. MAY 20, 2009

STREETS AND HIGHWAYS CODE
Division 1. State Highways
Chapter 2. The State Highway System
Article 3. The State Highway Routes

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Sts & Hy Code § 303.1 (2009)

§ 303.1. [Section repealed 1975.]

HISTORY:

Added Stats 1973 ch 760 § 1. Repealed Stats 1975 ch 39 § 9. The repealed section included that portion of Route 3 from Route 5 near Yreka to Montague in the state scenic highway system.

NOTES:

Hierarchy Notes:

Sts & Hy Code Note

Div. 1 Note

Div. 1, Ch. 2, Art. 3 Note

69 of 400 DOCUMENTS

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STREETS AND HIGHWAYS CODE
Division 1. State Highways
Chapter 2. The State Highway System
Article 3. The State Highway Routes

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Sts & Hy Code § 308.1 (2009)

§ 308.1. [Section repealed 1973.]

HISTORY:

Added by Stats 1972 ch 1216 § 11.5. Repealed Stats 1973 ch 735 § 12. The repealed section included portion of Route 8 from Sunset Cliffs Boulevard to Route 5 in San Diego in the state scenic highway system.

NOTES:

Hierarchy Notes:

Sts & Hy Code Note

Div. 1 Note

Div. 1, Ch. 2, Art. 3 Note

70 of 400 DOCUMENTS

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STREETS AND HIGHWAYS CODE
Division 1. State Highways
Chapter 2. The State Highway System
Article 3. The State Highway Routes

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Sts & Hy Code § 315.1 (2009)

§ 315.1. [Section repealed 1975.]

HISTORY:

Added by Stats 1974 ch 537 § 1, effective August 27, 1974. Repealed Stats 1975 ch 39 § 10. The repealed section included that portion of Route 15 from Route 194 to Route 91 in the state scenic highway system notwithstanding Section 263.3.

NOTES:

Hierarchy Notes:

Sts & Hy Code Note

Div. 1 Note

Div. 1, Ch. 2, Art. 3 Note

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STREETS AND HIGHWAYS CODE
Division 1. State Highways
Chapter 2. The State Highway System
Article 3. The State Highway Routes

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Sts & Hy Code § 330.1 (2009)

§ 330.1. [Section repealed 1973.]

HISTORY:

Added Stats 1972 ch 1216 § 12.5. Repealed Stats 1973 ch 735 § 14. The repealed section included that portion of Route 30 from Route 330 near Highland to Route 10 near Redlands in the state scenic highway system notwithstanding Section 263.3.

NOTES:

Hierarchy Notes:

Sts & Hy Code Note

Div. 1 Note

Div. 1, Ch. 2, Art. 3 Note

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STREETS AND HIGHWAYS CODE
Division 1. State Highways
Chapter 2. The State Highway System
Article 3. The State Highway Routes

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Sts & Hy Code § 340.1 (2009)

§ 340.1. [Section repealed 1975.]

HISTORY:

Added by Stats 1973 ch 850 § 1, effective September 25, 1973. Repealed Stats 1975 ch 39 § 12. The repealed section included that portion of Route 40 from Barstow to Needles within the state scenic highway system notwithstanding § 263.4.

NOTES:

Hierarchy Notes:

Sts & Hy Code Note

Div. 1 Note

Div. 1, Ch. 2, Art. 3 Note

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STREETS AND HIGHWAYS CODE
Division 1. State Highways
Chapter 2. The State Highway System
Article 3. The State Highway Routes

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Sts & Hy Code § 384.1 (2009)

§ 384.1. Use of railroad rights-of-way on Route 84 from Route 238 to Route 680

The inclusion of Route 84 from Route 238 to Route 680 near Sunol in the state scenic highway system pursuant to Section 263.5 does not prohibit the use of railroad rights-of-way located in that scenic corridor for transportation purposes.

HISTORY:

Added Stats 1992 ch 427 § 163 (AB 3355).

NOTES:

Amendments:

1992 Amendment:

Routine code maintenance.

Hierarchy Notes:

Sts & Hy Code Note

Div. 1 Note

Div. 1, Ch. 2, Art. 3 Note

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STREETS AND HIGHWAYS CODE
Division 1. State Highways
Chapter 2. The State Highway System
Article 3. The State Highway Routes

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Sts & Hy Code § 442.1 (2009)

§ 442.1. [Section repealed 1981.]

HISTORY:

Added Stats 1976 ch 567 § 1. Repealed Stats 1981 ch 292 § 39. The repealed section related to inclusion in state scenic highway system of portion of Route 142.

NOTES:

Hierarchy Notes:

Sts & Hy Code Note

Div. 1 Note

Div. 1, Ch. 2, Art. 3 Note

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STREETS AND HIGHWAYS CODE
Division 1. State Highways
Chapter 2. The State Highway System
Article 3. The State Highway Routes

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Sts & Hy Code § 494.2 (2009)

§ 494.2. [Section repealed 1975.]

HISTORY:

Added Stats 1974 ch 537 § 9, effective August 27, 1974. Repealed Stats 1975 ch 39 § 17. The repealed section included that portion of Route 194 from Route 74 near Romoland to Route 74 near Perris within the state scenic highway system.

NOTES:

Hierarchy Notes:

Sts & Hy Code Note

Div. 1 Note

Div. 1, Ch. 2, Art. 3 Note

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STREETS AND HIGHWAYS CODE
Division 1. State Highways
Chapter 2. The State Highway System
Article 3. The State Highway Routes

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Sts & Hy Code § 510.1 (2009)

§ 510.1. [Section repealed 1975.]

HISTORY:

Added Stats 1973 ch 627 § 1. Repealed Stats 1975 ch 39 § 18. The repealed section included that portion of Route 210 from Route 2 near La Canada to Route 134 within the state scenic highway system.

NOTES:

Hierarchy Notes:

Sts & Hy Code Note

Div. 1 Note

Div. 1, Ch. 2, Art. 3 Note

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WATER CODE
Division 7. Water Quality
Chapter 4. Regional Water Quality Control
Article 4. Waste Discharge Requirements

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Wat Code § 13269 (2009)

§ 13269. Board's waiver of reports or compliance with requirements

(a)

(1) On and after January 1, 2000, the provisions of subdivisions (a) and (c) of Section 13260, subdivision (a) of Section 13263, or subdivision (a) of Section 13264 may be waived by the state board or a regional board as to a specific discharge or type of discharge if the state board or a regional board determines, after any necessary state board or regional board meeting, that the waiver is consistent with any applicable state or regional water quality control plan and is in the public interest. The state board or a regional board shall give notice of any necessary meeting by publication pursuant to Section 11125 of the Government Code.

(2) A waiver may not exceed five years in duration, but may be renewed by the state board or a regional board. The waiver shall be conditional and may be terminated at any time by the state board or a regional board. The conditions of the waiver shall include, but need not be limited to, the performance of individual, group, or watershed-based monitoring, except as provided in paragraph (3). Monitoring requirements shall be designed to support the development and implementation of the waiver program, including, but not limited to, verifying the adequacy and effectiveness of the waiver's conditions. In establishing monitoring requirements, the regional board may consider the volume, duration, frequency, and constituents of the discharge; the extent and type of existing monitoring activities, including, but not limited to, existing watershed-based, compliance, and effectiveness monitoring efforts; the size of the project area; and other relevant factors. Monitoring results shall be made available to the public.

(3) The state board or a regional board may waive the monitoring requirements described in this subdivision for discharges that it determines do not pose a significant threat to water quality.

(4)

(A) The state board or a regional board may include as a condition of a waiver the payment of an annual fee established by the state board in accordance with subdivision (f) of Section 13260.

(B) Funds generated by the payment of the fee shall be deposited in the Waste Discharge Permit Fund for expenditure, upon appropriation by the Legislature, by the state board or appropriate regional board for the purpose of carrying out activities limited to those necessary to establish and implement the waiver program pursuant to this section. The total amount of annual fees collected pursuant to this section shall not exceed the costs of those activities necessary to establish and implement waivers of waste discharge requirements pursuant to this section.

(C) In establishing the amount of a fee that may be imposed on irrigated agriculture operations pursuant to this section, the state board shall consider relevant factors, including, but not limited to, all of the following:

(i) The size of the operations.

(ii) Any compliance costs borne by the operations pursuant to state and federal water quality regulations.

(iii) Any costs associated with water quality monitoring performed or funded by the operations.

(iv) Participation in a watershed management program approved by the applicable regional board.

(D) In establishing the amount of a fee that may be imposed on silviculture operations pursuant to this section, the state board shall consider relevant factors, including, but not limited to, all of the following:

(i) The size of the operations.

(ii) Any compliance costs borne by the operations pursuant to state and federal water quality regulations.

(iii) Any costs associated with water quality monitoring performed or funded by the operations.

(iv) The average annual number of timber harvest plans proposed by the operations.

(5) The state board or a regional board shall give notice of the adoption of a waiver by publication within the affected county or counties as set forth in Section 6061 of the Government Code.

(b)

(1) A waiver in effect on January 1, 2000, shall remain valid until January 1, 2003, unless the regional board terminates that waiver prior to that date. All waivers that were valid on January 1, 2000, and granted an extension until January 1, 2003, and not otherwise terminated, may be renewed by a regional board in five-year increments.

(2) Notwithstanding paragraph (1), a waiver for an onsite sewage treatment system that is in effect on January 1, 2002, shall remain valid until June 30, 2004, unless the regional board terminates the waiver prior to that date. Any waiver for onsite sewage treatment systems adopted or renewed after June 30, 2004, shall be consistent with the applicable regulations or standards for onsite sewage treatment systems adopted or retained in accordance with Section 13291.

(c) Upon notification of the appropriate regional board of the discharge or proposed discharge, except as provided in subdivision (d), the provisions of subdivisions (a) and (c) of Section 13260, subdivision (a) of Section 13263, and subdivision (a) of Section 13264 do not apply to a discharge resulting from any of the following emergency activities:

(1) Immediate emergency work necessary to protect life or property or immediate emergency repairs to public service facilities necessary to maintain service as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1

of Title 2 of the Government Code.

(2) Emergency projects undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway, as defined in Section 360 of the Vehicle Code, except for a highway designated as an official state scenic highway pursuant to Section 262 of the Streets and Highways Code, within the existing right-of-way of the highway, damaged as a result of fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide within one year of the damage. This paragraph does not exempt from this section any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.

(d) Subdivision (c) is not a limitation of the authority of a regional board under subdivision (a) to determine that any provision of this division shall not be waived or to establish conditions of a waiver. Subdivision (c) shall not apply to the extent that it is inconsistent with any waiver or other order or prohibition issued under this division.

(e) The regional boards and the state board shall require compliance with the conditions pursuant to which waivers are granted under this section.

(f) Prior to renewing any waiver for a specific type of discharge established under this section, the state board or a regional board shall review the terms of the waiver policy at a public hearing. At the hearing, the state board or a regional board shall determine whether the discharge for which the waiver policy was established should be subject to general or individual waste discharge requirements.

HISTORY:

Added Stats 1969 ch 482 § 18, operative January 1, 1970. Amended Stats 1996 ch 825 § 8 (AB 2963); Stats 1999 ch 686 § 2 (SB 390); Stats 2002 ch 999 § 62 (AB 2481); Stats 2003 ch 801 § 1 (SB 923). Amended Stats 2004 ch 183 § 360 (AB 3082).

NOTES:

Amendments:

1996 Amendment:

(1) Designated the former section to be subd (a); **(2)** substituted "the" for "such" both times it appears in subd (a); and **(3)** added subds (b) and (c).

1999 Amendment:

(1) Amended the first sentence of subd (a) by **(a)** adding On and after January 1, 2000,"; **(b)** deleting "and the term of the wavier does not exceed five years" after "public interest"; **(2)** adding the second sentence; **(3)** added subd (b); **(4)** redesignated former subd (b) to be subd (c); **(5)** amended subd (c) by substituting "subdivision (d)" for "subdivision (c)"; and **(6)** added subds (d) and (e).

2002 Amendment:

Amended subd (b) by **(1)** adding the subd (1) designation; and **(2)** adding subd (2).

2003 Amendment:

(1) Redesignated former subd (a) to be subds (a)(1) and (a)(2); **(2)** amended the first sentence of subd (a)(1) by **(a)** substituting "(c)" for "(b)"; **(b)** adding "the state board or"; **(c)** deleting "a specific" after "specific discharge or"; **(d)** adding "state board or a regional board determines, after any necessary state board or regional board meeting, that the"; **(e)** substituting "consistent with any applicable state or regional water quality control plan and is in" for "not against"; and **(f)** adding the second sentence; **(3)** amended the first sentence of subd (a)(2) by **(a)** substituting "A waiver" for "Waivers for specific types of discharges"; and **(b)** adding "the state board or"; **(4)** added "state board or a regional"; and **(5)** adding the third through sixth sentences; **(6)** added subd (a)(3)-(a)(5); **(7)** amended subd (c) by **(a)** substituting "(c)" for "(b)"; **(b)** substituting "do" for "shall"; and **(c)** adding "a" after "do not apply to"; **(8)** amended subd (f) by **(a)** adding "state board or a"; **(b)** substituting "board" for "boards"; and **(c)** adding "the state board or".

2004 Amendment:

(1) Deleted the comma after "watershed-based" in the third sentence of subd (a)(2); and **(2)** deleted "water quality control" before "board" in subd (a)(4)(C)(iv).

Note

Stats 1999 ch 686 provides:

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) The State Water Resources Control Board, as directed in the Supplemental Report of the 1999 Budget Act, is to provide the Legislature with reports on a baseline needs analysis for the core regulatory program of the board.

(b) The board is to take into consideration the overall cost of the program, the time and effort required to review and approve individual waste discharge reports, and other factors necessary to properly determine the adequacy of fees assessed pursuant to Section 13260 of the Water Code.

(c) The board is to provide a preliminary report to the Legislature by April 1, 2000, and a final report by January 1, 2001.

(d) It is the intent of the Legislature that the final report includes a review of the fees currently collected and expended under Section 13260 of the Water Code.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 472A "Agency Rulemaking Procedures0".

Hierarchy Notes:

Div. 7 Note

Div. 7, Ch. 4 Note

Div. 7, Ch. 4, Art. 4 Note

COLORADO REVISED STATUTES

*** THIS DOCUMENT REFLECTS CHANGES RECEIVED THROUGH DECEMBER 1, 2008 ***

TITLE 43. TRANSPORTATION
GENERAL AND ADMINISTRATIVE
ARTICLE 1. GENERAL AND ADMINISTRATIVE
PART 2. THE HIGHWAY LAW

GO TO COLORADO STATUTES ARCHIVE DIRECTORY

C.R.S. 43-1-207.5 (2008)

43-1-207.5. Colorado scenic byway program - criteria for designation - notice and hearing. (Repealed)

HISTORY: Source: L. 93: Entire section added, p. 1485, § 1, effective June 6.

Editor's note: Subsection (9) provided for the repeal of this section, effective May 15, 1995. (See L. 93, p. 1485.)

COLORADO REVISED STATUTES

*** THIS DOCUMENT REFLECTS CHANGES RECEIVED THROUGH DECEMBER 1, 2008 ***

TITLE 43. TRANSPORTATION
GENERAL AND ADMINISTRATIVE
ARTICLE 1. GENERAL AND ADMINISTRATIVE
PART 4. ROADSIDE ADVERTISING

GO TO COLORADO STATUTES ARCHIVE DIRECTORY

C.R.S. 43-1-419 (2008)

43-1-419. Scenic byways - Independence pass scenic area highway

(1) (a) State highways designated as scenic byways by the transportation commission shall have no new advertising devices erected which are visible from the highway, except the following:

(I) Official advertising devices, as defined in section 43-1-403 (13);

(II) On-premise advertising devices, as defined in section 43-1-403 (14); or

(III) Directional advertising devices, as defined in section 43-1-403 (4).

(b) Existing advertising devices along scenic byways which are in compliance with this part 4 and the rules and regulations of the department may be maintained as long as they remain in compliance with all provisions of this part 4 and the rules and regulations of the department.

(c) (I) An advertising device shall be considered to be visible from a designated highway if it is plainly visible to the driver of a vehicle who is proceeding in a legally designated direction and traveling at the posted speed.

(II) As used in this paragraph (c), "visible" shall have the same meaning as provided in section 43-1-403 (17).

(2) Independence pass on state highway 82 and sixteen miles of said highway extending on either side of Independence pass in Pitkin and Lake counties, Colorado, is designated as a scenic area highway, and no advertising devices shall be erected on or near said highway so as to be visible to motor vehicle operators on said highway.

HISTORY: Source: L. 81: Entire part R&RE, p. 2018, § 1, effective July 1. L. 92: Entire section amended, p. 1343, § 4, effective July 1. L. 93: (1)(c) added, p. 1487, § 2, effective June 6.

NOTES:

LexisNexis 50 State Surveys, Legislation & Regulations

Billboards and Outdoor Advertising

Editor's note: This section was contained in a part that was repealed and reenacted in 1981. This section, as it existed in 1981, is the same as § 43-1-421 as said section existed in 1980, the year prior to the repeal and reenactment of this part.

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TITLE 17. HIGHWAYS
CHAPTER 1. GENERAL PROVISIONS
SUBCHAPTER I. DEFINITIONS

GO TO DELAWARE STATUTES ARCHIVE DIRECTORY

17 Del. C. § 101 (2009)

§ 101. Definitions

(a) As used in this title, unless the context indicates a different intent:

(1) "Construction" means the first complete building or rebuilding of a highway after it has been converted into a state highway upon a modern engineering design with a permanent foundation of cement, concrete or other equally hard and permanent material and a top dressing of suitable material to economically withstand the wear of the particular traffic to which such highway will probably be subject with an adequate drainage system so that such highway, with reasonable maintenance, can reasonably be expected to endure for upwards of 40 years.

(2) "Department" means the Department of Transportation.

(3) "Express highway" means a state highway especially designed for through traffic over which owners of abutting property shall have no easement or right of direct access, light or air, by reason of the fact that this property abuts on such highway, and it shall have only such public entrances or exits as shall be designated by the Department and may be with or without service roads in the discretion of the Department.

(4) "Maintenance," as applied to constructed or reconstructed highways, is the upkeep and support thereof with true surfaces in a hard, smooth condition as when such highways were constructed or reconstructed and with proper and adequate drainage systems; as applied to state highways not constructed or reconstructed, is the upkeep and support thereof in as high a condition of perfection as is consistent with the character of such unconstructed or unreconstructed highway and shall include the keeping of the right-of-way of all state highways clear of underbrush and debris which might interfere with the drainage or injure the foundation of such highways and the setting out and preserving of trees where desirable along such right-of-way.

(5) "Public carrier" includes every individual, partnership, association, corporation, joint stock company, agency or department of this State, or any association of individuals engaged in the prosecution in common of a productive enterprise (commonly called a "cooperative"), their lessees, trustees, or receivers appointed by any court whatsoever, that now operates or hereafter may operate, within this State, any railroad, street railway, traction railway, motor bus or electric trackless trolley coach service, system, plant or equipment for public use.

(6) "Railroad" means a road, the cars, carriages and coaches on which are propelled by steam power, electricity, cable, motor or any improved motive power.

(7) "Reconstruction" is the first extensive repairing of an improved road converted into a state highway, and before the Department has constructed such highway, as in the opinion of the Department and the Secretary of Transportation, will result in a state highway of such permanency that there will be a net saving of reconstruction.

(8) "Road" and "highway" include any public way or road or portion thereof and any sewer, drain or drainage system connected therewith and any bridge, culvert, viaduct or other construction or artificial way used in connection therewith and anything which is accessory to any of the same or to the use thereof.

(9) A "Scenic and Historic Highway" or "Scenic Byway" is a transportation route which is adjacent to or runs along or next to an area that has particular intrinsic scenic, historic, recreational, cultural or archaeological qualities and for which such transportation route is managed in order to protect such characteristics and to encourage development of tourism and recreational resources.

(10) "Secretary" means the Secretary of Transportation.

(11) "State highway" includes any road or highway or portion thereof which the Department has constructed or of which the Department has taken or assumed control or jurisdiction.

(b) As used in this title, "construct" and "constructed" shall be defined in accordance with the definition of "construction"; "reconstruct" and "reconstructed" shall be defined in accordance with the definition of "reconstruction"; "maintain" and "maintained" shall be defined in accordance with the definition of "maintenance."

HISTORY: 29 Del. Laws, c. 63, § 1; Code 1935, § 5720; 47 Del. Laws, c. 406, § 2; 17 Del. C. 1953, § 101; 53 Del. Laws, c. 255; 57 Del. Laws, c. 671, §§ 1A-1C; 59 Del. Laws, c. 393, § 3; 60 Del. Laws, c. 503, §§ 18, 19; 72 Del. Laws, c. 444, § 1.

NOTES: CROSS REFERENCES. --As to Scenic and Historic Highways, see §§ 190 to 194 of this chapter.

LexisNexis 50 State Surveys, Legislation & Regulations

Highways

A BRIDGE IS A PART OF A HIGHWAY. Smith v. Baltimore & O.R.R., 46 Del. 441, 85 A.2d 73 (1951).

"PUBLIC ROAD" MUST BE CONSTRUED TO INCLUDE A DAYLIGHT EASEMENT APPURTENANT TO THE ROAD. Guy v. State, 438 A.2d 1250 (Del. Super. Ct. 1981).

NOTES APPLICABLE TO ENTIRE TITLE

CROSS REFERENCES. --As to street and highway lighting in unincorporated communities and villages of New Castle County, see Chapter 21 of Title 9. As to lighting streets and highways in unincorporated communities and villages of Kent County, see Chapter 51 of Title 9. As to motor vehicle and traffic regulations generally, see Title 21. As to Department of Public Safety generally, see Chapter 82 of Title 29. As to Department of Transportation generally, see Chapter 84 of Title 29. As to Office of Administration of Department of Transportation, see § 8405 of Title 29. As to Division of Highways of Department of Transportation, see § 8406 of Title 29.

NOTES APPLICABLE TO ENTIRE CHAPTER

CROSS REFERENCES. --As to transfer of powers, duties and functions of Comptroller of State Highway Department to Office of Administration, see § 8405 of Title 29. As to transfer of powers, duties and functions of State Highway Department to Division of Highways of Department of Transportation, see § 8406 of Title 29.

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TITLE 17. HIGHWAYS
CHAPTER 1. GENERAL PROVISIONS
SUBCHAPTER VI. SCENIC AND HISTORIC HIGHWAYS

GO TO DELAWARE STATUTES ARCHIVE DIRECTORY

17 Del. C. § 190 (2009)

§ 190. Statement of intent

The General Assembly finds that certain portions of the state highway system are notable for their scenic, historic, recreational, cultural or archaeological value and worthy of designation as scenic and historic highways to provide special consideration of their unique features and special role in the highway system.

The General Assembly further finds that the public interest would be served by the formation of a coordinated scenic highway program to enhance recreational, cultural and archaeological resources, encourage development through tourism, and educate residents and visitors on the history, culture and natural beauty of this State.

HISTORY: 72 Del. Laws, c. 444, § 2.

NOTES APPLICABLE TO ENTIRE TITLE

CROSS REFERENCES. --As to street and highway lighting in unincorporated communities and villages of New Castle County, see Chapter 21 of Title 9. As to lighting streets and highways in unincorporated communities and villages of Kent County, see Chapter 51 of Title 9. As to motor vehicle and traffic regulations generally, see Title 21. As to Department of Public Safety generally, see Chapter 82 of Title 29. As to Department of Transportation generally, see Chapter 84 of Title 29. As to Office of Administration of Department of Transportation, see § 8405 of Title 29. As to Division of Highways of Department of Transportation, see § 8406 of Title 29.

NOTES APPLICABLE TO ENTIRE CHAPTER

CROSS REFERENCES. --As to transfer of powers, duties and functions of Comptroller of State Highway Department to Office of Administration, see § 8405 of Title 29. As to transfer of powers, duties and functions of State Highway Department to Division of Highways of Department of Transportation, see § 8406 of Title 29.

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*** THIS DOCUMENT IS CURRENT THROUGH 77 DEL. LAWS, CH 70 AND CHs 78, 84, 86, 87 ***
*** ANNOTATIONS CURRENT THROUGH APRIL 17, 2009 ***

TITLE 17. HIGHWAYS
CHAPTER 1. GENERAL PROVISIONS
SUBCHAPTER VI. SCENIC AND HISTORIC HIGHWAYS

GO TO DELAWARE STATUTES ARCHIVE DIRECTORY

17 Del. C. § 191 (2009)

§ 191. State scenic and historic highways program

The Secretary shall establish within the Department a program to be known as the Delaware Scenic and Historic Highways Program (hereinafter referred to as "scenic and historic highways program," "scenic byways program," or "program") to encourage and coordinate state actions and the activities of others which relate to the development, protection, promotion, operation and management of scenic and historic highways. In order to carry out the purposes of the program, the Secretary is authorized to:

(1) Plan, design and develop the Scenic and Historic Highways system and to designate such highways as the Department may deem appropriate as "Scenic and Historic Highways." The process for such designation shall ensure that scenic and historic highways are selected and managed through a process that balances equity for property owners with the desire of the community to have a specific highway designated under this program;

(2) Ensure to the extent possible that all scenic and historic highway designations are continuous;

(3) Make safety improvements to a highway designated as a scenic and historic highway under this article to the extent such improvements are necessary to accommodate increased or reduced traffic as well as any changes necessary as a result of the types of vehicles using the highway due to such designation;

(4) Construct along such scenic highways such improvements as may be necessary for the use and enjoyment of motorists, pedestrians and bicyclists;

(5) Improve the highway to enhance access to areas utilized for the purpose of recreation, including but not limited to youth-related activities and water-related recreation;

(6) Protect scenic, historical, natural, archaeological and cultural resources in areas adjacent to the highway;

(7) Develop and provide tourist information to the public, including interpretive information about the scenic and historic highway;

(8) Apply for funding from any appropriate source to further the purposes of the scenic or historic highway program, including but not limited to federal grants or private contributions; and

(9) Enter into contracts with qualified and responsible not-for-profit organizations involved in scenic highway activities for services relating to the development of the scenic highways program or services relating to the operation, development or promotion of a specific scenic and historic highway.

HISTORY: 72 Del. Laws, c. 444, § 2.

USER NOTE: For more generally applicable notes, see notes under the first section of this heading, subchapter, chapter, part or title.

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TITLE 17. HIGHWAYS
CHAPTER 1. GENERAL PROVISIONS
SUBCHAPTER VI. SCENIC AND HISTORIC HIGHWAYS

GO TO DELAWARE STATUTES ARCHIVE DIRECTORY

17 Del. C. § 192 (2009)

§ 192. Regulations

The Secretary is authorized to promulgate such regulations as may be necessary or desirable to implement the scenic and historic highways program, consistent with departmental policy and this subchapter. Such regulations may also:

(1) Encourage counties, towns and municipalities to work with the Department to designate scenic and historic highways within their jurisdictions and to petition for the inclusions of these highways into the scenic highway program. Such inclusion shall enable the municipality to participate in federal funding that may be available under the National Scenic Byways Program of the Transportation Equity Act of the 21st Century of 1998 (23 USC § 162).

(2) Develop criteria for scenic and historic highway designation based upon its scenic, historic, natural, recreational, cultural or archeological qualities;

(3) Encourage and assist in fostering public awareness, understanding and participation in the objectives and functions of the scenic and historic highways program;

(4) Provide participants with tools and ideas for enhancement and protection of designated scenic and historic highways;

(5) Provide operation and management standards for highways designated as scenic and historic highways, including strategies for maintaining or improving the qualities for which a scenic and historic highway is so designated, for protecting and enhancing the landscape and scenic view and for minimizing traffic congestion as much as possible on such highways;

(6) Provide standards for scenic and historic highway-related signs, including those which identify scenic and historic highways;

(7) Develop and implement a scenic and historic highway corridor management plan that specifies the actions, procedures, controls, operational practices and administrative strategies to maintain the scenic, historic, cultural,

recreational, archaeological and natural qualities of the scenic highway; and

(8) Develop planning and design standards for development of official scenic and historic highways.

HISTORY: 72 Del. Laws, c. 444, § 2.

USER NOTE: For more generally applicable notes, see notes under the first section of this heading, subchapter, chapter, part or title.

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TITLE 29. STATE GOVERNMENT
PART VIII. DEPARTMENTS OF GOVERNMENT
CHAPTER 80. DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
SUBCHAPTER I. NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

GO TO DELAWARE STATUTES ARCHIVE DIRECTORY

29 Del. C. § 8017A (2009)

§ 8017A. Delaware Council on Greenways and Trails

(a) There is hereby established the Delaware Council on Greenways and Trails (successor to the Delaware Coastal Heritage Greenways Council) created for the following purposes:

(1) Evaluate the natural, coastal, cultural historical and recreational resources of Delaware and determine which of these resources should be components of a Delaware Greenway network;

(2) Promote and encourage public agencies, nonprofit organizations, private organizations and individuals to create, where appropriate, physical linkages between components of Greenways. Such linkage may involve the acquisition or other methods that provide for the permanent protection of open space within Greenways and establishment of trails, walkways, bicycles routes and/or scenic highways throughout Greenways.

(b) The Delaware Council on Greenways and Trails shall serve in an advisory capacity to the Secretary of the Department. Duties of the Council shall include, but not be limited to, the following:

(1) Adopt criteria for the establishment and maintenance of Greenway links to serve the long-term needs of Delaware's environment and the recreational needs of the citizens of this State;

(2) Establish a program of cooperation and coordination with the governing bodies of the governmental planning department, counties, municipalities and other units of general government below the state level and with private nonprofit of public organizations to assist in the creation and preservation of natural, coastal, cultural, historical and recreational resources as Greenways throughout this State;

(3) Review and approve applications for the establishment of Greenway acquisition and development projects consistent with the provisions of this section. Said projects may be funded from the Earnings Account of the Delaware Land and Water Conservation Trust Fund as described in § 5423(d) of Title 30;

(4) Enhance education and promotion of Delaware Greenways;

(5) Establish internal committees and/or encourage and promote establishment of new organizations, the purpose of which will be to develop and, where appropriate, implement strategies for a comprehensive greenway system.

(c) The Council shall be composed of 19 members. The Governor shall designate one member to serve as Chairperson. Members of the Council shall be:

(1) The Secretary of the Department of Natural Resources and Environmental Control or authorized designee;

(2) The Secretary of the Department of Transportation or authorized designee;

(3) The Secretary of the Department of Agriculture or authorized designee;

(4) The Director of the Division of Historical and Cultural Affairs;

(5) The Director of the Delaware Tourism Office;

(6) Eight members of the private or nonprofit sectors as shall be appointed by the Governor; provided, however, that any member of the former Delaware Coastal Heritage Greenway Council shall be permitted to complete any unexpired term;

(7) One member from the minority party and 2 members from the majority party of the Delaware House of Representatives appointed by the Speaker of the House;

(8) One member from the minority party and 2 members from the majority party of the Delaware State Senate appointed by the President Pro Tempore.

(d) Upon the expiration of the terms of the original members having designated terms, the terms of such members' positions thereafter shall be 3 years. For the members appointed to the positions indicated in subsection (c)(6) of this section, members registered in either major political party shall not exceed the other major political party by more than 1.

(e) The Secretary shall determine which applications eligible for funding under § 5423 of Title 30 shall be subject to review by this Council. Application reviewed and approved by the Council in subsection (b)(3) of this section shall not be subject to the provisions of § 7506(11) of Title 7. Greenways projects shall qualify as projects under the provisions of § 5423 of Title 30.

HISTORY: 68 Del. Laws, c. 377, § 1; 70 Del. Laws, c. 210, § 28; 70 Del. Laws, c. 290, §§ 11, 41.

NOTES: REVISOR'S NOTE. --Section 92 of 70 Del. Laws, c. 210, provides: "Insofar as the provisions of this act are inconsistent with the provisions of any general, special, or local laws, or parts thereof, the provisions of this act shall be controlling."

USER NOTE: For more generally applicable notes, see notes under the first section of this heading, subchapter, chapter, part or title.

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*** STATUTES AND CONSTITUTION ARE CURRENT THROUGH ACT 2009-51 OF THE 2009 REGULAR SESSION ***
*** Annotations current through June 12, 2009 ***

TITLE 26. PUBLIC TRANSPORTATION (Chs. 334-349)
CHAPTER 334. TRANSPORTATION ADMINISTRATION

GO TO FLORIDA STATUTES ARCHIVE DIRECTORY

Fla. Stat. § 334.044 (2009)

Legislative Alert: LEXSEE 2009 Fl. ALS 89 -- See section 1.

§ 334.044. Department; powers and duties

The department shall have the following general powers and duties:

(1) To assume the responsibility for coordinating the planning of a safe, viable, and balanced state transportation system serving all regions of the state, and to assure the compatibility of all components, including multimodal facilities.

(2) To adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of law conferring duties upon it.

(3) To adopt an official seal.

(4) To maintain its headquarters in Tallahassee and its district offices and necessary field offices at such places within the state as it may designate, and to purchase, build, or lease suitable buildings for such uses.

(5) To purchase, lease, or otherwise acquire property and materials, including the purchase of promotional items as part of public information and education campaigns for the promotion of scenic highways, traffic and train safety awareness, alternatives to single-occupant vehicle travel, and commercial motor vehicle safety; to purchase, lease, or otherwise acquire equipment and supplies; and to sell, exchange, or otherwise dispose of any property that is no longer needed by the department.

(6) To acquire, by the exercise of the power of eminent domain as provided by law, all property or property rights, whether public or private, which it may determine are necessary to the performance of its duties and the execution of its powers.

(7) To enter into contracts and agreements.

(8) To sue and be sued as provided by law.

(9) To employ and train staff, and to contract with qualified consultants. For the purposes of chapters 471 and 472, the department shall be considered a firm.

(10) (a) To develop and adopt uniform minimum standards and criteria for the design, construction, maintenance, and operation of public roads pursuant to the provisions of s. 336.045.

(b) The department shall periodically review its construction, design, and maintenance standards to ensure that such standards are cost-effective and consistent with applicable federal regulations and state law.

(c) The department is authorized to adopt rules relating to approval of aggregate and other material sources.

(11) To establish a numbering system for public roads, to functionally classify such roads, and to assign jurisdictional responsibility.

(12) To coordinate the planning of the development of public transportation facilities within the state and the provision of related transportation services as authorized by law.

(13) To designate existing and to plan proposed transportation facilities as part of the State Highway System, and to construct, maintain, and operate such facilities.

(14) To establish, control, and prohibit points of ingress to, and egress from, the State Highway System, the turnpike, and other transportation facilities under the department's jurisdiction as necessary to ensure the safe, efficient, and effective maintenance and operation of such facilities.

(15) To regulate and prescribe conditions for the transfer of stormwater to the state right-of-way as a result of manmade changes to adjacent properties.

(a) Such regulation shall be through a permitting process designed to ensure the safety and integrity of the Department of Transportation facilities and to prevent an unreasonable burden on lower properties.

(b) The department is specifically authorized to adopt rules which set forth the purpose; necessary definitions; permit exceptions; permit and assurance requirements; permit application procedures; permit forms; general conditions for a drainage permit; provisions for suspension or revocation of a permit; and provisions for department recovery of fines, penalties, and costs incurred due to permittee actions. In order to avoid duplication and overlap with other units of government, the department shall accept a surface water management permit issued by a water management district, the Department of Environmental Protection, a surface water management permit issued by a delegated local government, or a permit issued pursuant to an approved Stormwater Management Plan or Master Drainage Plan; provided issuance is based on requirements equal to or more stringent than those of the department. The department may enter into a permit-delegation agreement with a governmental entity if issuance of a permit is based on requirements that the department finds will ensure the safety and integrity of facilities of the Department of Transportation.

(16) To plan, acquire, lease, construct, maintain, and operate toll facilities; to authorize the issuance and refunding of bonds; and to fix and collect tolls or other charges for travel on any such facilities.

(17) To designate limited access facilities on the State Highway System and turnpike projects; to plan, construct, maintain, and operate service roads in connection with such facilities; and to regulate, reconstruct, or realign any existing public road as a service road.

(18) To establish and maintain bicycle and pedestrian ways.

(19) To encourage and promote the development of multimodal transportation alternatives.

(20) To conduct research studies, and to collect data necessary for the improvement of the state transportation

system.

(21) To conduct research and demonstration projects relative to innovative transportation technologies.

(22) To cooperate with and assist local governments in the development of a statewide transportation system and in the development of the individual components of the system.

(23) To cooperate with the transportation department or duly authorized commission or authority of any state in the development and construction of transportation facilities physically connecting facilities of this state with those facilities of any adjoining state.

(24) To identify, obtain, and administer all federal funds available to the department for all transportation purposes.

(25) To do all things necessary to obtain the full benefits of the national Highway Safety Act of 1966, and in so doing, to cooperate with federal and state agencies, public and private agencies, interested organizations, and individuals to effectuate the purposes of that act, and any and all amendments thereto. The Governor shall have the ultimate state responsibility for dealing with the Federal Government in respect to programs and activities initiated pursuant to the national Highway Safety Act of 1966, and any amendments thereto.

(26) To provide for the conservation of natural roadside growth and scenery and for the implementation and maintenance of roadside beautification programs, and no less than 1.5 percent of the amount contracted for construction projects shall be allocated by the department to beautification programs. Except where prohibited by federal law or federal regulation and to the extent practical, a minimum of 50 percent of these funds shall be used to purchase large plant materials with the remaining funds for other plant materials. All such plant materials shall be purchased from Florida-based nurseryman stock on a uniform competitive bid basis. The department will develop grades and standards for landscaping materials purchased through this process. To accomplish these activities, the department may contract with nonprofit organizations having the primary purpose of developing youth employment opportunities.

(27) To conduct studies and provide coordination to assess the needs associated with landside ingress and egress to port facilities, and to coordinate with local governmental entities to ensure that port facility access routes are properly integrated with other transportation facilities.

(28) To require persons to affirm the truth of statements made in any application for a license, permit, or certification issued by the department or in any contract documents submitted to the department.

(29) To advance funds for projects in the department's adopted work program to governmental entities prior to commencement of the project or project phase when the advance has been authorized by the department's comptroller and is made pursuant to a written agreement between the department and a governmental entity.

(30) To take any other action necessary to carry out the powers and duties expressly granted in this code.

(31) To provide oversight of traveler information systems that may include the provision of interactive voice response telephone systems accessible via the 511 number as assigned by the Federal Communications Commission for traveler information services. The department shall ensure that uniform standards and criteria for the collection and dissemination of traveler information are applied using interactive voice response systems.

(32) In order to fulfill the department's mission to provide a safe and efficient transportation system, the department's Office of Motor Carrier Compliance may employ sworn law enforcement officers, certified in accordance with chapter 943, to enforce the traffic and criminal laws of this state. Such officers shall have full law enforcement powers granted to other peace officers of this state, including making arrests, carrying firearms, serving court process, and seizing vehicles defined as contraband under s. 319.33, illegal drugs, stolen property, and the proceeds of illegal activities. Officers appointed under this section have the primary responsibility for enforcing laws relating to size and

weight of commercial motor vehicles; safety, traffic, tax, and registration of commercial motor vehicles; interdiction of vehicles defined as contraband under s. 319.33, illegal drugs, and stolen property; and violations that threaten the overall security and safety of Florida's transportation infrastructure and the motoring public. The office is also authorized to appoint part-time or auxiliary law enforcement officers pursuant to chapter 943 and to provide compensation in accordance with law.

(33) To enter into agreement with Space Florida to coordinate and cooperate in the development of spaceport infrastructure and related transportation facilities contained in the Strategic Intermodal System Plan and, where appropriate, encourage the cooperation and integration of airports and spaceports in order to meet transportation-related needs.

HISTORY: s. 11, ch. 84-309; s. 9, ch. 85-180; s. 26, ch. 86-243; s. 2, ch. 88-224; s. 155, ch. 92-152; s. 56, ch. 93-164; s. 15, ch. 96-423; s. 1, ch. 98-105; ss. 69, 232, 233, ch. 98-200; s. 1, ch. 99-250; s. 6, ch. 2000-266; s. 3, ch. 2002-13; s. 8, ch. 2002-20; s. 39, ch. 2003-286; s. 65, ch. 2006-60, eff. May 30, 2006; s. 27, ch. 2007-259, eff. July 1, 2007.

NOTES:

AMENDMENTS

The 2003 amendment by s. 39, ch. 2003-286, effective July 14, 2003, added present (31) and redesignated former (31) as (32).
The 2006 amendment by s. 65, ch. 2006-60, effective May 30, 2006, added (33).
The 2007 amendment by s. 27, ch. 2007-259, effective July 1, 2007, in (26) deleted past funding provisions, and made a stylistic change.

LexisNexis (R) Notes:

OPINIONS OF ATTORNEY GENERAL

1. Title to all tangible personal property acquired by the Florida State Turnpike Authority under the authority of Ch. 340, F.S., is vested in the state; and, as the successor in title under the Governmental Reorganization Act of 1969, the Department of Transportation is required to comply with Ch. 273, F.S., as well as other applicable laws relating to state-owned property. No. 073-297, 1973 Fla. AG LEXIS 75; 1973 Op. Atty Gen. Fla. 503.

2. The Port St. Joe Port Authority and the Department of Transportation may enter into an interlocal agreement pursuant to § 163.01, F.S., whereby the port authority agrees to aid in and partially fund the construction of a bridge project to be undertaken by the department., 84-99, 1984 Fla. AG LEXIS 5; 1984 Op. Atty Gen. Fla. 263.

LAW REVIEWS

1. 19 Fla. St. U.L. Rev. 974, ARTICLE: ADEQUATE PUBLIC FACILITIES REQUIREMENTS: REFLECTIONS ON FLORIDA'S CONCURRENCY SYSTEM FOR MANAGING GROWTH.

2. 21 Fla. St. U.L. Rev. 223, MANAGING FLORIDA'S GROWTH: THE NEXT GENERATION.

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*** STATUTES AND CONSTITUTION ARE CURRENT THROUGH ACT 2009-51 OF THE 2009 REGULAR SESSION ***
*** Annotations current through June 12, 2009 ***

TITLE 26. PUBLIC TRANSPORTATION (Chs. 334-349)
CHAPTER 335. STATE HIGHWAY SYSTEM

GO TO FLORIDA STATUTES ARCHIVE DIRECTORY

Fla. Stat. § 335.092 (2009)

§ 335.092. Everglades Parkway scenic highway

(1) The following terms, when used in this section, have the meanings ascribed herein:

(a) "Parkway" means the Everglades Parkway, which is a portion of State Road 84 commonly known as "Alligator Alley," in Collier and Broward Counties.

(b) "Owner" means a person or legal entity vested with title to an advertising structure or advertising sign.

(c) "Advertisement," "advertising structure," "advertising sign," "state," "highway," "post," "real property," and "adjacent" mean the same as are defined or hereafter are defined by s. 479.01.

(2) The Everglades Parkway is designated and declared to be an official scenic highway of the state. No advertising sign shall be erected or maintained within 500 feet of either side of the right-of-way of the parkway situate between the easternmost and westernmost tollgates, with the following exceptions:

(a) Official road signs erected by the department or erected by a political subdivision of the state.

(b) Signs advertising the sale or lease of the property upon which they are located, if they do not exceed 4 square feet in area.

(c) Signs advertising only the name or nature of the business being conducted on, or the products, facilities, goods or services being sold, supplied, or distributed on or from, the premises on which the signs are located, if such signs are within 500 feet of such business.

(d) Signs erected and maintained by a public utility for the purpose of giving warning of the location of an underground cable or other installation.

(3) (a) Any advertisement which is constructed, erected, operated, used, maintained, posted, or displayed in violation of this section is declared to be a public and private nuisance and shall be forthwith removed, obliterated, or abated by the secretary or the secretary's representatives; and for that purpose they may enter upon private property

without incurring any liability therefor.

(b) Any person who violates any provision of this section, whether as principal, agent, or employee, for which violation no other penalty is prescribed, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $ 10 or more than $ 300. Such person shall be deemed guilty of a separate offense for each month during any portion of which any violation of this section is committed, continued, or permitted. The existence of any advertising copy or any outdoor advertising structure, outdoor advertising sign, or advertisement shall constitute prima facie evidence that the outdoor advertising sign or advertisement was constructed, erected, operated, used, maintained, or displayed with the consent and approval and under the authority of the person whose goods or services are advertised thereon.

(4) Wherever the provisions of this section are inconsistent with the provisions of chapter 479, the provisions of this section shall prevail except when otherwise specifically provided in this section.

HISTORY: ss. 1, 2, 3, 4, ch. 69-371; ss. 23, 35, ch. 69-106; s. 23, ch. 84-227; s. 44, ch. 84-309; s. 490, ch. 95-148.

LexisNexis 50 State Surveys, Legislation & Regulations

Highways

87 of 400 DOCUMENTS

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*** Annotations current through June 12, 2009 ***

TITLE 26. PUBLIC TRANSPORTATION (Chs. 334-349)
CHAPTER 335. STATE HIGHWAY SYSTEM

GO TO FLORIDA STATUTES ARCHIVE DIRECTORY

Fla. Stat. § 335.093 (2009)

§ 335.093. Scenic highway designation

(1) The Department of Transportation may, after consultation with other state agencies and local governments, designate public roads as scenic highways. Public roads designated as scenic highways are intended to preserve, maintain, and protect a part of Florida's cultural, historical, and scenic routes for vehicular, bicycle, and pedestrian travel.

(2) The department may by rule adopt appropriate criteria for the designation of scenic highways and may specify appropriate planning and design standards including corridor management plans on such scenic highways.

(3) The designation of scenic highways by the department and the criteria adopted by the department for the designation of scenic highways are not intended to affect or limit existing or customary uses in commercial or industrial areas that are adjacent to designated scenic highways nor is designation intended to limit the ability of local government entities to control or limit land uses in commercial or industrial areas within their jurisdictions. This subsection shall take effect on July 1, 1996.

HISTORY: s. 54, ch. 93-164; s. 43, ch. 94-237; s. 17, ch. 99-385.

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Highways

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*** Current Through the 2009 Regular Session ***
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TITLE 12. CONSERVATION AND NATURAL RESOURCES
CHAPTER 3. PARKS, HISTORIC AREAS, MEMORIALS, AND RECREATION
ARTICLE 3. HISTORIC AREAS

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O.C.G.A. TITLE 12 Chapter 3 Article 3 (2009)

TITLE 12 Chapter 3 Article 3 Note

ARTICLE NOTES

EDITOR'S NOTES. --By resolution (Ga. L. 1985, p. 563), the General Assembly directed the Department of Natural Resources to place an historical marker at the entrance to Souther Field in Americus, Georgia, to honor Charles A. Lindbergh.

By resolution (Ga. L. 1985, p. 592), the General Assembly directed the Department of Natural Resources to erect an historical marker honoring Robert Toombs at the site of the Toombs Oak on the campus of the University of Georgia.

By resolution (Ga. L. 1988, p. 335), the General Assembly designated certain public roads and highways as the Chieftains Trail.

By resolution (Ga. L. 1988, p. 792), the General Assembly designated Georgia Highway 28 through the City of Augusta as the Savannah River Scenic Highway.

ADMINISTRATIVE RULES AND REGULATIONS. --Designation of historic buildings and landmark museum buildings, Official Compilation of Rules and Regulations of State of Georgia, Department of Natural Resources, Chapter 391-5-8.

RESEARCH REFERENCES

ALR. --Validity and construction of statute or ordinance protecting historical landmarks, 18 ALR4th 990.
Title Note

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*** Current Through the 2009 Regular Session ***
*** Annotations Current Through April 10, 2009. ***

TITLE 32. HIGHWAYS, BRIDGES, AND FERRIES
CHAPTER 6. REGULATION OF MAINTENANCE AND USE OF PUBLIC ROADS GENERALLY
ARTICLE 4. LIMITED-ACCESS ROADS

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O.C.G.A. § 32-6-119 (2009)

§ 32-6-119. Effect of article on Coastal Highway District and Coastal Scenic Highway Authority

This article shall in no way take away from, impair, or infringe upon the authority, duty, power, or obligations of the Coastal Highway District or the Coastal Scenic Highway Authority.

HISTORY: Ga. L. 1955, p. 559, § 9; Code 1933, § 95A-941, enacted by Ga. L. 1973, p. 947, § 1.
Title Note
Chapter Note

ILLINOIS COMPILED STATUTES ANNOTATED
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*** STATUTES CURRENT THROUGH PUBLIC ACT 96-33 OF THE 2009 LEGISLATIVE SESSION ***
*** ANNOTATIONS CURRENT TO STATE CASES THROUGH JUNE 15, 2009 ***

CHAPTER 225. PROFESSIONS AND OCCUPATIONS
SERVICE AND SALES
HIGHWAY ADVERTISING CONTROL ACT OF 1971

GO TO THE ILLINOIS STATUTES ARCHIVE DIRECTORY

225 ILCS 440/3.16 (2009)

§ 225 ILCS 440/3.16. [Scenic byway defined]

Sec. 3.16. "Scenic byway" means that portion of a highway that has been nominated by the Department to the United States Department of Transportation for designation as a national scenic byway or All-American Road, and that has received national designation. "Scenic byway" does not include a section of primary or Interstate highway that traverses a business area at the time of nomination, except in accordance with Section 14.02(a)(5) [225 ILCS 440/14.02].

HISTORY: Source: P.A. 89-605, § 10.

NOTES:
EFFECTIVE DATE.
Section 99 of P.A. 89-605 made this section effective upon becoming law. The Act was approved August 2, 1996.

LexisNexis 50 State Surveys, Legislation & Regulations

Billboards and Outdoor Advertising

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*** STATUTES CURRENT THROUGH PUBLIC ACT 96-33 OF THE 2009 LEGISLATIVE SESSION ***
*** ANNOTATIONS CURRENT TO STATE CASES THROUGH JUNE 15, 2009 ***

CHAPTER 225. PROFESSIONS AND OCCUPATIONS
SERVICE AND SALES
HIGHWAY ADVERTISING CONTROL ACT OF 1971

GO TO THE ILLINOIS STATUTES ARCHIVE DIRECTORY

225 ILCS 440/5 (2009)

[Prior to 1/1/93 cited as: Ill. Rev. Stat., Ch. 121, para. 505]

§ 225 ILCS 440/5. [Prohibited signs]

Sec. 5. No sign may be erected or maintained that:

(a) Imitates or resembles an official traffic sign, signal or device;

(b) Is erected, painted or drawn upon trees, rocks or other natural features;

(c) Is structurally unsafe or in disrepair; or

(d) Is erected adjacent to a scenic byway that is a primary or Interstate highway after the effective date of this amendatory Act of 1996, except those signs described in Sections 4.01, 4.02, 4.03, 4.06, and 4.08 of this Act [225 ILCS 440/4.01, 225 ILCS 440/4.02, 225 ILCS 440/4.03, 225 ILCS 440/4.06, and 225 ILCS 440/4.08].

HISTORY: Source: P.A. 79-1009; 89-605, § 10.

NOTES:
NOTE.
This section was Ill.Rev.Stat., Ch. 121, para. 505.

LexisNexis 50 State Surveys, Legislation & Regulations

Billboards and Outdoor Advertising

PRACTICE GUIDES AND TREATISES

Illinois Jurisprudence, Property § 21:40 Regulation of signs, generally

ILLINOIS COMPILED STATUTES ANNOTATED
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*** STATUTES CURRENT THROUGH PUBLIC ACT 96-33 OF THE 2009 LEGISLATIVE SESSION ***
*** ANNOTATIONS CURRENT TO STATE CASES THROUGH JUNE 15, 2009 ***

CHAPTER 225. PROFESSIONS AND OCCUPATIONS
SERVICE AND SALES
HIGHWAY ADVERTISING CONTROL ACT OF 1971

GO TO THE ILLINOIS STATUTES ARCHIVE DIRECTORY

225 ILCS 440/14.02 (2009)

§ 225 ILCS 440/14.02. Scenic byways; nomination

Sec. 14.02. Scenic byways; nomination. (a) The Department shall limit its nominations for national designation of scenic byways to roads or highways that:

(1) possess any of 6 intrinsic qualities as specified by the United States Department of Transportation, including scenic beauty, natural quality, historic quality, cultural quality, archeological quality, or recreational quality;

(2) accommodate 2-wheel drive automobiles and, wherever feasible, bicycle and pedestrian travel;

(3) are the subject of a complete corridor management plan consistent with requirements of the United States Department of Transportation and developed with community involvement, which provides for the conservation and enhancement of the byway's intrinsic qualities as well as promotion of tourism and economic development;

(4) are the subject of written notice of pending nomination given by a unit of local government of appropriate jurisdiction to businesses and property owners to be directly affected by national designation, which notice shall include the opportunity to submit written comments to the local government; and

(5) do not include sections of primary or Interstate highways that, at the time of nomination, traverse business areas, unless the Department determines that any such section possesses one or more intrinsic qualities in such exceptional measure as to merit nomination for national designation.

(b) Before forwarding a nomination to the United States Department of Transportation, the Department may request the appropriate unit of local government to conduct a public hearing if it is determined that sufficient numbers of property owners and businesses may be affected adversely by national designation.

(c) The Department may request the United States Department of Transportation to de-designate all or part of a scenic byway (i) if it is determined that the intrinsic qualities that led to designation no longer exist, (ii) if the approved

corridor management plan is not being implemented in accordance with its provisions, or (iii) in the event of termination of the national scenic byways program or the absence of Congressional authorization for funding of that program. Before making such request, the Department or the appropriate unit of local government petitioning for de-designation shall hold a public hearing for the purpose of obtaining public comment on the proposed de-designation.

HISTORY: Source: P.A. 89-605, § 10.

NOTES:
EFFECTIVE DATE.
Section 99 of P.A. 89-605 made this section effective upon becoming law. The Act was approved August 2, 1996.

LexisNexis 50 State Surveys, Legislation & Regulations

Billboards and Outdoor Advertising

LEXIS NEXIS (R) IOWA ANNOTATED STATUTES

*** THIS DOCUMENT IS CURRENT THROUGH THE 2008 SUPPLEMENT (2008 LEGISLATION) ***
*** ANNOTATIONS CURRENT THROUGH APRIL 8, 2009 ***

TITLE VIII. TRANSPORTATION
SUBTITLE 1. HIGHWAYS AND WATERWAYS
CHAPTER 306C. JUNKYARD BEAUTIFICATION AND BILLBOARD CONTROL
DIVISION II. BILLBOARD CONTROL

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

Iowa Code § 306C.11 (2008)

Legislative Alert: LEXSEE 2009 Ia. SF 449 -- See section 112.

306C.11 Advertising prohibited.

Subject to the provisions made in section 306C.13 regarding control of bonus interstate highways and section 306D.4 regarding scenic highways or byways, an advertising device shall not be erected or maintained within any adjacent area, or on the right-of-way of any primary highway, except the following:

1. Advertising devices concerning the sale or lease of property upon which they are located.

2. Advertising devices concerning activities conducted on the property on which they are located, nor shall the property upon which they are located be construed to mean located upon any contiguous area having inconsistent use, size, shape, or ownership. However, businesses located within the limits of a commercial or industrial development may be advertised on a sign located anywhere within the development regardless of land ownership.

3. *a.* Advertising devices within the adjacent area located in commercial or industrial zones or in unzoned commercial or industrial areas in compliance with the regulatory standards of this division and rules promulgated by the department.

b. The rules shall be consistent with national standards promulgated pursuant to 23 U.S.C. § 131 and shall include at least the following:

(1) Provision for a fee schedule to cover the direct and indirect costs related to issuing permits and control of outdoor advertising.

(2) Specific permit requirements.

(3) Criteria for on-premise signs.

(4) Provisions specifying the measurement of required spacing.

(5) Provisions specifying conforming sign configurations.

4. Official and directional signs and notices which shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historic attractions, and recreational attractions. The signs and notices shall conform with rules promulgated by the department, provided that such rules shall be consistent with national standards promulgated pursuant to 23 U.S.C. § 131(c).

5. Signs, displays, and devices giving specific information of interest to the traveling public, shall be erected by the department and maintained within the right-of-way in the areas, and at appropriate distances from interchanges on the interstate system and freeway primary highways as shall conform with the rules adopted by the department. The rules shall be consistent with national standards promulgated from time to time or as permitted by the appropriate authority of the federal government pursuant to 23 U.S.C. § 131(f) except as provided in this section. The rules shall include but are not limited to the following:

a. Criteria for eligibility for signing.

b. Criteria for limiting or excluding businesses that maintain advertising devices that do not conform to the requirements of chapter 306B, this division, or other statutes or administrative rules regulating outdoor advertising.

c. Provisions for a fee schedule to cover the direct and indirect costs of sign erection and maintenance and related administrative costs.

d. Provisions for specifying the maximum distance to eligible businesses.

e. Provisions specifying the maximum number of signs permitted per panel and per interchange.

f. Provisions for determining what businesses are signed when there are more applicants than the maximum number of signs permitted.

g. Provisions for removing signs when businesses cease to meet minimum requirements for participation and related costs.

For purposes of this division, *"specific information of interest to the traveling public"* means only information about public places for camping, lodging, eating, and motor fuel and associated services, including trade names which have telephone facilities available when the public place is open for business and businesses engaged in selling motor fuel which have free air for tire inflation and restroom facilities available when the public place is open for business.

Business signs supplied to the department by commercial vendors shall be on panels, with dimensional and material specifications established by the department. A business sign included under the provisions of this section shall not be posted unless it is in compliance with these specifications. The commercial vendor shall pay to the department a fee based upon the schedule adopted under this subsection for each business sign supplied for posting. Upon furnishing the business signs to the department and payment of all fees, the department shall post the business signs on eligible specific information panels. Faded signs shall be replaced and the commercial vendor charged for the cost of replacement based upon the fee schedule adopted. There is created in the office of the treasurer of state a fund to be known as the "highway beautification fund" and all funds received for the posting on specific information panels shall be deposited in the "highway beautification fund". Information on motor fuel and associated services may include vehicle service and repair where the same is available.

6. The publication title of a newspaper on a delivery receptacle attached to a mailbox or mailbox support.

HISTORY: C73, 75, 77, 79, 81, § 306C.11; 82 Acts, ch 1240, § 1

90 Acts, ch 1183, § 1, 2; 95 Acts, ch 135, § 3; 97 Acts, ch 104, § 2; 98 Acts, ch 1075, § 19; 2006 Acts, ch 1068, § 1; 2006 Acts, ch 1142, § 83; 2007 Acts, ch 143, § 1

LexisNexis (R) Notes:

CASE NOTES

1. Iowa Code § 306C.11 that regulated outdoor advertising devices along State primary highways drew a legitimate distinction between on- premise and off-premise signs and regulated a high school's 37 booster or advertising signs on its athletic field fence at issue consistent with constitutional norms pertaining to commercial speech. Immaculate Conception Corp. v. Iowa DOT, 656 N.W.2d 513, 2003 Iowa Sup. LEXIS 17 (Iowa 2003), writ of certiorari denied by 538 U.S. 1035, 123 S. Ct. 2097, 155 L. Ed. 2d 1066, 2003 U.S. LEXIS 3752, 71 U.S.L.W. 3721 (2003).

2. Iowa Code § 306C.11 that regulated outdoor advertising devices along State primary highways drew a legitimate distinction between on- premise and off-premise signs and regulated a high school's 37 booster or advertising signs on its athletic field fence at issue consistent with constitutional norms pertaining to commercial speech. Immaculate Conception Corp. v. Iowa DOT, 656 N.W.2d 513, 2003 Iowa Sup. LEXIS 17 (Iowa 2003), writ of certiorari denied by 538 U.S. 1035, 123 S. Ct. 2097, 155 L. Ed. 2d 1066, 2003 U.S. LEXIS 3752, 71 U.S.L.W. 3721 (2003).

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LEXIS NEXIS (R) IOWA ANNOTATED STATUTES

*** THIS DOCUMENT IS CURRENT THROUGH THE 2008 SUPPLEMENT (2008 LEGISLATION) ***
*** ANNOTATIONS CURRENT THROUGH APRIL 8, 2009 ***

TITLE VIII. TRANSPORTATION
SUBTITLE 1. HIGHWAYS AND WATERWAYS
CHAPTER 306D. SCENIC ROUTES

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

Iowa Code § 306D.1 (2008)

306D.1 Statement of purpose -- intent.

1. The general assembly finds that:

a. The state offers numerous regions through which people can drive for the pleasure of viewing unusually scenic and interesting landscapes; however, routes to and through these areas have not been adequately identified for Iowans and state visitors.

b. Among those things that attract motorists to the state's landscape are agricultural lands, forests, river basins, distinctive landforms, interesting architecture, metropolitan areas, small rural towns, and historic sites.

c. The landscape qualities of unusually scenic routes throughout the state have not been protected from visual and resource deterioration particularly along routes which pass near the state's nationally significant areas such as the bluffs of the Mississippi and Missouri rivers, the Amana colonies, the Herbert Hoover national historic site, federal reservoirs, communities surrounding the state's natural lakes, the Des Moines river greenbelt, the great river road, and many others.

d. A principal goal of economic development in this state is to increase the influence which travel and tourism have on the state's economic expansion.

e. Iowans and visitors should be encouraged to travel to and through unusually scenic areas of the state.

f. A program should be established, following a statewide plan, to identify and promote highways and secondary routes which pass through unusually scenic landscapes and to protect and enhance the scenic qualities of the landscape through which these routes pass.

2. In addition to other goals for the program, it is the intention of the general assembly that the scenic highways program be coordinated with the state's open space program.*

HISTORY: 87 Acts, ch 175, § 1

NOTES:
Section Notes:

*Open space program, chapter 465A

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LEXIS NEXIS (R) IOWA ANNOTATED STATUTES

*** THIS DOCUMENT IS CURRENT THROUGH THE 2008 SUPPLEMENT (2008 LEGISLATION) ***
*** ANNOTATIONS CURRENT THROUGH APRIL 8, 2009 ***

TITLE VIII. TRANSPORTATION
SUBTITLE 1. HIGHWAYS AND WATERWAYS
CHAPTER 306D. SCENIC ROUTES

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

Iowa Code § 306D.2 (2008)

306D.2 Statewide scenic highways program -- objectives and agency duties.

1. The state department of transportation shall prepare a statewide, long-range plan for the protection, enhancement, and identification of highways and secondary roads which pass through unusually scenic areas of the state as identified in section 306D.1. The department of natural resources, department of economic development, and department of cultural affairs, private organizations, county conservation boards, city park and recreation departments, and the federal agencies having jurisdiction over land in the state shall be encouraged to assist in preparing the plan. The plan shall be coordinated with the state's open space plan if a state open space plan has been approved by the general assembly. The plan shall include, but is not limited to, the following elements:

a. Preparation of a statewide inventory of scenic routes and ranking of relative uniqueness for each route. The degree to which these routes suffer from negative visual intrusions shall be documented.

b. Recommended techniques for preserving and enhancing the scenic qualities associated with each route.

c. Forecasts of significant changes in traffic volumes and environmental, social, and economic impacts if scenic routes are publicly identified and promoted as tourism attractions.

d. Recommended techniques for incorporating scenic highway routes in state and local tourism development and marketing programs.

e. Landscape management needs including maintenance, rehabilitation, and improvements to scenic areas.

f. Funding levels needed to accomplish the statewide scenic highway program.

g. Recommendations of how federal and state transportation programs can be modified or developed to assist the state's scenic highway program.

2. The preparation of the plan is subject to an appropriation by the general assembly for that purpose. The plan shall be submitted to the general assembly by January 15, 1988. Prior to submission of the plan to the general assembly, the department shall request comments on the proposed plan from state agencies, federal agencies, and private organizations with interests in scenic highways. The comments shall be submitted to the general assembly.

HISTORY: 87 Acts, ch 175, § 2

LEXIS NEXIS (R) IOWA ANNOTATED STATUTES

*** THIS DOCUMENT IS CURRENT THROUGH THE 2008 SUPPLEMENT (2008 LEGISLATION) ***
*** ANNOTATIONS CURRENT THROUGH APRIL 8, 2009 ***

TITLE VIII. TRANSPORTATION
SUBTITLE 1. HIGHWAYS AND WATERWAYS
CHAPTER 306D. SCENIC ROUTES

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

Iowa Code § 306D.3 (2008)

306D.3 Plan recommendations and pilot projects.

1. The department's recommendations to the general assembly shall include proposed legislation for the state to acquire and protect scenic landscapes along public roads and highways.

2. Before January 1, 1989, the department shall identify four pilot scenic highway routes across two or more counties each for trial promotion in the state's tourism marketing program.

HISTORY: 87 Acts, ch 175, § 3

LEXIS NEXIS (R) IOWA ANNOTATED STATUTES

*** THIS DOCUMENT IS CURRENT THROUGH THE 2008 SUPPLEMENT (2008 LEGISLATION) ***
*** ANNOTATIONS CURRENT THROUGH APRIL 8, 2009 ***

TITLE VIII. TRANSPORTATION
SUBTITLE 1. HIGHWAYS AND WATERWAYS
CHAPTER 306D. SCENIC ROUTES

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

Iowa Code § 306D.4 (2008)

306D.4 Scenic highway advertising.

The state department of transportation shall have the authority to adopt rules to control the erection of new advertising devices on a highway designated as a scenic highway or scenic byway in order to comply with federal requirements concerning the implementation of a scenic byways program.

HISTORY: 95 Acts, ch 135, § 4

LEXIS NEXIS (R) IOWA ANNOTATED STATUTES

*** THIS DOCUMENT IS CURRENT THROUGH THE 2008 SUPPLEMENT (2008 LEGISLATION) ***
*** ANNOTATIONS CURRENT THROUGH APRIL 8, 2009 ***

TITLE VIII. TRANSPORTATION
SUBTITLE 1. HIGHWAYS AND WATERWAYS
CHAPTER 314. ADMINISTRATIVE PROVISIONS FOR HIGHWAYS

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

Iowa Code § 314.22 (2008)

314.22 Integrated roadside vegetation management.

1. *Objectives.* It is declared to be in the general public welfare of Iowa and a highway purpose for the vegetation of Iowa's roadsides to be preserved, planted, and maintained to be safe, visually interesting, ecologically integrated, and useful for many purposes. The state department of transportation shall provide an integrated roadside vegetation management plan and program which shall be designed to accomplish all of the following:

a. Maintain a safe travel environment.

b. Serve a variety of public purposes including erosion control, wildlife habitat, climate control, scenic qualities, weed control, utility easements, recreation uses, and sustenance of water quality.

c. Be based on a systematic assessment of conditions existing in roadsides, preservation of valuable vegetation and habitats in the area, and the adoption of a comprehensive plan and strategies for cost-effective maintenance and vegetation planting.

d. Emphasize the establishment of adaptable and long-lived vegetation, often native species, matched to the unique environment found in and adjacent to the roadside.

e. Incorporate integrated management practices for the long-term control of damaging insect populations, weeds, and invader plant species.

f. Build upon a public education program allowing input from adjacent landowners and the general public.

g. Accelerate efforts toward increasing and expanding the effectiveness of plantings to reduce wind-induced and water-induced soil erosion and to increase deposition of snow in desired locations.

h. Incorporate integrated roadside vegetation management with other state agency planning and program activities including the recreation trails program, scenic highways, open space, and tourism development efforts. Agencies should annually report their progress in this area to the general assembly.

2. *Counties may adopt plans.* A county may adopt an integrated roadside vegetation management plan consistent with the integrated roadside vegetation management plan adopted by the department under subsection 1.

3. *Integrated roadside vegetation management technical advisory committee.*

a. The director of the department shall appoint members to an integrated roadside vegetation management technical advisory committee which is created to provide advice on the development and implementation of a statewide integrated roadside vegetation management plan and program and related projects. The department shall report annually in January to the general assembly regarding its activities and those of the committee. Activities of the committee may include, but are not limited to, providing advice and assistance in the following areas:

(1) Research efforts.

(2) Demonstration projects.

(3) Education and orientation efforts for property owners, public officials, and the general public.

(4) Activities of the integrated roadside vegetation management coordinator for integrated roadside vegetation management.

(5) Reviewing applications for funding assistance.

(6) Securing funding for research and demonstrations.

(7) Determining needs for revising the state weed law and other applicable Code sections.

(8) Liaison with the Iowa state association of counties, the Iowa league of cities, and other organizations for integrated roadside vegetation management purposes.

b. The director may appoint any number of persons to the committee but, at a minimum, the committee shall consist of all of the following:

(1) One member representing the utility industry.

(2) One member from the Iowa academy of sciences.

(3) One member representing county government.

(4) One member representing city government.

(5) Two members representing the private sector including community interest groups.

(6) One member representing soil conservation interests.

(7) One member representing the department of natural resources.

(8) One member representing county conservation boards.

Members of the committee shall serve without compensation, but may be reimbursed for allowable expenses from the living roadway trust fund created under section 314.21. No more than a simple majority of the members of the committee shall be of the same gender as provided in section 69.16A. The director of the department shall appoint the chair of the committee and shall establish a minimum schedule of meetings for the committee.

4. *Integrated roadside vegetation management coordinator.* The integrated roadside vegetation management coordinator shall administer the department's integrated roadside vegetation management plan and program. The department may create the position of integrated roadside vegetation management coordinator within the department or may contract for the services of the coordinator. The duties of the coordinator include, but are not limited to, the

following:

a. Conducting education and awareness programs.

b. Providing technical advice to the department and the department of natural resources, counties, and cities.

c. Conducting demonstration projects.

d. Coordinating inventory and implementation activities.

e. Providing assistance to local community-based groups for undertaking community entryway projects.

f. Being a clearinghouse for information from Iowa projects as well as from other states.

g. Periodically distributing information related to integrated roadside vegetation management.

h. General coordination of research efforts.

i. Other duties assigned by the director of transportation.

5. *Education programs.* The department shall develop educational programs and provide educational materials for the general public, landowners, governmental employees, and board members as part of its program for integrated roadside vegetation management. The educational program shall provide all of the following:

a. The development of public service announcements and television programs about the importance of roadside vegetation in Iowa.

b. The expansion of existing training sessions and educational curriculum materials for county weed commissioners, government contract sprayers, maintenance staff, and others to include coverage of integrated roadside management topics such as basic plant species identification, vegetation preservation, vegetation inventory techniques, vegetation management and planning procedures, planting techniques, maintenance, communication, and public relations. County and municipal engineers, public works staffs, planning and zoning representatives, parks and habitat managers, and others should be encouraged to participate.

c. The conducting of statewide and regional conferences and seminars about integrated roadside vegetation management, community entryways, scenic values of land adjoining roadsides, and other topics relating to roadside vegetation.

d. The preparation, display, and distribution of a variety of public relations material, in order to better inform and educate the traveling public on roadside vegetation management activities. The public relations material shall inform motorists of a variety of roadside vegetation issues including all of the following:

(1) Benefits of various types of roadside vegetation.

(2) Long-term results expected from planting and maintenance practices.

(3) Purposes for short-term disturbances in the roadside landscapes.

(4) Interesting aspects of the Iowa landscape and individual landscape regions.

(5) Other aspects relating to wildlife and soil erosion.

e. Preparation and distribution of educational material designed to inform adjoining property owners, farm operators, and others of the importance of roadside vegetation and their responsibilities of proper stewardship of that

vegetation resource.

6. *Research and demonstration projects.* The department, as part of its plan to provide integrated roadside vegetation management, shall conduct research and feasibility studies including demonstration projects of different kinds at a variety of locations around the state. The research and feasibility studies may be conducted in, but are not limited to, any of the following areas:

a. Cost effectiveness or comparison of planting, establishing and maintaining alternative or warm-season, native grass and forb roadside vegetation and traditional cool-season nonnative vegetation.

b. Identification of the relationship that roadsides and roadside vegetation have to maintaining water quality, through drainage wells, sediment and pollutant collection and filtration, and other means.

c. Impacts of burning as an alternative vegetation management tool on all categories of roads.

d. Techniques for more quickly establishing erosion control and permanent vegetative cover on recently disturbed ground as well as interplanting native species in existing vegetative cover.

e. Effectiveness of techniques for reduced or selected use of herbicides to control weeds.

f. Identification of cross section and slope steepness design standards which provide for motorist safety as well as for improved establishment, maintenance, and replacement of different types of vegetation.

g. Identification of a uniform inventory and assessment technique which could be used by many counties in establishing integrated roadside management programs.

h. Equipment innovations for seeding and harvesting grasses in difficult terrain settings, roadway ditches, and fore-slopes and back-slopes.

i. Identification of the perceptions of motorists and landowners to various types of roadside vegetation and configuration of plantings.

j. Market or economic feasibility studies for native seed, forb, and woody plant production and propagation.

k. Impacts of vegetation modifications on increasing or decreasing wildlife populations in rural and urban areas.

l. Effects of vegetation on the number and location of wildlife road-kills in rural and urban areas.

m. Costs to the public for improper off-site resource management adjacent to roadsides.

n. Advantages, disadvantages, and techniques of establishing pedestrian access adjacent to highways and their impacts on vegetation management.

o. Identification of alternative techniques for snow catchment on farmland adjacent to roadsides.

7. *Gateways program.* The department shall develop a gateways program to provide meaningful visual impacts including major new plantings at the important highway entry points to the state and its communities. Substantial and distinctive plantings shall also be designed and installed at these points. Creative and artistic design solutions shall be sought for these improvements. Communications about these projects shall be provided to local groups in order to build community involvement, support, and understanding of their importance. Consideration shall be given to a requirement that gateways projects produce a local match or contribution toward the overall project cost.

8. *Vegetation inventories and strategies.*

a. The department shall coordinate and compile integrated roadside vegetation inventories, classification systems, plans, and implementation strategies for roadsides. Areas of increased program and project emphasis may include, but are not limited to, all of the following:

(1) Additional development and funding of state gateways projects.

(2) Accelerated replacement of dead and unhealthy plants with native and hardy trees and shrubs.

(3) Special interest plantings at selected highly visible locations along primary and interstate highways.

(4) Pilot and demonstration projects.

(5) Additional snow and erosion control plantings.

(6) Welcome center and rest area plantings with native and aesthetically interesting species to create mini-arboretums around the state.

b. The department shall coordinate and compile a reconnaissance of lands to develop an inventory of sites having the potential of being harvested for native grass, forb, and woody plant material seed and growing stock. Highway right-of-ways, parks and recreation areas, converted railroad right-of-ways, state board of regents' property, lands owned by counties, and other types of public property shall be surveyed and documented for seed source potential. Sites volunteered by private organizations may also be included in the inventory. Inventory information shall be made available to state agencies' staffs, county engineers, county conservation board directors, and others.

HISTORY: 89 Acts, ch 246, § 6; 95 Acts, ch 3, § 2

LexisNexis (R) Notes:

OPINIONS OF ATTORNEY GENERAL

1. LOBBYING; COUNTY ATTORNEYS: Registering and reporting as lobbyists. Iowa Code §§ 68B.2, 68B.36, 68B.37 (1997). County attorneys who seek to influence legislation on behalf of the Iowa State Association of Counties or the Iowa County Attorneys Association do not need to register and report as lobbyists if lobbying constitutes part of their official duties and responsibilities. The question whether lobbying for any particular piece of legislation falls within the "duties and responsibilities" of county attorneys raises factual questions that an opinion cannot resolve., 97-6-4(L), 1997 Iowa AG LEXIS 15.

LexisNexis (R) KANSAS ANNOTATED STATUTES

*** THIS DOCUMENT IS CURRENT THROUGH THE 2008 SUPPLEMENT ***
*** ANNOTATIONS CURRENT THROUGH APRIL 24, 2009 ***

CHAPTER 68. ROADS AND BRIDGES
PART I. ROADS
ARTICLE 10. NAMING AND MARKING OF HIGHWAYS AND BRIDGES

GO TO KANSAS STATUTES ARCHIVE DIRECTORY

K.S.A. § 68-1026 (2008)

68-1026. Designation and marking of K-32 as Kaw Valley scenic highway.

Highway K-32, the entire distance of which runs through the Kaw Valley within the boundaries of Douglas, Leavenworth and Wyandotte counties, is hereby designated as the Kaw Valley scenic highway, and the secretary of transportation is hereby directed to erect suitable signs and markers along said highway showing such designation.

HISTORY: L. 1971, ch. 222, § 1; L. 1975, ch. 427, § 140; Aug. 15.

LexisNexis 50 State Surveys, Legislation & Regulations

Highways

LexisNexis (R) KANSAS ANNOTATED STATUTES

*** THIS DOCUMENT IS CURRENT THROUGH THE 2008 SUPPLEMENT ***
*** ANNOTATIONS CURRENT THROUGH APRIL 24, 2009 ***

CHAPTER 68. ROADS AND BRIDGES
PART I. ROADS
ARTICLE 10. NAMING AND MARKING OF HIGHWAYS AND BRIDGES

GO TO KANSAS STATUTES ARCHIVE DIRECTORY

K.S.A. § 68-1038 (2008)

68-1038. Designation and marking of the Frontier Military scenic byway.

From the junction of highway K-5 with United States highway 73 and highway K-7, south on highway K-5 to the junction with Interstate highway 435, south on Interstate highway 435 to the junction with United States highway 69, south on United States highway 69 to the junction with United States highway 69 alternate, then south on United States highway 69 alternate to the Kansas-Oklahoma line, such route is hereby designated as the Frontier Military scenic byway. The secretary of transportation shall place markers along the highway right-of-way at proper intervals to indicate that the highway is the Frontier Military scenic byway. The secretary of transportation may accept and administer gifts and donations to aid in obtaining and installing suitable highway signs.

HISTORY: L. 1990, ch. 249, § 1; July 1.

LexisNexis 50 State Surveys, Legislation & Regulations

Highways

LexisNexis

LexisNexis (R) KANSAS ANNOTATED STATUTES

*** THIS DOCUMENT IS CURRENT THROUGH THE 2008 SUPPLEMENT ***
*** ANNOTATIONS CURRENT THROUGH APRIL 24, 2009 ***

CHAPTER 68. ROADS AND BRIDGES
PART III. MISCELLANEOUS
ARTICLE 22. HIGHWAY BEAUTIFICATION
HIGHWAY ADVERTISING CONTROL ACT OF 1972

GO TO KANSAS STATUTES ARCHIVE DIRECTORY

K.S.A. § 68-2232 (2008)

68-2232. Definitions.

As used in this act the following words and phrases shall have the meanings respectively ascribed to them herein: (a) "Adjacent area" "controlled area" means an area which is adjacent to the right-of-way on any interstate or primary highway and is visible from the main traveled way.

(b) "Business area" means any part of an adjacent area, except areas adjacent to scenic byways, designated by the secretary of transportation, which is:

(1) Zoned for industrial or commercial activities under the authority of any law or by a local zoning authority; or

(2) an unzoned commercial or industrial area as herein defined.

(c) "Center line of the highway" means a line equidistant from the edges of the median separating the main traveled ways on a divided highway, or the center line of the main traveled way on a nondivided highway.

(d) "Commercial or industrial activities" means, for the purpose of establishing unzoned commercial or industrial areas, those activities generally recognized as commercial or industrial by local zoning authorities in this state, but excludes the following activities:

(1) Outdoor advertising structures;

(2) agricultural, forestry, ranching, grazing, farming and related activities, including, but not limited to, wayside fresh produce stands;

(3) transient or temporary activities;

(4) activities not visible from the traffic lanes of the main traveled way;

(5) activities more than 660 feet from the nearest edge of a highway right-of-way;

(6) activities conducted in a building principally used as a residence;

(7) railroad tracks and minor sidings;

(8) on-premise or on-property signs as provided for in subsection (c) of K.S.A. 68-2233, and amendments thereto, if the on-premise or on-property sign is the only part of the commercial or industrial activity that is visible from the main traveled way;

(9) any outdoor advertising activity or any other business or commercial activity carried on in connection with an outdoor advertising activity; and

(10) illegal junkyards as provided for in K.S.A. 68-2201 through 68-2215, and amendments thereto, and junkyards lawfully in existence pursuant to K.S.A. 68-2207, and amendments thereto.

(e) "Comprehensive zoning" means zoning by local zoning authorities of each parcel of land under the jurisdiction of the local zoning authority placed in a zoning classification pursuant to a comprehensive plan or reserved for future classification.

(f) "Department" means the Kansas department of transportation.

(g) "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw or in any other way bring into being or establish, but it shall not include any of the foregoing activities when performed as an incident to the change of advertising message or customary maintenance or repair of a sign structure.

(h) "Freeway" means any primary highway which is a divided arterial highway with four or more lanes available for through traffic with full control of access and grade separation at intersections.

(i) "Highway" means a highway as defined by K.S.A. 8-1424, and amendments thereto. For the purpose of this act, a highway shall be considered a highway when the project for improvement and final alignment has been approved by the appropriate authorities.

(j) "Interstate highway" means any highway at any time officially designated as a part of the national system of interstate and defense highways by the secretary of transportation and approved by the appropriate authority of the federal government.

(k) "Local zoning authority" means an incorporated city or a county which is authorized by law to zone areas within its jurisdiction and which has an active zoning authority.

(l) "Main traveled way" means the traveled way of a highway on which through traffic is carried. On a divided highway, the traveled way of each of the separate roadways for traffic in opposite directions is a main traveled way, but such term does not include such facilities as frontage roads, turning roadways or parking areas.

(m) "Maintain" means to keep in a state of continuing existence. A sign must remain substantially the same as it was when permitted on the effective date of compliance with state law. Customary maintenance of a sign includes only change of message, replacing electrical wiring and bulbs, painting of the face and structure, clearing of vegetation on the parcel the sign is located, reinforcing the structure and repairing the apron or catwalks or any addition or enhancements to safety equipment on structures including safety cables, railings and other modifications necessary to meet current safety standards. An increase in dimension, a change in dimension, any change in location, increase in height or the addition of lighting does not constitute customary maintenance. Additional maintenance activities, other than customary maintenance, require a new sign permit.

(n) "Primary highway" means any highway, other than an interstate highway, that was part of 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.

(o) "Safety rest area" means an area or site established and maintained within or adjacent to the highway right-of-way, which area is under public supervision or control and for the convenience of the traveling public.

(p) "Sign" or "outdoor advertising device" means any outdoor sign structure, display, light, device, notice, bulletin, figure, painting, drawing, message, placard, poster, billboard, vehicle or other thing which is designed, intended or used to advertise or inform, any part of the advertising or informative contents which is visible from any place on the main traveled way or any portion of an interstate or primary highway.

(q) "Sign facing" means and includes a sign display or displays at the same location and facing the same direction.

(r) "Sign display" means a single panel or part of the sign, including trim and background, which contains a message or messages.

(s) "Sign structure" means and includes all components of the sign, which may include poles, bracings, lateral supports, vehicles, displays and other materials of every kind and nature used to support a facing or facings on which advertising is placed.

(t) "Traveled way" means the portion of a roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

(u) "Unzoned commercial or industrial area" means an area which is not zoned by state or local law, regulation or ordinance, which is within 660 feet of the nearest edge of the right-of-way of the controlled area, and on which there is located one or more permanent structures devoted to a commercial or industrial activity or on which a commercial or industrial activity is actually conducted, whether or not a permanent structure is located thereon, which meets all the requirements specified in subsection (h) of K.S.A. 68-2234, and amendments thereto.

(v) "Visible" means capable of being seen without visual aid by a person of normal visual acuity.

(w) "Zoned commercial or industrial areas" means those areas which are comprehensively zoned for business, industry, commerce or trade pursuant to a state or local zoning ordinance or resolution or an area which is zoned for business, industry, commerce or trade pursuant to a state or local zoning ordinance or regulation. Local zoning action must be taken pursuant to the state's zoning enabling statute or constitutional authority in accordance therewith. Zoning which is not part of comprehensive zoning or which is created primarily to permit advertising devices or structures shall not be recognized as valid zoning for purposes of the Kansas highway advertising control act and the rules and regulations promulgated thereunder, unless there actually exists a commercial or industrial activity as defined under subsection (d) of K.S.A. 68-2232, and amendments thereto.

(x) "Secretary" means the secretary of transportation.

(y) "Vegetation control" means a program authorized hereunder, providing for the control of vegetation on state rights-of-way which shall be of benefit to the state as well as providing assistance to sign owners. Vegetation control is recognized as part of the maintenance of the state's highway right-of-way as it relates to safety and other highway operations. The secretary shall adopt policies and procedures for the creation of a vegetation control program within 12 months of the effective date of this act.

HISTORY: L. 1972, ch. 251, § 2; L. 1975, ch. 33, § 10; L. 1975, ch. 427, § 219; L. 2000, ch. 44, § 1; L. 2006, ch. 141, § 1; July 1.

NOTES: SOURCE OR PRIOR LAW:

68-2217.

CASE ANNOTATIONS

1. Act does not attempt to regulate noncommercial speech and noncommercial signs and is constitutionally valid. Roberts Enterprises, Inc. v. Secretary of Transportation, 237 K. 276, 281, 282, 699 P.2d 479 (1985).

LexisNexis (R) Notes:

CASE NOTES

1. Given the provisions of Kan. Stat. Ann. § 68-2231, Kan. Stat. Ann. § 68-2234, Kan. Stat. Ann. § 68-2232(p), Kan. Stat. Ann. § 68-2233, the Kansas Highway Advertising Control Act of 1972 was not unconstitutionally overbroad and facially invalid because it did not regulate noncommercial speech and noncommercial signs in violation of U.S. Const. amend. I. Roberts Enterprises, Inc. v. Secretary of Transp., 237 Kan. 276, 699 P.2d 479, 1985 Kan. LEXIS 371 (1985), appeal dismissed by 474 U.S. 915, 88 L. Ed. 2d 250, 106 S. Ct. 240, 1985 U.S. LEXIS 4062, 54 U.S.L.W. 3270 (1985).

2. Given the provisions of Kan. Stat. Ann. § 68-2231, Kan. Stat. Ann. § 68-2234, Kan. Stat. Ann. § 68-2232(p), Kan. Stat. Ann. § 68-2233, the Kansas Highway Advertising Control Act of 1972 was not unconstitutionally overbroad and facially invalid because it did not regulate noncommercial speech and noncommercial signs in violation of U.S. Const. amend. I. Roberts Enterprises, Inc. v. Secretary of Transp., 237 Kan. 276, 699 P.2d 479, 1985 Kan. LEXIS 371 (1985), appeal dismissed by 474 U.S. 915, 88 L. Ed. 2d 250, 106 S. Ct. 240, 1985 U.S. LEXIS 4062, 54 U.S.L.W. 3270 (1985).

3. Given the provisions of Kan. Stat. Ann. § 68-2231, Kan. Stat. Ann. § 68-2234, Kan. Stat. Ann. § 68-2232(p), Kan. Stat. Ann. § 68-2233, the Kansas Highway Advertising Control Act of 1972 was not unconstitutionally overbroad and facially invalid because it did not regulate noncommercial speech and noncommercial signs in violation of U.S. Const. amend. I. Roberts Enterprises, Inc. v. Secretary of Transp., 237 Kan. 276, 699 P.2d 479, 1985 Kan. LEXIS 371 (1985), appeal dismissed by 474 U.S. 915, 88 L. Ed. 2d 250, 106 S. Ct. 240, 1985 U.S. LEXIS 4062, 54 U.S.L.W. 3270 (1985).

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LexisNexis (R) KANSAS ANNOTATED STATUTES

*** THIS DOCUMENT IS CURRENT THROUGH THE 2008 SUPPLEMENT ***
*** ANNOTATIONS CURRENT THROUGH APRIL 24, 2009 ***

CHAPTER 68. ROADS AND BRIDGES
PART III. MISCELLANEOUS
ARTICLE 22. HIGHWAY BEAUTIFICATION
HIGHWAY ADVERTISING CONTROL ACT OF 1972

GO TO KANSAS STATUTES ARCHIVE DIRECTORY

K.S.A. § 68-2233 (2008)

68-2233. Erection or maintenance of signs in adjacent area prohibited, exceptions.

After March 31, 1972, and subject to the provisions of K.S.A. 68-2237, and amendments thereto, no sign shall be erected or maintained in an adjacent area, except the following: (a) Directional and official signs, including, but not limited to, signs pertaining to natural wonders, scenic or historical attractions, churches or rural businesses, which are required or authorized by law and which shall conform to rules and regulations promulgated by the secretary consistent with national policy, except that no such sign or notice shall be erected until an approved sign application and permit is obtained as provided for in K.S.A. 68-2236, and amendments thereto. Directional and official signs shall be required to obtain a license but such signs are exempt from payment of the fees required under subsection (c) of K.S.A. 68-2236, and amendments thereto;

(b) signs advertising the sale or lease of property upon which they are located;

(c) on-premise signs advertising activities conducted on the property on which they are located, including, without limiting the generality of the foregoing, goods grown, produced, sold, stored, manufactured, processed or mined thereon; services rendered thereon; and entertainment provided thereon;

(d) nonconforming signs or advertising devices lawfully in existence on March 31, 1972, or deemed to be nonconforming, provided that no such sign shall be maintained without a license as provided for in K.S.A. 68-2236, and amendments thereto;

(e) conforming signs or advertising devices erected in business areas and which comply with the provisions of K.S.A. 68-2234, and amendments thereto. No such sign or advertising device shall be erected until a permit is obtained as provided in K.S.A. 68-2236, and amendments thereto;

(f) conforming signs or advertising devices legally erected after March 31, 1972, which no longer comply with spacing, size or zoning requirements of K.S.A. 68-2234, and amendments thereto, because of a change in the law, provided that no such sign shall be maintained without a license as required by K.S.A. 68-2236, and amendments thereto. Such signs shall be considered legal conforming signs with grandfather status;

(g) in addition to the limitations contained in this section, in order to further the purposes to promote the

reasonable, orderly and effective display of outdoor advertising devices along highways adjacent to scenic and historical areas, while protecting the public investment in these highways and promoting safety and recreational value of public travel and to preserve natural beauty, no advertising sign, except as permitted under subsections (a), (b) or (c) shall be erected adjacent to any highway which is either:

(1) A scenic highway or scenic byway designated by the secretary;

(2) within 1,000 feet of the boundary line of a Kansas state park, a national park, a state or national wildlife refuge;

(3) within 500 feet of any of the following: Public park, garden, recreation area, forest preserve, church, school, any public museum or historical monument, any safety rest or recreation area which is publicly owned, controlled and maintained pursuant to 23 U.S.C. 319 or any sanitary or other facility for the accommodation of the motorist which is publicly owned, controlled and maintained pursuant to 23 U.S.C. 319; or

(4) within 500 feet of any strip of land, an interest in which has been acquired by the state of Kansas for the restoration, preservation or enhancement of scenic beauty and which is publicly controlled and maintained pursuant to 23 U.S.C. 319.

HISTORY: L. 1972, ch. 251, § 3; L. 1975, ch. 427, § 220; L. 2006, ch. 141, § 2; July 1.

NOTES: SOURCE OR PRIOR LAW:

68-2218.

ATTORNEY GENERAL'S OPINIONS:

Authority of city to regulate signs and billboards on private property; conflict with state and federal laws. 96-22.

CASE ANNOTATIONS

1. Act does not attempt to regulate noncommercial speech and noncommercial signs and is constitutionally valid. Roberts Enterprises, Inc. v. Secretary of Transportation, 237 K. 276, 281, 284, 699 P.2d 479 (1985).

LexisNexis (R) Notes:

CASE NOTES

1. Given the provisions of Kan. Stat. Ann. § 68-2231, Kan. Stat. Ann. § 68-2234, Kan. Stat. Ann. § 68-2232(p), Kan. Stat. Ann. § 68-2233, the Kansas Highway Advertising Control Act of 1972 was not unconstitutionally overbroad and facially invalid because it did not regulate noncommercial speech and noncommercial signs in violation of U.S. Const. amend. I. Roberts Enterprises, Inc. v. Secretary of Transp., 237 Kan. 276, 699 P.2d 479, 1985 Kan. LEXIS 371 (1985), appeal dismissed by 474 U.S. 915, 88 L. Ed. 2d 250, 106 S. Ct. 240, 1985 U.S. LEXIS 4062, 54 U.S.L.W. 3270 (1985).

2. Given the provisions of Kan. Stat. Ann. § 68-2231, Kan. Stat. Ann. § 68-2234, Kan. Stat. Ann. § 68-2232(p), Kan. Stat. Ann. § 68-2233, the Kansas Highway Advertising Control Act of 1972 was not unconstitutionally overbroad and facially invalid because it did not regulate noncommercial speech and noncommercial signs in violation of U.S. Const. amend. I. Roberts Enterprises, Inc. v. Secretary of Transp., 237 Kan. 276, 699 P.2d 479, 1985 Kan. LEXIS 371 (1985), appeal dismissed by 474 U.S. 915, 88 L. Ed. 2d 250, 106 S. Ct. 240, 1985 U.S. LEXIS 4062, 54 U.S.L.W. 3270 (1985).

3. Given the provisions of Kan. Stat. Ann. § 68-2231, Kan. Stat. Ann. § 68-2234, Kan. Stat. Ann. § 68-2232(p), Kan. Stat. Ann. § 68-2233, the Kansas Highway Advertising Control Act of 1972 was not unconstitutionally overbroad and facially invalid because it did not regulate noncommercial speech and noncommercial signs in violation of U.S. Const. amend. I. Roberts Enterprises, Inc. v. Secretary of Transp., 237 Kan. 276, 699 P.2d 479, 1985 Kan. LEXIS 371 (1985), appeal dismissed by 474 U.S. 915, 88 L. Ed. 2d 250, 106 S. Ct. 240, 1985 U.S. LEXIS 4062, 54 U.S.L.W. 3270 (1985).

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*** CURRENT THROUGH THE 2008 FIRST EXTRAORDINARY SESSION ***
*** ANNOTATIONS CURRENT THROUGH FEBRUARY 5, 2009 ***

TITLE IX Counties, Cities, and Other Local Units
CHAPTER 65 General Provisions Applicable to Counties, Cities, and Other Local Units
Local Scenic Easement Law

Go to the Kentucky Code Archive Directory

KRS § 65.466 (2009)

65.466. Requirements for acceptance.

A scenic easement shall not be accepted by a city, county, urban-county, or consolidated local government, unless the governing body, by resolution finds:

(1) That the preservation of the character of the land is consistent with the plan of the city, county, consolidated local government, or urban-county, where such plan exists; and

(2) That the preservation of the character of the land is in the best interest of the state, county, city, consolidated local government, or urban-county, is important to the public for the enjoyment of scenic beauty, and will serve the public interest in a manner recited in the resolution and consistent with the purposes of KRS 65.462 to 65.480.

(3) The local legislative body may consider these factors:

(a) It is likely that at some time the public may acquire the land for a park or other public use;

(b) The land is unimproved and has scenic value to the public as viewed from a public highway or from public or private buildings;

(c) The retention of the land as open space will add to the amenities of living in adjoining or neighboring urbanized areas;

(d) The land lies in an area which in the public interest should remain rural in character and the retention of the land as open space will help preserve the rural character of the area;

(e) It is in the public interest that the land remain in its natural state, including the trees and other natural growth, as a means of preventing floods or soil erosion or because of its value as watershed;

(f) The land lies within an established scenic highway corridor;

(g) The land is valuable to the public as a wildlife preserve or sanctuary and the instrument contains appropriate covenants to that end; or

(h) The land has historic significance or contains a building of either historic or architectural importance.

HISTORY: (Enact. Acts 1976, ch. 123, § 4; 2002, ch. 346, § 29, effective July 15, 2002.)

NOTES: Kentucky Law Journal.

Comment, Conservation Easements: The Greening of America, 73 Ky. L.J. 255 (1984-85).

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*** CURRENT THROUGH THE 2008 FIRST EXTRAORDINARY SESSION ***
*** ANNOTATIONS CURRENT THROUGH FEBRUARY 5, 2009 ***

TITLE XV Roads, Waterways, And Aviation
CHAPTER 177 State and Federal Highways -- Limited Access Facilities -- Turnpikes -- Road Bonds -- Billboards -- Recyclers
Transportation and Tourism Interagency Committee

Go to the Kentucky Code Archive Directory

KRS § 177.107 (2009)

Legislative Alert: LEXSEE 2009 Ky. Acts 16 -- See section 54.

177.107. Transportation and Tourism Interagency Committee -- Purpose.

The Transportation and Tourism Interagency Committee is established to foster close collaboration between the Commerce Cabinet and the Transportation Cabinet on policies that affect the tourism industry and to place strong emphasis on the coordination of mutual interests such as highway signage, scenic byways, highway safety, and concern for the Commonwealth's beauty and heritage.

HISTORY: (Enact. Acts 1998, ch. 334, § 1, effective July 15, 1998; 2005, ch. 95, § 40, effective June 20, 2005.)

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*** ANNOTATIONS CURRENT THROUGH FEBRUARY 5, 2009 ***

TITLE XV Roads, Waterways, And Aviation
CHAPTER 177 State and Federal Highways -- Limited Access Facilities -- Turnpikes -- Road Bonds -- Billboards -- Recyclers
Transportation and Tourism Interagency Committee

Go to the Kentucky Code Archive Directory

KRS § 177.109 (2009)

Legislative Alert: LEXSEE 2009 Ky. Acts 16 -- See section 56.
LEXSEE 2009 Ky. Acts 11 -- See section 59.

177.109. Duties and responsibilities.

The Transportation and Tourism Interagency Committee shall have but not be limited to the following duties and responsibilities:

(1) Review Kentucky's signage laws, administrative regulations, and policies implementing the federal "Manual on Uniform Traffic Control Devices" and submit any proposed revisions to the secretary of the Transportation Cabinet;

(2) Seek public comment on Kentucky's signage laws, administrative regulations, and policies;

(3) Advise the Transportation Cabinet on the scenic byways and highways program;

(4) Review and make recommendations on requests for highway signage from tourism-related entities;

(5) Coordinate development of the tourism information potential of welcome centers and rest areas through such means as interactive videos, information kiosks, and highway advisory radio transmitters, as well as other innovative methods which may be identified by the committee;

(6) Monitor developments across the United States relating to billboards and official signs;

(7) Report to the secretary of the Transportation Cabinet and to the secretary of the Commerce Cabinet on issues of mutual interest to the cabinets;

(8) Serve as an advisory committee on issues identified by the secretary of the Transportation Cabinet and secretary of the Commerce Cabinet; and

(9) Report committee recommendations to the secretary of the Transportation Cabinet, the secretary of the Commerce Cabinet, the secretary of the Education Cabinet, and the secretary of the Executive Cabinet.

HISTORY: (Enact. Acts 1998, ch. 334, § 3, effective July 15, 1998; 2005, ch. 95, § 42, effective June 20, 2005; 2006, ch. 211, § 115, effective July 12, 2006.)

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*** ANNOTATIONS CURRENT THROUGH FEBRUARY 5, 2009 ***

TITLE XV Roads, Waterways, And Aviation
CHAPTER 177 State and Federal Highways -- Limited Access Facilities -- Turnpikes -- Road Bonds -- Billboards -- Recyclers
Scenic Byways and Highways

Go to the Kentucky Code Archive Directory

KRS § 177.571 (2009)

177.571. Purpose of KRS 177.571 to 177.576.

The General Assembly hereby finds and declares the purpose of KRS 177.571 to 177.576 to be the appropriate recognition and preservation of the scenic qualities of many of Kentucky's roadways. Therefore, the General Assembly is creating a state system of scenic byways and scenic highways to preserve and present scenic byways and scenic highways for vehicular, bicycle, and pedestrian travel in an unhurried and leisurely environment.

HISTORY: (Enact. Acts 1998, ch. 566, § 1, effective July 15, 1998.)

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*** ANNOTATIONS CURRENT THROUGH FEBRUARY 5, 2009 ***

TITLE XV Roads, Waterways, And Aviation
CHAPTER 177 State and Federal Highways -- Limited Access Facilities -- Turnpikes -- Road Bonds -- Billboards -- Recyclers
Scenic Byways and Highways

Go to the Kentucky Code Archive Directory

KRS § 177.572 (2009)

177.572. Definitions for KRS 177.571 to 177.576.

As used in KRS 177.571 to 177.576, unless the context requires otherwise:

(1) "Advertising device" means as defined in KRS 177.830;

(2) "Archaeological quality" means those characteristics of the area surrounding a scenic byway or a scenic highway that are physical evidence of historic or prehistoric human life or activity and that are visible and capable of being inventoried and interpreted. The archaeological interest, as identified through ruins, artifacts, structural remains, or other physical evidence shall have scientific significance that educates the viewer and causes the viewer to appreciate the past;

(3) "Cultural quality" means evidence or expressions of the customs or traditions of a distinct group of people. Cultural features shall include, but not be limited to, crafts, music, dance, rituals, festivals, speech, food, special events, and vernacular architecture, as currently practiced. The cultural qualities of the area surrounding a scenic byway or scenic highway may highlight one (1) or more significant communities or ethnic traditions;

(4) "Historic quality" means legacies of the past that are distinctly associated with the physical elements of the landscape, whether natural or manmade, and that are of historic significance, educate the viewer, and cause the viewer to appreciate the past. The historic qualities reflect the actions of people and may include buildings, settlement patterns, or other examples of human activity. Historic qualities may be inventoried, mapped, and interpreted, and they possess integrity of location, design, setting, material, workmanship, feeling, and association;

(5) "Intrinsic quality" means one (1) or more of the following:

(a) Archaeological quality;

(b) Cultural quality;

(c) Historic quality;

(d) Natural quality;

(e) Recreational quality; or

(f) Scenic quality;

(6) "Natural quality" means those features in the visual environment that are in a relatively undisturbed state. These features shall predate the arrival of human populations and may include geological formations, fossils, landforms, water bodies, vegetation, and wildlife. If there is evidence of human activity, the natural features must reveal minimal disturbances;

(7) "Outdoor advertising device" means an advertising device that is not located on the premises of the entity being advertised;

(8) "Recreational quality" means outdoor recreational activities directly associated with and dependent upon the natural and cultural elements of the scenic byway or scenic highway's landscape. The recreational activities shall provide opportunities for active and passive recreational experiences including, but not limited to, downhill skiing, rafting, boating, fishing, hiking, and simple roadway driving. The recreational activities may be seasonal, but the quality and importance of the activities as seasonal operations shall be well recognized;

(9) "Scenic byway" means a highway maintained by a local government that has roadsides or view sheds of aesthetic, cultural, historical, or archaeological value worthy of preservation, restoration, protection, or enhancement;

(10) "Scenic highway" means a state-maintained highway that has roadsides or view sheds of aesthetic, cultural, historical, or archaeological value worthy of preservation, restoration, protection, or enhancement; and

(11) "Scenic quality" means the heightened visual experience derived from the view of the natural and manmade elements of the scenic byway or scenic highway. The characteristics of the landscape are strikingly distinct and offer a pleasing and memorable visual experience. All elements of the landscape, including landform, water, vegetation, and manmade development, must contribute in harmony to the quality of the scenic byway's or scenic highway's visual environment and share in its intrinsic qualities.

HISTORY: (Enact. Acts 1998, ch. 566, § 2, effective July 15, 1998.)

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TITLE XV Roads, Waterways, And Aviation
CHAPTER 177 State and Federal Highways -- Limited Access Facilities -- Turnpikes -- Road Bonds -- Billboards -- Recyclers
Scenic Byways and Highways

Go to the Kentucky Code Archive Directory

KRS § 177.573 (2009)

Legislative Alert: LEXSEE 2009 Ky. Acts 16 -- See section 57.

177.573. Administrative regulations for designation, nomination, review and removal of scenic designation of byway or highway.

The Transportation Cabinet, in coordination with the Commerce Cabinet and the Kentucky Heritage Council, shall promulgate administrative regulations under KRS Chapter 13A to establish:

(1) Specific criteria for a road to be designated a scenic byway or a scenic highway;

(2) A process for nominating and review of a road as a scenic byway or scenic highway;

(3) A process for designating a road as a scenic byway or scenic highway; and

(4) A process to remove the scenic designation from a byway or highway if the intrinsic qualities of the road change or if the community affected by the road requests the scenic designation to be removed.

HISTORY: (Enact. Acts 1998, ch. 566, § 3, effective July 15, 1998; 2005, ch. 95, § 43, effective June 20, 2005.)

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TITLE XV Roads, Waterways, And Aviation
CHAPTER 177 State and Federal Highways -- Limited Access Facilities -- Turnpikes -- Road Bonds -- Billboards -- Recyclers
Scenic Byways and Highways

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KRS § 177.574 (2009)

177.574. Criteria for designation.

A road may be designated a scenic byway or scenic highway if it has a minimum of one (1) intrinsic quality as defined in KRS 177.571; a limit on existing visual intrusions that significantly impact the road; and a local support group that has requested scenic designation for the road and that is committed to maintaining the intrinsic qualities of the area surrounding the road.

HISTORY: (Enact. Acts 1998, ch. 566, § 4, effective July 15, 1998.)

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*** ANNOTATIONS CURRENT THROUGH FEBRUARY 5, 2009 ***

TITLE XV Roads, Waterways, And Aviation
CHAPTER 177 State and Federal Highways -- Limited Access Facilities -- Turnpikes -- Road Bonds -- Billboards -- Recyclers
Scenic Byways and Highways

Go to the Kentucky Code Archive Directory

KRS § 177.575 (2009)

177.575. Maintenance by cabinet -- Identification signs.

(1) The Transportation Cabinet shall attempt to maintain the character of a state-maintained road that has been designated a scenic highway.

(2) The Transportation Cabinet shall erect and maintain appropriate scenic highway identification signs on each road designated a scenic byway or scenic highway.

(3) The Transportation Cabinet shall conduct necessary routine maintenance and care of a state-maintained road designated as a scenic highway.

HISTORY: (Enact. Acts 1998, ch. 566, § 5, effective July 15, 1998.)

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*** ANNOTATIONS CURRENT THROUGH FEBRUARY 5, 2009 ***

TITLE XV Roads, Waterways, And Aviation
CHAPTER 177 State and Federal Highways -- Limited Access Facilities -- Turnpikes -- Road Bonds -- Billboards -- Recyclers
Scenic Byways and Highways

Go to the Kentucky Code Archive Directory

KRS § 177.576 (2009)

177.576. Adjacent outdoor advertising devices -- Existing devices exempted.

(1) The cabinet shall prohibit the erection of an outdoor advertising device adjacent to or visible from a scenic highway on which outdoor advertising devices as defined in KRS 177.572 are regulated under KRS 177.830 to 177.890.

(2) The status of an outdoor advertising device shall not be changed by a highway being designated as scenic if the outdoor advertising device was legal or designated as nonconforming on the date the highway was designated as scenic.

HISTORY: (Enact. Acts 1998, ch. 566, § 6, effective July 15, 1998.)

NOTES:

LexisNexis 50 State Surveys, Legislation & Regulations

Billboards and Outdoor Advertising

LexisNexis Louisiana Annotated Statutes
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LOUISIANA REVISED STATUTES
TITLE 17. EDUCATION
CHAPTER 1. GENERAL SCHOOL LAW
PART 2. PARISH SCHOOL BOARDS
SUBPART A. ESTABLISHMENT AND ORGANIZATION

GO TO LOUISIANA STATUTES ARCHIVE DIRECTORY

La. R.S. 17:64 (2009)

§ 17:64. Zachary Community School Board and school system; creation; membership; qualifications; apportionment; election; powers, duties, and functions; system operation

A. (1) Notwithstanding any provision of law to the contrary, upon the appointment of members of the interim school board as provided in R.S. 17:64.1(C), there shall be established a separate school system and school board for the Zachary community in East Baton Rouge Parish, which shall be designated the Zachary Community School Board. The board shall be composed of nine members, one from each of the single-member districts provided for in Subsection B of this Section who shall meet the qualifications for office provided for in R.S. 17:52(E). Additionally, each member of the board shall meet the requirements of R.S. 17:52(D) specifying that school board members be able to read and write.

(2) The geographic boundaries of the school system shall be as follows: Commence at a point at the bank of the Mississippi River at its nearest point to the boundary of East Baton Rouge Parish and East Feliciana Parish, south of Port Hudson National Cemetery, and proceed in a northerly direction along a line forming the boundary between East Baton Rouge Parish and East Feliciana Parish to a point north of U.S. Highway 61 and corner; thence continue in a northeasterly direction and then an easterly direction along the East Baton Rouge and East Feliciana Parish boundary line to the westerly bank of the waterbody known as Redwood Creek; thence proceed in a southerly direction following the meanderings of said creek, along its western bank to where it empties into the Comite River; thence proceed in a southerly direction along the western bank of the Comite River to a point just north of Charlton Road; thence proceed in a westerly direction on a line parallel to the northern boundary of Charlton Road to the eastern boundary of White's Bayou where it intersects at the northern point with Baker Canal; thence proceed in a southerly direction to the southernmost intersection of White's Bayou and Baker Canal; thence proceed in a westerly direction following the meanderings of the northern bank of the Baker Canal to La. Highway 19; continue in the same line across La. Highway 19, thence proceed in a southerly direction along the western boundary of Highway 19 to a point being the boundary line of the Baker City limits and the Baker School District, as set forth in the 1997 Baker School District proposal; thence continue to proceed in a westerly direction then northerly and then in a westerly direction along a line being a portion of the northern boundary of said Baker City limit/School District proposal line; thence proceed south along said

line to the northern boundary of Groom Road; thence proceed along the northern boundary of said Groom Road to its intersection with La. Highway 964 (Old Scenic Highway) and continue in a westerly direction to the western boundary of La. Highway 964; thence proceed in a southerly direction along the western boundary of Highway 964 to its intersection with Springfield Road; thence proceed due west to the eastern bank of the Mississippi River; thence proceed in a northerly direction along the eastern bank of the Mississippi River to the point of beginning less and except any portion of said area located within the jurisdiction of the city of Baker School Board.

(3) No appropriation of state funds shall be provided to provide assistance or support with the initial establishment of the Zachary community school system. Nothing in this Paragraph shall limit the participation of the Zachary community school system in the Minimum Foundation Program or any other appropriation applicable to other public school systems in the state.

B. (1) By not later than January 15, 2000, the governing authority of the city of Zachary shall develop and adopt a plan to divide the Zachary community school system into nine single-member districts from each of which one member of the Zachary Community School Board shall be elected. The districts shall be drawn in a manner such that each member of the Zachary Community School Board represents as nearly as possible the same number of persons, using population figures from the latest federal decennial census, and shall be effective in time for qualifying for office for a special election for school board members to be held at the time and place of voting for members of congress in 2000. School board members elected at this time shall take office at noon on the second Monday in January next following the election and serve until the taking of office of the school board members elected as provided in Subsection C of this Section.

(2) Prior to the final adoption of the apportionment plan required by this Subsection, the governing authority of the city of Zachary shall order a public hearing on the proposed plan and shall cause to be published in its official journal at least twenty days prior to the date of such hearing, the time and place thereof, a general summary and map of the proposed plan, and the times and places where copies of the proposed plan are available for public inspection.

C. Except as otherwise provided in Paragraph B(1) of this Section for the initial elected members of the board, each member of the Zachary Community School Board shall be elected at the time and place provided by law generally for parish school board members. The members of the Zachary Community School Board elected in 2002 shall assume office as otherwise provided by law generally for parish school board members and such members and their successors in office shall serve for four-year concurrent terms.

D. Vacancies on the board shall be filled as provided by law generally for parish school boards.

E. (1) (a) The organization of the Zachary Community School Board as well as the board's powers, duties, functions, and responsibilities shall be as provided by law generally for parish school boards.

(b) Notwithstanding any provision of law to the contrary, the board may borrow money in sums necessary to fund its budgeted expenditures for Fiscal Year 2002-2003. As evidence of these loans, the board may execute or cause to be executed notes or other evidences of indebtedness payable before the close of Fiscal Year 2003-2004 and pledge, as security therefor, their revenues for Fiscal Year 2002-2003, plus their revenues for Fiscal Year 2003-2004.

(2) Compensation for board members and reimbursement for expenses shall be as provided by law generally for parish school board members.

(3) The Zachary Community School Board shall adopt rules, regulations, and procedures consistent with law to effectuate this Section and to administer the duties, functions, and responsibilities of the board.

F. (1) The Zachary Community School Board shall begin its initial year of actual operation providing for the education of students within its jurisdiction at the beginning of the 2001-2002 school year or any subsequent school year after the Zachary Community School Board complies with state and federal requirements for actual operation of a

separate school system. Beginning at this time and thereafter, notwithstanding any provisions of law or rule or regulation to the contrary and pursuant to the duty and responsibility placed with the legislature by Article VIII, Section 1 of the Constitution of Louisiana to establish and maintain a public educational system and the authority granted the legislature by Article VIII, Section 10(A) of the Constitution of Louisiana to enact laws affecting parish school board systems in existence on the effective date of the constitution, all lands, buildings and improvements, facilities, and other property having title vested in the public and subject to management, administration, and control by the East Baton Rouge Parish School Board for public education purposes but located within the geographic boundaries of the Zachary community school system or used to provide student transportation services to such facilities, or both, shall be managed, administered, and controlled by the Zachary Community School Board.

(2) In the absence of a mutual agreement between the East Baton Rouge Parish School Board and the Zachary Community School Board on questions of ownership of the lands, buildings and improvements, facilities, and other property having title vested in the public and subject to management, administration, and control by the East Baton Rouge Parish School Board for public education purposes but located within the geographic boundaries of the Zachary community school system or used to provide student transportation services to such facilities, or both, the Zachary Community School Board shall enter into arbitration proceedings to resolve such questions.

HISTORY: Added by Acts 1999, No. 1027, § 1, eff. Dec. 27, 1999; Amended by Acts 2001, No. 895, § 1, eff. June 26, 2001; Acts 2002, 1st Ex. Sess., No. 49, § 1, eff. Apr. 18, 2002.

NOTES:
LexisNexis (R) Notes:

Amendment Notes

LSLI 2004 Amendments.
In accordance with the revision authority set forth in R.S. 24:201 et seq., the Louisiana State Law Institute substituted "therefor" for "therefore" in (E)(1)(b) as enacted by Acts 2002, 1st Ex. Sess., No. 49, § 1.

2002 Amendments.
Acts 2002, 1st Ex. Sess., No. 49, § 1, effective April 18, 2002, redesignated the first sentence of former (E)(1) as (E)(1)(a) and last sentence of (E)(1) as (E)(2); redesignated the former (E)(2) as (E)(3); added (E)(1)(b).

2001 Amendments.
Acts 2001, No. 895, § 1, effective June 26, 2001, added "or any subsequent school year after the Zachary Community School Board complies with state and federal requirements for actual operation of a separate school system" to the end of the first sentence in (F)(1).

RELATED STATUTES & RULES

Louisiana Law:
Zachary community school system; interim school board, see La. R.S. 17:64.1

ADMINISTRATIVE LAW AND DECISIONS

Attorney General:
Where the law allows for the interim school board to call the special election for the election of the initial members of the board, it may do so in accordance with R.S. 18:402(E)., OPINION NUMBER 2000-497, La. Atty. Gen. Op. No. 2000-497; 2000 La. AG LEXIS 545.
Responds to various questions concerning the creation of new school systems in Baton Rouge and Zachary., Opinion Number 01-158, La. Atty. Gen. Op. No. 2001-158; 2001 La. AG LEXIS 185.
There are three separate and independent school districts within East Baton Rouge Parish--viz., the East Baton Rouge Parish School District, the City of Baker School District, and the City of Zachary School District--the territorial area of each of which is mutually exclusive of the others. Likewise, it is our opinion that each of these three school districts has its own EFI District, whose territorial boundaries are coterminous with its school district. When any of these EFI Districts submits a tax proposal to the voters, only the voters of that particular EFI District--and not any of the voters of the other two EFI Districts--may vote on the tax proposal. Of course, if any EFI District's tax proposal receives the approval of its voters, its tax proposal will become effective only within its own EFI District but will have no effect in either of the other two EFI Districts., Opinion No. 03-0032, 2003 La. AG LEXIS 103.

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LOUISIANA REVISED STATUTES
TITLE 25. LIBRARIES, MUSEUMS, AND OTHER SCIENTIFIC AND CULTURAL FACILITIES
CHAPTER 26. THE ATCHAFALAYA TRACE COMMISSION
PART 1. THE ATCHAFALAYA TRACE COMMISSION

GO TO LOUISIANA STATUTES ARCHIVE DIRECTORY

La. R.S. 25:1224 (2009)

§ 25:1224. Duties and authority

A. The commission shall have the following duties and authority:

(1) The commission may establish an office in the region.

(2) The commission shall have the power to appoint and fix compensation of such staff as may be necessary to carry out its duties subject to provisions of law governing employees of the Department of Culture, Recreation and Tourism.

(3) Upon request of the commission, the head of any federal or state agency may detail, on a reimbursable basis, any of the personnel of such agency to the commission to assist in carrying out the commission's duties. The commission may accept the services of personnel detailed from the state and any political subdivision thereof, and may reimburse the state or such political subdivision for those services.

(4) The commission may hold such hearings, act at such times and places, and receive such evidence as the commission considers appropriate.

(5) The commission may sue and be sued.

(6) The secretary of the Department of Culture, Recreation and Tourism shall provide to the commission, on a reimbursable basis, such administrative support services as may be required.

(7) The commission may promulgate rules in accordance with the Administrative Procedure Act to carry out the purposes of this Chapter.

(8) The commission may use its funds to obtain money from any source under any program or law requiring matching funds or other similar participation in order to receive funding.

(9) Except as limited by an agreement pursuant to Paragraph (12) of this Subsection, the commission may, for the purposes of carrying out its duties, seek, accept, and dispose of gifts, bequests, or donations of money, personal property, or services, received from any source.

(10) The commission may acquire from any willing seller real property or interests in real property in the trace area as deemed necessary to fulfill the purposes of this Chapter.

(11) Any real property or interest in real property acquired by the commission under Paragraph (10) of this Subsection may be conveyed by the commission to an appropriate public agency or public interest group as determined by the commission.

(12) For the purposes of carrying out the plan as provided in Paragraph B(2) of this Section, the commission may enter into cooperative agreements with the state, with any political subdivision of the state, or with any person. Any such cooperative agreement shall, at a minimum, establish procedures for providing notice to the commission of any action proposed by the state, such political subdivision, or such person which may affect the implementation of the plan.

(13) The commission may establish such advisory groups and form partnerships as it deems necessary to ensure open communication with and assistance from the state, political subdivisions of the state, and interested persons.

(14) Submit annual budget requests for implementation of the management plan, including matches for federal funds once national heritage area designation is achieved.

B. (1) To guide the commission's operations and in preparation for completing the management plan, the commission shall prepare a concept plan and feasibility study which:

(a) Identifies the commission as the management entity for the trace area and describes the organization, structure, people, programs, capabilities, and funding necessary and desirable for implementing the purposes of this Chapter.

(b) Discusses the commission's vision, mission, goals, roles, responsibilities, and other objectives related to strategic planning.

(c) Determines the potential for the trace area to become a nationally recognized heritage area.

(d) Identifies, inventories, maps, and describes the region's resources.

(e) Delineates the tentative boundaries of the heritage area.

(f) Defines the Atchafalaya Trace Heritage driving corridor or scenic byway.

(g) Outlines potential resource conservation and development measures.

(h) Lists partners and their commitments.

(i) Describes tentative management measures.

(j) Determines immediate project needs including initiatives that the commission will assist in implementing immediately.

(2) Within four years after the commission conducts its first meeting, it shall, through the secretary of the Department of Culture, Recreation and Tourism, submit to the House Committee on Municipal, Parochial and Cultural Affairs and the Senate Committee on Natural Resources a Cultural Heritage and Corridor Management Plan. The plan shall take into account existing federal, state, and local plans, and shall coordinate those plans and present a unified

resource management and interpretation plan for the trace area. The plan shall:

(a) Provide a complete resource inventory which also includes any property in the trace area which should be preserved, restored, managed, developed, maintained, or acquired because of its national historic, cultural, scenic, or natural systems significance.

(b) Develop a historic, cultural, scenic, and natural resource interpretation plan to interpret the resources of the trace area.

(c) Recommend policies for resource management which consider and detail the application of appropriate land and water management techniques, including the development of intergovernmental cooperative agreements, that will protect and interpret the trace's historical, cultural, scenic, and natural resources in a manner consistent with supporting appropriate and compatible economic revitalization efforts.

(d) Detail the ways in which local, state, and federal programs may best be coordinated to promote the purposes of this Chapter.

(e) Contain a program for implementation of the plan, including estimated funding needs, by local, state, and federal governments.

(f) Review local government comprehensive plans and projects.

(3) After review and approval of the plan by the legislature, by resolution, the commission shall implement the plan by taking appropriate steps in cooperation with any public or private entity to preserve and interpret the historic resources of the trace area and to support public and private efforts in sustainable economic revitalization consistent with the goals of the plan. These steps may include but need not be limited to:

(a) Assisting the state, local, and federal governments in preserving the trace area and its surrounding area.

(b) Assisting the state, local, and federal governments, directly or indirectly, in designing, establishing, and maintaining visitor centers and other interpretive centers and exhibits in the trace area.

(c) Assisting in increasing public awareness of and appreciation for the historical, scenic, natural, and cultural resources and sites in the trace area.

(d) Assisting the state, local, and federal governments and nonprofit organizations in the restoration of any historic building or structure and of any damaged or impaired natural systems or features in the trace area.

(e) Encouraging, by appropriate means, enhanced economic development in the trace area consistent with the goals of the plan.

(f) Ensuring that clear, consistent signs identifying access points, trace driving corridor or scenic byway routes, points of interest, and services for visitors are placed throughout the trace area.

(g) Assisting local governments in the development of comprehensive plans and projects.

HISTORY: Acts 1997, No. 1440, § 1, eff. July 1, 1998; Acts 1999, No. 367, § 1, eff. Aug. 15, 1999; Acts 2002, 1st Ex. Sess., No. 112, § 1, eff. Jan. 1, 2003; Acts 2006, No. 713, § 1, eff. July 1, 2006.

NOTES:
LexisNexis (R) Notes:

Editor's Note
See Acts 1997, No. 1440, § 3.

Amendment Notes

2006 Amendments
Acts 2006, No. 713, § 1, effective July 1, 2006, deleted "considering the advice of the advisory board" following "the commission" in (A); deleted "other" preceding "advisory groups" in (A)(13).

2002 Amendments.
Acts 2002, 1st Ex. Sess., No. 112, § 1, effective January 1, 2003, added (A)(14).

1999 Amendments.
Acts 1999, No. 367, § 1, effective August 15, 1999, substituted "considering the advice of the advisory board" for "acting through its executive board" in the first sentence of (A), redesignated former (B) as (A)(4), and in this paragraph, deleted the last sentence, which read: "The commission may not issue subpoenas or exercise any subpoena authority," inserted (A)(5), redesignated former (B)(1) as (A)(6), and in this paragraph, substituted "may be required" for "the commission may request," inserted (A)(7), redesignated former (B)(2) as (A)(8), redesignated former (B)(3) as (A)(9), and in this paragraph, substituted "Paragraph (12) of this Subsection" for "Paragraph (6) of this Subsection," redesignated former (B)(4) as (A)(10), and rewrote this paragraph, which read: "The commission may not acquire any real property or interest in real property, except that subject to Paragraph (5) of this Subsection, the commission may acquire real property or interests in real property in the trace area by gift or device or by purchase from a willing seller with money which was given or bequeathed to the commission on the condition that such money would be used to purchase real property or interests in real property in the trace area," redesignated former (B)(5) as (A)(11), and rewrote this paragraph, which read: "Any real property or interest in real property acquired by the commission under Paragraph (10) of this Subsection may be conveyed by the commission to an appropriate public agency or public interest group, such as the Nature Conservancy, the Audubon Society, or the Trust for Public Land, as determined by the commission. Any such conveyance shall be made as soon as practicable after such acquisition, without consideration, and on the condition that the real property or interest in real property so conveyed is used for public purposes," redesignated former (B)(6) as (A)(12), and in this paragraph, substituted "Paragraph B(2) of this Section" for "Paragraph C(2) of this Section," redesignated former (B)(7) as (A)(13), and in this paragraph, inserted "other," and inserted "and form partnerships"; redesignated former (C) as (B), and rewrote (B)(1), which read: "Within six months after full funding, the commission shall prepare and feasibility study which," substituted "and other objectives related to strategic planning" for "and objectives" in (B)(1)(b), rewrote (B)(1)(f), which read: "Defines the trace corridor loop," inserted "potential" in (B)(1)(g), added (B)(1)(j), in (B)(2), substituted "Within four years after the commission conducts its first meeting, it shall, through the secretary of the Department of Culture, Recreation and Tourism" for "Within two years after the commission conducts its first meeting, it shall" in the first sentence, rewrote the second sentence, which read: "The plan shall be based on existing federal, state, and local plans, but shall coordinate those plans and present a unified historic preservation and interpretation plan for the trace area," rewrote (C)(2)(a) and (b), which read: "(a) Provide an inventory which includes any property in the trace area which should be preserved, restored, managed, developed, maintained, or acquired because of its national historic or cultural significance. "(b) Develop a historic interpretation plan to interpret the history of the trace and its surrounding area," substituted " that will protect and interpret the trace's historical" for "that will protect the trace's historical" in (C)(2)(c), rewrote (C)(2)(e), which read: "Contain a program for

implementation of the plan by the state and its political subdivisions," inserted (C)(2)(f), in (C)(3), inserted "by resolution," inserted "in cooperation with any public or private entity," and inserted "sustainable" in the first sentence, inserted "local and federal governments" in (C)(3)(a), rewrote (C)(3)(b), which read: "Assisting the state and local governments in designing, establishing, and maintaining visitor centers and other interpretive exhibits in the trace area," inserted "historical, scenic" in (C)(3)(c), rewrote (C)(3)(d), which read: "Assisting the state and local governments and nonprofit organizations in the restoration of any historic building in the trace area," rewrote (C)(3)(f), which read: "Ensuring that clear, consistent signs identifying access points and sites of interest are placed throughout the trace area," and added (C)(3)(g).

RELATED STATUTES & RULES

Louisiana Law:
Termination of commission, see La. R.S. 25:1225 [Repealed]

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LOUISIANA REVISED STATUTES
TITLE 47. REVENUE AND TAXATION
SUBTITLE 2. PROVISIONS RELATING TO TAXES COLLECTED AND ADMINISTERED BY THE COLLECTOR OF REVENUE
CHAPTER 2-B. ADDITIONAL SALES AND USE TAX; USE TAX ON LIMESTONE AGGREGATE

GO TO LOUISIANA STATUTES ARCHIVE DIRECTORY

La. R.S. 47:332.9 (2009)

§ 47:332.9. Disposition of certain collections in parish of Lafayette

A. The avails of the tax imposed by R.S. 47:331 from the sale of services as defined in R.S. 47:301(14)(a) in the parish of Lafayette under the provisions of R.S. 47:331(C) and 332 shall be credited to the Bond Security and Redemption Fund and after a sufficient amount is allocated from that fund to pay all the obligations secured by the full faith and credit of the state which become due and payable within any fiscal year, the treasurer shall pay the remainder of such fund into a special fund which is hereby created in the state treasury and designated as the "Lafayette Parish Visitor Enterprise Fund".

B. (1) The monies deposited pursuant to this Section in the Lafayette Parish Visitor Enterprise Fund shall be subject to an annual appropriation by the legislature and for Fiscal Years 1993-1994 and 1994-1995 shall be allocated one-third to the Acadian Village and two-thirds to Vermilionville. For Fiscal Year 1995-1996, the money deposited in the fund pursuant to this Section shall be allocated and used for the following purposes in the following priority:

(a) Fifty thousand dollars for capital improvements to the Lafayette Children's Museum.

(b) Fifty thousand dollars to Creole, Inc. for the Creole Museum.

(c) Thirty thousand six hundred dollars as Lafayette Parish's pro rata contribution for the Jean Lafitte Scenic Byway District.

(d) An amount to Lafayette Parish sufficient to construct the Milton Visitors Improvement Project up to ten thousand dollars.

(e) The remainder of such money in the fund for Fiscal Year 1995-1996, and the money deposited in the fund pursuant to this Section for all fiscal years thereafter, shall be allocated and used exclusively for planning, development, or capital improvements at the Cajundome site in the city of Lafayette.

(2) All unexpended and unencumbered monies in the fund shall remain in the fund. The monies in the fund shall be invested by the treasurer in the same manner as the monies in the state general fund, and all interest earned shall be deposited into the state general fund.

(3) For the purposes of this Section, "capital improvements" shall mean expenditures for acquiring lands, buildings, equipment, or other permanent properties, or for their construction, preservation, development, or permanent improvement, or for payment of principal, interest, or premium, if any, and other obligations incident to the issuance, security, and payment of bonds or other evidences of indebtedness associated therewith.

HISTORY: Acts 1992, No. 983, § 1, eff. for taxable periods on or after July 1, 1993; Acts 1995, No. 757, § 1, eff. July 1, 1995.

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LOUISIANA REVISED STATUTES
TITLE 48. ROADS, BRIDGES AND FERRIES
CHAPTER 20. ZACHARY TAYLOR PARKWAY DISTRICT

GO TO LOUISIANA STATUTES ARCHIVE DIRECTORY

La. R.S. 48:1804 (2009)

§ 48:1804. Creation of district and commission; powers

A. There is hereby created the Zachary Taylor Parkway District, subject to the conditions hereinafter set forth, which shall be a body politic and corporate and a political subdivision of the state of Louisiana comprising all of the territory within the geographical boundaries of the parishes of Avoyelles, East Feliciana, Pointe Coupee, Rapides, St. Helena, Washington, and West Feliciana, together with all of the territory within the geographical boundaries of the parish of Tangipahoa that lies north of Louisiana Highway 40.

B. There is hereby created the Zachary Taylor Parkway Commission, and the management and control of the district is hereby vested in the commission. The commission shall be domiciled in West Feliciana Parish.

C. The commission is hereby granted all the rights, powers, privileges, and immunities granted to political subdivisions, including but not limited to the following:

(1) To sue and be sued.

(2) To adopt, use, and alter at will a corporate seal.

(3) To initiate and coordinate research studies, and the gathering of information on the project, including but not limited to the following:

(a) Engineering studies.

(b) Traffic flow and pattern studies.

(c) Environmental impact studies.

(d) Location of the proposed route.

(e) Economic development impacts and benefits.

(f) Feasibility of obtaining designation of the highway as a National Defense Highway and as a part of the National Highway System.

(g) Utility relocation.

(h) Right of way acquisition.

(i) Project construction cost/benefit ratio studies.

(j) Feasibility of including the highway in the Louisiana Scenic Byway Program.

(4) To be designated an official repository for information relating to and about the project. As such, the district is empowered to receive and preserve all information gathered by other parties pertaining to the project.

(5) To receive contributions, donations, grants, and appropriations of money or other things of value from any public or private source.

(6) To enter into a cooperative endeavor by written agreement with the state or with any other public or private entity.

(7) To employ such persons as employees and to enter into such contracts for services as it deems advisable, but the commission shall not enter into any contract for the design or construction of the project or any portion thereof.

(8) To work jointly or in cooperation with the state of Mississippi in the planning and development of the parkway and to carry out the purposes of this Chapter.

D. The commission shall not design any portion of the project, engage in or supervise the construction of any portion of the project, nor maintain any portion of the project.

HISTORY: Acts 1992, No. 288, § 1. Amended by Acts 1993, No. 230, § 1.

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LOUISIANA REVISED STATUTES
TITLE 48. ROADS, BRIDGES AND FERRIES
CHAPTER 21-A. CREOLE NATURE TRAIL SCENIC BYWAY DISTRICT

GO TO LOUISIANA STATUTES ARCHIVE DIRECTORY

La. R.S. 48:1815 (2009)

§ 48:1815. Creole Nature Trail Scenic Byway District; creation; boundaries; and purpose

A. There is hereby created the Creole Nature Trail Scenic Byway District which shall be a body politic and corporate and a political subdivision of the state of Louisiana. The following highways and sections of highways are hereby designated as the Creole Nature Trail Scenic Byway District:

Louisiana Highway 27 beginning at Sulphur in Calcasieu Parish, south to Hollybeach in Cameron Parish at the junction with Louisiana Highway 82; Louisiana Highway 82 west to the Texas state line, and east on Louisiana Highway 27/82 to Creole, south on Louisiana Highway 82 to Oak Grove; or alternate route thence east to the intersection of Louisiana Highway 27/82 with Trosclair Road, a parish road #357, in Cameron Parish, thence east on Trosclair Road to its intersection with Louisiana Highway 82 at Oak Grove; east on Louisiana Highway 82 to the Vermilion Parish line; Louisiana Highway 385 south beginning at the intersection of McNeese Street in Calcasieu Parish to Louisiana Highway 384 at Boone's Corner proceeding east to Louisiana Highway 27 and proceeding south on Louisiana Highway 27 to Creole, or alternate route Highway 14 in Lake Charles south to intersection of Highway 27 at Holmwood proceeding south to Creole.

B. The purpose of the Creole Nature Trail Scenic Byway District shall be to stimulate economic development and tourism in the parishes traversed by the Creole Nature Trail Scenic Byway.

HISTORY: Acts 1995, No. 539, § 1.

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LOUISIANA REVISED STATUTES
TITLE 48. ROADS, BRIDGES AND FERRIES
CHAPTER 21-A. CREOLE NATURE TRAIL SCENIC BYWAY DISTRICT

GO TO LOUISIANA STATUTES ARCHIVE DIRECTORY

La. R.S. 48:1816 (2009)

§ 48:1816. Board of commissioners; method of appointment, terms, vacancies, and domicile

A. The Creole Nature Trail Scenic Byway District shall be governed by a board of commissioners consisting of nine members as follows:

(1) Two members selected by the Calcasieu Parish Police Jury.

(2) Three members selected by the Cameron Parish Police Jury.

(3) One member selected by the Southwest Louisiana Convention and Visitors Bureau.

(4) One member selected by the Cameron Parish Tourism Commission.

(5) The secretary of the Department of Transportation and Development, ex officio or his designee.

(6) One member selected by the Calcasieu and Cameron Parish legislative delegation.

B. The members of the board of commissioners shall serve four-year terms and shall serve until their successors have been appointed and qualified.

C. A vacancy on the board of commissioners for any reason shall be filled in the same manner as the original appointment and for the unexpired term of office. The board of commissioners shall be domiciled in the town of Lake Charles in Calcasieu Parish.

HISTORY: Acts 1995, No. 539, § 1.

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LOUISIANA REVISED STATUTES
TITLE 48. ROADS, BRIDGES AND FERRIES
CHAPTER 21-A. CREOLE NATURE TRAIL SCENIC BYWAY DISTRICT

GO TO LOUISIANA STATUTES ARCHIVE DIRECTORY

La. R.S. 48:1817 (2009)

§ 48:1817. Powers and duties of the board of commissioners

The district, through the board of commissioners, shall have all the rights, powers, privileges, and immunities granted to political subdivisions, including but not limited to the following:

(1) To sue and be sued.

(2) To adopt, use, and alter at will a corporate seal.

(3) To receive contributions, donations, grants, and appropriations of money or other things of value from any public or private source.

(4) To enter into cooperative endeavors by written agreement with the state or with any other public or private entity.

(5) To employ such persons as employees and to enter into such contracts for services as it deems advisable.

(6) To develop and implement a plan for the preservation, beautification, and promotion of the scenic drive and the natural, historic, and cultural sites and attractions of the route with the assistance of the Department of Transportation and Development, the Department of Culture, Recreation and Tourism, and the Department of Wildlife and Fisheries.

(7) To acquire servitudes adjacent to the Creole Nature Trail Scenic Byway for the preservation of the natural beauty of the area, but such authority shall not include the acquisition of rights-of-way for the construction of such scenic highway, the acquisition of which shall be the sole jurisdiction of the Department of Transportation and Development.

(8) To adopt rules and regulations providing for the utilization and administration of the servitudes herein authorized to be acquired.

HISTORY: Acts 1995, No. 539, § 1.

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LOUISIANA REVISED STATUTES
TITLE 48. ROADS, BRIDGES AND FERRIES
CHAPTER 21-A. CREOLE NATURE TRAIL SCENIC BYWAY DISTRICT

GO TO LOUISIANA STATUTES ARCHIVE DIRECTORY

La. R.S. 48:1818 (2009)

§ 48:1818. Officers; quorum; meeting

A. The board of commissioners shall elect from its own membership a chairman and a vice chairman. A majority of the members of the board of commissioners shall constitute a quorum for the transaction of business and the meetings of the board shall be held at such place and time as shall be fixed in the call of the chairman after reasonable notice to the full membership.

B. The secretary of the Department of Transportation and Development shall serve as temporary chairman, and shall call the first meeting of the board of commissioners within sixty days after July 31, 1995.

HISTORY: Acts 1995, No. 539, § 1.

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LOUISIANA REVISED STATUTES
TITLE 48. ROADS, BRIDGES AND FERRIES
CHAPTER 21-A. CREOLE NATURE TRAIL SCENIC BYWAY DISTRICT

GO TO LOUISIANA STATUTES ARCHIVE DIRECTORY

La. R.S. 48:1819 (2009)

§ 48:1819. Compensation; expenses

The members of the board of commissioners shall serve without compensation for their services, but shall be entitled to reimbursement for actual expenses incurred in the performance of their duties as authorized by the board of commissioners.

HISTORY: Acts 1995, No. 539, § 1.

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LOUISIANA REVISED STATUTES
TITLE 48. ROADS, BRIDGES AND FERRIES
CHAPTER 21-A. CREOLE NATURE TRAIL SCENIC BYWAY DISTRICT

GO TO LOUISIANA STATUTES ARCHIVE DIRECTORY

La. R.S. 48:1820 (2009)

§ 48:1820. Advice and services of state departments

State departments and agencies, particularly the Department of Transportation and Development, the Department of Culture, Recreation and Tourism, and the Department of Wildlife and Fisheries, are authorized to provide such advice and services to the board of commissioners as will, in the opinion of the respective department secretary or agency head, tend to achieve the objectives of this Chapter.

HISTORY: Acts 1995, No. 539, § 1.

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LOUISIANA REVISED STATUTES
TITLE 48. ROADS, BRIDGES AND FERRIES
CHAPTER 23. JEAN LAFITTE SCENIC BYWAY DISTRICT. [REPEALED.]

GO TO LOUISIANA STATUTES ARCHIVE DIRECTORY

La. R.S. 48:1831 (2009)

§ 48:1831. [Repealed.]

Repealed by Acts 2008, No. 815, § 5, effective August 15, 2008. This section was derived from Acts 1993, No. 332, § 1.

[Repealed]

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LOUISIANA REVISED STATUTES
TITLE 48. ROADS, BRIDGES AND FERRIES
CHAPTER 23. JEAN LAFITTE SCENIC BYWAY DISTRICT. [REPEALED.]

GO TO LOUISIANA STATUTES ARCHIVE DIRECTORY

La. R.S. 48:1832 (2009)

§ 48:1832. [Repealed.]

Repealed by Acts 2008, No. 815, § 5, effective August 15, 2008. This section was derived from Acts 1993, No. 332, § 1.

[Repealed]

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LOUISIANA REVISED STATUTES
TITLE 48. ROADS, BRIDGES AND FERRIES
CHAPTER 23. JEAN LAFITTE SCENIC BYWAY DISTRICT. [REPEALED.]

GO TO LOUISIANA STATUTES ARCHIVE DIRECTORY

La. R.S. 48:1833 (2009)

§ 48:1833. [Repealed.]

Repealed by Acts 2008, No. 815, § 5, effective August 15, 2008. This section was derived from Acts 1993, No. 332, § 1.

[Repealed]

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LOUISIANA REVISED STATUTES
TITLE 48. ROADS, BRIDGES AND FERRIES
CHAPTER 23. JEAN LAFITTE SCENIC BYWAY DISTRICT. [REPEALED.]

GO TO LOUISIANA STATUTES ARCHIVE DIRECTORY

La. R.S. 48:1834 (2009)

§ 48:1834. [Repealed.]

Repealed by Acts 2008, No. 815, § 5, effective August 15, 2008. This section was derived from Acts 1993, No. 332, § 1.

[Repealed]

126 of 400 DOCUMENTS

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LOUISIANA REVISED STATUTES
TITLE 48. ROADS, BRIDGES AND FERRIES
CHAPTER 23. JEAN LAFITTE SCENIC BYWAY DISTRICT. [REPEALED.]

GO TO LOUISIANA STATUTES ARCHIVE DIRECTORY

La. R.S. 48:1835 (2009)

§ 48:1835. [Repealed.]

Repealed by Acts 2008, No. 815, § 5, effective August 15, 2008. This section was derived from Acts 1993, No. 332, § 1.

[Repealed]

127 of 400 DOCUMENTS

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LOUISIANA REVISED STATUTES
TITLE 48. ROADS, BRIDGES AND FERRIES
CHAPTER 23. JEAN LAFITTE SCENIC BYWAY DISTRICT. [REPEALED.]

GO TO LOUISIANA STATUTES ARCHIVE DIRECTORY

La. R.S. 48:1836 (2009)

§ 48:1836. [Repealed.]

Repealed by Acts 2008, No. 815, § 5, effective August 15, 2008. This section was derived from Acts 1993, No. 332, § 1.

[Repealed]

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LOUISIANA REVISED STATUTES
TITLE 48. ROADS, BRIDGES AND FERRIES
CHAPTER 25. REAL FRENCH DESTINATION SCENIC BYWAY DISTRICT. [REPEALED.]

GO TO LOUISIANA STATUTES ARCHIVE DIRECTORY

La. R.S. 48:2001 (2009)

§ 48:2001. [Repealed.]

Repealed by Acts 2008, No. 815, § 5, effective August 15, 2008. This section was derived from Acts 1995, No. 1271, § 1.

[Repealed]

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LOUISIANA REVISED STATUTES
TITLE 48. ROADS, BRIDGES AND FERRIES
CHAPTER 25. REAL FRENCH DESTINATION SCENIC BYWAY DISTRICT. [REPEALED.]

GO TO LOUISIANA STATUTES ARCHIVE DIRECTORY

La. R.S. 48:2002 (2009)

§ 48:2002. [Repealed.]

Repealed by Acts 2008, No. 815, § 5, effective August 15, 2008. This section was derived from Acts 1995, No. 1271, § 1.

[Repealed]

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LOUISIANA REVISED STATUTES
TITLE 48. ROADS, BRIDGES AND FERRIES
CHAPTER 25. REAL FRENCH DESTINATION SCENIC BYWAY DISTRICT. [REPEALED.]

GO TO LOUISIANA STATUTES ARCHIVE DIRECTORY

La. R.S. 48:2003 (2009)

§ 48:2003. [Repealed.]

Repealed by Acts 2008, No. 815, § 5, effective August 15, 2008. This section was derived from Acts 1995, No. 1271, § 1.

[Repealed]

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LOUISIANA REVISED STATUTES
TITLE 48. ROADS, BRIDGES AND FERRIES
CHAPTER 25. REAL FRENCH DESTINATION SCENIC BYWAY DISTRICT. [REPEALED.]

GO TO LOUISIANA STATUTES ARCHIVE DIRECTORY

La. R.S. 48:2004 (2009)

§ 48:2004. [Repealed.]

Repealed by Acts 2008, No. 815, § 5, effective August 15, 2008. This section was derived from Acts 1995, No. 1271, § 1.

[Repealed]

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LOUISIANA REVISED STATUTES
TITLE 48. ROADS, BRIDGES AND FERRIES
CHAPTER 25. REAL FRENCH DESTINATION SCENIC BYWAY DISTRICT. [REPEALED.]

GO TO LOUISIANA STATUTES ARCHIVE DIRECTORY

La. R.S. 48:2005 (2009)

§ 48:2005. [Repealed.]

Repealed by Acts 2008, No. 815, § 5, effective August 15, 2008. This section was derived from Acts 1995, No. 1271, § 1.

[Repealed]

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LOUISIANA REVISED STATUTES
TITLE 48. ROADS, BRIDGES AND FERRIES
CHAPTER 25. REAL FRENCH DESTINATION SCENIC BYWAY DISTRICT. [REPEALED.]

GO TO LOUISIANA STATUTES ARCHIVE DIRECTORY

La. R.S. 48:2006 (2009)

§ 48:2006. [Repealed.]

Repealed by Acts 2008, No. 815, § 5, effective August 15, 2008. This section was derived from Acts 1995, No. 1271, § 1.

[Repealed]

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LOUISIANA REVISED STATUTES
TITLE 56. WILDLIFE AND FISHERIES
CHAPTER 9. HISTORIC ROADS AND SCENIC PARKWAYS
PART 3. LOUISIANA BYWAYS

GO TO LOUISIANA STATUTES ARCHIVE DIRECTORY

La. R.S. 56:1948.4 (2009)

§ 56:1948.4. Regional development; legislative committee approval

A. Any byway suggested to be included in the Louisiana Byways Program shall:

(1) Meet the criteria provided for in R.S. 56:1948.3. However, any district may develop additional criteria specific to its area to determine potential byway routes.

(2) Have approval of Louisiana Byways Commission within the Department of Culture, Recreation and Tourism.

(3) Have approval of the Department of Culture, Recreation and Tourism.

(4) Have approval of the Department of Transportation and Development based upon the adequacy and safety of the proposed routes to meet the needs of the increased volume and variety of traffic on the byway.

B. After approval by the Louisiana Byways Commission, the Department of Culture, Recreation and Tourism, and the Department of Transportation and Development, a proposed byway shall be presented to the House and Senate Committees on Transportation, Highways and Public Works by the recommending agent and shall be approved by a majority of the members of each committee prior to its inclusion in the Louisiana Byway Program.

C. The Department of Transportation and Development shall maintain and update, on a regular basis, a listing of the Louisiana Byways approved by the House and Senate Committees on Transportation, Highways and Public Works.

HISTORY: Acts 1991, No. 588, § 1; Acts 2003, No. 999, § 2.

NOTES:
LexisNexis (R) Notes:

Amendment Notes

2003 Amendments.

Acts 2003, No. 999, § 2, effective August 15, 2003, deleted existing (A), which read: "Each of the five tourist regions designated by the Department of Culture, Recreation and Tourism, respectively as the Plantation Country Region, the Cajun Country Region, the Crossroads Region, the Sportsman's Paradise Region, and the Greater New Orleans Region, shall be authorized to identify and select potential Louisiana Byways within its land area. Any authority, agency, organization, or interested residents of the district may be designated by the governing authority of a parish or parishes within the district as a council to suggest potential byways. However, such designated entity shall inventory the potential route, build local support and commitment for the byway, coordinate its efforts through the Department of Culture, Recreation and Tourism and document such processes"; deleted existing (B), which read: "Any such designated entity of a tourist region may coordinate its efforts with any other tourist region and with the Capital Resource Conservation and Development Council, Inc. to provide continuity in the processing and designation of scenic byways throughout the state"; redesignated the remaining subsections accordingly; inserted (C)(2); redesignated existing remaining paragraphs accordingly; in (B) added "Louisiana Byways Commission" preceding "the Department of Culture, Recreation and Development," substituted "House and Senate" for "Joint," substituted "Committees" for "Committee," and "each committee" for "said joint"; inserted (C).

ADMINISTRATIVE LAW AND DECISIONS

Attorney General:

R.S. 56:1948.4 provides an alternative mechanism to legislative act for the inclusion of a suggested byway in the Louisiana Byways program., OPINION 00-275, La. Atty. Gen. Op. No. 2000-275; 2000 La. AG LEXIS 278.

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LOUISIANA REVISED STATUTES
TITLE 56. WILDLIFE AND FISHERIES
CHAPTER 9. HISTORIC ROADS AND SCENIC PARKWAYS
PART 3. LOUISIANA BYWAYS

GO TO LOUISIANA STATUTES ARCHIVE DIRECTORY

La. R.S. 56:1948.5 (2009)

§ 56:1948.5. Louisiana Byways designations

The following highways and sections of highways are hereby designated as Louisiana Byways:

(1) LA 1 from Labadieville in Assumption Parish north to the north end of Pointe Coupee Parish.

(2) LA 10 from the east boundary of Pearl River in Washington Parish west to New Roads in Pointe Coupee Parish.

(3) LA 21 from US 190 in St. Tammany Parish north to LA 10 in Washington Parish.

(4) LA 22 from US 190 in St. Tammany Parish west to LA 44 in Ascension Parish.

(5) LA 30 from I-10 in East Baton Rouge Parish southeast to LA 44 in Ascension Parish.

(6) LA 43 from LA 22 in Livingston Parish north to LA 10 in St. Helena Parish.

(7) LA 44 from LA 30 in Ascension Parish south to LA 70 in St. James Parish.

(8) LA 70 from LA 44 in St. James Parish west to LA 1 in Assumption Parish.

(9) LA 77 from US 190 in Pointe Coupee Parish to LA 1 in Iberville Parish.

(10) LA 78 from US 190 in Pointe Coupee Parish north to LA 1 in Pointe Coupee Parish.

(11) LA 308 from Labadieville in Assumption Parish north to LA 70 in Assumption Parish.

(12) LA 433 from I-10 in St. Tammany Parish northwest to US 11 in St. Tammany Parish.

(13) US 11 from LA 433 in St. Tammany Parish north to US 190 in St. Tammany Parish.

(14) US 51 from LA 38 in Tangipahoa Parish south to LA 10 in Tangipahoa Parish.

(15) US 51 from LA 10 at Arcola in Tangipahoa Parish north to LA 10 intersection at Fluker in Tangipahoa Parish.

(16) US 61 at the Mississippi state line in West Feliciana Parish south to US 190 in East Baton Rouge Parish.

(17) US 190 from US 11 in St. Tammany Parish west to LA 21 in St. Tammany Parish.

(18) US 190 from LA 1 at Port Allen in West Baton Rouge Parish west to LA 1 in Pointe Coupee Parish.

(19) US 190 and US 61 Business from US 61 in East Baton Rouge Parish south to LA 30 in East Baton Rouge Parish.

(20) The Jean Lafitte Scenic Byway: LA 82 east from Grand Chenier to Abbeville; LA 167 from Abbeville to US 90 in Lafayette; LA 14 west from New Iberia to Holmwood; and LA 27 south from Holmwood to Creole. LA 182 south from US 167 in Lafayette to the intersection of LA 182 with LA 89 in Lafayette; LA 182 south from LA 89 in Lafayette to LA 14 in New Iberia.

(21) The Mississippi River Road, east bank, from within Jefferson Parish west to East Baton Rouge Parish, which includes the following:

(a) LA 48 at LA 49 from Kenner in Jefferson Parish west to LA 628 at the St. John the Baptist Parish line.

(b) LA 628 in St. John the Baptist Parish west to LA 44 in LaPlace, extending west on LA 44 to the junction of LA 942 in Burnside, Ascension Parish.

(c) LA 942 in Burnside west to LA 75 in Darrow, Ascension Parish.

(22) The Mississippi River Road, west bank, from within Jefferson Parish west to Iberville Parish, which includes the following highways and sections of highways LA 18 from the Huey Long Bridge in Bridge City, Jefferson Parish west to LA 1 in Donaldsonville in Ascension Parish.

(23) LA 49 in Kenner at junction of US 61 north to Veterans Memorial Boulevard, then west to Loyola Drive, then north to Jefferson Parish Tourist Information Center on I-10.

(24) US 51 north from LA 44 to the Tangipahoa Parish line.

(25) LA 643 east from the St. James Parish line to Lac des Allemands.

(26) Main Street, Garyville National Historic District north from LA 44 to Railroad Avenue, Garyville.

(27) LA 644 east from LA 20 in South Vacherie to the St. John the Baptist Parish line.

(28) LA 20 south from LA 641 to the Lutcher-Vacherie Ferry then south to the Lafourche Parish line.

(29) LA 641 north from LA 44 to junction of I-10.

(30) LA 70 north from the St. James Parish line to LA 22.

(31) LA 22 north from LA 44 to I-10.

(32) LA 44 north from LA 942 to I-10.

(33) LA 3251 north from LA 75 to LA 30.

(34) LA 1 from Labadieville in Assumption Parish south to Grand Isle in Jefferson Parish.

(35) LA 24 from Thibodaux in Lafourche Parish to Larose in Lafourche Parish.

(36) Repealed by Acts 2003, No. 287, § 2.

(37) LA 307 from LA 20 in Lafourche Parish south to LA 3199 in Lafourche Parish.

(38) LA 56 from US 90 in Terrebonne Parish south to Cocodrie in Terrebonne Parish.

(39), (40) Repealed by Acts 2003, No. 287, § 2.

(41) LA 308 from Labadieville in Assumption Parish south to Golden Meadow in Lafourche Parish.

(42), (43) Repealed by Acts 2003, No. 287, § 2.

(44) LA 311 from LA 24 in Terrebonne Parish south to US 90 in Terrebonne Parish.

(45) Repealed by Acts 2003, No. 287, § 2.

(46) Louisiana Highway 93 from Grand Coteau in St. Landry Parish west to Sunset in St. Landry Parish; from Sunset south through Scott in Lafayette Parish to the Acadian Village at the intersection of Ambassador Caffery Parkway in Lafayette Parish.

(47) Louisiana Highway 27 beginning at Sulphur in Calcasieu Parish, south to Hollybeach in Cameron Parish at the junction with Louisiana Highway 82; Louisiana Highway 82 west to the Texas state line, and east to Louisiana Highway 2 7/82 to Creole, south on Louisiana Highway 27 to Oak Grove, east on Louisiana Highway 82 to the Vermilion Parish line; Louisiana Highway 385 south beginning at the intersection of McNeese Street in Calcasieu Parish to Louisiana Highway 384 proceeding east to Louisiana Highway 27 and proceeding south on Louisiana Highway 27 to Creole.

(48) The Louisiana's Promised Land Bayou/Basin Route to Our Cultural Roots:

(a) LA 686 beginning in the town of Arnaudville at the St. Landry-St. Martin Parish line, thence following LA 686 along said parish line in an easterly direction, thence continuing on LA 686 in a southerly direction to its intersection with LA 347 and LA 678 east of the community of Cecilia and north of I-10 in St. Martin Parish.

(b) LA 347 beginning with its intersection with LA 686 and LA 678 north of I-10 and east of the community of Cecilia in St. Martin Parish and following a southerly direction to its intersection with LA 352 south of I-10 in St. Martin Parish.

(c) LA 352 at its intersection with LA 347 south of I-10 and west of the town of Henderson, thence following LA 352 in an easterly direction to its intersection with the corporate limits of the town of Henderson, thence continuing in a westerly direction through the town of Henderson to its intersection with the West Atchafalaya Guide Levee Road (also referred to as Henderson Levee Road), in St. Martin Parish.

(d) St. Martin Parish Road referred to as West Atchafalaya Guide Levee Road (also referred to as Henderson Levee Road, Catahoula Levee Road, and Bayou Benoit Levee Road) beginning at its intersection with LA 352 in the town of Henderson in St. Martin Parish thence in a southerly direction to its intersection with the St. Martin-Iberia Parish line and continuing in a southerly direction to Lake Fausse Pointe State Park/St. Martin-Iberia Parish line.

(e) LA 96, beginning at its intersection with the West Atchafalaya Guide Levee Road in the community of Catahoula in St. Martin Parish, thence in a westerly, southerly and westerly direction to the city of St. Martinville, thence continuing through the city of St. Martinville and continuing in a westerly direction to the St. Martin-Lafayette Parish line and continuing in a westerly direction to its intersection with LA 182 and U.S. 90 in Lafayette Parish.

(f) LA 31 at its intersection with the St. Martin-St. Landry Parish line in the town of Arnaudville at the northern boundary of St. Martin Parish, thence in a southerly direction to the city of Breaux Bridge, continuing through the city of Breaux Bridge and continuing in a southerly direction through the village of Parks, continuing southerly to the city of St. Martinville, continuing through the city of St. Martinville to the southern boundary of St. Martin Parish, being the St. Martin-Iberia Parish line.

(g) LA 92 from its intersection with LA 31 south of the city of St. Martinville, St. Martin Parish, following a westerly direction to its intersection with LA 182 in the community of Cade in St. Martin Parish.

(h) LA 182 at its intersection with the Iberia-St. Martin Parish line, thence in a northwesterly direction through the parish of St. Martin to its intersection with the St. Martin-Lafayette Parish line.

(i) LA 328 from its intersection with I-10 at the northern corporate limits of the city of Breaux Bridge, St. Martin Parish, thence in a southerly direction within the city of Breaux Bridge to its intersection with Bridge Street in the corporate limits of Breaux Bridge.

(j) Bridge Street in the corporate limits of the city of Breaux Bridge, St. Martin Parish, at its intersection with LA 31 in an easterly direction to its intersection with LA 328.

(k) LA 94 at its intersection with LA 328 in the corporate limits of the city of Breaux Bridge, St. Martin Parish, thence in a westerly direction to the St. Martin-Lafayette Parish line.

(49) Bayou Byways: Beginning on LA 1090 at the I-59 Pearl River exit south on LA 1090 for 6.7 miles then east on LA 190 for 3.7 miles and west on LA 90 for 1.8 miles then west on LA 433 for 9.4 miles back to I-10.

(50) Louisiana's Bayou Teche Scenic Byways:

(a) LA 182 from Iberia Parish Line to Adeline.

(b) LA 326 from Adeline to Baldwin.

(c) LA 182 from Baldwin to Calumet.

(d) LA 90 to Calumet to LA 182 - Patterson, Berwick.

(e) LA 90/182 from Patterson to Berwick at LA 182, from Berwick to Morgan City.

(f) LA 318 from its intersection with LA 182 to LA 83 to LA 319 to Cypremort Point.

(g) LA 317 from its intersection with LA 182 to Burns Point.

(h) Connect LA 70 with its intersection with US 90 to Stephensville.

(i) Connect LA 90 from Morgan City to the Terrebonne Parish Line.

(51) Iberia Parish Bayou Browsing Scenic Byways:

(a) LA 182 from St. Mary to St. Martin Parish lines.

(b) LA 31 from St. Martin Parish/Iberia Parish line to LA 182 in New Iberia.

(c) LA 83 at its intersection with LA 14 in Iberia Parish to its intersection with LA 319.

(d) LA 86 through the village of Loreauville from LA 182 to LA 31.

(e) LA 87 from its intersection with LA 86 to the St. Mary Parish line.

(f) LA 345 at its intersection with LA 86 to LA 679, continue on LA 679 to Iberia/St. Martin Parish line.

(52) Bienville Trace I:

(a) LA 2 from Union and Claiborne Parish line in the west to US 65 in the east, this route being called the Bienville Trace.

(b) US 80 from the Ouachita and Lincoln Parish line in the west to the state of Mississippi in the east.

(c) LA 4 from Jackson and Bienville Parish line in the west to its junction with LA 559, continuing on LA 559 to Enterprise in the east.

(d) LA 34 from the Endom Bridge in Monroe in the north to LA 557, from LA 557 to LA 4 at Vixen, from LA 4 at Vixen to LA 849, from LA 849 to LA 126 at Holum with an extension to Copenhagen Historic Site, from LA 126 at Holum to the Caldwell and LaSalle Parish line in the south.

(e) LA 137 from the north boundary of the Rayville town limits to LA 135, from LA 135 to LA 618, from LA 618 to LA 4 Winnsboro, from LA 4 Winnsboro to LA 128, from LA 128 to LA 605 at Saint Joseph, from LA 605 to the state of Mississippi line in the south.

(f) LA 134 starting at LA 65 in the north to LA 17 at Epps with an extension to the Poverty Point State Historic Site on LA 577, from LA 17 at Epps to the I-20 at Delhi in the south.

(g) LA 142 from the state of Arkansas line in the north to LA 593, from LA 593 to Collinston, from Collinston to LA 138, from LA 138 to LA 554 at Perryville in the south.

(h) US 65 from the state of Arkansas line in the north to LA 605, then on LA 605 to LA 604, then LA 604 to LA 128, then LA 128 to US 65 and continuing south on US 65 to the Mississippi state line.

(53) Bienville Trace II:

(a) LA 2 from the Texas line to the Claiborne Parish/Union Parish line this section to be named the Bienville Trace.

(b) LA 1 from Arkansas line south to I-220.

(c) LA 3 from Arkansas line south to I-220.

(d) LA 159 from Arkansas line south to I-20.

(e) LA 9 from Arkansas line south to I-20.

(54) Jean Lafitte Scenic Byways:

(a) LA Highway 26 south beginning at I-10, Exit 64 in Jennings, south to LA 14 in Lake Arthur.

(b) LA 14 in New Iberia to LA 182.

(55) Tunica Trace Scenic Byways: LA 66 in West Feliciana Parish from intersection with LA 61 to the Louisiana State Penitentiary at Angola.

(56) LA 191 from US 84 in DeSoto Parish south to the state line between Texas and Sabine Parish at the Toledo Bend Reservoir Dam.

(57) The portion of US 190 from the Louisiana-Texas border to the city limits of DeRidder.

(58) LA 70 from Interstate 10 in Ascension Parish to LA 44 in St. James Parish.

(59) Louisiana Colonial Trails Scenic Byway:

(a) LA 115 from its intersection at LA 28 East (Catahoula Lake Road) south to its intersection with LA 107.

(b) LA 107 from its intersection with US 167 in Pineville south to Morrow.

(c) LA 451.

(d) LA 29 from its intersection with LA 115 at Bunkie to its intersection with LA 451.

(e) LA 124 south from Harrisonburg to its intersection with US 84 at Jonesville.

(f) LA 15 at Sicily Island south through Concordia Parish to Lettsworth; LA 8 from Harrisonburg to Sicily Island at its intersection with LA 15.

(g) LA 8 at Jena, south and crossing Little River, with the historic and local name of Thompson Ferry Road, through Pollock to its intersection with LA 158 and LA 8 at Colfax.

(h) LA 6 from the Texas border through Many and Natchitoches to its intersection with US 84 at Clarence.

(i) LA 496 (Bayou Rapides Road) from MacArthur Drive to its intersection with LA 1200 (Hot Wells Road); north on LA 1200 to its intersection with LA 8 in Colfax.

(j) LA 28 West from Alexandria, continuing on LA 8 (Nolan's Trace) west through Leesville and west on LA 8 to the Texas border.

(k) US 84/65 from the Mississippi state line at Vidalia through Winnfield to its intersection with LA 6.

(l) LA 124 from Harrisonburg to its intersection with LA 126 and LA 126 north into Caldwell Parish to existing Scenic Byway of LA 126 in Caldwell Parish.

(60) Zydeco Cajun Prairie Scenic Byway:

(a) US 167 from Interstate 49 to Turkey Creek.

(b) US 167 from Turkey Creek southeast to LA 106 (Bayou Chicot).

(c) LA 3187 northwest from Pine Prairie to Crooked Creek Recreation Area.

(d) LA 13 from Turkey Creek to the northern town limits of Mamou.

(e) LA 29 from Ville Platte south to LA 95 at Chataignier.

(f) LA 29 from LA 95 south to the northern city limits of Eunice at LA 13.

(g) LA 13 from US 190 south to Oak Street in the city of Eunice.

(h) LA 13 from the southern city limits of Eunice south to the northern city limits of Crowley.

(i) LA 13 from the southern city limits of Crowley south to LA 92.

(j) LA 92 from LA 13 east to LA 35 north.

(k) LA 182 north from LA 10 to Washington.

(l) LA 10 from Washington northeast to LA 105 at Melville.

(m) US 167 east from Nuba to Interstate 49.

(n) LA 105 from LA 10 south to US 190.

(o) LA 106 east from US 167 (Bayou Chicot) to Interstate 49.

(p) LA 3042 from LA 106 south to LA 10.

(q) LA 95 from LA 13 south to LA 29 at Chataignier.

(r) US 190 from the eastern city limits of Eunice east to LA 95.

(s) LA 95 from US 190 south to the northern city limits of Church Point.

(t) LA 35 from the southern city limits of Church Point south to the northern city limits of Rayne.

(u) LA 35 from the southern city limits of Rayne south to LA 92.

(v) LA 182 from LA 10 south to the northern city limits of Opelousas.

(w) LA 182 from the southern city limits of Opelousas south to LA 93.

(x) LA 93 from LA 182 east to LA 31 at Arnaudville.

(y) LA 31 from Arnaudville north to LA 103 at Leonville.

(z) LA 103 from Leonville north to LA 182 at Washington.

(aa) LA 103 from Interstate 49 northwest to Grand Prairie.

(bb) LA 363 from Grand Prairie west to US 167 at Ville Platte.

(61) San Bernardo Scenic Byway: (a) LA 30 (old LA 46) from LA 39 (Judge Perez Drive) to LA 46 (Florissant LA).

(62) Wetlands Cultural Trail (formerly known as the Lafourche/Terrebonne Scenic Byway): (a) LA 1 (Raceland) from a point located 1,120 feet north of Wilson Street, south to LA 655$1 (Raceland, south through Lockport) - Total of 9.82 miles.

HISTORY: Acts 1991, No. 588, § 1; Acts 1992, No. 230, § 1; Acts 1993, No. 216, § 1; Acts 1993, No. 221, § 1; Acts 1993, No. 272, § 1; Acts 1995, No. 244, § 1; Acts 1995, No. 741, § 1; Acts 1997, No. 71, § 1; Acts 1999, No.

709, § 3; Acts 2003, No. 287, §§ 1, 2.

NOTES:
LexisNexis (R) Notes:

Amendment Notes

2003 Amendments.
Acts 2003, No. 287, § 1, effective August 15, 2003, in (20), added "LA 182 south from US 167 in Lafayette to the intersection of LA 182 with LA 89 in Lafayette; LA 182 south from LA 89 in Lafayette to LA 14 in New Iberia"; and added subsections (58) through (62). Acts 2003, No. 287, § 2, effective August 15, 2003, deleted subsections (36), (39), (40), (42), (43) and (45), which read: "(36) LA 20 from Vacherie in St. James Parish to Gibson in Terrebonne Parish" "(39) LA 55 from LA 56 in Terrebonne Parish south to the end of the road in Terrebonne Parish" "(40) LA 57 from US 90 in Terrebonne Parish south to LA 56 in Terrebonne Parish" "(42) LA 315 from LA 661 in Terrebonne Parish south to the end of the road in Terrebonne Parish" "(43) LA 316 from LA 24 in Terrebonne Parish southeast to LA 24 in Terrebonne Parish" "(45) US 90 from Boutte in St. Charles Parish to Amelia in Terrebonne Parish"

1999 Amendments.
Acts 1999, No. 709, § 3, August 15, 1999, substituted "State Historic Site" for "Commemorative Area" in (52)(f).

ADMINISTRATIVE LAW AND DECISIONS

Attorney General:
R.S. 56:1948.4 provides an alternative mechanism to legislative act for the inclusion of a suggested byway in the Louisiana Byways program., OPINION 00-275, La. Atty. Gen. Op. No. 2000-275; 2000 La. AG LEXIS 278.

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LOUISIANA REVISED STATUTES
TITLE 56. WILDLIFE AND FISHERIES
CHAPTER 9. HISTORIC ROADS AND SCENIC PARKWAYS
PART 3. LOUISIANA BYWAYS

GO TO LOUISIANA STATUTES ARCHIVE DIRECTORY

La. R.S. 56:1948.7 (2009)

§ 56:1948.7. Exclusions from Louisiana Byway designation

A. Any section of the roads designated in this Part as a Louisiana Byway, which is adjacent to land zoned commercial or industrial or upon which is located one or more permanent structures at which commercial or industrial activity is conducted, shall be excluded from the scenic byway designation, except for official signage, mapping, and other purposes solely to preserve system continuity, unless the recommending body requests specific inclusion of such section and the House and Senate Committees on Transportation, Highways and Public Works, with the concurrence of the secretaries of the Department of Culture, Recreation and Tourism and of the Department of Transportation and Development, finds that such section meets the criteria of R.S. 56:1948.3.

B. If, however, the Federal Highway Administration formally expresses its objection to this process of automatic exclusion, and if such objection is directed to the state of Louisiana in writing, and if such objection also initiates official sanctions which would result in the loss of National Highway System apportionment or any past or pending grants to the state for the purpose of scenic byways, then the exclusion in Subsection A is null and void. The Department of Transportation and Development shall notify the Department of Culture, Recreation and Tourism and the Senate and House committees on transportation, highways and public works of such action and the following process shall be substituted in lieu of Subsection A of this Section: Any section of those roads, designated in this Part as a Louisiana Byway, which is adjacent to land zoned commercial or industrial or upon which is located one or more permanent structures at which commercial or industrial activity is conducted, may be excluded from the scenic byway designation if a recommendation for exclusion is presented to the secretary of the Department of Culture, Recreation and Tourism. The secretary of the Department of Culture, Recreation and Tourism is hereby authorized to promulgate rules and regulations in accordance with the Administrative Procedure Act. Such rules and regulations, subject to the oversight of the House and Senate committees on transportation, highways and public works, shall set forth the procedure which must be followed and the criteria which must be met in order for such segments to be excluded from the Louisiana Byways system.

C. Any section of the road designated as a Louisiana scenic highway, which is located in one or more parishes with

a population less than forty thousand, which is under the authority of a police jury form of government, and which includes State Highway 6, from its connection with State Highway 171 in Many, east through Natchitoches to its intersection with State Highway 84, east to the LaSalle Parish line, shall be excluded from the scenic byway designation.

HISTORY: Acts 1995, No. 244, § 1; Acts 1995, No. 741, § 1; Acts 1999, No. 1353, § 1; Acts 2003, No. 999, § 2.

NOTES:
LexisNexis (R) Notes:

Amendment Notes

2003 Amendments.
Acts 2003, No. 999, § 2, effective August 15, 2003, in the section heading, substituted "Louisiana" for "scenic"; in (A), substituted "House and Senate Committees" for "Joint Committee."

1999 Amendments.
Acts 1999, No. 1353, § 1, effective August 15, 1999, added (C).

ADMINISTRATIVE LAW AND DECISIONS

Administrative Code:
Byways > Segmentation of Louisiana Byways. LAC 25:XI.101.

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LOUISIANA REVISED STATUTES
TITLE 56. WILDLIFE AND FISHERIES
CHAPTER 10. LOUISIANA COLONIAL TRAILS

GO TO LOUISIANA STATUTES ARCHIVE DIRECTORY

La. R.S. 56:1951 (2009)

§ 56:1951. Purpose

The purpose of this Chapter is to create the Louisiana Colonial Trails, which consists of those routes identified as the major routes used by settlers, travelers and European colonial powers in the eighteenth and nineteenth centuries for travel to and across Louisiana and to designate those scenic highways which compose a modern tourist route paralleling the length of the Louisiana Colonial Trails.

HISTORY: Added by Acts 1982, No. 57, § 1.

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LOUISIANA REVISED STATUTES
TITLE 56. WILDLIFE AND FISHERIES
CHAPTER 10. LOUISIANA COLONIAL TRAILS

GO TO LOUISIANA STATUTES ARCHIVE DIRECTORY

La. R.S. 56:1952 (2009)

§ 56:1952. Definitions

Unless otherwise indicated herein, the terms used in this Chapter shall mean the following:

(1) "Louisiana Colonial Trails" means a system of trails or roads identified as the migration route of the Camino Real in the western part of the state from Natchitoches to the Texas border and the Harrisonburg Road from Natchitoches through east central Louisiana to the Mississippi River.

(2) "Scenic highway" means those designated modern day roads which parallel the colonial trail and is a route with significant scenic, historical, and recreational features by which tourists can travel across central Louisiana.

HISTORY: Added by Acts 1982, No. 57, § 1.

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LOUISIANA REVISED STATUTES
TITLE 56. WILDLIFE AND FISHERIES
CHAPTER 10. LOUISIANA COLONIAL TRAILS

GO TO LOUISIANA STATUTES ARCHIVE DIRECTORY

La. R.S. 56:1954 (2009)

§ 56:1954. Scenic highways; purpose

The route composing the scenic highways which parallel the Louisiana Colonial Trail and which is to be used as a route for the enjoyment of tourists of the Louisiana Colonial Trails, extending from Mississippi to Texas shall consist of the following:

(1) Enter Louisiana on State Highway 6.

(2) Intersection of State Highway 6 with US 7 1/84, turn south on US 71.

(3) Intersection of US 71 with local paved road known as the Old Harrisonburg Road. Turn east.

(4) Intersection of Old Harrisonburg Road with State Highway 34. Turn northeast on State Highway 34.

(5) Intersection of State Highway with local, paved road. Turn southeast on paved road.

(6) Intersection with Old Harrisonburg Road a local road paved in parts running east-west. Turn east on Old Harrisonburg Road.

(7) Intersection of Old Harrisonburg Road with paved State Highway 1228, turn north.

(8) Intersection of State Highway 1228 with paved, local road, turn east.

(9) Cross the intersection with US 167 and continue on road which becomes paved State Highway 500 at this intersection. Continue east on State Highway 500.

(10) Intersection of State Highway 500 with State Highway 472, a two lane road extending north to State Highway 1230, turn north.

(11) Intersection of State Highway 472 with State Highway 1230. Turn east on State Highway 1230.

(12) When State Highway 1230 turns sharply to the south, continue east on road which becomes State Highway 3098. Continue east on 3098.

(13) Intersection of State Highway 3098 with State Highway 165. Turn south on State Highway 165.

(14) Intersection of State Highway 165 with State Highway 500. Turn east on State Highway 500.

(15) Merger of State Highway 500 with US 84. Continue east on US 84.

(16) Intersection with State Highway 8. Turn northeast and continue on State Highway 8.

(17) Intersection of State Highway 8 with State Highway 124, turn south.

(18) Intersection of State Highway 124 with US 84, turn east.

(19) Veer south on US 84 / 65, which becomes a divided, four lane highway between Ferriday and Vidalia.

HISTORY: Added by Acts 1982, No. 57, § 1.

Maine Revised Statutes Annotated by LexisNexis(R)

*** Current with emergency legislation through Chapter 150 of the 2009 First Regular Session of the 124th Legislature ***
*** April 23, 2009 Annotation Service ***

TITLE 23. HIGHWAYS
PART 1. STATE HIGHWAY LAW
CHAPTER 3. OFFICIALS AND THEIR DUTIES
SUBCHAPTER 3. STATE CLAIMS COMMISSION

GO TO MAINE REVISED STATUTES ARCHIVE DIRECTORY

23 M.R.S. § 153-B (2009)

§ 153-B. Property for highways; acquisition

1. ACQUISITION OF PROPERTY. The Department of Transportation, on behalf of the State, may take over and hold for the State such property as it determines necessary to:

A. Lay out and establish, construct, improve or maintain, provide a change of location or alignment of or provide drainage for state and state aid highways;

B. Provide rest areas, parking strips, roadside and landscape development for the preservation and development of natural scenic beauty;

C. Provide for the health, safety and welfare of the public using a state or state aid highway;

D. Secure materials, with necessary ways and access, for the construction, improvement and maintenance of state and state aid highways;

E. Secure the relocation, removal or disposal of automobile graveyards and junkyards not in conformity with Title 30-A, chapter 183, subchapter I;

F. Erect administrative, storage and operational buildings used in effecting the objectives in conformity with section 1; or

G. Construct, improve and maintain transportation projects as

directed by law and provide mitigation for existing or potential environmental effects of transportation projects.

2. SURVEY AND APPRAISAL. When property is to be purchased or taken over and held for the State, unless the department determines that an adequate description already exists, the department shall first cause the property or interest in the property to be acquired to be surveyed and described, and a plan of the property made, and to be appraised by one or more appraisers. The owner or the owner's designated representative must be given an opportunity to accompany the appraisers during the appraiser's inspection of the property. All persons employed by the department are authorized, to the extent necessary for surveys, appraisals and preliminary engineering, to enter and cross all lands within, adjoining and adjacent to the area proposed for acquisition in carrying out the objectives of this section. The department may prescribe procedures to waive the appraisal in cases involving the acquisition by sale or donation of property or interest in property. The department may prescribe procedures to waive the appraisal in cases in which the fair market value of the property or interest in the property to be taken is estimated at $ 15,000 or less and valuation can be established by another method. In any case in which the department and the owner do not reach an agreement about the value of property or interest in property to be acquired, or if the owner requests, the department shall perform an appraisal.

3. ENTRY; SOUNDINGS, DRILLINGS AND EXAMINATIONS. Persons employed by the department may enter upon the property or building with the consent of the owner, for the purpose of making soundings, drillings and examinations as the department determines necessary for the purpose of this subchapter. If the department is unable to obtain consent of the owner, the department is authorized to seek an administrative inspection warrant from the Superior Court for the county in which the property is located for the purpose of making soundings, drillings and examinations. The department shall file an application in Superior Court in the form of a sworn affidavit that must include:

A. The statutory authority under which the department is authorized to acquire lands by eminent domain;

B. A description of the property to be examined;

C. A statement that the department has requested permission from the owner of the property to conduct an examination and that permission has been denied; and

D. A statement of the purpose for the entry and examination and the nature and scope of the activities reasonably necessary to accomplish this purpose.

4. NOTIFICATION TO POTENTIAL BUYER. If an owner decides to sell the property after the owner has been notified by the department that it plans to purchase or take the property, it is the responsibility of the owner to inform the potential buyer that the department intends to purchase or take the property. The department, as early in its property owner notification process as possible, shall remind the property owner of this responsibility.

LexisNexis (R) Notes:

CASE NOTES

1. Question of public exigency under former Me. Rev. Stat. Ann. tit. 23, § 153 (now Me. Rev. Stat. Ann. tit. 23, § 153-B), as determined by the authorized person or body is "legislative" and "political" and not subject to judicial review. Thus, such grantee of the power may determine, without being subject to judicial review, (a) whether the power shall be invoked, and (b) the time and the extent to which it shall be invoked. Rubin v. W. H. Hinman, Inc., 253 A.2d 708, 1969 Me. LEXIS 274 (Me. 1969).

2. By enactment of former Me. Rev. Stat. Ann. tit. 23, § 153 (now Me. Rev. Stat. Ann. tit. 23, § 153-B), Me. Rev. Stat. Ann. tit. 23, § 154, and Me. Rev. Stat. Ann. tit. 23, § 651, the Maine Legislature has granted the Maine State Highway Commission an unrestricted agency to take by eminent domain, which includes the determination of the suitability of property for the particular public use such as the preservation of natural scenic beauty and the extent to which the property has to be taken to satisfy that exigency, subject to the limitations inherent in the conceptual phrase "along and adjacent to any state or state aid highway" and subject to judicial review for any abuse of power in its exercise. Finks v. Maine State Highway Com., 328 A.2d 791, 1974 Me. LEXIS 273, 7 Env't Rep. Cas. (BNA) 1547 (Me. 1974).

3. Purpose that the Maine Legislature sought to accomplish by the highway beautification aspect of the eminent domain statutory provisions relating to the establishment or improvement of state and state aid highways, former Me. Rev. Stat. Ann. tit. 23, § 153 (now Me. Rev. Stat. Ann. tit. 23, § 153-B), Me. Rev. Stat. Ann. tit. 23, § 154, and Me. Rev. Stat. Ann. tit. 23, § 651, is the integration of public improvement with the aesthetics of the area traversed by a state or state aid highway; though Me. Rev. Stat. Ann. tit. 23, § 651 does not speak in specific terms of taking for the purpose of preserving and developing the natural scenic beauty along and adjacent to any state or state aid highway, when read together with former Me. Rev. Stat. Ann. tit. 23, § 153 (now Me. Rev. Stat. Ann. tit. 23, § 153-B) and Me. Rev. Stat. Ann. tit. 23, § 651 so as to give effect to each provision of the entire statutory scheme, it is readily discernable that the preservation and development of natural scenic beauty is so intimately related to the Commission's right to take and hold property for the purposes enumerated as to evince an implicit finding by the Legislature of a public exigency. Finks v. Maine State Highway Com., 328 A.2d 791, 1974 Me. LEXIS 273, 7 Env't Rep. Cas. (BNA) 1547 (Me. 1974).

4. Concept of "natural scenic beauty," though more generally used in a subjective sense, connotes a sufficiently definite concrete image in terms of highway beautification that, when objectively tested, it furnishes an adequate standard for the measurement of a proper exercise of discretion in a taking for such purposes under the authority of former Me. Rev. Stat. Ann. tit. 23, § 153 (now Me. Rev. Stat. Ann. tit. 23, § 153-B), Me. Rev. Stat. Ann. tit. 23, § 154, and Me. Rev. Stat. Ann. tit. 23, § 651. Finks v. Maine State Highway Com., 328 A.2d 791, 1974 Me. LEXIS 273, 7 Env't Rep. Cas. (BNA) 1547 (Me. 1974).

5. Taking of an owner's land by the Maine State Highway Commission for highway beautification was declared excessive, beyond the scope of former Me. Rev. Stat. Ann. tit. 23, § 153 (now Me. Rev. Stat. Ann. tit. 23, § 153-B), Me. Rev. Stat. Ann. tit. 23, § 154, and Me. Rev. Stat. Ann. tit. 23, § 651, and thus null and void because the taking was over 1,000 feet from the edge of the highway right-of-way, the record negated the existence of unusually picturesque landscape on the fringes of the 1,000 foot scenic highway border strip, the land beyond 1,000 feet was undistinguishable from the entire surrounding area, there was no threat of future development inimical to the preservation of scenic value, and there was no natural boundary within immediate reach; thus, the taking was beyond the intendment of Me. Rev. Stat. Ann. tit. 23, § 651, there was no compelling reason for the taking, and it therefore violated Me. Const. art. I, § 21 because there no public exigency. Finks v. Maine State Highway Com., 328 A.2d 791, 1974 Me. LEXIS 273, 7 Env't Rep. Cas. (BNA) 1547 (Me. 1974).

6. By enactment of former Me. Rev. Stat. Ann. tit. 23, § 153 (now Me. Rev. Stat. Ann. tit. 23, § 153-B), Me. Rev. Stat. Ann. tit. 23, § 154, and Me. Rev. Stat. Ann. tit. 23, § 651, the Maine Legislature has granted the Maine State Highway Commission an unrestricted agency to take by eminent domain, which includes the determination of the suitability of property for the particular public use such as the preservation of natural scenic beauty and the extent to which the property has to be taken to satisfy that exigency, subject to the limitations inherent in the conceptual phrase "along and adjacent to any state or state aid highway" and subject to judicial review for any abuse of power in its exercise. Finks v. Maine State Highway Com., 328 A.2d 791, 1974 Me. LEXIS 273, 7 Env't Rep. Cas. (BNA) 1547 (Me. 1974).

7. Purpose that the Maine Legislature sought to accomplish by the highway beautification aspect of the eminent domain statutory provisions relating to the establishment or improvement of state and state aid highways, former Me. Rev. Stat. Ann. tit. 23, § 153 (now Me. Rev. Stat. Ann. tit. 23, § 153-B), Me. Rev. Stat. Ann. tit. 23, § 154, and Me. Rev. Stat. Ann. tit. 23, § 651, is the integration of public improvement with the aesthetics of the area traversed by a state or state aid highway; though Me. Rev. Stat. Ann. tit. 23, § 651 does not speak in specific terms of taking for the purpose of preserving and developing the natural scenic beauty along and adjacent to any state or state aid highway, when read together with former Me. Rev. Stat. Ann. tit. 23, § 153 (now Me. Rev. Stat. Ann. tit. 23, § 153-B) and Me. Rev. Stat. Ann. tit. 23, § 651 so as to give effect to each provision of the entire statutory scheme, it is readily discernable that the preservation and development of natural scenic beauty is so intimately related to the Commission's right to take and hold property for the purposes enumerated as to evince an implicit finding by the Legislature of a public exigency. Finks v. Maine State Highway Com., 328 A.2d 791, 1974 Me. LEXIS 273, 7 Env't Rep. Cas. (BNA) 1547 (Me. 1974).

8. Concept of "natural scenic beauty," though more generally used in a subjective sense, connotes a sufficiently definite concrete image in terms of highway beautification that, when objectively tested, it furnishes an adequate standard for the measurement of a proper exercise of discretion in a taking for such purposes under the authority of former Me. Rev. Stat. Ann. tit. 23, § 153 (now Me. Rev. Stat. Ann. tit. 23, § 153-B), Me. Rev. Stat. Ann. tit. 23, § 154, and Me. Rev. Stat. Ann. tit. 23, § 651. Finks v. Maine State Highway Com., 328 A.2d 791, 1974 Me. LEXIS 273, 7 Env't Rep. Cas. (BNA) 1547 (Me. 1974).

9. Me. Rev. Stat. Ann. tit. 23, § 154, read in conjunction with former Me. Rev. Stat. Ann. tit. 23, § 153 (now Me. Rev. Stat. Ann. tit. 23, § 153-B), in effect confers the broad powers of eminent domain upon the State Highway Commission for the public purposes of construction, improvement, and maintenance of state and state aid highways. Rubin v. W. H. Hinman, Inc., 253 A.2d 708, 1969 Me. LEXIS 274 (Me. 1969).

10. Department of Transportation had a rational basis for taking all five acres of the property owner's land where a restaurant was located pursuant to Me. Rev. Stat. Ann. tit. 23, § 153-B(1), because, inter alia, the land was used for staging during construction, flexibility was needed during construction due to the short amount of time in which the project had to be finished, and the severe blasting done during construction would have posed a safety risk to customers. Dyer v. DOT, 2008 ME 106, 951 A.2d 821, 2008 Me. LEXIS 108 (2008).

11. Taking of an owner's land by the Maine State Highway Commission for highway beautification was declared excessive, beyond the scope of former Me. Rev. Stat. Ann. tit. 23, § 153 (now Me. Rev. Stat. Ann. tit. 23, § 153-B), Me. Rev. Stat. Ann. tit. 23, § 154, and Me. Rev. Stat. Ann. tit. 23, § 651, and thus null and void because the taking was over 1,000 feet from the edge of the highway right-of-way, the record negated the existence of unusually picturesque landscape on the fringes of the 1,000 foot scenic highway border strip, the land beyond 1,000 feet was undistinguishable from the entire surrounding area, there was no threat of future development inimical to the preservation of scenic value, and there was no natural boundary within immediate reach; thus, the taking was beyond the intendment of Me. Rev. Stat. Ann. tit. 23, § 651, there was no compelling reason for the taking, and it therefore violated Me. Const. art. I, § 21 because there no public exigency. Finks v. Maine State Highway Com., 328 A.2d 791, 1974 Me. LEXIS 273, 7 Env't Rep. Cas. (BNA) 1547 (Me. 1974).

12. By enactment of former Me. Rev. Stat. Ann. tit. 23, § 153 (now Me. Rev. Stat. Ann. tit. 23, § 153-B), Me. Rev. Stat. Ann. tit. 23, § 154, and Me. Rev. Stat. Ann. tit. 23, § 651, the Maine Legislature has granted the Maine State Highway Commission an unrestricted agency to take by eminent domain, which includes the determination of the suitability of property for the particular public use such as the preservation of natural scenic beauty and the extent to which the property has to be taken to satisfy that exigency, subject to the limitations inherent in the conceptual phrase "along and adjacent to any state or state aid highway" and subject to judicial review for any abuse of power in its exercise. Finks v. Maine State Highway Com., 328 A.2d 791, 1974 Me. LEXIS 273, 7 Env't Rep. Cas. (BNA) 1547 (Me. 1974).

13. Purpose that the Maine Legislature sought to accomplish by the highway beautification aspect of the eminent domain statutory provisions relating to the establishment or improvement of state and state aid highways, former Me. Rev. Stat. Ann. tit. 23, § 153 (now Me. Rev. Stat. Ann. tit. 23, § 153-B), Me. Rev. Stat. Ann. tit. 23, § 154, and Me. Rev. Stat. Ann. tit. 23, § 651, is the integration of public improvement with the aesthetics of the area traversed by a state or state aid highway; though Me. Rev. Stat. Ann. tit. 23, § 651 does not speak in specific terms of taking for the purpose of preserving and developing the natural scenic beauty along and adjacent to any state or state aid highway, when read together with former Me. Rev. Stat. Ann. tit. 23, § 153 (now Me. Rev. Stat. Ann. tit. 23, § 153-B) and Me. Rev. Stat. Ann. tit. 23, § 651 so as to give effect to each provision of the entire statutory scheme, it is readily discernable that the preservation and development of natural scenic beauty is so intimately related to the Commission's right to take and hold property for the purposes enumerated as to evince an implicit finding by the Legislature of a public exigency. Finks v. Maine State Highway Com., 328 A.2d 791, 1974 Me. LEXIS 273, 7 Env't Rep. Cas. (BNA) 1547 (Me. 1974).

14. Me. Rev. Stat. Ann. tit. 23, § 154, read in conjunction with former Me. Rev. Stat. Ann. tit. 23, § 153 (now Me. Rev. Stat. Ann. tit. 23, § 153-B), in effect confers the broad powers of eminent domain upon the State Highway Commission for the public purposes of construction, improvement, and maintenance of state and state aid highways. Rubin v. W. H. Hinman, Inc., 253 A.2d 708, 1969 Me. LEXIS 274 (Me. 1969).

15. Question of public exigency under former Me. Rev. Stat. Ann. tit. 23, § 153 (now Me. Rev. Stat. Ann. tit. 23, § 153-B), as determined by the authorized person or body is "legislative" and "political" and not subject to judicial review. Thus, such grantee of the power may determine, without being subject to judicial review, (a) whether the power shall be invoked, and (b) the time and the extent to which it shall be invoked. Rubin v. W. H. Hinman, Inc., 253 A.2d 708, 1969 Me. LEXIS 274 (Me. 1969).

16. Department of Transportation had a rational basis for taking all five acres of the property owner's land where a restaurant was located pursuant to Me. Rev. Stat. Ann. tit. 23, § 153-B(1), because, inter alia, the land was used for staging during construction, flexibility was needed during construction due to the short amount of time in which the project had to be finished, and the severe blasting done during construction would have posed a safety risk to customers. Dyer v. DOT, 2008 ME 106, 951 A.2d 821, 2008 Me. LEXIS 108 (2008).

17. In enacting Me. Rev. Stat. Ann. tit. 23, § 153-B(1)(G), the legislature intended to allow the use of eminent domain in accordance with other statutorily authorized purposes and not to require specific legislative enactments for non-highway projects on a case-by-case basis; thus, § 153-B(1)(G) was a general authorization, delegated from the legislature to the department, to take a landowner's property that was necessary to achieve the State's transportation policies. Blanchard v. DOT, 2002 ME 96, 798 A.2d 1119, 2002 Me. LEXIS 126 (2002).

Maine Revised Statutes Annotated by LexisNexis(R)

*** Current with emergency legislation through Chapter 150 of the 2009 First Regular Session of the 124th Legislature ***
*** April 23, 2009 Annotation Service ***

TITLE 23. HIGHWAYS
PART 1. STATE HIGHWAY LAW
CHAPTER 3. OFFICIALS AND THEIR DUTIES
SUBCHAPTER 3. STATE CLAIMS COMMISSION

GO TO MAINE REVISED STATUTES ARCHIVE DIRECTORY

23 M.R.S. § 154 (2009)

§ 154. Condemnation proceedings

If the department determines that public exigency requires the taking of property or any interest in property, or is unable to purchase a property or any interest in a property, or the necessary ways and access to a property at what it considers a reasonable valuation, or if the title in a property is defective, it shall file in the registry of deeds for the county or registry district where the land is located a notice of condemnation which must contain a description of the project specifying the property and the interest taken and the name or names of the owner or owners of record so far as they can be reasonably determined. The department may prescribe procedures for the reasonable determination of the owner or owners of record. The department may join in the notice one or more separate properties whether in the same or different ownership and whether or not taken for the same use.

The department shall serve a check in the amount of the determined net damage and offering price and a copy of the notice of condemnation on the owner or owners of record. In case there is multiple ownership, the check may be served on any one of the owners. With that copy the department must serve on each individual owner of record a copy of that part of the plan as relates to the particular parcel or parcels of land taken from that owner and a statement by the department with respect to the particular parcel or parcels of land taken from that owner which must:

1. DATE OF PROPOSED POSSESSION. State the proposed date of taking possession;

2. COMPENSATION INVOLVING SEVERANCE DAMAGE. Where the department appraisals disclose severance damages, state the amount of compensation itemized in accordance with the department's determination of the following elements of damage:

A. The highest and best use of the property at the date of taking;

B. The highest and best use of the property remaining after the taking;

C. The fair market value of the property before the taking;

D. The fair market value of the property after the taking;

E. The gross damage, showing separately:

1) The fair market value of the real property taken; and

2) Severance damages including the impairment or destruction of facilities and structures;

F. Special benefits, accruing to the remaining property by reason of the public improvement for which part of the property is taken, to be set off against severance damages;

G. The net damage showing separately:

1) The fair market value of the real property taken;

2) The amount of severance damages in excess of special benefits; and

3) The offering price;

H. If the offer is not acceptable and the State cannot negotiate an agreement on the amount of just compensation within 60 days from the date of taking, the owner may apply to the department within said 60 days and have the matter referred to the State Claims Commission for assessment of the damage. Acceptance and cashing this check will not jeopardize negotiation and will not be construed as acceptance of the offer; and

I. Enclosed Check No.: Amount: $

Payable to:

Sent to:

3. COMPENSATION NOT INVOLVING SEVERANCE DAMAGE. Where the department appraisals disclose no severance damages, state the amount of compensation itemized in accordance with the department's determination of the following elements of damage:

A. The highest and best use of the property at the date of taking;

B. Repealed.

C. The fair market value of the real property taken as of the date of taking;

D. Repealed.

E. Offering price;

F. The check represents the State's offer of just compensation. If the offer is not acceptable and the State cannot negotiate an agreement on the amount of just compensation within 60 days from the date of taking, the owner may apply to the department within the 60 days and have the matter referred to the State Claims Commission for assessment of the damage. Acceptance and cashing this check will not jeopardize negotiation and will not be construed as acceptance of the offer; and

G. Enclosed Check No.: Amount: $

Payable to:

Sent to:

4. COMPENSATION IN CASES INVOLVING THE FACILITIES OF A PUBLIC UTILITY. Where the condemnation involves the taking of established rights and facilities owned by a public utility and located outside of an established highway right-of-way, no statement by the department as provided above may be sent to the public utility concerned. In any negotiations for an agreement with such public utility with regard to such rights and facilities, the department shall consider, without being limited to, the following elements of damage:

A. Relocation costs, which must include the cost of acquisition of substitute rights and the cost of establishing either existing or substitute facilities in a new location;

B. The salvage value of facilities removed;

C. Cost of removal; and

D. The value of betterments where the function of the substitute facilities exceeds the function of the replaced facilities.

Service of the notice of condemnation with a copy of the plan, check and the statement by the department must be made by registered or certified mail or by personal service as required for service of a summons on a complaint in the Superior Court. A notice describing the condemnation must be published once in a newspaper of general circulation in the county where the property is located and such publication constitutes service on any unknown owner or owners or other persons who may have or claim an interest in the property. The notice must consist of an area map depicting the general location of the property interests to be condemned and such other information as the department determines will sufficiently identify the area in which the property interests are to be taken; an informative summary listing the parcel or item numbers to be condemned, the name of the apparent owner or owners of record of the property interests, the estimated areas to be condemned and the nature of the interests to be condemned; and a location at which the complete notice of layout and taking may be examined.

If such owner is a person under the age of 18 years, or an incompetent person, the commission shall cause such notice and check to be served upon the legal guardian of such person or incompetent. If there is no such guardian, then the department shall apply to the judge of probate for the county wherein the property is situated, briefly stating the facts and requesting the appointment of a guardian. The reasonable fee of such guardian as approved by the court must be

paid by the department.

In case there is a mortgage, tax lien of record or other encumbrance covering any of said land, a copy of the notice of condemnation must be sent forthwith by registered or certified mail to the holder of record of said mortgage, tax lien or other encumbrance addressed to the holder's office or place of abode if known, otherwise to the office, abode or address as set forth in said record.

The recording of the notice of condemnation is the date of taking and vests title to the property therein described in the State in fee simple or such lesser state as is specified in the notice of condemnation. Within one year after the completion of the project for which the land is taken, the department shall file a plan for recording in the registry of deeds for the county or registry district where the land is located.

If a condemnation proceeding is instituted and then abandoned, the owner of any right, title or interest in any real property included in said proceeding must be reimbursed by the department for reasonable attorney, appraisal and engineering fees, actually incurred because of the condemnation proceedings.

LexisNexis (R) Notes:

CASE NOTES

1. By enactment of former Me. Rev. Stat. Ann. tit. 23, § 153 (now Me. Rev. Stat. Ann. tit. 23, § 153-B), Me. Rev. Stat. Ann. tit. 23, § 154, and Me. Rev. Stat. Ann. tit. 23, § 651, the Maine Legislature has granted the Maine State Highway Commission an unrestricted agency to take by eminent domain, which includes the determination of the suitability of property for the particular public use such as the preservation of natural scenic beauty and the extent to which the property has to be taken to satisfy that exigency, subject to the limitations inherent in the conceptual phrase "along and adjacent to any state or state aid highway" and subject to judicial review for any abuse of power in its exercise. Finks v. Maine State Highway Com., 328 A.2d 791, 1974 Me. LEXIS 273, 7 Env't Rep. Cas. (BNA) 1547 (Me. 1974).

2. In eminent domain proceedings, although municipal officers are directed by Me. Rev. Stat. Ann. tit. 23, § 3029 to use the methods set forth in Me. Rev. Stat. Ann. tit. 23, §§ 154-154E to determine the amount of damages to be paid to each affected property owner, the superior court only renders judgment for just compensation. Me. Rev. Stat. Ann. tit. 23, § 3029 does not require the superior court to assess damages pursuant to Me. Rev. Stat. Ann. tit. 23, §§ 154-154E. August Realty, Inc. v. York, 431 A.2d 1289, 1981 Me. LEXIS 851 (Me. 1981).

3. In eminent domain proceedings, the offering price is simply the total amount of damages computed by the Maine Department of Transportation and offered to the property owner and is not an element of damage under Me. Rev. Stat. Ann. tit. 23, § 154. August Realty, Inc. v. York, 431 A.2d 1289, 1981 Me. LEXIS 851 (Me. 1981).

4. Purpose that the Maine Legislature sought to accomplish by the highway beautification aspect of the eminent domain statutory provisions relating to the establishment or improvement of state and state aid highways, former Me. Rev. Stat.

Ann. tit. 23, § 153 (now Me. Rev. Stat. Ann. tit. 23, § 153-B), Me. Rev. Stat. Ann. tit. 23, § 154, and Me. Rev. Stat. Ann. tit. 23, § 651, is the integration of public improvement with the aesthetics of the area traversed by a state or state aid highway; though Me. Rev. Stat. Ann. tit. 23, § 651 does not speak in specific terms of taking for the purpose of preserving and developing the natural scenic beauty along and adjacent to any state or state aid highway, when read together with former Me. Rev. Stat. Ann. tit. 23, § 153 (now Me. Rev. Stat. Ann. tit. 23, § 153-B) and Me. Rev. Stat. Ann. tit. 23, § 651 so as to give effect to each provision of the entire statutory scheme, it is readily discernable that the preservation and development of natural scenic beauty is so intimately related to the Commission's right to take and hold property for the purposes enumerated as to evince an implicit finding by the Legislature of a public exigency. Finks v. Maine State Highway Com., 328 A.2d 791, 1974 Me. LEXIS 273, 7 Env't Rep. Cas. (BNA) 1547 (Me. 1974).

5. Concept of "natural scenic beauty," though more generally used in a subjective sense, connotes a sufficiently definite concrete image in terms of highway beautification that, when objectively tested, it furnishes an adequate standard for the measurement of a proper exercise of discretion in a taking for such purposes under the authority of former Me. Rev. Stat. Ann. tit. 23, § 153 (now Me. Rev. Stat. Ann. tit. 23, § 153-B), Me. Rev. Stat. Ann. tit. 23, § 154, and Me. Rev. Stat. Ann. tit. 23, § 651. Finks v. Maine State Highway Com., 328 A.2d 791, 1974 Me. LEXIS 273, 7 Env't Rep. Cas. (BNA) 1547 (Me. 1974).

6. By enactment of former Me. Rev. Stat. Ann. tit. 23, § 153 (now Me. Rev. Stat. Ann. tit. 23, § 153-B), Me. Rev. Stat. Ann. tit. 23, § 154, and Me. Rev. Stat. Ann. tit. 23, § 651, the Maine Legislature has granted the Maine State Highway Commission an unrestricted agency to take by eminent domain, which includes the determination of the suitability of property for the particular public use such as the preservation of natural scenic beauty and the extent to which the property has to be taken to satisfy that exigency, subject to the limitations inherent in the conceptual phrase "along and adjacent to any state or state aid highway" and subject to judicial review for any abuse of power in its exercise. Finks v. Maine State Highway Com., 328 A.2d 791, 1974 Me. LEXIS 273, 7 Env't Rep. Cas. (BNA) 1547 (Me. 1974).

7. Taking of an owner's land by the Maine State Highway Commission for highway beautification was declared excessive, beyond the scope of former Me. Rev. Stat. Ann. tit. 23, § 153 (now Me. Rev. Stat. Ann. tit. 23, § 153-B), Me. Rev. Stat. Ann. tit. 23, § 154, and Me. Rev. Stat. Ann. tit. 23, § 651, and thus null and void because the taking was over 1,000 feet from the edge of the highway right-of-way, the record negated the existence of unusually picturesque landscape on the fringes of the 1,000 foot scenic highway border strip, the land beyond 1,000 feet was undistinguishable from the entire surrounding area, there was no threat of future development inimical to the preservation of scenic value, and there was no natural boundary within immediate reach; thus, the taking was beyond the intendment of Me. Rev. Stat. Ann. tit. 23, § 651, there was no compelling reason for the taking, and it therefore violated Me. Const. art. I, § 21 because there no public exigency. Finks v. Maine State Highway Com., 328 A.2d 791, 1974 Me. LEXIS 273, 7 Env't Rep. Cas. (BNA) 1547 (Me. 1974).

8. Purpose that the Maine Legislature sought to accomplish by the highway beautification aspect of the eminent domain statutory provisions relating to the establishment or improvement of state and state aid highways, former Me. Rev. Stat. Ann. tit. 23, § 153 (now Me. Rev. Stat. Ann. tit. 23, § 153-B), Me. Rev. Stat. Ann. tit. 23, § 154, and Me. Rev. Stat. Ann. tit. 23, § 651, is the integration of public improvement with the aesthetics of the area traversed by a state or state aid highway; though Me. Rev. Stat. Ann. tit. 23, § 651 does not speak in specific terms of taking for the purpose of preserving and developing the natural scenic beauty along and adjacent to any state or state aid highway, when read together with former Me. Rev. Stat. Ann. tit. 23, § 153 (now Me. Rev. Stat. Ann. tit. 23, § 153-B) and Me. Rev. Stat. Ann. tit. 23, § 651 so as to give effect to each provision of the entire statutory scheme, it is readily discernable that the preservation and development of natural scenic beauty is so intimately related to the Commission's right to take and hold property for the purposes enumerated as to evince an implicit finding by the Legislature of a public exigency. Finks v. Maine State Highway Com., 328 A.2d 791, 1974 Me. LEXIS 273, 7 Env't Rep. Cas. (BNA) 1547 (Me. 1974).

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10. There is no statutory requirement under Me. Rev. Stat. Ann. tit. 23, § 154 that the highway commission negotiate with a property owner for the purchase of an easement before resorting to eminent domain proceedings. Rubin v. W. H. Hinman, Inc., 253 A.2d 708, 1969 Me. LEXIS 274 (Me. 1969).

11. Me. Rev. Stat. Ann. tit. 23, § 154 must be read in conjunction with Me. Rev. Stat. Ann. tit. 23, § 153, which in effect confers the broad powers of eminent domain upon the State Highway Commission for the public purposes of construction, improvement, and maintenance of state and state aid highways. Rubin v. W. H. Hinman, Inc., 253 A.2d 708, 1969 Me. LEXIS 274 (Me. 1969).

12. Notice given by the State Highway Commission under Me. Rev. Stat. Ann. tit. 23, § 154 was not invalid where the notice did not more than make the right to possession accrue upon the vesting of title, as it had a right to do. Rubin v. W. H. Hinman, Inc., 253 A.2d 708, 1969 Me. LEXIS 274 (Me. 1969).

13. Evaluating the highest and best use of the property at the date of taking and the fair market value of the real property taken as of the date of taking would have fairly compensated the property owners for their loss. The happenstance of the property owners owning part of the old and new paths for the road, such that they stood to receive a portion of the discontinued road in the future if they retained title to the property did not justify the city's reduction of the just compensation owed to the property owners. J.A. Rapaport Family L.P. v. City of Brewer, 2005 ME 89, 877 A.2d 1077, 2005 Me. LEXIS 93 (2005).

14. In eminent domain proceedings, although municipal officers are directed by Me. Rev. Stat. Ann. tit. 23, § 3029 to use the methods set forth in Me. Rev. Stat. Ann. tit. 23, §§ 154-154E to determine the amount of damages to be paid to each affected property owner, the superior court only renders judgment for just compensation. Me. Rev. Stat. Ann. tit. 23, § 3029 does not require the superior court to assess damages pursuant to Me. Rev. Stat. Ann. tit. 23, §§ 154-154E. August Realty, Inc. v. York, 431 A.2d 1289, 1981 Me. LEXIS 851 (Me. 1981).

15. In eminent domain proceedings, the offering price is simply the total amount of damages computed by the Maine Department of Transportation and offered to the property owner and is not an element of damage under Me. Rev. Stat. Ann. tit. 23, § 154. August Realty, Inc. v. York, 431 A.2d 1289, 1981 Me. LEXIS 851 (Me. 1981).

16. By enactment of former Me. Rev. Stat. Ann. tit. 23, § 153 (now Me. Rev. Stat. Ann. tit. 23, § 153-B), Me. Rev. Stat. Ann. tit. 23, § 154, and Me. Rev. Stat. Ann. tit. 23, § 651, the Maine Legislature has granted the Maine State Highway Commission an unrestricted agency to take by eminent domain, which includes the determination of the suitability of property for the particular public use such as the preservation of natural scenic beauty and the extent to which the property has to be taken to satisfy that exigency, subject to the limitations inherent in the conceptual phrase "along and adjacent to any state or state aid highway" and subject to judicial review for any abuse of power in its exercise. Finks v. Maine State Highway Com., 328 A.2d 791, 1974 Me. LEXIS 273, 7 Env't Rep. Cas. (BNA) 1547 (Me. 1974).

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1,000 feet from the edge of the highway right-of-way, the record negated the existence of unusually picturesque landscape on the fringes of the 1,000 foot scenic highway border strip, the land beyond 1,000 feet was undistinguishable from the entire surrounding area, there was no threat of future development inimical to the preservation of scenic value, and there was no natural boundary within immediate reach; thus, the taking was beyond the intendment of Me. Rev. Stat. Ann. tit. 23, § 651, there was no compelling reason for the taking, and it therefore violated Me. Const. art. I, § 21 because there no public exigency. Finks v. Maine State Highway Com., 328 A.2d 791, 1974 Me. LEXIS 273, 7 Env't Rep. Cas. (BNA) 1547 (Me. 1974).

18. Purpose that the Maine Legislature sought to accomplish by the highway beautification aspect of the eminent domain statutory provisions relating to the establishment or improvement of state and state aid highways, former Me. Rev. Stat. Ann. tit. 23, § 153 (now Me. Rev. Stat. Ann. tit. 23, § 153-B), Me. Rev. Stat. Ann. tit. 23, § 154, and Me. Rev. Stat. Ann. tit. 23, § 651, is the integration of public improvement with the aesthetics of the area traversed by a state or state aid highway; though Me. Rev. Stat. Ann. tit. 23, § 651 does not speak in specific terms of taking for the purpose of preserving and developing the natural scenic beauty along and adjacent to any state or state aid highway, when read together with former Me. Rev. Stat. Ann. tit. 23, § 153 (now Me. Rev. Stat. Ann. tit. 23, § 153-B) and Me. Rev. Stat. Ann. tit. 23, § 651 so as to give effect to each provision of the entire statutory scheme, it is readily discernable that the preservation and development of natural scenic beauty is so intimately related to the Commission's right to take and hold property for the purposes enumerated as to evince an implicit finding by the Legislature of a public exigency. Finks v. Maine State Highway Com., 328 A.2d 791, 1974 Me. LEXIS 273, 7 Env't Rep. Cas. (BNA) 1547 (Me. 1974).

19. There is no statutory requirement under Me. Rev. Stat. Ann. tit. 23, § 154 that the highway commission negotiate with a property owner for the purchase of an easement before resorting to eminent domain proceedings. Rubin v. W. H. Hinman, Inc., 253 A.2d 708, 1969 Me. LEXIS 274 (Me. 1969).

20. Me. Rev. Stat. Ann. tit. 23, § 154 must be read in conjunction with Me. Rev. Stat. Ann. tit. 23, § 153, which in effect confers the broad powers of eminent domain upon the State Highway Commission for the public purposes of construction, improvement, and maintenance of state and state aid highways. Rubin v. W. H. Hinman, Inc., 253 A.2d 708, 1969 Me. LEXIS 274 (Me. 1969).

21. Notice given by the State Highway Commission under Me. Rev. Stat. Ann. tit. 23, § 154 was not invalid where the notice did not more than make the right to possession accrue upon the vesting of title, as it had a right to do. Rubin v. W. H. Hinman, Inc., 253 A.2d 708, 1969 Me. LEXIS 274 (Me. 1969).

LAW REVIEWS

1. 45 Me. L. Rev. 243, AN ARGUMENT TO THE STATE OF MAINE, THE TOWN OF WELLS, AND OTHER MAINE TOWNS SIMILARLY SITUATED: BUY THE FORESHORE--NOW.

Maine Revised Statutes Annotated by LexisNexis(R)

*** Current with emergency legislation through Chapter 150 of the 2009 First Regular Session of the 124th Legislature ***
*** April 23, 2009 Annotation Service ***

TITLE 23. HIGHWAYS
PART 1. STATE HIGHWAY LAW
CHAPTER 3. OFFICIALS AND THEIR DUTIES
SUBCHAPTER 6. SCENIC HIGHWAY BOARD [REPEALED]

GO TO MAINE REVISED STATUTES ARCHIVE DIRECTORY

23 M.R.S. § 231 (2009)

§§ 231 to 235. Repealed. Laws 1971, c. 593, § 7

Maine Revised Statutes Annotated by LexisNexis(R)

*** Current with emergency legislation through Chapter 150 of the 2009 First Regular Session of the 124th Legislature ***
*** April 23, 2009 Annotation Service ***

TITLE 23. HIGHWAYS
PART 1. STATE HIGHWAY LAW
CHAPTER 11. LAYING OUT, ALTERING AND DISCONTINUING HIGHWAYS

GO TO MAINE REVISED STATUTES ARCHIVE DIRECTORY

23 M.R.S. § 651 (2009)

§ 651. State and state aid highways

The department may alter, widen or change the grade of any state or state aid highway whenever in its judgment the public exigency may require, and may lay out, establish and open a new highway as a state highway, and upon appropriate petition from municipal officers may lay out, establish and open a new highway as a state aid highway. It may discontinue a highway, or a portion thereof, as a state or state aid highway and the same shall be thereafter maintained by the town or county originally liable therefor except as otherwise provided.

The department, in consultation with a municipality, may preserve and develop the natural scenic beauty along and adjacent to any state or state aid highway to integrate the public improvement with the aesthetics of the area traversed by the highway, particularly along those areas of the highway that constitute the entrance to that municipality. The department shall consult with each municipality traversed by a state or state aid highway on the placement of utility poles and signs within the boundaries of that municipality. The department may establish and maintain rest areas, turn-outs and parking strips for the suitable accommodation of the public whenever in its judgment the public exigency may require.

The department may construct ditches and drains to carry water away from any highway that is under its supervision or that it is constructing, and over or through any lands of persons or corporations when it deems it necessary for public convenience or for the proper care of such highway. No such ditch or drain shall pass under or within 20 feet of any dwelling house without the consent of the owner thereof.

Wherever, on or along public highways, ditches or drains have existed for a period of 20 years or longer, which cause water to be flowed away from the highway, there shall be a conclusive presumption that easements for such flowage from such ditches or drains exist, but only to the extent of the original flowage. This paragraph does not apply in the cases protected by section 6025.

The department shall take into consideration the interests of a municipality as to the location of any state or state aid highway construction or alteration within the boundaries of that municipality.

The department, at its discretion, may authorize a person, corporation or entity who has had conditions imposed pursuant to Title 23, section 704-A or by other governmental review to perform construction work on the state or state aid highway system and on town ways. The performance of the work must be in compliance with the department's standards for highway and bridge construction, traffic control and bonding and any other standards or conditions the department may impose. All of the department's expenses and administrative costs relating to the work must be paid by the person authorized to perform the work. Notwithstanding the Maine Tort Claims Act, Title 14, chapter 741, the State or its employees are immune from suit for damages arising from any activities performed in connection with this work.

LexisNexis (R) Notes:

CASE NOTES

1. By enactment of former Me. Rev. Stat. Ann. tit. 23, § 153 (now Me. Rev. Stat. Ann. tit. 23, § 153-B), Me. Rev. Stat. Ann. tit. 23, § 154, and Me. Rev. Stat. Ann. tit. 23, § 651, the Maine Legislature has granted the Maine State Highway Commission an unrestricted agency to take by eminent domain, which includes the determination of the suitability of property for the particular public use such as the preservation of natural scenic beauty and the extent to which the property has to be taken to satisfy that exigency, subject to the limitations inherent in the conceptual phrase "along and adjacent to any state or state aid highway" and subject to judicial review for any abuse of power in its exercise. Finks v. Maine State Highway Com., 328 A.2d 791, 1974 Me. LEXIS 273, 7 Env't Rep. Cas. (BNA) 1547 (Me. 1974).

2. Where lessors of a hotel brought an action in tort against the chairman of the state highway commission and the commission's engineer for taking some land and making changes in the street in front of their hotel which made it more difficult for cars to get into the hotel and financially hurt the hotel, the chairman and engineer were not entitled to summary judgment under Me. R. Civ. P. 56 because there was an issue of fact as to whether the taking was for state or state aid highways under Me. Rev. Stat. Ann. tit. 23, § 651. Jacobson v. State, 244 A.2d 419, 1968 Me. LEXIS 227 (Me. 1968).

3. Purpose that the Maine Legislature sought to accomplish by the highway beautification aspect of the eminent domain statutory provisions relating to the establishment or improvement of state and state aid highways, former Me. Rev. Stat. Ann. tit. 23, § 153 (now Me. Rev. Stat. Ann. tit. 23, § 153-B), Me. Rev. Stat. Ann. tit. 23, § 154, and Me. Rev. Stat. Ann. tit. 23, § 651, is the integration of public improvement with the aesthetics of the area traversed by a state or state aid highway; though Me. Rev. Stat. Ann. tit. 23, § 651 does not speak in specific terms of taking for the purpose of preserving and developing the natural scenic beauty along and adjacent to any state or state aid highway, when read together with former Me. Rev. Stat. Ann. tit. 23, § 153 (now Me. Rev. Stat. Ann. tit. 23, § 153-B) and Me. Rev. Stat. Ann. tit. 23, § 651 so as to give effect to each provision of the entire statutory scheme, it is readily discernable that the preservation and development of natural scenic beauty is so intimately related to the Commission's right to take and hold property for the purposes enumerated as to evince an implicit finding by the Legislature of a public exigency. Finks v. Maine State Highway Com., 328 A.2d 791, 1974 Me. LEXIS 273, 7 Env't Rep. Cas. (BNA) 1547 (Me. 1974).

4. Concept of "natural scenic beauty," though more generally used in a subjective sense, connotes a sufficiently definite concrete image in terms of highway beautification that, when objectively tested, it furnishes an adequate standard for the measurement of a proper exercise of discretion in a taking for such purposes under the authority of former Me. Rev.

Stat. Ann. tit. 23, § 153 (now Me. Rev. Stat. Ann. tit. 23, § 153-B), Me. Rev. Stat. Ann. tit. 23, § 154, and Me. Rev. Stat. Ann. tit. 23, § 651. Finks v. Maine State Highway Com., 328 A.2d 791, 1974 Me. LEXIS 273, 7 Env't Rep. Cas. (BNA) 1547 (Me. 1974).

5. By enactment of former Me. Rev. Stat. Ann. tit. 23, § 153 (now Me. Rev. Stat. Ann. tit. 23, § 153-B), Me. Rev. Stat. Ann. tit. 23, § 154, and Me. Rev. Stat. Ann. tit. 23, § 651, the Maine Legislature has granted the Maine State Highway Commission an unrestricted agency to take by eminent domain, which includes the determination of the suitability of property for the particular public use such as the preservation of natural scenic beauty and the extent to which the property has to be taken to satisfy that exigency, subject to the limitations inherent in the conceptual phrase "along and adjacent to any state or state aid highway" and subject to judicial review for any abuse of power in its exercise. Finks v. Maine State Highway Com., 328 A.2d 791, 1974 Me. LEXIS 273, 7 Env't Rep. Cas. (BNA) 1547 (Me. 1974).

6. Taking of an owner's land by the Maine State Highway Commission for highway beautification was declared excessive, beyond the scope of former Me. Rev. Stat. Ann. tit. 23, § 153 (now Me. Rev. Stat. Ann. tit. 23, § 153-B), Me. Rev. Stat. Ann. tit. 23, § 154, and Me. Rev. Stat. Ann. tit. 23, § 651, and thus null and void because the taking was over 1,000 feet from the edge of the highway right-of-way, the record negated the existence of unusually picturesque landscape on the fringes of the 1,000 foot scenic highway border strip, the land beyond 1,000 feet was undistinguishable from the entire surrounding area, there was no threat of future development inimical to the preservation of scenic value, and there was no natural boundary within immediate reach; thus, the taking was beyond the intendment of Me. Rev. Stat. Ann. tit. 23, § 651, there was no compelling reason for the taking, and it therefore violated Me. Const. art. I, § 21 because there no public exigency. Finks v. Maine State Highway Com., 328 A.2d 791, 1974 Me. LEXIS 273, 7 Env't Rep. Cas. (BNA) 1547 (Me. 1974).

7. Purpose that the Maine Legislature sought to accomplish by the highway beautification aspect of the eminent domain statutory provisions relating to the establishment or improvement of state and state aid highways, former Me. Rev. Stat. Ann. tit. 23, § 153 (now Me. Rev. Stat. Ann. tit. 23, § 153-B), Me. Rev. Stat. Ann. tit. 23, § 154, and Me. Rev. Stat. Ann. tit. 23, § 651, is the integration of public improvement with the aesthetics of the area traversed by a state or state aid highway; though Me. Rev. Stat. Ann. tit. 23, § 651 does not speak in specific terms of taking for the purpose of preserving and developing the natural scenic beauty along and adjacent to any state or state aid highway, when read together with former Me. Rev. Stat. Ann. tit. 23, § 153 (now Me. Rev. Stat. Ann. tit. 23, § 153-B) and Me. Rev. Stat. Ann. tit. 23, § 651 so as to give effect to each provision of the entire statutory scheme, it is readily discernable that the preservation and development of natural scenic beauty is so intimately related to the Commission's right to take and hold property for the purposes enumerated as to evince an implicit finding by the Legislature of a public exigency. Finks v. Maine State Highway Com., 328 A.2d 791, 1974 Me. LEXIS 273, 7 Env't Rep. Cas. (BNA) 1547 (Me. 1974).

8. Concept of "natural scenic beauty," though more generally used in a subjective sense, connotes a sufficiently definite concrete image in terms of highway beautification that, when objectively tested, it furnishes an adequate standard for the measurement of a proper exercise of discretion in a taking for such purposes under the authority of former Me. Rev. Stat. Ann. tit. 23, § 153 (now Me. Rev. Stat. Ann. tit. 23, § 153-B), Me. Rev. Stat. Ann. tit. 23, § 154, and Me. Rev. Stat. Ann. tit. 23, § 651. Finks v. Maine State Highway Com., 328 A.2d 791, 1974 Me. LEXIS 273, 7 Env't Rep. Cas. (BNA) 1547 (Me. 1974).

9. Former Me. Rev. Stat. Ann. tit. 23, § 153 (now Me. Rev. Stat. Ann. tit. 23, § 153-A) was not intended to prevent the designation of a state highway, or the taking therefore, even though it was known or recognized at the outset that the designation was temporary. Section 153 had to be read in conjunction with Me. Rev. Stat. Ann. tit. 23, § 651 and the statutes recognized that highway conditions changed and no degree of permanence was required with respect to any segment of the state highway system. Rubin v. W. H. Hinman, Inc., 253 A.2d 708, 1969 Me. LEXIS 274 (Me. 1969).

10. Where lessors of a hotel brought an action in tort against the chairman of the state highway commission and the commission's engineer for taking some land and making changes in the street in front of their hotel which made it more difficult for cars to get into the hotel and financially hurt the hotel, the chairman and engineer were not entitled to summary judgment under Me. R. Civ. P. 56 because there was an issue of fact as to whether the taking was for state or state aid highways under Me. Rev. Stat. Ann. tit. 23, § 651. Jacobson v. State, 244 A.2d 419, 1968 Me. LEXIS 227 (Me. 1968).

11. On the State's appeal, pursuant to Me. Rev. Stat. Ann. tit. 23, § 157, from an award of the Land Damage Board in an eminent domain proceeding under former Me. Rev. Stat. Ann. tit. 23, § 153, where the State challenged the formula utilized, a judgment sustaining the award was appropriate because the property owner was not restricted in the formulation used. The owner was entitled to submit proof of its damages based upon the value of its holdings at their highest and best use. Merrill Trust Co. v. State, 417 A.2d 435, 1980 Me. LEXIS 622 (Me. 1980).

12. By enactment of former Me. Rev. Stat. Ann. tit. 23, § 153 (now Me. Rev. Stat. Ann. tit. 23, § 153-B), Me. Rev. Stat. Ann. tit. 23, § 154, and Me. Rev. Stat. Ann. tit. 23, § 651, the Maine Legislature has granted the Maine State Highway Commission an unrestricted agency to take by eminent domain, which includes the determination of the suitability of property for the particular public use such as the preservation of natural scenic beauty and the extent to which the property has to be taken to satisfy that exigency, subject to the limitations inherent in the conceptual phrase "along and adjacent to any state or state aid highway" and subject to judicial review for any abuse of power in its exercise. Finks v. Maine State Highway Com., 328 A.2d 791, 1974 Me. LEXIS 273, 7 Env't Rep. Cas. (BNA) 1547 (Me. 1974).

13. Taking of an owner's land by the Maine State Highway Commission for highway beautification was declared excessive, beyond the scope of former Me. Rev. Stat. Ann. tit. 23, § 153 (now Me. Rev. Stat. Ann. tit. 23, § 153-B), Me. Rev. Stat. Ann. tit. 23, § 154, and Me. Rev. Stat. Ann. tit. 23, § 651, and thus null and void because the taking was over 1,000 feet from the edge of the highway right-of-way, the record negated the existence of unusually picturesque landscape on the fringes of the 1,000 foot scenic highway border strip, the land beyond 1,000 feet was undistinguishable from the entire surrounding area, there was no threat of future development inimical to the preservation of scenic value, and there was no natural boundary within immediate reach; thus, the taking was beyond the intendment of Me. Rev. Stat. Ann. tit. 23, § 651, there was no compelling reason for the taking, and it therefore violated Me. Const. art. I, § 21 because there no public exigency. Finks v. Maine State Highway Com., 328 A.2d 791, 1974 Me. LEXIS 273, 7 Env't Rep. Cas. (BNA) 1547 (Me. 1974).

14. Purpose that the Maine Legislature sought to accomplish by the highway beautification aspect of the eminent domain statutory provisions relating to the establishment or improvement of state and state aid highways, former Me. Rev. Stat. Ann. tit. 23, § 153 (now Me. Rev. Stat. Ann. tit. 23, § 153-B), Me. Rev. Stat. Ann. tit. 23, § 154, and Me. Rev. Stat. Ann. tit. 23, § 651, is the integration of public improvement with the aesthetics of the area traversed by a state or state aid highway; though Me. Rev. Stat. Ann. tit. 23, § 651 does not speak in specific terms of taking for the purpose of preserving and developing the natural scenic beauty along and adjacent to any state or state aid highway, when read together with former Me. Rev. Stat. Ann. tit. 23, § 153 (now Me. Rev. Stat. Ann. tit. 23, § 153-B) and Me. Rev. Stat. Ann. tit. 23, § 651 so as to give effect to each provision of the entire statutory scheme, it is readily discernable that the preservation and development of natural scenic beauty is so intimately related to the Commission's right to take and hold property for the purposes enumerated as to evince an implicit finding by the Legislature of a public exigency. Finks v. Maine State Highway Com., 328 A.2d 791, 1974 Me. LEXIS 273, 7 Env't Rep. Cas. (BNA) 1547 (Me. 1974).

15. Former Me. Rev. Stat. Ann. tit. 23, § 153 (now Me. Rev. Stat. Ann. tit. 23, § 153-A) was not intended to prevent the designation of a state highway, or the taking therefore, even though it was known or recognized at the outset that the designation was temporary. Section 153 had to be read in conjunction with Me. Rev. Stat. Ann. tit. 23, § 651 and the statutes recognized that highway conditions changed and no degree of permanence was required with respect to any

segment of the state highway system. Rubin v. W. H. Hinman, Inc., 253 A.2d 708, 1969 Me. LEXIS 274 (Me. 1969).

Maine Revised Statutes Annotated by LexisNexis(R)

*** Current with emergency legislation through Chapter 150 of the 2009 First Regular Session of the 124th Legislature ***
*** April 23, 2009 Annotation Service ***

TITLE 23. HIGHWAYS
PART 5. DEPARTMENT OF TRANSPORTATION
CHAPTER 410. DEPARTMENT OF TRANSPORTATION
SUBCHAPTER 1. [GENERAL PROVISIONS]

GO TO MAINE REVISED STATUTES ARCHIVE DIRECTORY

23 M.R.S. § 4206 (2009)

§ 4206. Duties of commissioner

1. DUTIES. The commissioner shall have the following general powers, duties and responsibilities:

A. To develop for the State, comprehensive, balanced transportation policy and planning as will meet the present and future needs for adequate, safe and efficient transportation facilities and services;

B. To assist in the development and operation of transportation facilities and services in the State;

C. To promote the coordinated and efficient use of all available and future modes of transportation;

D. To exercise and perform such other functions, powers and duties as shall have been or may be from time to time conferred or imposed by law, including all the functions, powers and duties assigned and transferred to the Department of Transportation from and as now imposed by law or otherwise conferred on these units designated in section 4205;

E. To appear as chief spokesman for the State before such national, regional, state and local agencies, groups or organizations including regulatory agencies as he deems necessary to enhance and promote the transportation interest of Maine, to counsel, advise and participate for the furtherance of the intent and purpose of this chapter;

F. To stimulate active support for and to develop, administer and

promote transportation safety action programs throughout the State of Maine and to formulate and recommend to the Legislature specific measures for these purposes;

G. To establish a system of scenic highways in the State of Maine and preserve the scenic values along the system of highways; to develop and adopt procedures for the designation and development of that system of scenic highways and the preservation of the scenic value in the highway corridor and in the implementation of this intent and purpose consider the scenic value, safety aspects, economic implications, preservation of scenic value and compatibility with other national, regional and local conservation plans;

H. To acquire, construct, operate and maintain such harbor facilities as may be necessary to implement the planned development of coastal resources, ports and harbors; to operate and maintain the port facilities as now within or as may hereafter come within the jurisdiction of the Department of Transportation; and to oversee the administration of the Maine State Pilotage Commission;

I. To accept and receive and be the sole administrator of all federal or other moneys for and in behalf of this State or any political subdivision thereof now or hereafter available for purposes of transportation or which would further the intent and specific purposes of this chapter;

J. To oversee matters relating to railroad safety, provided that jurisdiction of the commissioner shall in no way diminish, infringe upon or replace the jurisdiction of the United States Department of Transportation, Federal Railroad Administration with regard to employee safety;

K. Repealed. Laws 1981, c. 492, § D, 5.

L. Repealed. Laws 1983, c. 477, § E, 26, 8; Laws 1985, c. 506, § A, 48.

M. Acting upon the advice of the State Tax Assessor, to negotiate a compact with other states, the District of Columbia and Canadian provinces for the administration of user license fees on condition that the compact provides for:

1) The collection of the annual user license fee for any other state or province by the state or province in which the motor truck is registered;

2) The disbursement of revenues due to other states or provinces subject to the compact;

3) The free exchange of information between and among the states

or provinces subject to the compact; and

4) The establishment of identification tags or decals.

The compact must provide for reciprocal enforcement of the laws establishing the annual user license fees and for the auditing of all books, records and logs of the operator of a motor truck by the state or province in which the motor truck is registered, which pertains to travel in it and any other state or province subject to the compact;

N. To make contracts and enter into agreements with and make assurances and certifications to the Maine Turnpike Authority, and other 3rd parties, necessary in connection with determination of Department of Transportation projects and the issuance of bonds or obligations pursuant to section 1968, subsection 2-A; and

O. To bring before the joint standing committee of the Legislature having jurisdiction over transportation matters for review and approval any proposal that would alter the current land use, ownership or jurisdiction of lands owned by the State within the Port of Searsport presently under the jurisdiction of the department.

2. ORGANIZATION. The commissioner shall organize the department into such bureaus, divisions and other units as he deems necessary to fulfill the duties of the department, provided at all times there shall be the following bureaus:

A. Bureau of Finance and Administration;

B. Repealed. Laws 1995, c. 504, § B-7.

C. Bureau of Planning;

D. Bureau of Project Development; and

E. Bureau of Maintenance and Operations.

3. ADVISORY BOARDS. The commissioner, subject to approval by the Governor, shall organize and create such advisory committees and boards to serve at the pleasure of the commissioner for such terms and purposes as are deemed to be in the best interest of furthering the intent and purposes of this chapter. Such committees and boards shall be made up of persons especially skilled, knowledgeable or experienced in some phase of transportation. The commissioner shall fix the compensation for those who serve on such boards and committees with the consent and approval of the Governor.

4. PERSONNEL. The commissioner may appoint such deputies, directors, assistants, general counsel and other officers and employees as may be needed for the performance of his duties. These appointments shall be subject to the Civil Service Law, except for the following who shall serve at the pleasure of the commissioner: Deputy Commissioners of Transportation; Chief Counsel, Bureau of Legal Services; Assistant to the Commissioner; and Assistant to the Commissioner for Public Information.

5. RULES AND REGULATIONS. The commissioner may prescribe and promulgate all necessary rules and regulations in order to fulfill the purposes of this Title.

6. HEARINGS. The commissioner may conduct investigations, inquiries and hearings concerning all matters within the jurisdiction of the department. The commissioner may administer oaths and affirmations, certify to all official acts, issue subpoenas and compel the attendance and testimony of witnesses and the production of papers, records, books and documents and if any person refuses to attend, testify or produce papers, records, books and documents as ordered, a Justice of the Superior Court, upon application of the commissioner, may make such order as is appropriate to aid in enforcement of the order.

7. DELEGATION. The commissioner may delegate to deputies, directors, assistants and other officers and employees of the department such of his duties as he deems appropriate.

8. EXPERIMENTAL PROJECTS. The commissioner may engage in such experimental projects as he deems will contribute to furthering the purposes of this chapter.

9. EXPERIMENTAL VEHICLE PERMITS. The Commissioner of Transportation, with the advice of the Commissioner of Public Safety and the Director of Motor Vehicles, may establish a program providing for the issuance of temporary experimental vehicle permits on a discretionary basis, each for a period not exceeding 2 years, upon proper application in writing from a trucker representing a significant sector of the trucking industry. The permits are to provide for the operation and the evaluation of the operation of experimental vehicles that have a length, width, height, weight and other conditions beyond that specified in Title 29-A, over any nonlimited way or bridge. These permits carry no fee. Registration must be assessed for the applicable road limit exclusive of general or special commodity permits, despite expected operation beyond these limits, in an experimental mode. Multistate experiments are to be encouraged. Registration in another state in the context of a regional multistate experiment will be honored without the necessity of acquiring a Maine registration. These permits may be granted only within the context of a structured joint industry-government evaluation program, including preparatory off-road performance tests, strictly controlled operational testing on the highway system and both in-process and final evaluation reports covering productivity, operating characteristics and safety. Additional reports may be required by the commissioner if considered necessary during the experimental phase. The Commissioner of Transportation shall issue these permits on a limited basis and only if the commissioner judges that a significant potential exists for increased productivity without undue compromise in safety by the eventual legal general operation of the experimental vehicle, without permit, on the highway system. No commitment to that eventual operation is implied by the issuance of the temporary experimental vehicle permit. The Commissioner of Transportation shall ratify, at the commissioner's discretion, all conditions of the experimental programs proposed, including, but not limited to, preparatory off-road vehicle tests, time limits, vehicle dimensions, axle and gross weight limits, routing, insurance and reporting provisions. The commissioner may terminate any evaluation at any time if in the commissioner's judgment the operation of the vehicle poses an undue threat to public safety or the integrity of the highway system or if the conditions of the permit are violated.

The commissioner shall submit a report biennially to the joint standing committee of the Legislature having jurisdiction over transportation before the first regular session of each Legislature. This report must discuss the progress of any experimental vehicle evaluations and contain recommendations, if any, for legislation leading to their eventual general use on the highway system. If during the previous biennium there has been no activity relating to the evaluation and permitting of experimental vehicles, the reporting requirement is waived.

HISTORY: 2005 ch. 277, §§ 1, 2, 3 (AMD).

Maine Revised Statutes Annotated by LexisNexis(R)

*** Current with emergency legislation through Chapter 150 of the 2009 First Regular Session of the 124th Legislature ***
*** April 23, 2009 Annotation Service ***

TITLE 35-A. PUBLIC UTILITIES
PART 3. ELECTRIC POWER
CHAPTER 34-A. EXPEDITED PERMITTING OF GRID-SCALE WIND ENERGY DEVELOPMENT

GO TO MAINE REVISED STATUTES ARCHIVE DIRECTORY

35-A M.R.S. § 3451 (2009)

§ 3451. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. ASSOCIATED FACILITIES. "Associated facilities" means elements of a wind energy development other than its generating facilities that are necessary to the proper operation and maintenance of the wind energy development, including but not limited to buildings, access roads, generator lead lines and substations.

2. DEPARTMENT. "Department" means the Department of Environmental Protection.

3. EXPEDITED PERMITTING AREA. "Expedited permitting area" means:

A. The organized areas of the State in their entirety, but not including waters subject to tidal influence, so that the edge of the area that is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables published by the United States Department of Commerce, National Oceanic and Atmospheric Administration, National Ocean Service defines the boundary of the expedited permitting area on lands abutting waters subject to tidal influence; and

B. Specific places within the State's unorganized and deorganized areas, as defined by Title 12, section 682, subsection 1, that are identified by rule by the Maine Land Use Regulation Commission in accordance with this chapter.

4. EXPEDITED WIND ENERGY DEVELOPMENT. "Expedited wind energy development" means a grid-scale wind energy development that is proposed for location within an expedited permitting area.

5. GENERATING FACILITIES. "Generating facilities" means wind turbines and towers and transmission lines, not including generator lead lines, that are immediately associated with the wind turbines.

6. GRID-SCALE WIND ENERGY DEVELOPMENT. "Grid-scale wind energy development" means a wind energy development that is of a size that would qualify as a development of state or regional significance that may substantially affect the environment as defined under Title 38, section 482, subsection 2, paragraph A or paragraph C.

7. HOST COMMUNITY. "Host community" means a municipality, township or plantation in which the generating facilities of an expedited wind energy development are located.

8. PRIMARY SITING AUTHORITY. "Primary siting authority" means:

A. The department, in the case of an expedited wind energy development subject to the department's jurisdiction pursuant to Title 38, chapter 3, subchapter 1, article 6, including, but not limited to, a development subject to the department's jurisdiction pursuant to Title 38, section 488, subsection 9; or

B. The Maine Land Use Regulation Commission, in the case of an expedited wind energy development subject to the Maine Land Use Regulation Commission's jurisdiction pursuant to Title 12, chapter 206-A.

9. SCENIC RESOURCE OF STATE OR NATIONAL SIGNIFICANCE. "Scenic resource of state or national significance" means an area or place owned by the public or to which the public has a legal right of access that is:

A. A national natural landmark, federally designated wilderness area or other comparable outstanding natural and cultural feature, such as the Orono Bog or Meddybemps Heath;

B. A property listed on the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966, as amended, including, but not limited to, the Rockland Breakwater Light and Fort Knox;

C. A national or state park;

D. A great pond that is:

1) One of the 66 great ponds located in the State's organized area identified as having outstanding or significant scenic quality in the "Maine's Finest Lakes" study published by the Executive Department, State Planning Office in October 1989; or

2) One of the 280 great ponds in the State's unorganized or deorganized areas designated as outstanding or significant from a scenic perspective in the "Maine Wildlands Lakes Assessment" published by the Maine Land Use Regulation Commission in June 1987;

E. A segment of a scenic river or stream identified as having unique or outstanding scenic attributes listed in Appendix G of the "Maine Rivers Study" published by the Department of Conservation in 1982;

F. A scenic viewpoint located on state public reserved land or on a trail that is used exclusively for pedestrian use, such as the Appalachian Trail, that the Department of Conservation designates by rule adopted in accordance with section 3457;

G. A scenic turnout constructed by the Department of Transportation pursuant to Title 23, section 954 on a public road that has been designated by the Commissioner of Transportation pursuant to Title 23, section 4206, subsection 1, paragraph G as a scenic highway; or

H. Scenic viewpoints located in the coastal area, as defined by Title 38, section 1802, subsection 1, that are ranked as having state or national significance in terms of scenic quality in:

1) One of the scenic inventories prepared for and published by the Executive Department, State Planning Office: "Method for Coastal Scenic Landscape Assessment with Field Results for Kittery to Scarborough and Cape Elizabeth to South Thomaston," Dominie, et al., October 1987; "Scenic Inventory Mainland Sites of Penobscot Bay," Dewan and Associates, et al., August 1990; or "Scenic Inventory: Islesboro, Vinalhaven, North Haven and Associated Offshore Islands," Dewan and Associates, June 1992; or

2) A scenic inventory developed by or prepared for the Executive Department, State Planning Office in accordance with section 3457.

10. TANGIBLE BENEFITS. "Tangible benefits" means environmental or economic improvements attributable to the construction, operation and maintenance of an expedited wind energy development, including but not limited to: construction-related employment; local purchase of materials; employment in operations and maintenance; reduced property taxes; reduced electrical rates; natural resource conservation; performance of construction, operations and maintenance activities by trained, qualified and licensed workers in accordance with Title 32, chapter 17 and other applicable laws; or other comparable benefits, with particular attention to assurance of such benefits to the host community to the extent practicable and affected neighboring communities.

11. WIND ENERGY DEVELOPMENT. "Wind energy development" means a development that uses a windmill or wind turbine to convert wind energy to electrical energy for sale or use by a person other than the generator. A wind energy development includes generating facilities and associated facilities.

HISTORY: P.L. 2007 ch. 661, part A, § A-7 (NEW).

Maine Revised Statutes Annotated by LexisNexis(R)

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TITLE 38. WATERS AND NAVIGATION
CHAPTER 3. PROTECTION AND IMPROVEMENT OF WATERS
SUBCHAPTER 1. ENVIRONMENTAL PROTECTION BOARD
ARTICLE 7. PERFORMANCE STANDARDS FOR EXCAVATIONS FOR BORROW, CLAY, TOPSOIL OR SILT

GO TO MAINE REVISED STATUTES ARCHIVE DIRECTORY

38 M.R.S. § 490-D (2009)

Legislative Alert: LEXSEE 2009 Me. ALS 293 -- See section 5.

§ 490-D. Performance standards

1. SIGNIFICANT WILDLIFE HABITAT AND OTHER PROTECTED AREAS. Affected land may not be located in, on or over a significant wildlife habitat or other type of protected natural resource, as defined in section 480-B, or in an area listed pursuant to the Natural Areas Program, Title 12, section 544. The department may allow excavation to occur in, on or over a significant wildlife habitat or other type of protected natural resource provided a permit is obtained pursuant to article 5-A. Permit requirements for certain excavations in, on or over high and moderate value inland waterfowl and wading bird habitat are also governed by section 480-GG.

2. SOLID WASTE. Solid waste, including stumps, wood waste and land-clearing debris generated on the affected land must be disposed of in accordance with chapter 13, including any rules adopted to implement those laws. The department may not grant a variance from the provisions of this subsection.

3. GROUNDWATER PROTECTION. Excavation may not occur within 5 feet of the seasonal high water table. A benchmark sufficient to verify the location of the seasonal high water table must be established and at least one test pit or monitoring well must be established on each 5 acres of unreclaimed land.

A. A 200-foot separation must be maintained between any excavation and any private drinking water supply that is a point-driven or dug well and was in existence prior to that excavation.

B. A 100-foot separation must be maintained between any excavation and any private drinking water supply that is drilled into saturated bedrock and was in existence prior to that excavation.

C. Separation must be maintained between any affected land and any

public drinking water source existing prior to the filing of a notice of intent to comply under section 490-C as follows:

1) For systems serving a population of 500 persons or less, the minimum separation must be 300 feet;

2) For systems serving a population of 501 persons up to 1,000 persons, the separation must be 500 feet;

3) For systems serving a population of more than 1,000 persons, the separation must be 1,000 feet; and

4) For any system that holds a valid filtration waiver in accordance with the federal Safe Drinking Water Act, the separation must be 1,000 feet.

The department may grant a variance from the provisions of this paragraph upon consultation with the public water supply affected by the excavation. The department may not grant a waiver from the provisions of paragraph A, B or D.

D. Refueling operations, oil changes and other maintenance activities requiring the handling of fuels, petroleum products, hydraulic fluids, and other on-site activity involving the storage or use of products that, if spilled, may contaminate groundwater, must be conducted in accordance with the department's spill prevention, control and countermeasures plan. Petroleum products and other substances that may contaminate groundwater must be stored and handled over impervious surfaces that are designed to contain spills. The spill prevention, control and countermeasures plan must be posted at the site.

E. Excavation below the seasonal high water table of an area previously designated for potential use as a public drinking water source by a municipality or private water company is prohibited. If the yield of groundwater flow to protected waters or wetlands is not adversely affected, the department may grant a variance allowing excavation below the seasonal high water table of a mapped significant sand and gravel aquifer, or primary sand and gravel recharge area, or an unconsolidated deposit in other locations.

F. In the event of excavation below the seasonal high water table, the operator of a mining activity that affects a public drinking water source or private drinking water supply by excavation activities causing contamination, interruption or diminution must restore or replace the affected water supply with an alternate source of water, adequate in quantity and quality for the purpose served by the supply. This paragraph is not intended to replace any independent action that a person whose water supply is affected by a mining activity may have.

G. In the event of excavation below the seasonal high water table, a 300-foot separation must be maintained between the permitted limit of excavation and any predevelopment private drinking water supply, and a 1,000-foot separation must be maintained between the permitted limit of excavation and any predevelopment public drinking water source or area previously designated for potential use as a public drinking water source by a municipality or private water company.

The department may grant a variance allowing excavation between 2 and 5 feet of the seasonal high water table. The separation distance requirements described in paragraphs A, B and C do not apply when the private water supply or public drinking water source is owned by the owner of the excavation site.

3-A. MEDIUM BORROW PITS UNLICENSED ON OCTOBER 1, 1993. Notwithstanding subsection 3, the following provisions apply to a medium borrow pit that on October 1, 1993 was not licensed under article 6 and on which gravel had been extracted to a level less than 5 feet above, at or below the seasonal high water table.

The medium borrow pit owner or operator may not further excavate in areas where gravel had been extracted to a level less than 5 feet above, at or below the seasonal high water table unless a variance is granted by the department.

A. The department may not require the medium borrow pit owner or operator to elevate the medium borrow pit floor to 5 feet or more above the seasonal high water table as a condition of operation.

B. Deleted. Laws 1995, c. 700, § 24.

C. The medium borrow pit owner or operator may reclaim as a pond that area of the medium borrow pit on which gravel had been extracted to a level at or below the seasonal high water table.

4. NATURAL BUFFER STRIP. Existing vegetation within a natural buffer strip may not be removed. If vegetation within the natural buffer strip has been removed or disturbed by the excavation or activities related to the excavation before submission of a notice of intent to comply, that vegetation must be reestablished as soon as practicable after filing the notice of intent to comply. The department may not grant a variance from the provisions of this subsection.

5. REPEALED. Laws 1995, c. 287, § 10, eff. June 23, 1995.

5-A. PROTECTED NATURAL RESOURCE BUFFERS. A natural buffer strip must be maintained between the working edge of an excavation and a river, stream, brook, great pond or coastal wetland as defined in section 480-B. A natural buffer strip must also be maintained between the working edge of an excavation and certain freshwater wetlands as defined in section 480-B and having the characteristics listed in paragraph B. Excavation activities conducted within 100 feet of a protected natural resource must comply with the applicable permit requirement under article 5-A. The width requirements for natural buffer strips are as follows.

A. A natural buffer strip at least 100 feet wide must be maintained between the working edge of the excavation and the normal high-water line of a great pond classified as GPA, a river flowing to a great pond classified as GPA or a segment of the Kennebec River identified in Title 12, section 403, subsection 7.

B. A natural buffer strip at least 75 feet wide must be maintained between the working edge of the excavation and any other water body, river, stream, brook, coastal wetland or significant wildlife habitat contained within a freshwater wetland or a freshwater wetland consisting of or containing:

1) Under normal circumstances, at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation or open water, except for artificial ponds or impoundments; or

2) Peat lands dominated by shrubs, sedges and sphagnum moss.

For purposes of this subsection, the width of a natural buffer strip is measured from the upland edge of floodplain wetlands; if no floodplain wetlands are present, the width of the natural buffer strip is measured from the normal high-water mark of a great pond, river, stream or brook or the upland edge of a freshwater or coastal wetland. The department may allow excavation to occur under this subsection as long as a permit is obtained pursuant to article 5-A. An excavation is not eligible for a permit by rule under department rules regarding activities adjacent to a protected natural resource.

6. REPEALED. Laws 1995, c. 287, § 12, eff. June 23, 1995.

6-A. PUBLIC AND PRIVATE ROADS. A natural buffer strip must be maintained between the working edge of an excavation and a road or right-of-way as follows.

A. A natural buffer strip at least 150 feet wide must be maintained between the working edge of an excavation and a road designated as a scenic highway by the Department of Transportation.

B. A natural buffer strip at least 100 feet wide must be maintained between the working edge of an excavation and any public road not designated as a scenic highway by the Department of Transportation. A natural buffer strip at least 25 feet wide must be maintained between the working edge of a topsoil excavation and any public road not designated as a scenic highway by the Department of Transportation. A natural buffer strip at least 50 feet wide must be maintained between the working edge of an excavation and any public right-of-way that does not contain a road. The width of a natural buffer strip adjacent to a public road or right-of-way may be reduced if there is a public entity or entities with authority to grant permission and the applicant receives permission from each authority in writing.

C. A natural buffer strip at least 50 feet wide must be maintained between the working edge of an excavation and any private road or right-of-way. If a private road is contained within a wider right-of-way, the buffer is measured from the edge of the right-of-way. The width of the natural buffer strip adjacent to a private road may be reduced if the applicant receives written permission from the person or persons having a right-of-way over the private road.

Except for paragraph B, the department may not grant a variance from the provisions of this subsection. The department may grant a variance from paragraph B if the variance will not result in the natural buffer strip being reduced to less than 50 feet between the working edge of the excavation and any road or right-of-way, whichever is farther from the excavation, and if the owner or operator installs visual screening and safety measures as required by the department.

A distance specified in this subsection is measured from the outside edge of the shoulder of the road or edge of the right-of-way unless otherwise specifically provided.

6-B. MEDIUM BORROW PITS UNLICENSED ON OCTOBER 1, 1993. Notwithstanding subsection 6-A, the following provisions apply to a medium borrow pit that on October 1, 1993 was not licensed under article 6 and on which gravel had been extracted closer than 50 feet to a public or private road.

A. The department may not require the owner or operator of a medium borrow pit to reestablish the required natural buffer strip as a condition of operation.

B. The owner or operator of a medium borrow pit shall regrade and seed the sideslopes to a slope no steeper than 2 horizontal feet for each vertical foot unless otherwise approved by the department.

The owner or operator of a medium borrow pit shall install visual screening and safety measures as required by the department.

7. PROPERTY BOUNDARY. A natural buffer strip at least 50 feet wide must be maintained between any excavation and any property boundary. A natural buffer strip at least 25 feet wide must be maintained between any topsoil excavation and a property boundary. These distances may be reduced to not less than 10 feet with the written permission of the affected property owner or owners, except that the distance may not be reduced to less than 25 feet from the boundary of a cemetery or burial ground. The buffer strip between excavations owned by abutting owners may be eliminated with the abutter's written permission, provided the elimination of this buffer strip does not increase the runoff from either excavation across the property boundary. Any written permission to reduce a buffer must provide that it remains in effect until mining ceases and must be recorded in the registry of deeds. All property boundaries must be identified in the field by markings such as metal posts, stakes, flagging or blazed trees. The department may not grant a variance from the provisions of this subsection.

8. EROSION AND SEDIMENTATION CONTROL. A working pit must be naturally internally drained at all times unless a variance is obtained from the department.

A. The area of a working pit may not exceed 10 acres.

B. Stockpiles consisting of topsoil to be used for reclamation must be seeded, mulched or otherwise temporarily stabilized.

C. Sediment may not leave the parcel or enter a protected natural resource.

D. Grubbed areas not internally drained must be stabilized.

E. Erosion and sedimentation control for access roads must be conducted in accordance with the department's best management

practices for erosion and sedimentation control.

F. All areas other than a working pit area that are not naturally internally drained must meet the erosion and sedimentation control standards of section 420-C.

The department may grant a variance from this subsection, except for paragraphs C, D, E and F. Areas are not considered "naturally internally drained" if surface discharge is impeded through the use of structures such as detention ponds, retention ponds and undersized culverts.

9. WATER QUALITY PROTECTION AND STORM WATER MANAGEMENT. Standards of the laws governing storm water management and waste discharge must be met as provided in this subsection.

A. A variance must be obtained and storm water standards adopted pursuant to section 420-D must be met for any part of a project, other than the working pit area, that is not naturally internally drained if that part of the project would require a storm water management permit pursuant to section 420-D but for the exception for certain excavations in section 420-D, subsection 5. A storm water management permit pursuant to section 420-D is not required.

B. A waste discharge must meet standards and obtain authorization if required pursuant to section 413.

C. If a reclaimed slope or working pit is adjacent to steep slopes and a protected natural resource, measures must be taken to prevent storm water from ponding at the base of the reclaimed slope or working pit.

10. DELETED. Laws 1995, c. 700, § 24.

11. TRAFFIC. The following provisions govern traffic.

A. Repealed. Pursuant to its terms, eff. July 1, 1997.

B. Any excavation activity that generates 100 or more passenger car equivalents at peak hour must comply with the applicable permit requirements under Title 23, section 704-A.

12. NOISE. Noise levels may not exceed applicable noise limits in rules adopted by the board.

13. DUST. Dust generated by activities at the excavation site, including dust associated with traffic to and from the excavation site, must be controlled by sweeping, paving, watering or other best management practices for control of fugitive emissions. Dust control methods may include the application of calcium chloride, providing the manufacturer's labeling guidelines are followed. The department may not grant a variance from the provisions of this subsection. Visible emissions from a fugitive emission source may not exceed an opacity of 20% for more than 5 minutes in any one-hour period.

14. RECLAMATION. Except as provided in subsection 15, the affected land must be restored to a condition that is similar to or compatible with the conditions that existed before excavation. Reclamation should be conducted in

accordance with the department's best management practices for erosion and sediment control, and must include:

A. Regrading side slopes to a slope no steeper than 2 1/2 horizontal feet for each vertical foot;

B. Establishing a vegetative cover by seeding within one year of the completion of excavation. Vegetative cover is acceptable if, within one year of seeding:

1) The planting of trees and shrubs results in a permanent stand or a stand capable of regeneration and succession, sufficient to ensure a 75% survival rate; and

2) The planting of all materials results in permanent 90% ground coverage;

C. Removing all structures and, once no longer in use, reclaiming all access roads, haul roads and other support roads;

D. Reclaiming all affected lands within 2 years after final grading; and

E. Stockpiling soil that is stripped or removed for use in reclaiming disturbed land areas.

The department may require a bond payable to the State with sureties satisfactory to the department or such other security as the department may determine adequately secures compliance with this article, conditioned upon the faithful performance of the requirements set forth in this article. Other security may include a security deposit with the State, an escrow account and agreement, insurance or an irrevocable trust. In determining the amount of the bond or the security, the department shall take into consideration the character and nature of the overburden, the future suitable use of the land involved and the cost of grading and reclamation required. All proceeds of forfeited bonds or other security must be expended by the department for the reclamation of the area for which the bond was posted and any remainder returned to the operator.

The board may adopt or amend rules to carry out this subsection, including rules relating to operation or maintenance plans; standards for determining the reclamation period; annual revisions of those plans; limits, terms and conditions on bonds or other security; proof of financial responsibility of a person engaged in excavation activity or the affiliated person who guarantees performance; estimation of reclamation costs; reports on reclamation activities; or the manner of determining when the bond or other security may be discharged. Rules adopted under this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter II-A.

The department may grant a variance from paragraph A, provided that the slopes exhibit substantial vegetation and are stable. The department may not assess a fee for a request for a variance from paragraph A. The department may grant a variance from paragraph E if the applicant demonstrates that the soil is not needed for reclamation purposes. The department may not grant a variance from the other provisions of this subsection.

15. RECREATIONAL MANAGEMENT AREAS. An owner or operator may request a variance to develop a recreational management area on the affected land as an alternative to reclamation in accordance with subsection 14. The department may grant a variance under section 490-E if the Off-road Recreational Vehicle Division determines the site is suitable under Title 12, section 1893-A.

16. BLASTING. Blasting must be conducted in accordance with the standards in section 490-Z, subsection 14 unless otherwise approved by the department.

17. LIGHTING. Lighting must be shielded from adjacent highways and residential areas.

HISTORY: 2005 ch. 158, §§ 4, 5, 6 (AMD); 2005 ch. 561, § 2 (AMD); 2007 ch. 290, § 11 (AMD); 2007 ch. 297, §§ 5, 6, 7 (AMD); 2007 ch. 364, § 2 (AMD); 2007 ch. 507, § 1 (AMD); 2007 ch. 616, §§ 3, 4, 5 (AMD).

LexisNexis 50 State Surveys, Legislation & Regulations

Excavation

Maine Revised Statutes Annotated by LexisNexis(R)

*** Current with emergency legislation through Chapter 150 of the 2009 First Regular Session of the 124th Legislature ***
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TITLE 38. WATERS AND NAVIGATION
CHAPTER 3. PROTECTION AND IMPROVEMENT OF WATERS
SUBCHAPTER 1. ENVIRONMENTAL PROTECTION BOARD
ARTICLE 8-A. PERFORMANCE STANDARDS FOR QUARRIES

GO TO MAINE REVISED STATUTES ARCHIVE DIRECTORY

38 M.R.S. § 490-Z (2009)

Legislative Alert: LEXSEE 2009 Me. ALS 293 -- See section 6.

§ 490-Z. Performance standards for quarries

1. SIGNIFICANT WILDLIFE HABITAT AND OTHER PROTECTED AREAS. Affected land may not be located in, on or over a significant wildlife habitat or other type of protected natural resource, as defined in section 480-B, or in an area listed pursuant to the Natural Areas Program, Title 12, section 544. The department may allow excavation to occur in, on or over a significant wildlife habitat or other type of protected natural resource provided a permit is obtained pursuant to article 5-A. Permit requirement for certain excavations in, on or over high and moderate value inland waterfowl and wading bird habitat are also governed by section 480-GG.

2. SOLID WASTE. Solid waste, including stumps, wood waste and land-clearing debris generated on the affected land must be disposed of in accordance with chapter 13, including any rules adopted to implement those laws. The department may not grant a variance from the provisions of this subsection.

3. GROUNDWATER PROTECTION. To ensure adequate groundwater protection, the following setback requirements must be met.

A. A 200-foot separation must be maintained between an excavation and a private drinking water supply that is point driven or dug and was in existence prior to the excavation.

B. A 100-foot separation must be maintained between an excavation and a private drinking water supply that is drilled into saturated bedrock and was in existence prior to the excavation.

C. Separation must be maintained between an excavation and a public drinking water source as follows:

1) For systems serving a population of 500 persons or less, the minimum separation must be 300 feet;

2) For systems serving a population of 501 persons up to 1,000 persons, the separation must be 500 feet;

3) For systems serving a population of more than 1,000 persons, the separation must be 1,000 feet; and

4) For any system that holds a valid filtration waiver in accordance with the federal Safe Drinking Water Act, 42 United States Code, Sections 300f to 300j-26 (1988), the separation must be 1,000 feet.

D. Refueling operations, oil changes, other maintenance activities requiring the handling of fuels, petroleum products and hydraulic fluids and other on-site activity involving storage or use of products that, if spilled, may contaminate groundwater, must be conducted in accordance with the department's spill prevention, control and countermeasures plan. Petroleum products and other substances that may contaminate groundwater must be stored and handled over impervious surfaces that are designed to contain spills. The spill prevention, control and countermeasures plan must be posted at the site.

E. In the event of excavation below the seasonal high water table, a 300-foot separation must be maintained between the limit of excavation and any predevelopment private drinking water supply and a 1000-foot separation must be maintained between the limit of excavation and any public drinking water source or area previously designated for potential use as a public drinking water source by a municipality or private water company.

The department may grant a variance from the provisions of paragraph C upon consultation with the person or entity that controls the public drinking water supply affected by the excavation. The department may not grant a waiver from the provisions of paragraph A, B or D.

Excavation below the seasonal high water table is prohibited. The department may grant a variance allowing excavation below the seasonal high water table if the applicant demonstrates that the yield of groundwater flow to protected waters or wetlands or public drinking water sources or private drinking water supplies will not be adversely affected by the excavation.

In the event of excavation below the seasonal high water table, the operator of a mining activity that affects by excavation activities a public drinking water source or private drinking water supply by contamination, interruption or diminution must restore or replace the affected water supply with an alternate source of water, adequate in quantity and quality for the purpose served by the supply. This provision is not intended to replace any independent action that a person may have whose water supply is affected by a mining activity.

4. NATURAL BUFFER STRIP. Existing vegetation within a natural buffer strip may not be removed. If vegetation

within the natural buffer strip has been removed or disturbed by the excavation or activities related to operation of a quarry before submission of a notice of intent to comply, that vegetation must be reestablished as soon as practicable after filing the notice of intent to comply. The department may not grant a variance from the provisions of this subsection.

5. PROTECTED NATURAL RESOURCE BUFFERS. A natural buffer strip must be maintained between the working edge of an excavation and a river, stream, brook, great pond or coastal wetland as defined in section 480-B. A natural buffer strip must also be maintained between the working edge of an excavation and certain freshwater wetlands as defined in section 480-B and have the characteristics listed in paragraph B. Excavation activities conducted within 100 feet of a protected natural resource must comply with the applicable permit requirements under article 5-A. The width requirements for natural buffer strips are as follows.

A. A natural buffer strip at least 100 feet wide must be maintained between the working edge of the excavation and the normal high-water line of a great pond classified as GPA, a river flowing to a great pond classified as GPA or a segment of the Kennebec River identified in Title 12, section 403, subsection 7.

B. A natural buffer strip at least 75 feet wide must be maintained between the working edge of the excavation and a body of water other than as described in paragraph A, a river, stream or brook, coastal wetland or significant wildlife habitat contained within a freshwater wetland consisting of or containing:

1) Under normal circumstances, at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation or open water, except for artificial ponds or impoundments; or

2) Peat lands dominated by shrubs, sedges and sphagnum moss.

For purposes of this subsection, the width of a natural buffer strip is measured from the upland edge of a floodplain wetland. If no floodplain wetlands are present, the width is measured from the normal high-water mark of the river, stream or brook.The width is measured from the normal high-water mark of a great pond and upland edge of a freshwater or coastal wetland.

The department may allow excavation to occur under this subsection as long as a permit is obtained pursuant to article 5-A. A quarry is not eligible for a permit by rule under department rules regarding activities adjacent to a protected natural resource.

6. ROADS. A natural buffer strip must be maintained between the working edge of an excavation and a road or right-of-way as follows.

A. A natural buffer strip at least 150 feet wide must be maintained between the working edge of an excavation and a road designated as a scenic highway by the Department of Transportation.

B. A natural buffer strip at least 100 feet wide must be maintained between the working edge of the excavation and any other public road. A natural buffer strip at least 50 feet wide must be maintained between the working edge of an excavation and any public right-of-way

that does not contain a road. The width of a natural buffer strip adjacent to a public road or right-of-way may be reduced if there is a public entity or entities with authority to grant permission and the applicant receives permission from each authority in writing.

C. A natural buffer strip at least 50 feet wide must be maintained between the working edge of an excavation and a private road or a right-of-way. If a private road is contained within a wider right-of-way, the buffer is measured from the edge of the right-of-way. The width of the natural buffer strip adjacent to a private road may be reduced if the applicant receives written permission from the persons having a right-of-way over the private road.

The department may not grant a variance from the provisions of paragraph A or C. The department may grant a variance from paragraph B if the variance does not result in the natural buffer strip being reduced to less than 50 feet between the working edge of the excavation and any road or right-of-way, whichever is farther from the excavation, and if the owner or operator installs visual screening and safety measures as required by the department.

A distance specified in this subsection is measured from the outside edge of the shoulder of the road or edge of the right-of-way unless otherwise specifically provided.

7. PROPERTY BOUNDARY. A natural buffer strip at least 100 feet wide must be maintained between an excavation and any property boundary. This distance may be reduced to 10 feet with the written permission of the affected abutting property owner or owners, except that the distance may not be reduced to less than 25 feet from the boundary of a cemetery or burial ground. The natural buffer strip between quarries owned by abutting owners may be eliminated with the abutter's written permission if the elimination of this natural buffer strip does not increase the runoff from either excavation across the property boundary. Any written permission to reduce a buffer must provide that it remains in effect until mining ceases and must be recorded in the registry of deeds. All property boundaries must be identified in the field by markings such as metal posts, stakes, flagging or blazed trees. The department may not grant a variance from the provisions of this subsection.

8. EROSION AND SEDIMENTATION CONTROL. A working pit must be naturally internally drained at all times unless a variance is obtained from the department. Stockpiles consisting of topsoil to be used for reclamation must be seeded, mulched or otherwise temporarily stabilized.

A. Sediment may not leave the parcel or enter a protected natural resource.

B. Grubbed areas not internally drained must be stabilized.

C. Erosion and sedimentation control for access roads must be conducted in accordance with the department's best management practices for erosion and sedimentation control.

D. All areas other than a working pit area that are not naturally internally drained must meet the erosion and sedimentation control standards of section 420-C.

The department may not grant a variance from the provisions of paragraph A, B, C or D. Areas are not considered

"naturally internally drained" if surface discharge is impeded through the use of structures such as detention ponds, retention ponds and undersized culverts.

9. WATER QUALITY PROTECTION AND STORM WATER MANAGEMENT. Standards of the laws governing storm water management and waste discharge must be met as provided in this subsection.

A. A variance must be obtained and storm water standards adopted pursuant to section 420-D must be met for any part of a project, other than the working pit area, that is not naturally internally drained if that part of the project would require a storm water management permit pursuant to section 420-D but for the exception for certain excavations in section 420-D, subsection 5. A storm water management permit pursuant to section 420-D is not required.

B. A waste discharge must meet standards and obtain authorization if required pursuant to section 413.

10. TRAFFIC. The following provisions govern traffic.

A. Repealed. By its terms, eff. July 1, 1997.

B. Any excavation activity that generates 100 or more passenger car equivalents at peak hour must comply with the applicable permit requirements under Title 23, section 704-A.

11. NOISE. Noise levels may not exceed applicable noise limits in rules adopted by the board.

12. DUST. Dust generated by activities at a quarry, including dust associated with traffic to and from a quarry, must be controlled by sweeping, paving, watering or other best management practices for control of fugitive emissions. Dust control methods may include calcium chloride as long as the manufacturer's labeling guidelines are followed. The department may not grant a variance from the provisions of this subsection. Visible emissions from a fugitive emission source may not exceed an opacity of 20% for more than 5 minutes in any one-hour period.

13. RECLAMATION. The affected land must be restored to a condition that is similar to or compatible with the conditions that existed before excavation. Reclamation may be conducted in accordance with the department's best management practices for erosion and sedimentation control and must include the following.

A. Highwalls, or quarry faces, must be treated in such a manner as to leave them in a condition that minimizes the possibility of rock falls, slope failures and collapse. A highwall that is loose must be controlled by the use of blasting or scaling, the use of safety benches, the use of flatter slopes or reduced face heights or the use of benching near the top of the face or rounding the edge of the face.

B. A vegetative cover must be established by seeding or planting within one year of the completion of excavation. Vegetative cover must be established on all affected land except for quarry walls and flooded areas. A vegetative cover must be established on safety benches, unless otherwise approved by the department. Topsoil must

be placed, seeded and mulched within 30 days of final grading. Vegetative cover is acceptable if within one year of seeding:

1) The planting of trees and shrubs results in a permanent stand or a stand capable of regeneration and succession sufficient to ensure a 75% survival rate; and

2) The planting of all material results in permanent 90% ground cover.

Vegetative cover used in reclamation must consist of grasses, legumes, herbaceous or woody plants, shrubs, trees or a mixture of these.

C. All structures, once no longer in use, and all access roads, haul roads and other support roads must be reclaimed.

D. All affected lands must be reclaimed within 2 years after final grading.

E. Topsoil that is stripped or removed must be stockpiled for use in reclaiming disturbed land areas. The department may grant a variance from this paragraph if the applicant demonstrates that the soil is not needed for reclamation purposes.

F. The department may require a bond payable to the State with sureties satisfactory to the department or such other security as the department determines adequately secures compliance with this article, conditioned upon the faithful performance of the requirements set forth in this article. Other security may include a security deposit with the State, an escrow account and agreement, insurance or an irrevocable trust. In determining the amount of the bond or the security, the department shall take into consideration the character and nature of the overburden, the future suitable use of the land involved and the cost of grading and reclamation required. All proceeds of forfeited bonds or other security must be expended by the department for the reclamation of the area for which the bond was posted and any remainder returned to the operator.

G. The board may adopt or amend rules to carry out this subsection, including rules relating to operational or maintenance plans; standards for determining the reclamation period; annual revisions of those plans; limits, terms and conditions on bonds or other security; proof of financial responsibility of a person engaged in excavation activity or the affiliated person who guarantees performance; estimation of reclamation costs; reports on reclamation activities; and the manner of determining when the bond or other security may be discharged.

14. BLASTING. The applicant must ensure that the blasting is conducted in accordance with Title 25, chapter 318.

A. The owner or operator shall use sufficient stemming, matting or natural protective cover to prevent flyrock from leaving property owned or under control of the owner or operator or from entering protected natural resources or natural buffer strips. Crushed rock or other suitable material must be used for stemming when available; native gravel, drill cuttings or other material may be used for stemming only if no other suitable material is available.

B. The maximum allowable airblast at any inhabited building not owned or controlled by the developer may not exceed 129 decibels peak when measured by an instrument having a flat response (+ or %F8 3 decibels) over the range of 5 to 200 hertz.

C. The maximum allowable airblast at an uninhabited building not owned or controlled by the developer may not exceed 140 decibels peak when measured by an instrument having a flat response (+ or %F8 3 decibels) over the range of 5 to 200 hertz.

D. Monitoring of airblast levels is required in all cases for which a preblast survey is required by paragraph F. The department may waive the monitoring requirement if the owner or operator secures the permission of affected property owners to increase allowable airblast levels on their property and the department determines that no protected natural resource will be adversely affected by the increased airblast levels.

E. If a blast is to be initiated by detonating cord, the detonating cord must be covered by crushed rock or other suitable cover to reduce noise and concussion effects.

F. A preblast survey is required for all production blasting and must extend a minimum radius of 1/2 mile from the blast site. The preblast survey must document any preexisting damage to structures and buildings and any other physical features within the survey radius that could reasonably be affected by blasting. Assessment of features such as pipes, cables, transmission lines and wells and other water supply systems must be limited to surface conditions and other readily available data, such as well yield and water quality. The preblast survey must be conducted prior to the initiation of blasting at the operation. The owner or operator shall retain a copy of all preblast surveys for at least one year from the date of the last blast on the development site.

1) The owner or operator is not required to conduct a preblast survey if the department determines that no protected natural resource within the limits of the otherwise required survey is likely to be affected by blasting and production blasting will not occur within 2000 feet of any building not owned or under the control of the developer.

2) The owner or operator is not required to conduct a preblast survey on properties for which the owner or operator documents the rejection of an offer by registered letter, return receipt requested, to conduct a preblast survey. Any person owning a building within a preblast survey radius may voluntarily waive the right to a survey.

3) The owner or operator is not required to conduct a preblast survey if the owner or operator agrees to design all blasts so that the weight of explosives per 8 millisecond or greater delay does not exceed that determined by the equation W=(D/Ds)%g2%g, where W is the maximum allowable weight of explosives per delay of 8 milliseconds or greater, D is the shortest distance between any area to be blasted and any inhabitable structure not owned or controlled by the developer and Ds equals 70 ft./(lb.)%g1/2%g.

G. Blasting may not occur in the period between sundown and sunrise the following day or in the period between 7:00 p.m. and 7:00 a.m., whichever is greater. Routine production blasting is not allowed in the daytime on Sunday. Detonation of misfires may occur outside of these times but must be reported to the department within 5 business days of the misfire detonation. Blasting may not occur more frequently than 4 times per day. Underground production blasting may be exempted from these requirements provided that a waiver is granted by the department.

H. Sound from blasting may not exceed the following limits at any protected location:

I. The maximum peak particle velocity at inhabitable structures not owned or controlled by the developer may not exceed the levels established in Table 1 in paragraph K and the graph published by the United States Department of the Interior in "Bureau of Mines Report of Investigations 8507," Appendix B, Figure B-1. The department may grant a variance to allow ground vibration levels greater than 2 inches per second on undeveloped property not owned or controlled by the applicant if the department determines that no protected natural resource, unusual natural area or historic site will be adversely affected by the increased ground vibration levels. If inhabitable structures are constructed on the property after approval of the development and prior to completion of blasting, the developer immediately must notify the department and modify blasting procedures to remain in compliance with the standards of this subsection.

J. Based upon an approved engineering study, the department may grant a variance to allow higher vibration levels for certain buildings and infrastructures. In reviewing a variance application, the department shall take into account that the standards in this paragraph and paragraph I are designed to protect conventional low-rise structures

such as churches, homes and schools. In cases of practical difficulty, the department may grant a variance from paragraph I if it can be demonstrated that no adverse impacts on existing infrastructures or protected natural resources, unusual natural areas or historic sites will result.

K. Table 1 of this paragraph or the graph published by the United States Department of the Interior in "Bureau of Mines Report of Investigations 8507," Appendix B, Figure B-1 must be used to evaluate ground vibration effects for those blasts for which a preblast survey is required.

1) Either Table 1 of this paragraph or the graph published by the United States Department of the Interior in "Bureau of Mines Report of Investigations 8507," Appendix B, Figure B-1 may be used to evaluate ground vibration effects when blasting is to be monitored by seismic instrumentation.

2) Blasting measured in accordance with Table 1 of this paragraph must be conducted so that the peak particle velocity of any one of the 3 mutually perpendicular components of motion does not exceed the ground vibration limits at the distances specified in Table 1 of this paragraph.

3) Seismic instruments that monitor blasting in accordance with Table 1 of this paragraph must have the instrument's transducer firmly coupled to the ground.

4) An owner or operator using Table 1 of this paragraph must use the scaled-distance equation, W=(D/Ds)%g2%g, to determine the allowable charge weight of explosives to be detonated in any 8 millisecond or greater delay period without seismic monitoring, where W is equal to the maximum weight of explosives, in pounds, and D and Ds are defined as in Table 1 of this paragraph. The department may authorize use of a modified scaled-distance factor for production blasting if the owner or operator can demonstrate to a 95% confidence level, based upon records of seismographic monitoring at the specific site of the mining activity covered by the permit, that use of the modified scaled-distance factor will not cause the ground vibration to exceed the maximum allowable peak particle velocities of Table 1 of this paragraph.

5) Blasting monitored in accordance with the graph published by the United States Department of the Interior in "Bureau of Mines Report of Investigations 8507," Appendix B, Figure B-1 must be conducted so that the continuously variable particle velocity criteria are not exceeded.

The owner or operator may apply for a variance of the ground vibration monitoring requirement prior to conducting blasting at the

development site if the owner or operator agrees to design all blasts so that the weight of explosives per 8 millisecond or greater delay does not exceed that determined by the equation W=(D/Ds)%g2%g, where W is the maximum allowable weight of explosives per delay of 8 milliseconds or greater, D is the shortest distance between any area to be blasted and any inhabitable structure not owned or controlled by the developer and Ds equals 70 ft./lb.%g1/2%g. As a condition of the variance, the department may require submission of records certified as accurate by the blaster and may require the owner or operator to document compliance with the conditions of this paragraph.

The following is Table 1.

L. A record of each blast, including seismographic data, must be kept for at least one year from the date of the last blast, must be available for inspection at the development or at the offices of the owner or operator if the development has been closed, completed or abandoned before the one-year limit has passed and must contain at a minimum the following data:

1) Name of blasting company or blasting contractor;

2) Location, date and time of blast;

3) Name, signature and social security number of blaster;

4) Type of material blasted;

5) Number and spacing of holes and depth of burden or stemming;

6) Diameter and depth of holes;

7) Type of explosives used;

8) Total amount of explosives used;

9) Maximum amount of explosives used per delay period of 8 milliseconds or greater;

10) Maximum number of holes per delay period of 8 milliseconds or greater;

11) Method of firing and type of circuit;

12) Direction and distance in feet to the nearest dwelling, public building, school, church or commercial or institutional building neither owned nor controlled by the developer;

13) Weather conditions, including factors such as wind direction

and cloud cover;

14) Height or length of stemming;

15) Amount of mats or other protection used;

16) Type of detonators used and delay periods used;

17) The exact location of each seismograph and the distance of each seismograph from the blast;

18) Seismographic readings;

19) Name and signature of the person operating each seismograph; and

20) Names of the person and the firm analyzing the seismographic data.

M. All field seismographs must record the full analog wave form of each of the 3 mutually perpendicular components of motion in terms of particle velocity. All seismographs must be capable of sensor check and must be calibrated according to the manufacturer's recommendations.

N. If any blasting activity exceeds the standards in this subsection, the department must be notified within 48 hours of the blast event. Notification must include the name of the blasting operator, the location, date and time of the blasting event and a description of the specific occurrence that is in noncompliance with this subsection. Use of explosives at the quarry may be suspended by the department until the cause of the noncompliance is identified and appropriate steps are implemented to reduce, prevent or eliminate reoccurrence.

O. Prior to blasting, the owner or operator shall develop and implement a plan that provides an opportunity for prior notification of a planned blast for all persons located within 1,000 feet of the blast site. Notification may be by telephone, in writing, by public notice in a newspaper of general circulation in the area affected or by other means identified in the plan. The plan must be in writing and available for inspection by the department.

15. LIGHTING. Lighting must be shielded from adjacent highways and residential areas.

HISTORY: 2005 ch. 158, §§ 11, 12, 13, 14, 15 (AMD); 2005 ch. 561, § 4 (AMD); 2007 ch. 290, § 12 (AMD); 2007 ch. 297, §§ 10, 11 (AMD); 2007 ch. 364, § 3 (AMD); 2007 ch. 616, §§ 6, 7, 8 (AMD).

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*** CURRENT THROUGH ACTS OF THE 2009 REGULAR SESSION EFFECTIVE JULY 1, 2009, WITH ANNOTATIONS THROUGH JUNE 18, 2009. ***

FINANCIAL INSTITUTIONS
TITLE 13. STATE-OPERATED FINANCIAL PROGRAMS
SUBTITLE 11. HERITAGE AREAS
PART III. MARYLAND SYSTEM OF HERITAGE AREAS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. FINANCIAL INSTITUTIONS Code Ann. § 13-1112 (2009)

§ 13-1112. Program statement for certified heritage areas

(a) Preparation. --

(1) The State officials under items (i) through (vii) of this subsection who have program responsibilities that affect aspects of the interpretation, preservation, development, and use of heritage area resources shall prepare a program statement detailing actions in the areas of planning, development, use, assistance, and regulation that support and assist the establishment and management of certified heritage areas, as follows:

(i) Secretary of Planning regarding local government adoption of heritage area management plans and regarding historic preservation and museum programs;

(ii) Secretary of Housing and Community Development regarding housing and neighborhood revitalization;

(iii) Secretary of Business and Economic Development regarding the State tourism program and economic development and job creation activities;

(iv) Secretary of Natural Resources regarding outdoor recreation and the management of natural resources, including State greenways;

(v) Secretary of Higher Education regarding educational resources and their interpretation;

(vi) Secretary of Transportation regarding access to and transportation within certified heritage areas, including the scenic byways program and programs for special signage; and

(vii) Secretary of General Services regarding the management and disposition of State property.

(2) The State officials shall submit the program statements required under paragraph (1) of this subsection, and any revisions of the statements, to the Authority.

(b) Activities affecting heritage area. -- Units of State government that conduct or support activities affecting a certified heritage area shall:

(1) Consult, cooperate, and to the maximum extent feasible, coordinate their activities with the unit or entity responsible for the management of each certified heritage area;

(2) To the maximum extent practicable, carry out the activities of the unit in a manner that is consistent with the approved management plan for the certified heritage area; and

(3) When conducting a review of activities under §§ 5A-325 and 5A-326 of the State Finance and Procurement Article, assure that the activities will not have an adverse effect on the historic and cultural resources of the certified heritage area, unless there is no prudent and feasible alternative.

HISTORY: 1996, ch. 601, § 1; 2005, ch. 25, § 13; ch. 44, § 1; ch. 440, § 3.

NOTES: EFFECT OF AMENDMENTS. --Section 1, ch. 44, Acts 2005, effective October 1, 2005, substituted "§§ 5-425 and 5-426 of the Housing and Community Development Article" for "Article 83B, §§ 5-617 and 5-618 of the Code" in (b)(3).

Section 3, ch. 440, Acts 2005, effective October 1, 2005, inserted present (a)(1)(i) and redesignated the following paragraphs accordingly; in present (a)(1)(ii), deleted ", historic preservation, and museum programs" and made related changes; and in (b)(3) substituted "§§ 5A-325 and 5A-326 of the State Finance and Procurement Article" for "§§ 5-425 and 5-426 of the Housing and Community Development Article".

EDITOR'S NOTE. --Chapters 44 and 440, Acts 2005, both amended (b)(3) to conform the Code references related to the creation of the Housing and Community Development Article and transfer of Title 5 therefrom. Neither of the 2005 amendments referred to the other, and effect has been given to ch. 440 as the later enactment.

Section 13, ch. 25, Acts 2005, provides that "the publisher of the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, at the time of publication of a new supplement, new volume, or a replacement volume of the Annotated Code, shall make nonsubstantive corrections to codification, style, capitalization, punctuation, grammar, spelling, and any reference rendered obsolete by an Act of the General Assembly, with no further action required by the General Assembly. The publisher shall adequately describe any such correction in an editor's note following the section affected." Pursuant to § 13 of ch. 25, "items (i) through (vi)" was changed to "items (i) through (vii)" in (a)(1).

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*** CURRENT THROUGH THE 2008 1ST EXTRAORDINARY SESSION ***
*** STATE COURT ANNOTATIONS CURRENT THROUGH FEBRUARY 10, 2009 ***

TITLE 49. CONSERVATION AND ECOLOGY
CHAPTER 23. OUTDOOR ADVERTISING

GO TO MISSISSIPPI CODE OF 1972 ARCHIVE DIRECTORY

Miss. Code Ann. § 49-23-3 (2008)

§ 49-23-3. Definitions

As used in Sections 49-23-1 through 49-23-29:

(a) "An unzoned commercial or industrial area" is an area determined by actual land uses which is commercial, industrial, marketing or mercantile, along a state controlled route and extending outward along one (1) side of such highway not more than eight hundred (800) feet from the edge of such activity.

(b) "Areas which are zoned industrial or commercial" means an area along a state controlled route that has been zoned or rezoned as industrial or commercial under the authority of any law of this state, which shall include, without limiting the generality of the foregoing, zoning districts customarily referred to as "B" or business, "C" or commercial, "I" or industrial, "M" or manufacturing and "S" or service and all similar classifications.

(c) "Commission" means the Mississippi Transportation Commission.

(d) "Department" means the Mississippi Department of Transportation.

(e) "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish an advertising message.

(f) "Great River Road" means that portion of highway located within this state as officially designated by the Federal Highway Administration pursuant to the provisions of Title 23, United States Code, "Highways."

(g) "Information center" means an area or site established and maintained at safety rest areas for the purpose of informing the public of places of interest within the state and providing such other information as the commission may consider desirable.

(h) "Interstate system" means that portion of the national system of interstate and defense highways located within this state, as officially designated, or as may hereafter be so designated, by the commission, and approved pursuant to the provisions of Title 23, United States Code, "Highways."

(i) "Maintenance" means repair, replacement, change, renovation or improvement of any outdoor advertising sign as defined herein. Maintenance shall not include the removal or destruction of any outdoor advertising sign.

(j) "National highway system" means that portion of the national system of interstate and defense highways located within this state, as officially designated, or as may hereafter be so designated by the commission, and approved pursuant to the provisions of Title 23, United States Code, "Highways."

(k) "Outdoor advertising" or "outdoor advertising sign" means by outdoor signs, display, light, device, figure, painting, drawing, message, plaque, poster, billboard, or other thing which is designated, intended or used to advertise or inform, any part of which is visible from any place on the main-traveled way of a state controlled route.

(*l*) "Primary system" means that portion of connected main highways, as officially designated by the commission, and approved pursuant to the provisions of Title 23, United States Code, "Highways."

(m) "Safety rest area" means an area or site established and maintained within or adjacent to the right-of-way or under public supervision or control, for the convenience of the traveling public.

(n) "Scenic byway" means a highway that is designated as a scenic byway under Section 65-41-1 et seq. without regard to qualification as a Federal Scenic Byway, meaning that both "state" scenic byway as well as "federal" scenic byway shall be included under the general category of "scenic byway."

(o) "State controlled routes" means the Interstate System, the Federal Primary System, the National Highway System, the Great River Road and any scenic byways as defined herein along with any additions or deletions thereto as the Federal Highway Administration shall determine by federal statutes or regulations.

HISTORY: SOURCES: Codes, 1942, § 8059.5-02; Laws, 1966, ch. 497, § 2; Laws, 1972, ch. 303, § 1; Laws, 1978, ch. 534, § 2; Laws, 2008, ch. 517, § 2, eff from and after passage (approved May 8, 2008.)

NOTES: AMENDMENT NOTES. --The 2008 amendment added (c), (d), (j), (n) and (o), and rewrote and redesignated the remaining subsections to put them in alphabetical order.

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Billboards and Outdoor Advertising

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*** CURRENT THROUGH THE 2008 1ST EXTRAORDINARY SESSION ***
*** STATE COURT ANNOTATIONS CURRENT THROUGH FEBRUARY 10, 2009 ***

TITLE 49. CONSERVATION AND ECOLOGY
CHAPTER 23. OUTDOOR ADVERTISING

GO TO MISSISSIPPI CODE OF 1972 ARCHIVE DIRECTORY

Miss. Code Ann. § 49-23-5 (2008)

§ 49-23-5. Limitations of outdoor advertising devices

(1) No outdoor advertising shall be erected or maintained within six hundred sixty (660) feet of the nearest edge of the right-of-way and visible from the main-traveled way of a state controlled route, except the following:

(a) Directional and other official signs and notices, which signs and notices shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historic attractions, as authorized or required by law;

(b) Signs, displays and devices advertising the sale or lease of property upon which they are located;

(c) Signs, displays and devices advertising the principal activities conducted on the property upon which they are located;

(d) Outdoor advertising signs, displays and devices located in areas which are zoned industrial or commercial as defined in Section 49-23-3;

(e) Outdoor advertising signs, displays and devices located in unzoned commercial or industrial areas as defined in Section 49-23-3; and

(f) Signs, displays and devices which locate, identify, mark or warn of the presence of pipelines, utility lines or rail lines and appurtenances thereto, including, but not limited to, markers used in maintenance, operation, observation and safety.

(2) No outdoor advertising shall be erected at or beyond six hundred sixty (660) feet of the nearest edge of the right-of-way outside of urban areas, with the purpose of their message being read from the main-traveled ways of state controlled routes, except the following:

(a) Directional and other official signs and notices, which signs and notices shall include, but not be limited to, signs and notices, pertaining to natural wonders, scenic and historic attractions, as authorized or required by law;

(b) Signs, displays and devices advertising the sale or lease of property upon which they are located;

(c) Signs, displays and devices advertising the principal activities conducted on the property upon which they are located.

(3) Signs lawfully in existence on October 22, 1965, as determined by the commission, subject to the concurrence of the United States Secretary of Transportation, to be landmark signs of historic or artistic significance, including signs on farm structures or natural surfaces, the preservation of which would be consistent with the purposes of this section, are not required to be removed.

(4) No outdoor advertising shall be erected along or adjacent to a scenic byway as defined in Section 49-23-3.

(5) No outdoor advertising shall be erected contrary to the restrictions in SECTION 7 of Section 65-3-137.

(6) The board of supervisors of the county, for an outdoor advertising sign that is located outside the corporate limits of any incorporated municipality, and the governing authorities of a municipality, for an outdoor advertising sign that is located within the corporate limits of the municipality, may prohibit any outdoor advertising sign that contains any message or depiction of a sexually explicit nature.

HISTORY: SOURCES: Codes, 1942, § 8059.5-03; Laws, 1966, ch. 497, § 3; Laws, 1976, ch. 438; Laws, 1978, ch. 534, § 3; Laws, 2008, ch. 517, § 3, eff from and after passage (approved May 8, 2008.)

NOTES: JOINT LEGISLATIVE COMMITTEE NOTE. --Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical errors in the introductory paragraph of (2). The word "of" was substituted for the comma and the word "a" following "ways" and the letter "s" was added to the word "route" so that ".with the purpose of their message being read from the main-traveled ways, a state controlled route, except the following" now reads ".with the purpose of their message being read from the main-traveled ways of state controlled routes, except the following." The Joint Committee ratified the corrections at its August 5, 2008, meeting.

AMENDMENT NOTES. --The 2008 amendment substituted "a state controlled route" for "the interstate or primary highways in this state or the Great River Road" in the introductory paragraphs of (1) and (2); inserted "Outdoor advertising" in (1)(d) and (e); added "as defined in Section 49-23-3" at the end of (1)(d); substituted "in Section 49-23-3" for "herein" at the end of (1)(e); deleted "State Highway" preceding "commission" in (3); added (4) through (6); and made minor stylistic changes.

CROSS REFERENCES. --Exemption of certain signs specified in this section from requirement that name of owner of sign be posted on sign, see § 49-23-35.

LexisNexis 50 State Surveys, Legislation & Regulations

Billboards and Outdoor Advertising

RESEARCH REFERENCES

ALR. Validity of regulations restricting size of free standing advertising signs. 56 A.L.R.3d 1207.
Validity and construction of ordinance prohibiting roof signs. 76 A.L.R.3d 1162.
Validity and construction of provision prohibiting or regulating advertising sign overhanging street or sidewalk. 80 A.L.R.3d 687.
Validity and construction of state or local regulation prohibiting off-premises advertising structures. 81 A.L.R.3d 486.
Validity and construction of state or local regulation prohibiting the erection or maintenance of advertising structures

within a specified distance of street or highway. 81 A.L.R.3d 564.

AM JUR. 3 Am. Jur. 2d, Advertising §§ 2, 6, 22-24.
1 Am. Jur. Legal Forms 2d, Advertising §§ 12:161 et seq. (construction and maintenance of outdoor advertising structures).

CJS. 66 C.J.S., Nuisances § 37.

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*** CURRENT THROUGH THE 2008 1ST EXTRAORDINARY SESSION ***
*** STATE COURT ANNOTATIONS CURRENT THROUGH FEBRUARY 10, 2009 ***

TITLE 55. PARKS AND RECREATION
CHAPTER 5. FEDERAL PARKS AND NATIONAL PARKWAYS
IN GENERAL

GO TO MISSISSIPPI CODE OF 1972 ARCHIVE DIRECTORY

Miss. Code Ann. § 55-5-5 (2008)

§ 55-5-5. Conveyances by counties of rights-of-way and easements for construction of roadways and parkways by federal government; eminent domain; powers of federal government as to national roadways or parkways generally

The board of supervisors of any county within the State of Mississippi through which or adjoining which the United States government or any of its agencies desires to construct a roadway or a roadway and parkway in connection therewith, shall have full power to donate such rights of way, together with scenic easements of such additional lands as may be required by the United States government, for the purpose of constructing such roadway or roadway and parkway. Any and all counties in the State of Mississippi are authorized to receive by donation, gift, will or purchase with county funds, any and all necessary lands, rights of way or scenic easements, and after the acquisition of such lands, rights of way or scenic easements may, by resolution or deed or other authorization of the board of supervisors of such county, convey same to the United States or to such subordinate agency of the United States as may be required for the establishment of such roadway or roadway and parkway.

The board of supervisors of any county in the State of Mississippi is hereby expressly vested with the power of eminent domain to condemn for public use as a public park and for scenic easement all lands adjoining such public park or parkway and for road or roadways and to acquire title to all or any part of the lands which such board of supervisors may deem necessary for the purposes of complying with the requirements of the United States government in the establishment of any national roadway or roadway and parkway through the State of Mississippi. Such right of condemnation shall include the right to condemn houses, outbuildings, orchards, yards, gardens and other improvements on such lands. Said board of supervisors is authorized to acquire all or any right, title or interest in and to all or any part of such lands and the improvements thereon by the right of eminent domain in condemnation proceedings or by gift, devise, purchase or any other lawful means for the transfer of title. Such condemnation proceedings shall be carried out and executed as are condemnation proceedings by the highway department of the State of Mississippi as authorized under the laws of the State of Mississippi.

The United States government, or any of its subsidiary agencies, shall have complete control and supervision, severally or in connection with any county or counties in the State of Mississippi or with the highway department of the

State of Mississippi, with full power and authority to locate, relocate, widen, alter, change, straighten, construct or reconstruct roads or rights of way, parkways or lands covered by scenic easements on any federal parkway, highway or trace being constructed by the United States government or any of its subsidiary subdivisions or severally or jointly with any county or counties in the State of Mississippi or with the state highway department of the State of Mississippi and shall have full and complete authority for the making of all contracts, surveys, plans and specifications and estimates for the location, laying out, widening, straightening, altering, changing, constructing, reconstructing and maintaining and securing rights of way therefor of any and all such highways, parkways, and scenic easements and shall further have the right to authorize its employees and agents to enter upon property for such purposes. The said United States government severally and any county or counties in the State of Mississippi and the said highway department, either jointly or severally, is further authorized and empowered to obtain and pay for rights of way to such width and extent as may be necessary to meet the requirement of the United States government for the construction and building of new parkway or roadway or scenic highway in the State of Mississippi. Such political authorities, either jointly or severally shall have the right to condemn or acquire by gift or purchase lands necessary for the building and maintenance of said roadway, parkway or trace.

In event that said political authority or authorities so acting, either jointly or severally, shall be unable to agree with the owners of land necessary for widening any existing public highways which shall be used as a part of said national roadway or parkway or for the building of said roadway or parkway or for the laying out of any public highway or parkway in connection therewith or changing the route of an existing public highway, then the said political authority or authorities, either jointly or severally, aforesaid, shall be authorized to condemn any land needed for any of said purposes. The proceedings to acquire such lands by condemnation shall be in conformity with the statute on the subject of eminent domain under the laws of the State of Mississippi, the power of eminent domain being hereby expressly conferred upon said political subdivision or authorities for that purpose.

Such proceedings shall take precedence over all other causes not involving the public interest in all courts and shall be given preference to the end that construction and reconstructions of highways and parkways may not be unreasonably delayed, but the same may be fully expedited. The amount of such compensation and damages, if any, awarded to the owner in such proceedings shall be paid by the respective counties in which the lands obtained for such highway or parkway may be located unless funds are otherwise provided by the State of Mississippi for the acquisition of such lands.

HISTORY: SOURCES: Codes, 1942, §§ 5964, 5965; Laws, 1935, ch. 52.

NOTES: JOINT LEGISLATIVE COMMITTEE NOTE. --Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error at the beginning of the first paragraph by substituting "The board of supervisors" for "The boards of supervisors." The Joint Committee ratified the correction at its August 5, 2008, meeting.

CROSS REFERENCES. --How right of eminent domain is to be exercised, see § 11-27-1.
County board of supervisors jurisdiction and power generally, see § 19-3-41.
Appropriations and donations by board of supervisors for support of state park within county, see § 55-3-61.
Execution of conveyances and deeds, see § 55-5-11.
Retention by State of Mississippi of concurrent jurisdiction with the United States over certain civil and criminal processes, see § 55-5-17.
Exercise of eminent domain in development of Natchez Trace, see § 55-13-7.

RESEARCH REFERENCES

AM JUR. 26 Am. Jur. 2d, Eminent Domain §§ 67, 73.

CJS. 29A C.J.S., Eminent Domain §§ 33, 58.

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*** CURRENT THROUGH THE 2008 1ST EXTRAORDINARY SESSION ***
*** STATE COURT ANNOTATIONS CURRENT THROUGH FEBRUARY 10, 2009 ***

TITLE 65. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 3. STATE HIGHWAY SYSTEM
GENERAL PROVISIONS; ADDITIONS TO AND DELETIONS FROM STATE HIGHWAY SYSTEM, 1954-1971

GO TO MISSISSIPPI CODE OF 1972 ARCHIVE DIRECTORY

Miss. Code Ann. § 65-3-35 (2008)

§ 65-3-35. Certain highways designated as scenic route

The following links of highways located in the State of Mississippi are hereby designated as a scenic route:

U.S. Highway 61 at Woodville, in Wilkinson County, Mississippi, thence to Natchez, in Adams County, thence to Fayette, in Jefferson County, thence to Port Gibson, in Claiborne County, thence across the new Highway 61 Bridge, spanning Bayou Pierre, which shall be known and is hereby designated as the Irwin Russell Memorial Bridge, and which shall be so marked and designated, and from thence to Vicksburg, in Warren County, Mississippi, and running to Redwood, in Warren County, Mississippi; Mississippi Highway No. 3 beginning at point of intersection with U.S. Highway 61, north of Redwood, and running north to Yazoo City, in Yazoo County, Mississippi; U.S. Highway 49-E beginning at Yazoo City in Yazoo County, Mississippi, running north to Greenwood in Leflore County, Mississippi; Mississippi Highway No. 7 beginning at a point at or near Greenwood where same intersects U.S. Highway 49-E, running in a northeasterly direction to Grenada, in Grenada County, Mississippi; Mississippi Highway No. 7, where same intersects U.S. Highway No. 51 north of Grenada, and running north through Water Valley, in Yalobusha County, Oxford, in Lafayette County, Holly Springs, in Marshall County, and north from Holly Springs to the Tennessee-state line north of the community of Slayden, in Marshall County, Mississippi, to intersect the Austin Peay Memorial Highway in the State of Tennessee; U.S. Highway 90 from Mississippi Highway No. 607 in Hancock County, Mississippi, to the Alabama state line; the portion of Mississippi Highway No. 607 beginning at a point of intersection with Interstate Highway 10 and running southeasterly to the point of intersection with U.S. Highway 90.

All links of highway designated herein not now a part of the state system of highways in Mississippi are hereby designated and declared to be on the secondary group of highways in the State of Mississippi.

HISTORY: SOURCES: Codes, 1942, § 8024-03; Laws, 1948, ch. 342, § 2; Laws, 1975, ch. 374; repealed, Laws, 1981, ch. 464, § 32; reenacted without change, 1985, ch. 537, § 20; reenacted without change, 1987, ch. 510, § 13, eff from and after July 1, 1987.

NOTES: EDITOR'S NOTE. --Laws, 1981, ch. 464, § 32, provided that this section would stand repealed from and after July 1, 1985. Subsequently, this section was reenacted without change by Laws, 1985, ch. 537, § 8, effective from and after July 1, 1985, and, by terms of § 28 of ch. 537, would stand repealed from and after July 1, 1987. Thereafter, this section was again reenacted without change by Laws, 1987, ch. 510, § 1, effective July 1, 1987, and, by the terms of § 21 of 1987 ch. 510, shall stand repealed from and after July 1, 1989. Subsequently, Laws, 1989, ch. 317, § 1, amended § 21 of Laws 1987, ch. 510, by extending the repeal date from July 1, 1989, to July 1, 1993. Finally, Laws, 1993, ch. 357, § 1, repealed Laws, 1981, ch. 464, § 32, Laws, 1985, ch. 537, § 28, Laws, 1987, ch. 510, § 21, and Laws, 1989, ch. 317, § 1.

CROSS REFERENCES. --For additional designations of scenic highways, see §§ 65-3-38 et seq.

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Highways

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*** CURRENT THROUGH THE 2008 1ST EXTRAORDINARY SESSION ***
*** STATE COURT ANNOTATIONS CURRENT THROUGH FEBRUARY 10, 2009 ***

TITLE 65. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 3. STATE HIGHWAY SYSTEM
GENERAL PROVISIONS; ADDITIONS TO AND DELETIONS FROM STATE HIGHWAY SYSTEM, 1954-1971

GO TO MISSISSIPPI CODE OF 1972 ARCHIVE DIRECTORY

Miss. Code Ann. § 65-3-36 (2008)

§ 65-3-36. Additional designation of highways as scenic route

(1) The following segments of highways located in the State of Mississippi are hereby designated as a scenic route:

Mississippi Highway 7 beginning at point of intersection with Interstate 55, running east to the intersection with Mississippi Highway 332, thence southerly along the route of the Grenada Dam then to its intersection with Mississippi Highway 8, thence running west along the route of Mississippi Highway 8 to its intersection with Interstate 55.

(2) (a) The State Highway Department may plan and erect suitable signs and markers along such route and along the interstate approaches to the area. Such signs shall be attractive and designed to invite and encourage tourism, recreation and camping in the area.

(b) The State Highway Department may establish and maintain rest and observation areas along the designated route and may invite the participation of and cooperate with any state, county or municipal agency to assist in the promotion and development of the scenic route hereinabove designated.

HISTORY: SOURCES: Laws, 1974, ch. 421 §§ 1, 2, eff from and after passage (approved March 25, 1974).

NOTES: CROSS REFERENCES. --For additional designations of scenic highways, see §§ 65-3-38 et seq.

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Highways

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*** STATE COURT ANNOTATIONS CURRENT THROUGH FEBRUARY 10, 2009 ***

TITLE 65. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 3. STATE HIGHWAY SYSTEM
SPECIAL DESIGNATIONS OF PORTIONS OF HIGHWAY SYSTEM AND BRIDGES

GO TO MISSISSIPPI CODE OF 1972 ARCHIVE DIRECTORY

Miss. Code Ann. § 65-3-38 (2008)

§ 65-3-38. Designation of scenic route in Sardis Lake area

(1) The following segments of highways located in the State of Mississippi are hereby designated as a scenic route:

Mississippi Highway 315 beginning at a point of intersection with Interstate 55, running east to the intersection with Sardis Dam Road, thence southerly along the route of the Sardis Dam then to its intersection with Mississippi Highway 35, thence running west along the route of Mississippi Highway 35 to its intersection with Mississippi Highway 6, thence in an easterly direction to its intersection with Interstate 55.

(2) (a) The State Highway Department may plan and erect suitable signs and markers along such route and along the interstate approaches to the area. Such signs shall be attractive and designed to invite and encourage tourism, recreation and camping in the area.

(b) The State Highway Department may establish and maintain rest and observation areas along the designated route and may invite the participation of and cooperate with any state, county or municipal agency to assist in the promotion and development of the scenic route hereinabove designated.

HISTORY: SOURCES: Laws, 1976, ch. 309, §§ 1, 2, eff from and after passage (approved March 9, 1976).

NOTES: CROSS REFERENCES. --For additional designation of scenic highways, see §§ 65-3-35 and 65-3-36.

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*** CURRENT THROUGH THE 2008 1ST EXTRAORDINARY SESSION ***
*** STATE COURT ANNOTATIONS CURRENT THROUGH FEBRUARY 10, 2009 ***

TITLE 65. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 3. STATE HIGHWAY SYSTEM
SPECIAL DESIGNATIONS OF PORTIONS OF HIGHWAY SYSTEM AND BRIDGES

GO TO MISSISSIPPI CODE OF 1972 ARCHIVE DIRECTORY

Miss. Code Ann. § 65-3-71.20 (2008)

§ 65-3-71.20. Portion of Mississippi Highway 35 designated as scenic highway

(1) The following segment of highway located in Panola, Tallahatchie, Grenada and Carroll Counties is hereby designated as a scenic highway:

Mississippi Highway 35 beginning at the corporate limits of the City of Batesville and extending southerly to the corporate limits of the Town of Vaiden.

(2) (a) The State Highway Department may plan and erect suitable signs and markers along the above described segment of highway and along the interstate approaches to such highway. Such signs shall be attractive and designed to invite and encourage tourism, recreation and camping in the area.

(b) The State Highway Department may establish and maintain rest and observation areas along the designated segment of highway and may invite the participation of and cooperate with any state, county or municipal agency to assist in the promotion and development of the scenic highway hereinabove designated.

HISTORY: SOURCES: Laws, 1991, ch. 548, § 2, eff from and after passage (approved April 12, 1991).

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*** CURRENT THROUGH THE 2008 1ST EXTRAORDINARY SESSION ***
*** STATE COURT ANNOTATIONS CURRENT THROUGH FEBRUARY 10, 2009 ***

TITLE 65. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 41. MISSISSIPPI SCENIC BYWAYS
ARTICLE 1. MISSISSIPPI SCENIC BYWAYS PROGRAM

GO TO MISSISSIPPI CODE OF 1972 ARCHIVE DIRECTORY

Miss. Code Ann. § 65-41-1 (2008)

§ 65-41-1. Short title

This chapter shall be known and may be cited as the "Mississippi Scenic Byways Program."

HISTORY: SOURCES: Laws, 2002, ch. 531, § 2, eff from and after July 1, 2002.

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*** CURRENT THROUGH THE 2008 1ST EXTRAORDINARY SESSION ***
*** STATE COURT ANNOTATIONS CURRENT THROUGH FEBRUARY 10, 2009 ***

TITLE 65. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 41. MISSISSIPPI SCENIC BYWAYS
ARTICLE 1. MISSISSIPPI SCENIC BYWAYS PROGRAM

GO TO MISSISSIPPI CODE OF 1972 ARCHIVE DIRECTORY

Miss. Code Ann. § 65-41-3 (2008)

§ 65-41-3. Definitions

As used in this chapter, the following terms have the meanings ascribed to them in this section unless the context clearly requires otherwise:

(a) "Corridor" means a highway, road or street right-of-way and the adjacent area that is visible from and extends along the highway, road or street;

(b) "Department" means the Mississippi Department of Transportation;

(c) "Intrinsic qualities," as related to scenic byways, include:

(i) Scenic: Beauty, whether natural or man-made. The quality of the feature is measured by how memorable, distinctive, unique, uninterrupted and unified a scenic byway is;

(ii) Natural: Minimal disturbance of the natural ecological features that are associated with the region;

(iii) Historic: Landscapes, buildings, structures or other visual evidence of the past other than just a site;

(iv) Cultural: Visual evidence of the unique customs, traditions, folklore or rituals of a currently existing human group;

(v) Archeological: Visual evidence of the unique customs, traditions, folklores or rituals of a no longer existing human group;

(vi) Recreational: Use of a scenic byway or its corridor for recreational activities like jogging, biking, roadside picnics or for direct access to recreational sites like campgrounds, lakes, etc.;

(d) "Program" means the Mississippi Scenic Byways Program created under the provisions of this chapter;

(e) "Scenic byway" means a public highway, road or street, including the corridor through which it passes, that has been designated as a scenic byway in order to develop, promote and maintain its intrinsic qualities.

HISTORY: SOURCES: Laws, 2002, ch. 531, § 3, eff from and after July 1, 2002.

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*** CURRENT THROUGH THE 2008 1ST EXTRAORDINARY SESSION ***
*** STATE COURT ANNOTATIONS CURRENT THROUGH FEBRUARY 10, 2009 ***

TITLE 65. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 41. MISSISSIPPI SCENIC BYWAYS
ARTICLE 1. MISSISSIPPI SCENIC BYWAYS PROGRAM

GO TO MISSISSIPPI CODE OF 1972 ARCHIVE DIRECTORY

Miss. Code Ann. § 65-41-5 (2008)

§ 65-41-5. Administration by Department of Transportation

The Mississippi Department of Transportation, upon approval of the Mississippi Transportation Commission, may administer a Mississippi Scenic Byways Program. Under the program, the department, with assistance from the Scenic Byways Advisory Committee created under Section 65-41-7, shall develop, adopt and implement a scenic byways corridor management plan for the state. The plan shall be consistent with the provisions of this chapter and with guidelines established by federal law, and shall specify actions, procedures, controls, operational practices and administrative strategies necessary to govern the selection, nomination and declaration of scenic byways and to ensure that highways, roads, streets and corridors designated as scenic byways are properly managed and that their intrinsic qualities are maintained.

HISTORY: SOURCES: Laws, 2002, ch. 531, § 4, eff from and after July 1, 2002.

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*** CURRENT THROUGH THE 2008 1ST EXTRAORDINARY SESSION ***
*** STATE COURT ANNOTATIONS CURRENT THROUGH FEBRUARY 10, 2009 ***

TITLE 65. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 41. MISSISSIPPI SCENIC BYWAYS
ARTICLE 1. MISSISSIPPI SCENIC BYWAYS PROGRAM

GO TO MISSISSIPPI CODE OF 1972 ARCHIVE DIRECTORY

Miss. Code Ann. § 65-41-7 (2008)

§ 65-41-7. Advisory committee; corridor management plan

(1) There is created a Scenic Byways Advisory Committee to assist the department in the development and administration of the Mississippi Scenic Byways Program, the adoption of a corridor management plan, the review of scenic byway applications and the selection and nomination of highways, roads and streets as scenic byways. The committee shall consist of:

(a) Two (2) members from each of the following entities, with one (1) member from each entity being the executive director of that entity, or his or her designee, and the other member being a member of that entity selected by its executive director:

(i) The Mississippi Department of Transportation;

(ii) The Mississippi Development Authority, Division of Tourism Development;

(iii) The Keep Mississippi Beautiful/People Against Litter Association;

(iv) The Mississippi Association of Supervisors;

(v) The Mississippi Outdoor Advertising Association;

(vi) The Mississippi Retail Association;

(vii) The Mississippi Tourism Association; and

(viii) The Mississippi Municipal League; and

(b) Three (3) members to be selected by the Mississippi Transportation Commission, one (1) from each commissioner's district.

(2) The corridor management plan adopted by the committee shall use best management practices to maintain the

intrinsic qualities of highways, roads and streets designated as scenic byways while ensuring the rights of landowners, including riparian owners, to continue existing agriculture, forestry, water supply, recreational, residential, commercial and industrial uses, and any other uses of land and water, identified in the plan. The department may enter into agreements for the mutual management of scenic byways with counties, municipalities and other political subdivisions of the state, state and federal agencies and private landowners or businesses. The plan shall ensure that landowners have input into management practices of any land or water that is designated as a scenic byway or that is included within a scenic byway corridor. Land placed in the program shall not be obtained by eminent domain. A landowner's decision to participate in the program shall be entirely voluntary and a participating landowner may terminate his participation at any time without liability, criminally or civilly, for his subsequent failure to participate. Counties, municipalities and other political subdivisions of the state may participate in the program as landowners in the same manner as private landowners. For the purposes of carrying out the intent of this chapter, counties, municipalities and other political subdivisions of the state, in addition to and supplemental to any other powers authorized by law for the acquisition of real property, may acquire by donation or purchase, but not by eminent domain, interests in real property.

(3) The plan adopted under this chapter shall be in compliance with all applicable Federal Highway Administration rules, regulations and policies regarding outdoor advertising on or along a highway, road or street designated as a scenic byway. Nothing in This chapter shall be interpreted as amending or limiting any county or municipal zoning or land use ordinance unless the county or municipality has authorized the amendment according to the procedure provided for in its ordinance.

(4) A corridor management plan may not become effective until a draft of the plan has been submitted for review and recommendation to the Transportation Committee of the House of Representatives and the Highways and Transportation Committee of the Senate.

HISTORY: SOURCES: Laws, 2002, ch. 531, § 5, eff from and after July 1, 2002.

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*** CURRENT THROUGH THE 2008 1ST EXTRAORDINARY SESSION ***
*** STATE COURT ANNOTATIONS CURRENT THROUGH FEBRUARY 10, 2009 ***

TITLE 65. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 41. MISSISSIPPI SCENIC BYWAYS
ARTICLE 1. MISSISSIPPI SCENIC BYWAYS PROGRAM

GO TO MISSISSIPPI CODE OF 1972 ARCHIVE DIRECTORY

Miss. Code Ann. § 65-41-9 (2008)

§ 65-41-9. Interlocal participation

(1) The corridor management plan adopted under this chapter shall establish criteria, policies and procedures that will permit county boards of supervisors, municipal governing authorities and the Mississippi Department of Transportation to submit to the advisory committee applications for highways, roads and streets under the governmental entity's respective jurisdiction for nomination as a scenic byway. Nothing in the corridor management plan shall be interpreted as amending or limiting any county or municipal zoning or land use ordinances unless the county or municipality has authorized the amendment according to the procedure provided for in its ordinance. The corridor management plan shall authorize county boards of supervisors and municipal governing authorities to submit one or more plans for one or more highways, roads or streets to be designated a scenic byway that may have management requirements that are more strict than the department's corridor management plan. Such plans for a scenic byway submitted by a county or municipality shall describe the additional management requirements proposed for application to the scenic byway and, if approved by the department, shall apply only to the approved scenic byway. In carrying out the purposes of this chapter and the specific plans for scenic byways, counties and municipalities may include in such specific plans for the corridor (including, but not limited to, medians) provisions for planting and replanting of trees, shrubs and flowers; vegetative buffers, design guidelines and limitations for landscaping, signage and lighting; and noise guidelines and limitations. The authority granted to counties and municipalities under this subsection is supplementary and in addition to any other authority that a county or municipality may have under law.

(2) After receipt of an application, the advisory committee shall hold a public meeting in the geographic area where the proposed scenic byway is located to receive comments and recommendations from the public. Notice of the meeting, along with a description of the highway, road or street proposed as a scenic byway shall be given once each week for at least three (3) consecutive weeks by publication in some newspaper having a general circulation in the county where the proposed scenic byway is located. Following the public meeting, the committee may nominate the highway, road or street as a scenic byway if it is eligible and meets the guidelines established under the program. A highway, road or street that has been nominated by the committee as a scenic byway shall be submitted by the advisory committee to the Legislature at the next regular session of the Legislature following its nomination. A highway, road or street that has been nominated as a scenic byway may be designated as an official Mississippi Scenic Byway only by its introduction and passage as a legislative bill.

(3) The advisory committee shall review each designated scenic byway not less often than once each two (2) years to make sure that the program participants are meeting their obligations under the plan and that the byway continues to possess the intrinsic qualities and meet the criteria which supported its initial designation. If the committee finds that a designated byway is not being maintained according to established standards or that it has lost its necessary intrinsic qualities, the committee shall report its findings to the Legislature and the Legislature, by legislation, may de-designate the byway.

HISTORY: SOURCES: Laws, 2002, ch. 531, § 6, eff from and after July 1, 2002.

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*** CURRENT THROUGH THE 2008 1ST EXTRAORDINARY SESSION ***
*** STATE COURT ANNOTATIONS CURRENT THROUGH FEBRUARY 10, 2009 ***

TITLE 65. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 41. MISSISSIPPI SCENIC BYWAYS
ARTICLE 1. MISSISSIPPI SCENIC BYWAYS PROGRAM

GO TO MISSISSIPPI CODE OF 1972 ARCHIVE DIRECTORY

Miss. Code Ann. § 65-41-11 (2008)

§ 65-41-11. Scenic Byways Development and Maintenance Fund

(1) The department may accept donations, bequests, gifts, grants, appropriations of federal money, in-kind contributions and things of value from any source, public or private, including individuals, organizations and federal, state and local governmental bodies, for the purpose of establishing and maintaining the Mississippi Scenic Byways Program. All such money so received by the department shall be deposited into a special fund that is created in the State Treasury to be designated as the "Scenic Byways Development and Maintenance Fund." Unexpended amounts remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any investment earnings or interest earned on amounts in the fund shall be deposited to the credit of the fund.

(2) Monies in the Scenic Byways Development and Maintenance Fund may be expended, upon legislative appropriation, for the following purposes:

(a) To plan, design and develop the Mississippi Scenic Byways Program;

(b) To develop and implement a corridor management plan for the purposes of maintaining the intrinsic qualities of scenic byways and providing accommodation of increased tourism and development of related amenities;

(c) To make safety improvements to Mississippi scenic byways, a National Scenic Byway or an All-American Road to the extent that the improvements are necessary to accommodate increased traffic and changes in the types of vehicles using the highway, road or street as a result of the designation;

(d) To construct along scenic byways facilities for use by pedestrians and bicyclists, rest areas, turnouts, highway shoulder improvements, passing lanes, overlooks and interpretive facilities;

(e) To make improvements to scenic byways that will enhance access to recreation areas, including water-related recreations;

(f) To protect the intrinsic qualities of areas adjacent to scenic byways;

(g) To develop and provide tourist information to the public, including interpretive information about scenic

byways;

(h) To develop and implement scenic byway marketing programs; and

(i) To match monies made available from the federal government for the establishment and maintenance of the Scenic Byways Program.

HISTORY: SOURCES: Laws, 2002, ch. 531, § 7, eff from and after July 1, 2002.

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*** CURRENT THROUGH THE 2008 1ST EXTRAORDINARY SESSION ***
*** STATE COURT ANNOTATIONS CURRENT THROUGH FEBRUARY 10, 2009 ***

TITLE 65. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 41. MISSISSIPPI SCENIC BYWAYS
ARTICLE 1. MISSISSIPPI SCENIC BYWAYS PROGRAM

GO TO MISSISSIPPI CODE OF 1972 ARCHIVE DIRECTORY

Miss. Code Ann. § 65-41-13 (2008)

§ 65-41-13. Lawful use or activity related to scenic byway area not restricted; local governments not mandated to participate

(1) This chapter shall not prohibit, restrict or otherwise affect any existing or future lawful use or activity in or related to a scenic byway area. This chapter also shall not prohibit, restrict or otherwise affect the operation, maintenance or new construction of any facility, road, railroad, bridge, utility, pipeline, crossing or any other structure in or related to a scenic byway area. If there is any conflict between this section and any other provision of this chapter, this section shall control.

(2) Nothing in this chapter shall mandate local governments to participate in the program, and a local governmental entity may terminate participation in the program at any time by resolution duly adopted and entered upon its minutes.

HISTORY: SOURCES: Laws, 2002, ch. 531, § 8, eff from and after July 1, 2002.

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*** CURRENT THROUGH THE 2008 1ST EXTRAORDINARY SESSION ***
*** STATE COURT ANNOTATIONS CURRENT THROUGH FEBRUARY 10, 2009 ***

TITLE 65. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 41. MISSISSIPPI SCENIC BYWAYS
ARTICLE 3. DESIGNATIONS OF OFFICIAL MISSISSIPPI SCENIC BYWAYS

GO TO MISSISSIPPI CODE OF 1972 ARCHIVE DIRECTORY

Miss. Code Ann. § 65-41-51 (2008)

§ 65-41-51. "Grand Gulf-Raymond Scenic Byway" designated

The following highways, roads or streets located in the State of Mississippi are hereby designated as an official Mississippi Scenic Byway to be known as the "Grand Gulf-Raymond Scenic Byway," pursuant to Section 65-41-1 et seq.:

Beginning at the Grand Gulf Military Monument on the Mississippi River then east along the historic Back Grand Gulf Road to Frasier Road, following east along Frasier Road to Y-Camp Road, following east along Y-Camp Road to Ingleside-Karnac Ferry Road through the community of Ingleside to Highway 61, then the route continues 1/2 mile north of Highway 61, eastward along Willows Road to the community of Willows, then northeastward along the Old Port Gibson Road terminating at the Raymond Military Park at the City of Raymond.

HISTORY: SOURCES: Laws, 2004, ch. 316, § 1, eff from and after passage (approved Apr. 12, 2004.)

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*** CURRENT THROUGH THE 2008 1ST EXTRAORDINARY SESSION ***
*** STATE COURT ANNOTATIONS CURRENT THROUGH FEBRUARY 10, 2009 ***

TITLE 65. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 41. MISSISSIPPI SCENIC BYWAYS
ARTICLE 3. DESIGNATIONS OF OFFICIAL MISSISSIPPI SCENIC BYWAYS

GO TO MISSISSIPPI CODE OF 1972 ARCHIVE DIRECTORY

Miss. Code Ann. § 65-41-53 (2008)

§ 65-41-53. "Lower Mississippi Historic Scenic Byway" designated

(1) The following highways, roads and streets located in the State of Mississippi are hereby designated as an official Mississippi scenic byway to be known as the "Lower Mississippi Historic Scenic Byway," pursuant to Section 65-41-1 et seq.:

Begin on U.S. Highway 61 at the Issaquena County line and travel south along U.S. Highway 61 in Warren County, to Business 61 (North Washington Street); travel north on Washington Street to downtown Vicksburg. Continue traveling on Washington Street as it merges into Warrington Road; travel Warrington Road to U.S. Highway 61; continue on U.S. Highway 61 South to Claiborne County.

Upon entering Claiborne County, continue traveling south on U.S. Highway 61. At Grand Gulf Road, travel west to Grand Gulf Military Park. Turn on Grand Gulf Road to U.S. Highway 61. Travel south on U.S. Highway 61 to Port Gibson. U.S. Highway 61 at Port Gibson is also known as "Church Street." At the intersection of Church Street and Orange Street, travel west on Orange Street, past the Claiborne County Courthouse to Market Street. Travel south on Market Street four (4) blocks, past Mississippi Cultural Crossroads, Matt Ross Administrative Building, Harriette Pearson Memorial Library and Meyer Marx Building until you reach Carroll Street. Return to Church Street and travel south on U.S. Highway 61 to Jefferson County. This corridor also includes Rodney Road, which is Carroll Street (west of Market Street). Travel west on Rodney Road, past the Shaifer House and grounds; travel past the Ruins of Windsor where Rodney Road merges into Highway 552. Travel past Alcorn State University on Highway 552 back to U.S. Highway 61.

Travel south on U.S. Highway 61 until you reach Adams County and continue on U.S. Highway 61 through the City of Natchez to U.S. Highway 6 1/84 Interchange; travel west on U.S. Highway 84 to the Natchez Intermodal Center at the Mississippi River Bridge. Return to U.S. Highway 6 1/84 interchange and travel south on U.S. Highway 61 through the southern portion of Natchez to Wilkinson County. Traveling south on U.S. Highway 61 through Woodville to the Louisiana state line. This terminates the Lower Mississippi Historic Byway.

(2) Outdoor advertising as identified in the Lower Mississippi Historic Byway Corridor Management Plan shall be

allowed on U.S. Highway 61 and U.S. Highway 84 within the corporate limits of the impacted municipalities along the byway subject to the zoning and signage statutes and ordinances of the state and the impacted municipalities. Outdoor advertising outside of a municipality's corporate limit must be in compliance with applicable local, state and federal guidelines.

HISTORY: SOURCES: Laws, 2004, ch. 544, § 1, eff from and after passage (approved May 13, 2004.)

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*** CURRENT THROUGH THE 2008 1ST EXTRAORDINARY SESSION ***
*** STATE COURT ANNOTATIONS CURRENT THROUGH FEBRUARY 10, 2009 ***

TITLE 65. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 41. MISSISSIPPI SCENIC BYWAYS
ARTICLE 3. DESIGNATIONS OF OFFICIAL MISSISSIPPI SCENIC BYWAYS

GO TO MISSISSIPPI CODE OF 1972 ARCHIVE DIRECTORY

Miss. Code Ann. § 65-41-55 (2008)

Legislative Alert: LEXSEE 2009 Miss. SB 2932 -- See section 1.
LEXSEE 2009 Miss. HB 1022 -- See section 1.

§ 65-41-55. "Mississippi Delta Great River Road Scenic Byway" designated

(1) The following highways, roads or streets located in the State of Mississippi are hereby designated as an official Mississippi Scenic Byway to be known as the "Mississippi Delta Great River Road Scenic Byway," pursuant to Sections 65-41-1 et seq.:

Begin on Mississippi Highway 1 at the intersection with U.S. Highway 49 near Lula, Mississippi, and travel south along Mississippi Highway 1. Continue south along Mississippi Highway 1 through Coahoma County, Bolivar County, Washington County, east along Mississippi Highway 1 at Sharkey County and then south along Mississippi Highway 1 at Issaquena County. Continue on Mississippi Highway 1 south to the intersection of U.S. Highway 61 at Mississippi Highway 1 at Onward; continue south along U.S. Highway 61 to the Issaquena/Warren County line. This terminates the "Mississippi Delta Great River Road Scenic Byway."

(2) Outdoor advertising as identified in the Mississippi Delta Great River Road Scenic Byway Corridor Management Plan shall be allowed on Mississippi Highway 1 and U.S. Highway 61 within the corporate limits of the impacted municipalities along the byway subject to the zoning and signage statutes and ordinances of the state and the impacted municipalities. Outdoor advertising outside of a municipality's corporate limit must be in compliance with applicable local, state and federal guidelines.

HISTORY: SOURCES: Laws, 2004, ch. 578, § 1, eff from and after passage (approved May 27, 2004.)

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*** CURRENT THROUGH THE 2008 1ST EXTRAORDINARY SESSION ***
*** STATE COURT ANNOTATIONS CURRENT THROUGH FEBRUARY 10, 2009 ***

TITLE 65. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 41. MISSISSIPPI SCENIC BYWAYS
ARTICLE 3. DESIGNATIONS OF OFFICIAL MISSISSIPPI SCENIC BYWAYS

GO TO MISSISSIPPI CODE OF 1972 ARCHIVE DIRECTORY

Miss. Code Ann. § 65-41-57 (2008)

Legislative Alert: LEXSEE 2009 Miss. SB 2735 -- See section 1.

§ 65-41-57. "Highway 67 Scenic Byway" designated.

The following highways, roads or streets located in the State of Mississippi are hereby designated as an official Mississippi Scenic Byway to be known as the "Highway 67 Scenic Byway" pursuant to Section 65-41-1 et seq. as it reaches completion:

Beginning at the intersection of Highway 67 and Interstate I-10 and travel northerly along Highway 67 to the intersection of Highway 67 and U.S. Highway 49.

HISTORY: SOURCES: Laws, 2007, ch. 307, § 1, eff from and after passage (approved Mar. 7, 2007.)

NOTES: JOINT LEGISLATIVE COMMITTEE NOTE. --Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the second paragraph of the section. The word "the" was inserted preceding "intersection" so that "Beginning at intersection of Highway 67" will read as "Beginning at the intersection of Highway 67." The Joint Committee ratified the correction at its August 5, 2008, meeting.

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*** CURRENT THROUGH THE 2008 1ST EXTRAORDINARY SESSION ***
*** STATE COURT ANNOTATIONS CURRENT THROUGH FEBRUARY 10, 2009 ***

TITLE 65. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 41. MISSISSIPPI SCENIC BYWAYS
ARTICLE 3. DESIGNATIONS OF OFFICIAL MISSISSIPPI SCENIC BYWAYS

GO TO MISSISSIPPI CODE OF 1972 ARCHIVE DIRECTORY

Miss. Code Ann. § 65-41-59 (2008)

§ 65-41-59. "Highway 605 Tradition Scenic Parkway" designated

The following highways, roads or streets located in the State of Mississippi are hereby designated as an official Mississippi Scenic Byway to be known as the "Highway 605 Tradition Scenic Parkway" pursuant to Section 65-41-1 et seq. as it reaches completion:

Beginning at the intersection of Highway 605 and U.S. Highway 90 and travel northerly along Highway 605 to the intersection of Highway 605 and Highway 67.

HISTORY: SOURCES: Laws, 2007, ch. 307, § 2; Laws, 2008, ch. 483, § 1, eff from and after passage (approved Apr. 14, 2008.)

NOTES: AMENDMENT NOTES. --The 2008 amendment substituted "Highway 605 Tradition Scenic Parkway" for "Highway 605 Scenic Byway."

LEXISNEXIS (TM) MISSOURI ANNOTATED STATUTES

*** CURRENT THROUGH THE 94TH GENERAL ASSEMBLY, SECOND REGULAR SESSION, 2008 ***
*** MOST CURRENT ANNOTATION MAY 5, 2009 ***

TITLE 14. ROADS AND WATERWAYS (Chs. 226-238)
CHAPTER 226. STATE TRANSPORTATION DEPARTMENT
HISTORIC PRESERVATION, BEAUTIFICATION AND REST AREAS

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

§ 226.797 R.S.Mo. (2009)

§ 226.797. Scenic roads and highways system to be established--commission's powers and duties--counties or municipalities may make application, procedure to join or remove from scenic system

1. The general assembly finds that certain roads and highways serve scenic and natural areas and that preserving, protecting, and enhancing such roads and highways for the benefit of the state of Missouri and improving the coordination between all levels of government in preserving such roads and highways is of importance to the people of the state, and that measures should be taken in order to provide a means and stimulus for coordinating the preservations, protection, enhancement, enjoyment, and utilization of such roads and highways.

2. The highways and transportation commission of the state of Missouri is authorized to create a state system of scenic byways in order to create and preserve rustic, historic or scenic roads and highways for vehicular, bicycle and pedestrian travel in unhurried, quiet and leisurely enjoyment; to protect and preserve a part of Missouri's transportation history, historic roads and cultures, recreational driving, beauty, trees, vegetation and wildlife by establishing protective standards for scenic byway design, access, maintenance, preservation, and identification, which will promote a continuous system of scenic byways for the public health and welfare.

3. Any county commission or the governing body of any municipality may apply to the Missouri highways and transportation commission for the designation of any road or highway, all or part of which is under its jurisdiction, as a scenic byway after a public hearing with at least a thirty-day prior notice. Unless the commission determines that the road or highway does not meet the standards for scenic byways established by the commission pursuant to this section the commission shall approve the application for designation of the road or highway as a scenic byway.

4. Any county commission or the governing body of any municipality may apply to the commission for the removal of any road or highway from the scenic byways system after a public hearing with at least a thirty-day prior notice. Unless opposed by a majority of the residents along the scenic byway or if the commission determines that the road or highway does not meet the standards for scenic byways established by the commission pursuant to this section the commission shall approve the application for removal of the road or highway from the scenic byways system.

5. Roads or highways submitted for designation or removal as scenic byways, which are under the joint jurisdiction of two or more municipalities, or one or more municipalities and one or more counties, or two or more counties may not be designated scenic byways or be withdrawn from the scenic byways system by the commission until the governing bodies of all affected municipalities and the county commissions of all affected counties approve of such designation or

removal after public hearings with at least thirty-day prior notices.

6. The county commissions, the municipalities and the counties shall have the same authority over scenic byways as they possess over other roads or highways under their jurisdiction.

HISTORY: L. 1990 H.B. 1207

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Archaeological and Historic Sites

LEXISNEXIS (TM) MISSOURI ANNOTATED STATUTES

*** CURRENT THROUGH THE 94TH GENERAL ASSEMBLY, SECOND REGULAR SESSION, 2008 ***
*** MOST CURRENT ANNOTATION MAY 5, 2009 ***

TITLE 14. ROADS AND WATERWAYS (Chs. 226-238)
CHAPTER 226. STATE TRANSPORTATION DEPARTMENT
HISTORIC PRESERVATION, BEAUTIFICATION AND REST AREAS

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

§ 226.798 R.S.Mo. (2009)

§ 226.798. Factors considered in designating a road or highway a scenic byway--rating system to be established

1. The highways and transportation commission shall consider, at a minimum, the following factors in designating a road or highway as a scenic byway:

(1) Highway design which preserves and protects the natural beauty or scenery of the area;

(2) Significant scenic, natural, historical, cultural or recreational resources in the area;

(3) Adequate land area to accommodate safe enjoyment of scenic attractions;

(4) Compatibility of the scenic byway with recreational, aesthetic and environmental management needs of the area; and

(5) Presence of existing protected areas near, or adjacent to, the scenic byway, such as national forests or federal or state park land.

2. The commission shall adopt a rating system to ensure that only roads and highways that display outstanding characteristics pursuant to the provision of subsection 1 of this section are designated as scenic byways as provided by the provisions of section 226.797.

HISTORY: L. 1995 S.B. 212 § 226.799 subsecs. 1, 2

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Archaeological and Historic Sites

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*** CURRENT THROUGH THE 94TH GENERAL ASSEMBLY, SECOND REGULAR SESSION, 2008 ***
*** MOST CURRENT ANNOTATION MAY 5, 2009 ***

TITLE 14. ROADS AND WATERWAYS (Chs. 226-238)
CHAPTER 226. STATE TRANSPORTATION DEPARTMENT
HISTORIC PRESERVATION, BEAUTIFICATION AND REST AREAS

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

§ 226.799 R.S.Mo. (2009)

§ 226.799. Procedure to designate a road or highway as scenic, publication--hearing--county or city in area affected to notify commission of approval or rejection, effect

Prior to the designation of a road or highway as a scenic byway pursuant to the provisions of section 226.797, the commission shall provide written notice of its intent to designate the road or highway as a scenic byway to newspapers of general circulation in the area or areas affected and to the governing body of each county and each municipality that has jurisdiction over all or part of the road or highway. Within thirty days after receipt of such notice, the governing body of each such county or municipality shall conduct a public hearing on the matter. Within ninety days after the receipt of the notice from the commission, each such governing body of a county or municipality, after such hearing, shall approve or reject the proposed designation of the road or highway as a scenic byway and notify the commission of its approval or rejection of the proposed scenic byway. The commission shall only designate a portion of a road or highway as a scenic byway if the governing body of the county or municipality containing that portion of the road or highway approves the proposed scenic byway as prescribed in this section.

HISTORY: L. 1995 S.B. 212 § 226.799 subsec. 3

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TITLE 14. ROADS AND WATERWAYS (Chs. 226-238)
CHAPTER 226. STATE TRANSPORTATION DEPARTMENT
HISTORIC PRESERVATION, BEAUTIFICATION AND REST AREAS

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

§ 226.801 R.S.Mo. (2009)

§ 226.801. Signs and outdoor advertising, rules and regulations

1. The commission may adopt rules to regulate or prohibit outdoor advertising in order to preserve scenic corridors adjacent to, and visible from, roads and highways designated as scenic byways pursuant to the provisions of section 226.797, except, that on-premise signs may be regulated, but not prohibited. Areas zoned commercial or industrial shall not be designated as scenic byways.

2. The commission may adopt rules to implement a program for the erection and maintenance of tourist-oriented directional signs within the right-of-way of scenic byways in the state. The tourist-oriented directional signs shall provide business identification and directional information for businesses, services, natural attractions and activities which, during a normal business season, derive the major portion of the income and visitors for the business or activity from motorists not residing in the immediate area of the business or activity. Tourist- oriented directional signs shall only be used on roads and highways designated as scenic byways under section 226.797.

HISTORY: L. 1995 S.B. 212 § 226.799 subsecs. 4, 5

LexisNexis 50 State Surveys, Legislation & Regulations

1. Billboards and Outdoor Advertising

2. Archaeological and Historic Sites

LexisNexis (R) Montana Code Annotated

*** THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR AND SPECIAL SESSIONS ***
*** ANNOTATIONS CURRENT THROUGH JUNE 23, 2009 ***

TITLE 60 HIGHWAYS AND TRANSPORTATION
CHAPTER 2 STATE ADMINISTRATION
PART 2 DEPARTMENT OF TRANSPORTATION GENERAL POWERS AND DUTIES

Go to the Montana Code Archive Directory

Mont. Code Anno., § 60-2-217 (2007)

60-2-217 Signs identifying mountain ranges -- scenic loop highways -- costs -- responsibility of department.

(1) Subject to the provisions of federal law, the department shall design and erect at relevant locations signs, clearly visible to traffic, identifying:

(a) each prominent mountain range that is visible to an occupant of a vehicle traveling on a primary or interstate highway in Montana; and

(b) the junctions with primary or interstate highways in Montana of scenic highways designated under authority of the commission or the department. The signs must mark where the scenic loop leaves and returns to the primary or interstate highway.

(2) (a) The department may not pay the cost of the manufacture and erection of the signs provided for in subsection (1)(b) out of funds appropriated to the department.

(b) Scenic loop highway signs are intended to provide tourist information, and the department's responsibility for the construction, maintenance, or traffic operation of the highway so signed is not affected by the signs.

(c) Erection of scenic loop highway signs does not create a scenic highway.

HISTORY: En. Sec. 1, Ch. 325, L. 1987; amd. Sec. 1, Ch. 144, L. 1989.

NOTES: Chapter Cross-References

General obligation highway bonds, Title 17, ch. 5, part 5.

Highway revenue bonds, Title 17, ch. 5, part 9.

Highway patrol officers' retirement, Title 19, ch. 6.

Conditional granting of use of highways to nonresidents, 25-3-601.

No road construction through cemetery, 35-20-217.

Highway patrol, Title 44, ch. 1.

Part Cross-References

Department of Transportation, Title 2, ch. 15, part 25.

State-owned motor vehicles, Title 2, ch. 17, part 4.

Department of Transportation -- grievance procedures, Title 2, ch. 18, part 10.

Cooperative agreements with district weed boards, 7-22-2151.

National defense highway plans, 10-3-107.

Gasoline and vehicle fuels taxes, Title 15, ch. 70.

Connecting roads between state highways and state parks, 23-1-104.

Operation of snowmobiles on public roads, streets, and highways, 23-2-631, 23-2-632.

Enforcement of provisions relating to snowmobiles, 23-2-641, 23-2-642.

Highway safety, Title 61, ch. 2.

Authority for reciprocity agreements, provisions, and reciprocity standards, 61-3-714.

Traffic regulation, Title 61, ch. 8.

Shooting from or across road or highway right-of-way prohibited, 61-8-369.

Motor vehicles -- size -- weight -- load, Title 61, ch. 10.

Enforcement by Department of Transportation personnel, Title 61, ch. 12, part 2.

Aircraft landings and takeoffs on public roads, 67-1-204.

Assistance in airport road construction -- Department of Transportation, 67-10-211.

Regulation of carriers, Title 69, ch. 11.

Motor carriers, Title 69, ch. 12.

Outdoor advertising, Title 75, ch. 15, part 1.

Disabled person -- hunting from vehicle allowed -- exception, 87-2-803.

Unlawful to kill wildlife from vehicle on highway, 87-3-101.

Restrictions on use of motor vehicles while hunting, 87-3-125.

Coal Board grants for certain highway construction, repair, and maintenance, 90-6-205.

Coal area highway reconstruction program, 90-6-210.

Part Compiler's Comments

Transfer of Functions: Sections 12 through 14, Ch. 512, L. 1991, provided: "Section 12. Transfer of rulemaking authority. Any existing authority of the department of highways, the department of commerce, or the department of revenue to make rules on the various functions transferred by the provisions of sections 1 through 14 is extended to the provisions of sections 1 through 14 .

Section 13. Application of transfer provisions. The provisions of 2-15-131 through 2-15-137 govern:

(1) the merger into the department of transportation of the functions of the department of highways and those functions of the departments of commerce and revenue specified in sections 1 through 14 ; and

(2) the transfer of the various functions contained in sections 1 through 14 .

Section 14. Governor to implement. The governor shall implement the provisions of sections 1 through 14 by executive order."

Compiler's Comments

1989 Amendment: Inserted (1)(b) requiring identification, by signs placed at junctions with primary or interstate highways, of designated scenic loops; inserted (2) clarifying Department responsibility with regard to scenic loop highway signs; and made minor changes in form.

Chapter Case Notes

Highway Not an Attractive Nuisance -- Summary Judgment Properly Granted: In an action for the wrongful death of the plaintiff's son which occurred when the decedent was struck by an automobile on a controlled-access highway, the District Court did not err in granting the state's motion for summary judgment. As one of the conditions of declaring an object an attractive nuisance, the plaintiff must prove that children are unable to discover or appreciate the dangerous condition of the object. Because there is nothing in the record to prove that a 5-year-old child would not appreciate the dangerous condition of the highway, the highway cannot be found to be an attractive nuisance. Big Man v. St., 192 M 29, 626 P2d 235, 38 St. Rep. 362 (1981).

NOTES:

Chapter Collateral References

Highways [Key number] 91, 95 through 97.

39A C.J.S. Highways §§ 154 through 160.

Report and Recommendations, Joint Subcommittee on Highways, Interim Report, Montana Legislative Council (1982).

Interim Report #41, Highways, Montana Legislative Council (1972).

Part Collateral References

Highways [Key number] 97 3/4 through 111.

39 Am. Jur. 2d Highways, Streets, and Bridges §§ 78 through 88.

Validity, construction, and application of road or transportation impact fee statutes or ordinances. 97 ALR 5th 123.

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*** ANNOTATIONS CURRENT THROUGH JUNE 23, 2009 ***

TITLE 60 HIGHWAYS AND TRANSPORTATION
CHAPTER 2 STATE ADMINISTRATION
PART 6 SCENIC-HISTORIC BYWAYS PROGRAM

Go to the Montana Code Archive Directory

Mont. Code Anno., § 60-2-602 (2007)

60-2-602 Scenic-historic byways program -- rules.

(1) The department shall adopt rules to effectively administer the scenic-historic byways program. The rules must include the criteria that will be considered for designating a road for inclusion in the scenic-historic byways program.

(2) In developing the criteria, to be included in the rules, for designating a road for inclusion in the scenic-historic byways program, the advisory council, commission, and department shall specifically address:

(a) factors that allow each locality choosing to participate in or seeking participation in the scenic-historic byways program the opportunity to:

(i) enhance the experience of the traveling public;

(ii) stimulate or allow for economic development and new marketing strategies; or

(iii) preserve intrinsic resources for the benefit of future generations;

(b) a methodology by which a locality choosing to participate in or seeking participation in the scenic-historic byways program may participate in the national scenic byways program, described in section 1047 of Public Law 102-240;

(c) means by which a road may be excluded from designation as a scenic-historic byway by:

(i) an incorporated municipality for a road or segment of a road within its jurisdiction; or

(ii) a landowner for a road or segment of a road adjacent to the landowner's private property;

(d) factors to be considered in assessing the intrinsic, scenic, historic, recreational, cultural, archaeological, educational, or natural qualities of the road nominated for inclusion in the scenic-historic byways program;

(e) factors to be considered in a locality's corridor management plan, including that the plan:

(i) serves as a visioning tool to provide direction for enhancing and marketing the corridor, but not as a land

management document, zoning tool or mandate, highway improvement scoping or prioritization document, or highway management document;

(ii) accommodates commerce and commercial vehicles and maintains a safe and efficient level of highway services;

(iii) protects private property rights, including assurances that the private property rights of a person who owns land adjacent to or visible from the road are not in any way diminished by the road being designated a scenic-historic byway or are accommodated through mutually agreeable compensation;

(iv) precludes the locality having adopted the corridor management plan from establishing goals or commitments outside the locality's jurisdiction; and

(v) has accommodated all jurisdictions affected or to be affected by the designation of a road as a scenic-historic byway; and

(f) procedures to ensure that localities choosing to participate in the scenic-historic byways program:

(i) may exclude from designation any segment of a highway that is inconsistent with the state's criteria for designating scenic-historic byways. Within an excluded segment, a locality may allow off-premises advertising in the form of billboards or painted signs, subject to applicable federal, state, or local laws.

(ii) may use signage recognized as exceptions or as information signs in all areas along a designated route, provided that the signage complies with 23 U.S.C. 131, Title 60, chapter 5, part 5, Title 75, chapter 15, part 1, and all applicable state or locally adopted rules, requirements, and restrictions.

HISTORY: En. Sec. 3, Ch. 546, L. 1999.

NOTES: Chapter Cross-References

General obligation highway bonds, Title 17, ch. 5, part 5.

Highway revenue bonds, Title 17, ch. 5, part 9.

Highway patrol officers' retirement, Title 19, ch. 6.

Conditional granting of use of highways to nonresidents, 25-3-601.

No road construction through cemetery, 35-20-217.

Highway patrol, Title 44, ch. 1.

Part Compiler's Comments

Effective Date: Section 4, Ch. 546, L. 1999, provided: "(1) Except as provided in subsection (2), this act is effective July 1, 1999.

(2) On passage and approval, the commission may establish and appoint members to a scenic-historic advisory council and the department may promulgate rules to effect the purposes of the scenic-historic byways program." Approved April 30, 1999.

Severability: Section 6, Ch. 546, L. 1999, was a severability clause.

Chapter Case Notes

Highway Not an Attractive Nuisance -- Summary Judgment Properly Granted: In an action for the wrongful death of the plaintiff's son which occurred when the decedent was struck by an automobile on a controlled-access highway, the District Court did not err in granting the state's motion for summary judgment. As one of the conditions of declaring an object an attractive nuisance, the plaintiff must prove that children are unable to discover or appreciate the dangerous condition of the object. Because there is nothing in the record to prove that a 5-year-old child would not appreciate the dangerous condition of the highway, the highway cannot be found to be an attractive nuisance. Big Man v. St., 192 M 29, 626 P2d 235, 38 St. Rep. 362 (1981).

NOTES:

Chapter Collateral References

Highways [Key number] 91, 95 through 97.

39A C.J.S. Highways §§ 154 through 160.

Report and Recommendations, Joint Subcommittee on Highways, Interim Report, Montana Legislative Council (1982).

Interim Report #41, Highways, Montana Legislative Council (1972).

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CHAPTER 39. HIGHWAYS AND BRIDGES
ARTICLE 2. SIGNS

Go to the Nebraska Code Archive Directory

R.R.S. Neb. § 39-201.01 (2009)

§ 39-201.01. Terms, defined

For purposes of sections 39-202 to 39-226:

(1) Highway Beautification Control System means the National System of Interstate and Defense Highways, the system of federal-aid primary roads as they existed on June 1, 1991, any additional highway or road which is designated as a part of the National Highway System under the federal Intermodal Surface Transportation Efficiency Act, and scenic byways. A map of the Highway Beautification Control System shall be maintained as provided in section 39-1311;

(2) Scenic byway means a road, highway, or connecting link designated as a scenic byway pursuant to section 39-217. A map of the scenic byways shall be maintained as provided in section 39-1311; and

(3) Visible, in reference to advertising signs, displays, or devices, means the message or advertising content of such sign, display, or device is capable of being seen without visual aid by a person of normal visual acuity. A sign is considered visible even though the message or advertising content can be seen but not read.

HISTORY: Laws 1995, LB 264, § 1.

USER NOTE: For more generally applicable notes, see notes under the first section of this heading.

NOTES:

LexisNexis 50 State Surveys, Legislation & Regulations

Billboards and Outdoor Advertising

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CHAPTER 39. HIGHWAYS AND BRIDGES
ARTICLE 2. SIGNS

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R.R.S. Neb. § 39-215 (2009)

§ 39-215. Prohibition of advertising visible from main-traveled way; other signs permitted; where; criteria listed

(1) Except as provided in sections 39-212 to 39-222, the erection or maintenance of any advertising sign, display, or device which is visible from the main-traveled way of the Highway Beautification Control System is prohibited. On-premise signs, directional and official signs, and notices as defined and controlled in the department's rules and regulations shall be permitted.

(2) Other signs controlled in accordance with the federal-state agreement shall be permitted, if conforming to sections 39-212 to 39-222, in the following areas:

(a) All zoned commercial or industrial areas within the boundaries of incorporated municipalities, as those boundaries existed on September 21, 1959, and all other areas where the land use as of September 21, 1959, was clearly established by law or ordinance as industrial or commercial in which outdoor advertising signs, displays, and devices may be visible from the main-traveled way of the National System of Interstate and Defense Highways, except that no such signs, displays, or devices shall be permitted in areas in which advertising control easements have been acquired;

(b) All zoned and unzoned commercial and industrial areas in which outdoor advertising signs, displays, and devices may be visible from the main-traveled way of those portions of the National System of Interstate and Defense Highways constructed upon right-of-way, any part of the width of which was acquired on or before July 1, 1956, except that no such signs, displays, or devices shall be permitted in areas in which advertising control easements have been acquired;

(c) All zoned and unzoned commercial and industrial areas in which outdoor advertising signs, displays, and devices may be visible from the main-traveled way of all portions of the Highway Beautification Control System other than the National System of Interstate and Defense Highways within the State of Nebraska, except that no such signs, displays, or devices shall be permitted in areas in which advertising control easements have been acquired. No signs shall be allowed in such areas along scenic byways except those permitted under section 39-218; and

(d) All signs, displays, or devices beyond six hundred sixty feet of the edge of the right-of-way of the Highway

Beautification Control System and outside of urban areas which are visible from the main-traveled way are prohibited except those which are authorized to be erected by the Federal-Aid Highway Acts of 1965, 1970, and 1974 and those signs whose advertising message is only visible from a secondary road or street but not visible from the main-traveled way of the Highway Beautification Control System.

(3) In the areas described in subsection (2) of this section, advertising signs, displays, and devices shall be allowed to be erected in accordance with the following criteria:

(a) Whenever a bona fide state, county, or local zoning authority has made a determination of customary use, as to size, lighting, and spacing, such determination may be accepted in lieu of criteria established by regulation in the zoned commercial and industrial areas described in subsection (2) of this section within the geographical jurisdiction of such authority unless conflicting with laws not contained in this section or with the rules and regulations of the department; and

(b) In all other areas described in subsection (2) of this section, the following criteria shall apply:

(i) On-premise signs as defined and controlled in the department's rules and regulations shall be permitted;

(ii) Those signs referred to as being permitted in the October 1968 federal-state agreement shall be permitted when in conformity with the rules and regulations of the department;

(iii) Within the areas in which, according to sections 39-212 to 39-222, advertising signs will be permitted, such signs shall conform to standards and criteria as to height, width, spacing, and lighting as set forth in the rules and regulations of the department;

(iv) Nothing contained in such sections shall be construed to allow any person or persons, except the department, to erect signs within the right-of-way of any portion of the state highway system or, except the county, to erect official signs within the right-of-way of any portion of the county road system;

(v) Nothing contained in such sections shall be construed to prevent the department from acquiring easements for the control of outdoor advertising;

(vi) Nothing contained in such sections shall be construed to require the removal of signs in zoned and unzoned commercial and industrial areas, lawfully in existence on March 27, 1972, which signs may under such sections remain and continue in place even if nonconforming; and

(vii) The powers conferred by such sections are supplementary and additional powers, and nothing contained in such sections shall be deemed amendatory or in derogation of any other grant of power or authority to the department.

HISTORY: Laws 1972, LB 1181, § 7; Laws 1975, LB 213, § 6; Laws 1983, LB 120, § 4; Laws 1994, LB 848, § 2; R.S.Supp.,1994, § 39-1320.06; Laws 1995, LB 264, § 9.

NOTES:

LexisNexis 50 State Surveys, Legislation & Regulations

Billboards and Outdoor Advertising

JUDICIAL DECISIONS

ANALYSIS
Constitutionality

Grandfather clause.

CONSTITUTIONALITY

The portion of a prior similar provision that prohibited the "erection or maintenance of any advertising sign, display, or device which is visible from the main-traveled way of the National System of Interstate and Defense Highways and the system of federal-aid primary roads of the State of Nebraska" was held unconstitutionally vague. State, Dep't of Rds. v. Mayhew Prods. Corp., 211 Neb. 300, 318 N.W.2d 280 (1982); State, Dep't of Rds. v. Houtwed, 211 Neb. 681, 320 N.W.2d 97 (1982).

GRANDFATHER CLAUSE.

Conversion of a sign to electronic format did not constitute erection of a new sign but instead was a modernization of the old sign with the basic use of the sign remaining the same, and thus the sign continued to be covered under the grandfather clause in this section. State Dep't of Roads v. World Diversified, Inc., 254 Neb. 307, 576 N.W.2d 198 (1998).

USER NOTE: For more generally applicable notes, see notes under the first section of this heading.

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CHAPTER 39. HIGHWAYS AND BRIDGES
ARTICLE 2. SIGNS

Go to the Nebraska Code Archive Directory

R.R.S. Neb. § 39-217 (2009)

§ 39-217. Scenic byway designations

(1) The Department of Roads may designate portions of the state highway system as a scenic byway when the highway corridor possesses unusual, exceptional, or distinctive scenic, historic, recreational, cultural, or archeological features. The department shall adopt and promulgate rules and regulations establishing the procedure and criteria to be utilized in making scenic byway designations.

(2) Any portion of a highway designated as a scenic byway which is located within the limits of any incorporated municipality shall not be designated as part of the scenic byway, except when such route possesses intrinsic scenic, historic, recreational, cultural, or archeological features which support designation of the route as a scenic byway.

HISTORY: Laws 1995, LB 264, § 11.

USER NOTE: For more generally applicable notes, see notes under the first section of this heading.

NOTES:

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CHAPTER 39. HIGHWAYS AND BRIDGES
ARTICLE 2. SIGNS

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R.R.S. Neb. § 39-218 (2009)

§ 39-218. Scenic byways; prohibition of signs visible from main-traveled way; exceptions

No sign shall be erected which is visible from the main-traveled way of any scenic byway except (1) directional and official signs to include, but not be limited to, signs and notices pertaining to natural wonders, scenic attractions, and historical attractions, (2) signs, displays, and devices advertising the sale or lease of property upon which such media are located, and (3) signs, displays, and devices advertising activities conducted on the property on which such media are located. Signs which are allowed shall comply with the standards and criteria established by rules and regulations of the Department of Roads.

HISTORY: Laws 1995, LB 264, § 12.

USER NOTE: For more generally applicable notes, see notes under the first section of this heading.

NOTES:

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CHAPTER 39. HIGHWAYS AND BRIDGES
ARTICLE 13. STATE HIGHWAYS
(c) DESIGNATION OF SYSTEM

Go to the Nebraska Code Archive Directory

R.R.S. Neb. § 39-1311 (2009)

§ 39-1311. State highway system; Department of Roads; maintain current map; contents; corridor location; map; notice; beltway; duties

(1) The Department of Roads at all times shall maintain a current map of the state, which shall show all the roads, highways, and connecting links which have been designated, located, created, or constituted as part of the state highway system, including all corridors. All changes in designation or location of highways constituting the state highway system, or additions thereto, shall be indicated upon the map. The department shall also maintain six separate and additional maps. These maps shall include (a) the roads, highways, and streets designated as federal-aid primary roads as of March 27, 1972, (b) the National System of Interstate and Defense Highways, (c) the roads designated as the federal-aid primary system as it existed on June 1, 1991, (d) the National Highway System, (e) the Highway Beautification Control System as defined in section 39-201.01, and (f) scenic byways as defined in section 39-201.01. The National Highway System is the system designated as such under the federal Intermodal Surface Transportation Efficiency Act. The maps shall be available at all times for public inspection at the offices of the Director-State Engineer and shall be filed with the Legislature of the State of Nebraska each biennium.

(2) Whenever the department has received a corridor location approval for a proposed state highway or proposed beltway to be located in any county or municipality, it shall prepare a map of such corridor sufficient to show the location of such corridor on each parcel of land to be traversed. If the county or municipality in which such corridor is located does not have a requirement for the review and approval of a preliminary subdivision plat or a requirement that a building permit be obtained prior to commencement of a structure, the department shall send notice of the approval of such corridor by certified mail to the owner of each parcel traversed by the corridor at the address shown for such owner on the county tax records. Such notice shall advise the owner of the requirement of sections 39-1311 to 39-1311.05 for preliminary subdivision plats and for building permits.

(3) For any beltway proposed under sections 39-1311 to 39-1311.05, the duties of the department shall be assumed by the county or municipality that received approval for the beltway project.

HISTORY: Laws 1955, c. 148, § 11, p. 422; Laws 1972, LB 1181, § 2; Laws 1974, LB 805, § 1; Laws 1995, LB 264, §

22; Laws 2003, LB 187, § 7; Laws 2005, LB 639, § 2.

NOTES: EFFECT OF AMENDMENTS.
Laws 2005, LB 639, effective September 4, 2005, in (2), inserted "or proposed beltway", and added (3).

OPINIONS OF THE ATTORNEY GENERAL

STATE MAP
State can finance the cost of printing state highway maps by selling advertising space on the back of the map. 1993 Op. Att'y Gen. No. 16.

USER NOTE: For more generally applicable notes, see notes under the first section of this heading.

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CHAPTER 39. HIGHWAYS AND BRIDGES
ARTICLE 26. JUNKYARDS

Go to the Nebraska Code Archive Directory

R.R.S. Neb. § 39-2602 (2009)

§ 39-2602. Terms, defined

For purposes of sections 39-2601 to 39-2612, unless the context otherwise requires:

(1) Junk means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material;

(2) Automobile graveyard means any establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts;

(3) Junkyard means an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk or for the maintenance or operation of an automobile graveyard, and includes garbage dumps and sanitary fills;

(4) Highway Beautification Control System has the same meaning as in section 39-201.01;

(5) Scenic byway has the same meaning as in section 39-201.01;

(6) Main-traveled way means the traveled portion of an interstate or primary highway on which through traffic is carried and, in the case of a divided highway, the traveled portion of each of the separated roadways;

(7) Person means any natural person, partnership, limited liability company, association, corporation, or governmental subdivision; and

(8) Department means the Department of Roads.

HISTORY: Laws 1971, LB 398, § 2; Laws 1993, LB 121, § 214; Laws 1995, LB 264, § 25.

NOTES:

LexisNexis 50 State Surveys, Legislation & Regulations

Junk Yards/Salvage/Scrap Metal

JUDICIAL DECISIONS

ANALYSIS
Dismantled vehicle
Ruined vehicle
Scrapped vehicle
Wrecked vehicle

DISMANTLED VEHICLE
For purposes of subsection (2), a dismantled vehicle is one which has been stripped of its furnishings or equipment. State, Dep't of Rds. v. Melcher, 240 Neb. 592, 483 N.W.2d 540 (1992).

RUINED VEHICLE
For purposes of subsection (2), a ruined vehicle is one which, through destruction or disintegration, has become formless, useless, or valueless. State, Dep't of Rds. v. Melcher, 240 Neb. 592, 483 N.W.2d 540 (1992).

SCRAPPED VEHICLE
For purposes of subsection (2), a scrapped vehicle is one which has no value whatsoever as a vehicle, but the only worth of which is in the value of its metal for remelting or remanufacturing. State, Dep't of Rds. v. Melcher, 240 Neb. 592, 483 N.W.2d 540 (1992).

WRECKED VEHICLE
For the purposes of subsection (2), the word "wrecked" relates to the outward appearance of a vehicle; a wrecked vehicle is one which is seriously damaged in its outward appearance. State, Dep't of Rds. v. Melcher, 240 Neb. 592, 483 N.W.2d 540 (1992).

USER NOTE: For more generally applicable notes, see notes under the first section of this heading.

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*** CURRENT THROUGH THE 2008 SPECIAL SESSION ***
*** AND THE NOVEMBER 2008 GENERAL ELECTION ***
*** ANNOTATIONS CURRENT THROUGH FEBRUARY 20,2009.***

CHAPTER 39. HIGHWAYS AND BRIDGES
ARTICLE 26. JUNKYARDS

Go to the Nebraska Code Archive Directory

R.R.S. Neb. § 39-2605 (2009)

§ 39-2605. Permit; issuance; conditions

No permit shall be granted for the location and maintenance of a junkyard within one thousand feet of the nearest edge of the right-of-way of any roadway of the Highway Beautification Control System except the following:

(1) Those which are screened by natural objects, plantings, fences or other appropriate means so as not to be visible from the main-traveled way of the system, or otherwise removed from sight;

(2) Those located within areas which are zoned for industrial use under authority of the law of a municipality or county, except those located along any route designated as a scenic byway;

(3) Those located within unzoned industrial areas, which areas shall be determined from actual land uses and defined by rules to be promulgated by the department, except those located along any route designated as a scenic byway; and

(4) Those which are not visible from the main-traveled way of the system.

HISTORY: Laws 1971, LB 398, § 5; Laws 1995, LB 264, § 28.

USER NOTE: For more generally applicable notes, see notes under the first section of this heading.

NOTES:

LexisNexis 50 State Surveys, Legislation & Regulations

Junk Yards/Salvage/Scrap Metal

181 of 400 DOCUMENTS

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*** STATUTES CURRENT THROUGH CHAPTER 61 OF THE 2009 SESSION ***
*** ANNOTATIONS CURRENT THROUGH CASES DECIDED MAY 15, 2009 ***

TITLE XX Transportation
CHAPTER 238 Highway Programs
New Hampshire Scenic Byways Planning Program

Go to the New Hampshire Code Archive Directory

RSA 238:13 (2009)

238:13 -238:18.

[Repealed 1992, 160:4, eff. July 5, 1992.]

NOTES: Former section(s).

Former RSA 238:13-238:18, which were derived from 1991, 209:2, related to the scenic byways planning program.

HIERARCHY NOTES:
Tit. XX Note

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*** STATUTES CURRENT THROUGH CHAPTER 61 OF THE 2009 SESSION ***
*** ANNOTATIONS CURRENT THROUGH CASES DECIDED MAY 15, 2009 ***

TITLE XX Transportation
CHAPTER 238 Highway Programs
Scenic and Cultural Byways System

Go to the New Hampshire Code Archive Directory

RSA 238:19 (2009)

238:19 Purpose.

I. The scenic and cultural byways system is established to provide the opportunity for residents and visitors to travel a system of byways which feature the scenic and cultural qualities of the state within the existing highway system, promote retention of rural and urban scenic byways, support the cultural, recreational and historic attributes along these byways and expose the unique elements of the state's beauty, culture and history.

II. It is the intent of the general court that the scenic and cultural assets of the byways will be respected, that the rights of individual property owners shall be preserved, and that nothing in this subdivision shall be interpreted to preempt any land and zoning authority granted to municipalities under title LXIV.

III. It shall be a process of state and local identification of scenic and cultural byways that shall build a statewide system. However, nothing in this subdivision shall restrict a municipality from designating scenic byways within its jurisdiction, require that such designated scenic byways be nominated for inclusion in the New Hampshire scenic and cultural byways system, or require that the scenic and cultural byways council accept such locally designated scenic byway into the system.

HISTORY: 1992, 160:1. 1995, 105:1, eff. July 15, 1995.

NOTES: References in text.

RSA title LXIV, referred to in par. II, is classified to Title 64 of LEXIS New Hampshire Revised Statutes Annotated, which is comprised of chapters 672-678.

Amendments

--1995.

Paragraph III: Substituted "a process of state and" for "the" preceding "local" in the first sentence.

HIERARCHY NOTES:
Tit. XX Note
Tit. XX, Ch. 238 Note

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*** STATUTES CURRENT THROUGH CHAPTER 61 OF THE 2009 SESSION ***
*** ANNOTATIONS CURRENT THROUGH CASES DECIDED MAY 15, 2009 ***

TITLE XX Transportation
CHAPTER 238 Highway Programs
Scenic and Cultural Byways System

Go to the New Hampshire Code Archive Directory

RSA 238:21 (2009)

238:21 Duties.

The council shall:

I. Encourage towns and municipalities to designate scenic and cultural byways within their jurisdictions and to petition the council for the inclusion of these byways into the New Hampshire scenic and cultural byways system. Such inclusion shall enable the municipality to participate in federal funding that may be available under section 1047, Scenic Byways Program, of the Intermodal Surface Transportation Efficiency Act of 1991. The council may also propose a statewide network of connecting highways. Proposed connecting highways shall not be designated as scenic and cultural byways as defined and controlled under section 1047, Scenic Byways Program, of the Intermodal Surface Transportation Efficiency Act of 1991.

II. Develop the process for byways nomination and nomination criteria. Advise and consult with municipalities regarding the process of recommending municipal roads for inclusion in the scenic and cultural byways system.

III. Encourage and assist in fostering public awareness, understanding, and participation in the objectives and functions of the scenic and cultural byways system.

IV. Provide municipalities with tools and ideas for enhancement and protection of the scenic and cultural byways.

V. Review the byway system and report biennially to the governor and the general court upon the effectiveness of this subdivision and make recommendations. The reports shall indicate the status of all state and town designations and include a fiscal accounting of all moneys received and expended.

VI. De-designate a scenic and cultural byway at the request of the municipality or if its character changes in such a way that it no longer meets the criteria under which it was designated.

HISTORY: 1992, 160:1. 1995, 105:2, eff. July 15, 1995.

NOTES: References in text.

Section 1047 of the Intermodal Surface Transportation Efficiency Act of 1991, referred to in the second sentence of par. I, is set out as a note under 23 U.S.C.S. § 101.

Amendments

--1995.

Paragraph I: Added the third sentence.

RESEARCH REFERENCES

New Hampshire Practice

16 N.H.P. Municipal Law & Taxation § 49.15.

HIERARCHY NOTES:
Tit. XX Note
Tit. XX, Ch. 238 Note

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*** ANNOTATIONS CURRENT THROUGH 2009-NMCA-027 AND 2009-NMSC-007 ***

CHAPTER 66. MOTOR VEHICLES
ARTICLE 3. REGISTRATION LAWS; SECURITY INTERESTS; ANTI-THEFTPROVISIONS; BICYCLES; EQUIPMENT; UNSAFE VEHICLES; OFF-HIGHWAY MOTOR VEHICLES; OTHER VEHICLES
PART 5. SPECIAL REGISTRATION PLATES

Go to the New Mexico Code Archive Directory

N.M. Stat. Ann. § 66-3-424.8 (2008)

§ 66-3-424.8. Special route 66 commemorative registration plate

A. The division shall issue a standardized special registration plate with a logo specified in Section 66-3-424 NMSA 1978 commemorating route 66.

B. For a fee of thirty-five dollars ($ 35.00), which shall be in addition to the regular motor vehicle registration fees, the owner of a vehicle may apply for issuance of a special route 66 commemorative registration plate. The owner shall apply and pay the fee each year to retain and renew the special route 66 commemorative registration plate.

C. Revenue from the additional fee for a special route 66 commemorative registration plate shall be distributed as follows:

(1) ten dollars ($ 10.00) of the additional fee collected shall be retained by and is appropriated to the department to defray the cost of making and issuing the special registration plate with route 66 logo; and

(2) twenty-five dollars ($ 25.00) of the additional fee shall be distributed to and is appropriated to the state highway and transportation department for the purpose of funding the revitalization and preservation of historic route 66 in New Mexico pursuant to the national scenic byways program.

HISTORY: 1978 Comp., § 66-3-424.1, enacted by Laws 2003, ch. 180, § 2; renumbered as 66-3-424.8.

NOTES: STATUTORY NOTES

EFFECTIVE DATES. --Pursuant to Laws 2003, ch. 180, § 3, this section took effect January 1, 2004.

LexisNexis 50 State Surveys, Legislation & Regulations

Motorcycles

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*** ANNOTATIONS CURRENT THROUGH 2009-NMCA-027 AND 2009-NMSC-007 ***

CHAPTER 67. HIGHWAYS
ARTICLE 9. SCENIC, HISTORICAL AND OTHER STATE HIGHWAYS

Go to the New Mexico Code Archive Directory

N.M. Stat. Ann. § 67-9-1 (2008)

§ 67-9-1. [Scenic highway from Santa Fe to Las Vegas; establishment; route.]

There is hereby established a public wagon road from the city limits of Santa Fe, in the county of Santa Fe, to the city limits of Las Vegas, county of San Miguel, which said road shall be constructed over the most feasible route through or near the canon of the Santa Fe river from the courthouse in the city of Santa Fe, county of Santa Fe, state of New Mexico, over the mountain range at the most practicable place to the east of said city and from thence on the route which may be most practicable, as well as most direct, to the courthouse in Las Vegas, in the county of San Miguel in the state of New Mexico.

HISTORY: Laws 1903, ch. 56, § 1; Code 1915, § 2716; C.S. 1929, § 64-1610; 1941 Comp., § 58-801; 1953 Comp., § 55-8-1.

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CHAPTER 67. HIGHWAYS
ARTICLE 9. SCENIC, HISTORICAL AND OTHER STATE HIGHWAYS

Go to the New Mexico Code Archive Directory

N.M. Stat. Ann. § 67-9-8 (2008)

§ 67-9-8. Temporary provision; highways; United States route 66; signs

The state highway and transportation department shall conduct an inventory of all current New Mexico state highway designation signs on former United States route 66 and add a second designation sign reading "New Mexico Route 66", contingent upon funding pursuant to the federal Transportation Equity Act for the 21st Century, the National Scenic Byways Program and other sources. The state highway and transportation department, working with the New Mexico route 66 association and the New Mexico route 66 scenic byway coordinator in the economic development department, shall add the secondary designation "New Mexico Route 66" to all official maps of the state of New Mexico and shall complete its survey and addition of all signs prior to January 1, 2001 in celebration of the seventy-fifth anniversary of United States route 66.

HISTORY: Laws 1999, ch. 194, § 2.

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CHAPTER 67. HIGHWAYS
ARTICLE 13. SCENIC HIGHWAY ZONING

Go to the New Mexico Code Archive Directory

N.M. Stat. Ann. § 67-13-1 (2008)

§ 67-13-1. Short title

This act [67-13-1 to 67-13-16 NMSA 1978] may be cited as the "Scenic Highway Zoning Act."

HISTORY: 1953 Comp., § 55-14-1, enacted by Laws 1973, ch. 17, § 1.

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CHAPTER 67. HIGHWAYS
ARTICLE 13. SCENIC HIGHWAY ZONING

Go to the New Mexico Code Archive Directory

N.M. Stat. Ann. § 67-13-2 (2008)

§ 67-13-2. Legislative declaration

It is declared as a matter of legislative determination that:

A. the powers and duties provided in the Scenic Highway Zoning Act [67-13-1 to 67-13-16 NMSA 1978] will serve a public use and will promote the health, safety, prosperity, security and general welfare of the inhabitants of New Mexico;

B. the operation of zoning ordinances and agreements authorized in the Scenic Highway Zoning Act is in the public interest and constitutes a part of the established and permanent policy of the state;

C. the scenic highway zones hereby authorized will be a special benefit to the property within and adjacent to them;

D. the notice provided in the Scenic Highway Zoning Act for each hearing and action to be taken is reasonably calculated to inform any person of interest in any proceedings hereunder which may directly and adversely affect his legally protected interests; and

E. for the accomplishment of these purposes, the provisions of the Scenic Highway Zoning Act shall be broadly construed.

HISTORY: 1953 Comp., § 55-14-2, enacted by Laws 1973, ch. 17, § 2.

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CHAPTER 67. HIGHWAYS
ARTICLE 13. SCENIC HIGHWAY ZONING

Go to the New Mexico Code Archive Directory

N.M. Stat. Ann. § 67-13-3 (2008)

§ 67-13-3. Definitions

As used in the Scenic Highway Zoning Act [67-13-1 to 67-13-16 NMSA 1978]:

A. "board" means a board of county commissioners;

B. "highway" means any United States highway, state highway or any combination of such highways used for vehicular traffic;

C. "person" means any human being, association, partnership, firm or corporation, excluding a public body and excluding the federal government;

D. "public body" means the state of New Mexico or any agency, instrumentality or corporation thereof, or any municipality, school district or other district or any other political subdivision of the state, excluding the federal government; and

E. "real property" means:

(1) land, including land under water;

(2) buildings, structures, fixtures and improvements on land;

(3) any property appurtenant to or used in connection with land; and

(4) every estate, interest, privilege, easement, franchise and right in land, legal or equitable, including without limiting the generality of the foregoing, rights-of-way, terms for years and liens and charges or encumbrances by way of judgment or otherwise, and the indebtedness secured by such liens.

HISTORY: 1953 Comp., § 55-14-3, enacted by Laws 1973, ch. 17, § 3.

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CHAPTER 67. HIGHWAYS
ARTICLE 13. SCENIC HIGHWAY ZONING

Go to the New Mexico Code Archive Directory

N.M. Stat. Ann. § 67-13-4 (2008)

§ 67-13-4. Creation of scenic highway zones

The board of county commissioners of any county, through which any highways extend, which highways have been designated by a joint memorial of both houses of the legislature as being a scenic road, may establish or amend by ordinance a scenic highway zone, provided such ordinance is enacted or amended by the unanimous vote of the entire board of county commissioners.

HISTORY: 1953 Comp., § 55-14-4, enacted by Laws 1973, ch. 17, § 4.

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CHAPTER 67. HIGHWAYS
ARTICLE 13. SCENIC HIGHWAY ZONING

Go to the New Mexico Code Archive Directory

N.M. Stat. Ann. § 67-13-5 (2008)

§ 67-13-5. Boundaries of scenic highway zones

The boundaries of a scenic highway zone are limited to a strip of real property five hundred feet wide on each side of the right-of-way of any highways established as a scenic highway zone by ordinance of the county.

HISTORY: 1953 Comp., § 55-14-5, enacted by Laws 1973, ch. 17, § 5.

192 of 400 DOCUMENTS

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CHAPTER 67. HIGHWAYS
ARTICLE 13. SCENIC HIGHWAY ZONING

Go to the New Mexico Code Archive Directory

N.M. Stat. Ann. § 67-13-6 (2008)

§ 67-13-6. Board powers; delegation allowed

All powers, rights, privileges and duties vested in or imposed upon county commissioners shall be exercised and performed by the board; provided, that the exercise of any and all executive, administrative and ministerial powers may be, by the board, delegated and redelegated to officers and employees of the county.

HISTORY: 1953 Comp., § 55-14-6, enacted by Laws 1973, ch. 17, § 6.

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*** ANNOTATIONS CURRENT THROUGH 2009-NMCA-027 AND 2009-NMSC-007 ***

CHAPTER 67. HIGHWAYS
ARTICLE 13. SCENIC HIGHWAY ZONING

Go to the New Mexico Code Archive Directory

N.M. Stat. Ann. § 67-13-7 (2008)

§ 67-13-7. Decision of board final

The action and decision of the board as to all matters passed upon it in relation to any action, matter or thing provided herein shall be final.

HISTORY: 1953 Comp., § 55-14-7, enacted by Laws 1973, ch. 17, § 7.

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*** ANNOTATIONS CURRENT THROUGH 2009-NMCA-027 AND 2009-NMSC-007 ***

CHAPTER 67. HIGHWAYS
ARTICLE 13. SCENIC HIGHWAY ZONING

Go to the New Mexico Code Archive Directory

N.M. Stat. Ann. § 67-13-8 (2008)

§ 67-13-8. Administrative powers of board

The board may make and pass resolutions, regulations, ordinances and orders not repugnant to the provisions of the Scenic Highway Zoning Act [67-13-1 to 67-13-16 NMSA 1978], necessary or proper for the government and management of the affairs of a scenic highway zone, for the execution of the powers vested in the board and for carrying into effect the provisions of the Scenic Highway Zoning Act.

HISTORY: 1953 Comp., § 55-14-8, enacted by Laws 1973, ch. 17, § 8.

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*** ANNOTATIONS CURRENT THROUGH 2009-NMCA-027 AND 2009-NMSC-007 ***

CHAPTER 67. HIGHWAYS
ARTICLE 13. SCENIC HIGHWAY ZONING

Go to the New Mexico Code Archive Directory

N.M. Stat. Ann. § 67-13-9 (2008)

§ 67-13-9. Zoning authority

A. For the purpose of promoting the health, safety and the general welfare, and for the purpose of historic preservation, a county commission is a scenic highway zoning authority, with all of the powers provided for a municipal zoning authority under Sections 3-21-1 through 3-21-26 NMSA 1978 of the Municipal Code as modified by the provisions of the Scenic Highway Zoning Act [67-13-1 to 67-13-16 NMSA 1978], which provisions shall control, within a scenic highway zone and may through its ordinance power regulate the reasonable location and use of buildings, structures and real property.

B. The scenic highway regulations and restrictions must be in accordance with a comprehensive plan and be designed to achieve the purposes stated in Subsection A of this section, and encourage the most appropriate use of real property within the area of a scenic highway zone.

HISTORY: 1953 Comp., § 55-14-9, enacted by Laws 1973, ch. 17, § 9.

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*** ANNOTATIONS CURRENT THROUGH 2009-NMCA-027 AND 2009-NMSC-007 ***

CHAPTER 67. HIGHWAYS
ARTICLE 13. SCENIC HIGHWAY ZONING

Go to the New Mexico Code Archive Directory

N.M. Stat. Ann. § 67-13-10 (2008)

§ 67-13-10. Zoning; regulations and restrictions; public hearings required; notice

A. A county, within its jurisdiction, shall provide for the manner in which scenic highway zoning regulations and restrictions are determined, established, enforced, amended, supplemented and repealed.

B. No proposed scenic highway zoning regulation or restriction shall become effective, be amended, supplemented or repealed until after a public hearing at which all parties in interest and citizens shall have an opportunity to be heard. Bilingual notice of the date, time and place of the public hearing shall be published for two consecutive weeks at least fifteen days prior to the date of the hearing, in a newspaper of general circulation within the respective county. The notice shall contain, in addition to the date, time and place of the hearing, the title of the ordinance, a summary of its contents and a statement as to the time and place where copies of the ordinance may be obtained and where a display of zoning maps may be studied.

C. Whenever a change in zoning is proposed, notice of the public hearing on the ordinance shall be published as required by the preceding subsection and in addition, notice of the public hearing shall be mailed by certified mail, return receipt requested, to the owners, as shown by the records of the county assessor, of lands or lots within the area proposed to be changed and which are within three hundred feet, excluding right-of-way, of the area proposed to be changed.

D. If any owner of real property included in the area proposed for a change in zoning, protests in writing the proposed change, the proposed change in zoning will not become effective unless the change is approved by the unanimous vote of the entire board of county commissioners.

HISTORY: 1953 Comp., § 55-14-10, enacted by Laws 1973, ch. 17, § 10.

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*** ANNOTATIONS CURRENT THROUGH 2009-NMCA-027 AND 2009-NMSC-007 ***

CHAPTER 67. HIGHWAYS
ARTICLE 13. SCENIC HIGHWAY ZONING

Go to the New Mexico Code Archive Directory

N.M. Stat. Ann. § 67-13-11 (2008)

§ 67-13-11. Appeals; grounds; stay of proceedings

A. The board shall provide, by resolution, the procedure to be followed in considering appeals allowed by this section. A record shall be made of all proceedings.

B. Any aggrieved person or any public body affected by a decision of an administrative officer, in the enforcement of the Scenic Highway Zoning Act [67-13-1 to 67-13-16 NMSA 1978], or any ordinance, resolution, rule or regulation adopted pursuant to these sections may appeal to the board. An appeal shall stay all proceedings in furtherance of the action appealed unless the officer from whom the appeal is taken certifies that by reason of facts stated in the certificate, a stay would cause imminent peril of life or property. Upon certification, the proceedings shall not be stayed except by order of the board.

C. When an appeal alleges that there is an error in any order, requirement, decision or determination by an administrative official or any board in the enforcement of the Scenic Highway Zoning Act or any ordinance, resolution, rule or regulation adopted pursuant to these sections, the board, by a majority vote of the quorum present, may:

(1) authorize, in appropriate cases and subject to appropriate conditions and safeguards, special exceptions to the terms of the zoning ordinance or resolution:

(a) which are not contrary to the public interest;

(b) where, owing to special conditions, a literal enforcement of the zoning ordinance will result in unnecessary hardship; and

(c) so that the spirit of the zoning ordinance is observed and substantial justice done; or

(2) in conformity with the Scenic Highway Zoning Act:

(a) reverse any order, requirement, decision or determination of an administrative official;

(b) decide in favor of the appellant; or

(c) make any change in any order, requirement, decision or determination of an administrative official.

HISTORY: 1953 Comp., § 55-14-11, enacted by Laws 1973, ch. 17, § 11.

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*** ANNOTATIONS CURRENT THROUGH 2009-NMCA-027 AND 2009-NMSC-007 ***

CHAPTER 67. HIGHWAYS
ARTICLE 13. SCENIC HIGHWAY ZONING

Go to the New Mexico Code Archive Directory

N.M. Stat. Ann. § 67-13-12 (2008)

§ 67-13-12. Zoning; petition for review; restraining order

A. A person aggrieved by a decision of the board may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

B. The appeal shall not stay the decision appealed from, but the court may, on application, grant a restraining order.

HISTORY: 1953 Comp., § 55-14-12, enacted by Laws 1973, ch. 17, § 12; 1998, ch. 55, § 82; 1999, ch. 265, § 83.

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*** ANNOTATIONS CURRENT THROUGH 2009-NMCA-027 AND 2009-NMSC-007 ***

CHAPTER 67. HIGHWAYS
ARTICLE 13. SCENIC HIGHWAY ZONING

Go to the New Mexico Code Archive Directory

N.M. Stat. Ann. § 67-13-13 (2008)

§ 67-13-13. Zoning enforcement

A. The Scenic Highway Zoning Act [67-13-1 to 67-13-16 NMSA 1978], and any ordinance adopted pursuant to it, shall be enforced by the board in the same manner as municipal ordinances are enforced under Sections 3-21-8 through 3-21-11 NMSA 1978 of the Municipal Code.

B. In addition, if any building or structure is erected, constructed, reconstructed, altered, extensively repaired or converted, or any structure, building or real property is used in violation of the Scenic Highway Zoning Act, or any ordinance adopted pursuant thereto, the board may institute any appropriate action or proceedings to:

(1) prevent such unlawful erection, construction, reconstruction, alteration, extensive repair, conversion or use;

(2) restrain, correct or abate the violation;

(3) prevent the occupancy of such building, structure or real property; or

(4) prevent any illegal act, conduct, business or use in or about such premises.

C. The ordinances, rules and regulations, together with any officially adopted zoning map of the scenic highway zone, shall be filed in the office of the county clerk and shall be made available for examination by any citizen.

HISTORY: 1953 Comp., § 55-14-13, enacted by Laws 1973, ch. 17, § 13.

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*** ANNOTATIONS CURRENT THROUGH 2009-NMCA-027 AND 2009-NMSC-007 ***

CHAPTER 67. HIGHWAYS
ARTICLE 13. SCENIC HIGHWAY ZONING

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N.M. Stat. Ann. § 67-13-14 (2008)

§ 67-13-14. Conflicts between zoning regulations and other laws

If any other statute or regulation or any local ordinance of any county or municipality is applicable to any premises within the boundaries of the scenic highway zone, the provisions of the existing statute, regulation or local ordinance shall govern within the geographical boundaries of the county or municipality. If any other statute or regulation or any local county or municipal ordinance is applicable to any real property within the boundaries of the scenic highway zone, the provisions shall govern which require:

A. the lower height of buildings or a lessor number of stories;

B. the greater percentage of land to be left unoccupied;

C. the greater size of open space or use not requiring a structure or building; or

D. higher standards for scenic and historic values.

HISTORY: 1953 Comp., § 55-14-14, enacted by Laws 1973, ch. 17, § 14.

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CHAPTER 67. HIGHWAYS
ARTICLE 13. SCENIC HIGHWAY ZONING

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N.M. Stat. Ann. § 67-13-15 (2008)

§ 67-13-15. Authority to contract

A board may contract for staff assistance and the service of another body, if the other body is a:

A. state agency;

B. federal agency; or

C. planning or zoning commission of a county or municipality within the boundaries of the scenic highway zone.

HISTORY: 1953 Comp., § 55-14-15, enacted by Laws 1973, ch. 17, § 15.

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CHAPTER 67. HIGHWAYS
ARTICLE 13. SCENIC HIGHWAY ZONING

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N.M. Stat. Ann. § 67-13-16 (2008)

§ 67-13-16. Application of act

Nothing in the Scenic Highway Zoning Act [67-13-1 to 67-13-16 NMSA 1978] shall be construed to derogate from any powers of the state transportation commission under the Highway Beautification Act [67-12-1 to 67-12-14 NMSA 1978] or the powers of the commission relating to the construction, repair or maintenance of highways or to require any act or omission on the part of the commission that is inconsistent with federal or state laws, regulations or policies. Nothing in the Scenic Highway Zoning Act shall be construed so as to affect or limit in any way any nonconforming use in existence on the effective date of the Scenic Highway Zoning Act or any ordinance adopted pursuant thereto.

HISTORY: 1953 Comp., § 55-14-16, enacted by Laws 1973, ch. 17, § 16; 2003, ch. 142, § 88.

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AGRICULTURE AND MARKETS LAW
ARTICLE 23. DIRECT MARKETING

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NY CLS Agr & M § 284-a (2009)

§ 284-a. Establishment of farm trails, apple trails and cuisine trails

1. Marketing activities and designation of trails. The department shall conduct statewide and regional marketing activities which shall include, but not be limited to, the designation of farm trails, apple trails, and cuisine trails.

2. Definitions. For the purposes of this section:

(a) "farm trail" shall mean an association of producers that are in close proximity to each other, that sell in a cooperative manner a complementary variety of farm and food products, and that utilize a map, other directional devices, or highway signs to market products and direct patrons to their respective farms.

(b) "apple trail" shall mean an association of producers that are in close proximity to each other, that sell in a cooperative manner a wide variety of fresh apples or other fresh fruits or processed apple or other fruit products, and that utilize a map, other directional devices, or highway signs to market their products and direct patrons to their respective farms.

(c) "cuisine trail" shall mean an association of producers, that may include a combination of producers, food or agricultural product processors and retailers including, but not limited to, restaurants, that are in close proximity to each other, and that sell in a cooperative manner a complementary variety of unusual, unique, or hard to find fresh farm and food products and foods prepared primarily with such products for on or off premises consumption, including but not limited to, herbs, meats, vegetables, salad materials, wines, cut flowers, mushrooms, or fruits. Such trails may utilize a map, other directional devices, or highway signs to market their products and direct patrons to their places of business.

3. Designation of trails.

(a) The department shall designate farm, apple, and cuisine trails to promote greater agricultural marketing and promotional opportunities for agricultural producers located in the areas of such trails.

(b) Designations shall take into consideration geographic proximity and alignment, thematic consistency, geographic or historical consistency, density, economic feasibility, and the cooperation of agricultural producers on the

trails to be designated. The department shall designate no more than ten farm trails, [fig 1] ten apple trails, and [fig 2] ten cuisine trails. Criteria for developing and approving such trails shall include:

(i) that the length of such trail, excluding laterals, is no longer than [fig 1] fifty miles,

(ii) containing a sufficient number of producers to cost-effectively attract patrons to such trail association's participating members,

(iii) incorporating considerations that maximize patronage of such trail,

(iv) ensuring that proposed trail routes do not conflict with [fig 1] existing scenic byways designated pursuant to section three hundred forty-nine-dd of the highway law or wine trails designated pursuant to section three hundred forty-three-k of the highway law,

(v) ensuring that trail designations are neither redundant nor cover themes or subjects or have names that have already been used by trails designated by the New York state scenic byways program or designated as a wine trail pursuant to section three hundred forty-three-k of the highway law,

(vi) ensuring that the trail route is designed and laid out so that it is relatively simple and easy to follow for patrons and contains few branches or laterals that dead end at one association member's business, and

(vii) upon consulting with the commissioner of transportation, trail designations that may support, augment, or reinforce the themes or subjects already covered by the existing scenic byways system or wine trails designated pursuant to the highway law.

(c) In making designations, the department shall consult with:

(i) the [fig 1] New York State Farmers Direct Marketing Association, the advisory council on agriculture, and the New York State scenic byways advisory board; and

(ii) the commissioner of transportation. The commissioner of transportation shall cooperate with the department in carrying out the provisions of this section. The commissioner of transportation, upon receipt of a one time five hundred dollar application fee, is authorized to permit the installation and maintenance of signs on the state highway system for trails designated pursuant to this section. Such funds received by the commissioner of transportation pursuant to this subdivision shall be deposited pursuant to section eighty-nine-b of the state finance law. However, to avoid confusion and to limit any possible disruption of commerce, the trail designations called for pursuant to this section shall be of a ceremonial nature and the official names of such highway shall not be changed as a result of such designations. Signage for trails designated pursuant to this section may include "farm trail", "apple trail", "cuisine trail" or other descriptive language to promote the marketing of the trails products.

(d) Once approved, trail route designations may not be altered for a minimum period of time of eighteen months; provided, however, that additional participating members may be incorporated into already existing designated trail routes. The department may review the designation of any trail established pursuant to this section and review such trail's effectiveness in attracting patrons or tourists, increasing patronage of association member businesses, and expanding the marketing capabilities of all trail members. The department, upon periodically reviewing designated trails, may make suggestions to alter the route, adopt revisions to the business management practices of such trail association, or remove the designation of any such trail authorized by this section.

4. Application for designation.

(a) Any association of producers as described in this section, upon payment of an application fee of two hundred fifty dollars and completion of an application form, may obtain from the department designation as a farm, apple, or cuisine trail. Such funds received by the department pursuant to this subdivision shall be deposited in the general fund. All applicants must satisfy the designation criteria stated in subdivision three of this section.

(b) The department, in approving any trail application and installation of highway signage, if such signage is requested by the applicant, shall consult with and satisfy all reasonable motor vehicle safety concerns specified by the commissioner of transportation to ensure that the trail designation, its route, or proposed signage does not impede vehicular traffic or diminish motorists' safety on the state highway system. The design of all highway signs must conform with all uniform traffic control device regulations and must be approved by the commissioner of

transportation.

5. Application for federal monies. The department may apply for and accept federal monies that may be available to support such a program or funds from any other source to support this program. Upon approval of the commissioner of transportation, trails designated pursuant to this section may be eligible for and accept any federal highway aid or funds that may be available to support such program.

HISTORY: Add, L 2004, ch 248, § 1, eff Jan 23, 2005 (see 2004 note below).
Sub 2, par (c), amd, L 2008, ch 448, § 1, eff Aug 5, 2008.
Sub 3, par (b), amd, L 2008, ch 448, § 2, eff Aug 5, 2008.
Sub 3, par (b), opening par, amd, L 2008, ch 448, § 2, eff Aug 5, 2008.
The 2008 act deleted at fig 1 "seven" and at fig 2 "five" Sub 3, par (b), subpar (i), amd, L 2008, ch 448, § 2, eff Aug 5, 2008.
The 2008 act deleted at fig 1 "twenty-five" Sub 3, par (b), subpar (iv), amd, L 2008, ch 448, § 2, eff Aug 5, 2008.
The 2008 act deleted at fig 1 "or significantly overlap with" Sub 3, par (c), amd, L 2008, ch 448, § 2, eff Aug 5, 2008.
Sub 3, par (c), subpar (i), amd, L 2008, ch 448, § 2, eff Aug 5, 2008.
The 2008 act deleted at fig 1 "direct marketing advisory council for statewide activities, the direct marketing advisory councils for regional marketing areas, the Hudson valley agricultural advisory council, associations of farmers established pursuant to section two hundred ninety of this chapter" Sub 3, par (c), subpar (ii), amd, L 2008, ch 448, § 2, eff Aug 5, 2008.
Sub 4, par (a), amd, L 2008, ch 448, § 3, eff Aug 5, 2008.

NOTES:

Editor's Notes

Laws 2004, ch 248, § 2, eff Jan 23, 2005, provides as follows:
§ 2. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however, that the departments of agriculture and markets and transportation may promulgate rules and regulations prior to such effective date to implement this act.

NYCRR References:
Department of agriculture and markets: cuisine trail. 1 NYCRR Part 206

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ENVIRONMENTAL CONSERVATION LAW
ARTICLE 42. HISTORIC SARATOGA-WASHINGTON ON THE HUDSON PARTNERSHIP

Go to the New York Code Archive Directory

NY CLS ECL Article 42 Note (2009)

ECL Article 42 Note

HISTORY: Add, L 2006, ch 737, § 2, eff Sept 13, 2006 (see 2006 note below).

NOTES:

Editor's Notes

Laws 2006, ch 737, § 1, eff Sept 13, 2006, provides as follows:

Section 1. Legislative findings. The legislature finds that the land area and communities along the Hudson River in the counties of Saratoga and Washington possess unique historic and natural significance as a primary birthplace of America. Beginning with Native Americans in pre-colonial times to early European trading posts, this Hudson River corridor was the setting of major chapters in American history including the French and Indian War, the American revolution and 19th century commercial and industrial development associated with the building of the Erie and Champlain Canals. In addition, this corridor is distinguished by its scenic and natural features, agricultural uses and historic river towns.

The legislature recognizes major historical sites like the Saratoga National Historical Park are features of a corridor associated with change, revolution and transportation. The corridor also has a pivotal role in the unfolding commemorations associated with the 400th anniversary of the voyages of Champlain and Hudson, the French and Indian War, and the American Revolutionary War. The corridor has been designated by the U.S. Congress to be part of the Erie Canalway National Heritage Corridor and is included in the Champlain Canal Trail Scenic Byway.

Therefore, the legislature finds it is timely and in the public interest to establish an innovative partnership framework building and expanding on existing public and private initiatives to fully realize the Historic Saratoga-Washington on the Hudson Partnership's historic, natural and scenic, recreational and economic potential for the people of its region and the state as a whole.

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ENVIRONMENTAL CONSERVATION LAW
ARTICLE 44. HUDSON RIVER VALLEY GREENWAY

Go to the New York Code Archive Directory

NY CLS ECL § 44-0113 (2009)

§ 44-0113. Powers and duties of the conservancy

The [fig 1] conservancy shall have the power:

1. To sue on causes of action consistent with the purposes and its responsibilities under this article and with respect to contracts to which it is a party, but not for general enforcement of state or local environmental or planning laws, provided that the right to sue, other than with respect to contracts, to which it is a party, shall be limited to causes of action arising within the boundaries of the greenway; and to be sued.

2. To make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this article.

3. To establish and maintain such facilities as may be necessary for the transacting of its business.

4. To appoint an executive officer, officers, agents, employees, and prescribe their duties and qualifications and fix their compensation.

5. To utilize, to the extent feasible the staff and facilities of existing state agencies.

6. To hold hearings in the exercise of its powers, functions and duties provided for by this article.

7. To contract for professional and technical assistance and advice.

8. To contract for and to accept assistance, including but not limited to gifts, grants or loans of funds or of property from the federal government or any agency or instrumentality thereof, or from any agency or instrumentality of the state, or from any other public or private source and to comply, subject to the provisions of this article, with the terms and conditions thereof, subject to the applicable general policies of the director of the budget.

9. To encourage individuals, corporations, associations, organizations and public agencies to preserve and enhance the natural scenic beauty and heritage of the Hudson river valley and the lands, water, [fig 1] exemplary natural communities, aesthetic and cultural resources of the Hudson river valley, as well as manage and conserve the fish,

wildlife and endangered plant and animal species, and to increase public access to the waters of the Hudson river.

10. To acquire, in the name of the state, interests or rights in real property including title by gift or devise anywhere within the greenway, or by purchase solely for the purposes of a riverside park or development of the greenway trail, or by easement for the conservation, management and preservation of open space characterized by natural scenic beauty, heritage, natural resource values or conditions enhancing regional qualities of the Hudson river valley provided, however, that notwithstanding any other provision of law, transfers of such interests or rights in real property may be made to municipalities or not-for-profit corporations which contract to hold such property for the beneficial enjoyment of the people of the state and in no event shall such land be sold by any such municipality or not-for-profit corporation except for purposes consistent with the beneficial enjoyment of the people of the state. Additionally, notwithstanding this or any other provision of law, neither the state, nor any of its instrumentalities, may transfer, to the conservancy, any interests or rights in real property upon which the state is making property tax payments or payments in lieu of taxes, unless provision is made for the continuance of such payments by the conservancy from monies available in the fund.

11. To continue the existing subsidiary nonprofit corporation and create committees and appoint members thereto to assist and advise the conservancy in carrying out its functions, powers and duties and in coordinating the activities of the conservancy with state and local agencies functioning within the Hudson river valley.

12. To intervene in proceedings before state agencies including the department on matters affecting the Hudson river valley.

13. To encourage and assist in the creation of special local improvement districts consistent with the purposes of this article.

14. To identify land and water areas in the Hudson river valley that are suited for designation as scenic areas under the provisions of article forty-nine of this chapter and for subsequent development of resource management plans.

15. To provide technical assistance to county and local officials, landowners and interested organizations with regard to resource protection, conservation and management of renewable natural resources and preservation methods and techniques, including but not limited to: natural resource inventories, scenic and conservation easements, deed restrictions, local land trust, innovative zoning techniques, establishment of urban cultural parks, historic preservation methods and viewshed analysis.

16. To encourage and assist state, county and local governments with the implementation of procedures for identifying and designating critical areas under the state environmental quality review act, and to provide similar support for utilization of scenic impact project review guidelines.

17. To help to advance, guide and coordinate on a priority basis the acquisition of land and water areas possessed of scenic, natural, historical, recreational or cultural significance, for the purpose of preserving or enhancing such areas; and to do so in cooperation with appropriate public and private agencies.

18. To initiate the preparation of comprehensive and systematic inventories and studies of the natural, scenic, historic, cultural and recreational resources of the Hudson river valley.

19. To provide local governments and the private sector with improved liaison, interpretation and focus relative to a variety of state and federal programs which bear on the Hudson river valley and its shorelands, including coastal management; basin level B study; wild, scenic and recreational rivers; urban cultural parks; fisheries management; estuarine sanctuaries; areas of national concern; historic preservation; tourism and outdoor recreation; and grants-in-aid.

20. To help develop and implement a comprehensive program and plan at the state, county and local levels for resource preservation, renewable natural resource management and enhancement in scenic highway corridors.

21. To annually prepare a work plan of intended projects and activities of the conservancy and present such plan to the council for its review and comment and report periodically to the governor, the legislature and the council on the conduct of its activities, but not less than once a year, and to provide a copy of each report to appropriate public and private entities within the Hudson river valley which request a copy of the report.

22. To exercise and perform such other powers and duties as shall have been or may be from time to time conveyed or imposed by law.

23. To encourage individuals, corporations, associations and public entities to protect and preserve unique resources of the greenway and make grants to municipalities and non-profit entities within the greenway therefor.

24. To whenever in the opinion of the conservancy it would be in the public interest, after prior approval of the director of the budget, request the temporary assignment and transfer of certain employees of any board, commission, agency or department of the state or its political subdivisions, and said board, commission, agency or department, if in its opinion such transfer will not interfere with the performance of its duties and functions may make such assignment and transfer of said employees to the conservancy. Such assignment and transfer or extension thereof shall not in any way affect the civil service status, continuity of service, retirement plan status, right to compensation, grade or compensation or other rights or privileges of any employee so transferred.

25. To submit title to all interests or rights in real property proposed to be acquired by the conservancy for examination and approval by the attorney general of the state who shall also furnish any and all necessary legal services and advice required to assist the conservancy in accomplishing its corporate purposes.

26. When funds are available, and with the approval of the governor, enter into an agreement with a municipality or district within which real property interests or rights have been acquired by the conservancy providing for the payment of moneys in lieu of anticipated tax revenues whenever the conservancy shall determine that undue hardship justifying such financial relief has been created by such acquisition.

27. To enforce that no officer, member or employee of the conservancy shall receive or may be lawfully entitled to receive any pecuniary profit from the operation thereof except, to the extent available from the fund, for expenses actually and necessarily incurred, including reasonable compensation to employees for services in effecting one or more of the purposes set forth herein .

28. To continue to provide certain programmatic contractual services to the department as has heretofore been the practice.

29. To jointly designate and develop model greenway projects in agreement with the council to demonstrate the implementation of greenway planning and make grants for assistance to municipalities and non-profit entities within the greenway therefor.

30. To promote the greenway as a single, tourism destination site in conjunction with the designation and development of the greenway trail.

31. To assist in the preservation of farmlands within the greenway for continued agricultural use.

32. To take any actions necessary to carry out the functions, powers and duties imposed by this article.

33. Notwithstanding any other section of law the conservancy shall not have the power of eminent domain or to acquire property by eminent domain.

34. Notwithstanding any other section of law, the conservancy may exercise its powers within the county of New York only for the purposes of designating, developing, or causing to be developed a trail pursuant to section 44-0121 of

this article. For the purposes of this subdivision, "trail" means a linear corridor or pathway, walkway or bikeway used solely for public transportation and recreation. The council or the conservancy shall not develop, construct or caused [cause] [n1] to be developed or constructed any landfill, pier or structure over water located west of the existing bulkhead or shoreline; nor shall the council or the conservancy develop, construct or cause to be developed or constructed any commercial or residential uses on any trail developed pursuant to this subdivision.

HISTORY: Formerly § 44-0107, add, L 1987, ch 520, § 1; renumbered § 44-0113, L 1991, ch 748, § 8, eff Dec 31, 1991.
Section heading, amd, L 1991, ch 748, § 9, eff Dec 31, 1991.
Sub 1, amd, L 1991, ch 748, § 9, eff Dec 31, 1991.
Sub 9, amd, L 1991, ch 748, § 9, L 1991, ch 749, § 7, eff Dec 31, 1991.
Sub 10, amd, L 1991, ch 748, § 9, L 1991, ch 749, § 7, eff Dec 31, 1991.
Sub 11, amd, L 1991, ch 748, § 9, eff Dec 31, 1991.
Sub 15, amd, L 1991, ch 748, § 9, eff Dec 31, 1991.
Sub 21, amd, L 1991, ch 748, § 9, eff Dec 31, 1991.
Subs 23 and 24, add, L 1991, ch 748, § 9, eff Dec 31, 1991.
Sub 25, add, L 1991, ch 748, § 9; amd, L 1991, ch 749, § 7, eff Dec 31, 1991.
Sub 26, add, L 1991, ch 748, § 9; amd, L 1991, ch 749, § 7, eff Dec 31, 1991.
Sub 27, add, L 1991, ch 748, § 9; amd, L 1991, ch 749, § 7, eff Dec 31, 1991.
Subs 28 and 29, add, L 1991, ch 748, § 9, eff Dec 31, 1991.
Sub 30, add, L 1991, ch 749, § 8, eff Dec 31, 1991.
Former sub 30, redesignated sub 33, L 1991, ch 749, § 8, eff Dec 31, 1991.
Subs 31 and 32, add, L 1991, ch 749, § 8, eff Dec 31, 1991.
Sub 33, formerly sub 30, add, L 1991, ch 748, § 9, so designated, L 1991, ch 749, § 8, eff Dec 31, 1991.
Opening par, amd, L 1995, ch 225, § 5, eff July 26, 1995 (see 1995 note below).
The 1995 act deleted at fig 1 "task force" Sub 9, amd, L 1992, ch 388, § 1, eff July 17, 1992, L 1993, ch 412, § 2, eff July 21, 1993.
The 1993 act deleted at fig 1 "fish, wildlife, endangered plant and animal species," Sub 10, amd, L 1992, ch 388, § 1, eff July 17, 1992, L 1993, ch 412, § 2, eff July 21, 1993.
Sub 15, amd, L 1993, ch 412, § 2, eff July 21, 1993.
Sub 20, amd, L 1993, ch 412, § 2, eff July 21, 1993.
Sub 34, add, L 1995, ch 225, § 6, eff July 26, 1995 (see 1995 note below).

NOTES:

Editor's Notes

Laws 1991, ch 748, § 2, eff Dec 31, 1991, provides as follows:
§ 2. Short title. This act shall be known and may be cited as the "Hudson river valley greenway act".

Laws 1995, ch 225, § 13, eff July 26, 1995, provides as follows:
§ 13. This act shall take effect immediately; provided, however, that nothing contained herein shall be deemed to affect the application, qualification, expiration or repeal of any provision of law amended by any section of this act and such provisions shall be applied or qualified or shall expire or be deemed repealed in the same manner, to the extent and on the same date as the case may be as otherwise provided by law.

Research References & Practice Aids:
55 NY Jur 2d, Environmental Rights and Remedies § 54

FOOTNOTES:

[n1] The bracketed word has been inserted by the Publisher.

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ENVIRONMENTAL CONSERVATION LAW
ARTICLE 44. HUDSON RIVER VALLEY GREENWAY

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NY CLS ECL § 44-0121 (2009)

§ 44-0121. Greenway trail

1. The conservancy shall designate and develop or cause to be developed a trail or pathway system consistent with the greenway criteria connecting the [fig 1] city of New York from the southernmost boundary of the area designated as the greenway to the Erie canal lock two park in the town of Waterford, Saratoga county to be known as the Hudson river valley greenway trail. To the fullest extent practicable, the trail shall:

a. be located with direct physical or, if not physical, visual access to the Hudson river;

b. be planned for both sides of the Hudson river;

c. have segments that can be restricted to non-motorized use;

d. utilize existing heritage trails, bikeways, scenic highways, railroad rights of way and esplanades and make connections with other trails including trails along tributaries of the Hudson river;

e. highlight and link existing parks, urban cultural parks and historic sites;

f. provide for interpretive signage and opportunities to experience the unique natural and cultural heritage of the valley;

g. reflect the natural and cultural diversity;

h. involve state and local agencies and private organizations in the planning, development and maintenance of the trail of the greenway;

i. use the services of local school districts and the youth conservation corps to participate in trail development and maintenance;

j. have segment management plans prepared for each segment of the trail to assure uniform maintenance and upkeep; and

k. have connections to pathways that highlight the character and resources of the countryside communities.

2. The greenway trail to the extent practicable shall be completed on or before June first, two thousand five; provided that the conservancy shall submit a plan for the trail to the governor and legislature within twenty-four months of the effective date of this section and shall to the extent practicable dedicate and open significant sections of the trail on or before June first, two thousand. Planning for the trail shall commence with the council and the conservancy sponsoring a Hudson river valley greenway trail symposium to prepare a plan of action for the planning and development of the trail. Representatives of local governments in the greenway, interested nonprofit organizations, representatives of the state and federal government, planners and landscape architects along with any other interested parties shall be invited to participate in the symposium.

3. The department and the office of parks, recreation and historic preservation, the department of transportation and the office of general services are hereby authorized and directed to support and assist in the planning and development of the trail.

HISTORY: Add, L 1991, ch 748, § 10, eff Dec 31, 1991.
Sub 1, opening par, amd, L 1991, ch 749, § 14, eff Dec 31, 1991.
Sub 1, opening par, amd, L 1995, ch 225, § 9, eff July 26, 1995 (see 1995 note below).
The 1995 act deleted at fig 1 "county of Westchester from the border with the"

NOTES:

Editor's Notes

Laws 1991, ch 748, § 2, eff Dec 31, 1991, provides as follows:
§ 2. Short title. This act shall be known and may be cited as the "Hudson river valley greenway act".

Laws 1995, ch 225, § 13, eff July 26, 1995, provides as follows:
§ 13. This act shall take effect immediately; provided, however, that nothing contained herein shall be deemed to affect the application, qualification, expiration or repeal of any provision of law amended by any section of this act and such provisions shall be applied or qualified or shall expire or be deemed repealed in the same manner, to the extent and on the same date as the case may be as otherwise provided by law.

Research References & Practice Aids:
11 NY Jur 2d, Boats, Ships, and Shipping § 20
55 NY Jur 2d, Environmental Rights and Remedies § 54

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HIGHWAY LAW
ARTICLE XII-B. STATE ARTERIAL HIGHWAYS PASSING THROUGH CITIES

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NY CLS High § 349-e (2009)

§ 349-e. Cities named; streets designated

The cities, outside of New York city, affected by this article, and the public streets designated herein, as aforesaid, are as follows, viz:

City of Albany

Southside Route, beginning at the Albany city line west of Krumkill road, thence southeasterly to the Albany city line east of Krumkill road--also from a point on the Albany city line east of the Slingerlands by-pass, southeasterly crossing Delaware avenue in the vicinity of the New York State thruway in the city of Albany, thence southeasterly generally paralleling the New York thruway to an intersection with the Mid-Crosstown Arterial in the vicinity of McCarthy avenue, continuing generally easterly crossing South Pearl street near McCarthy avenue and generally northeasterly through the Delaware and Hudson railroad yards to and on or near Green street to a traffic interchange with the South Mall expressway. Approximate length 4.8 miles.

Riverfront Route, beginning at a traffic interchange with the South Mall expressway, thence northerly along or in the vicinity of the west shore of the Hudson river to the northerly city line of Albany. Approximate length 2.6 miles.

Fuller Road Alternate, beginning at the southerly city line of Albany, west of Fuller road, thence on new location northerly to the north city line of Albany. Approximate length 0.9 mile.

Washington Avenue-Northside Route, beginning at a traffic interchange with the Fuller Road Alternate, thence southeasterly along or in the vicinity of Washington avenue to a point west of Tudor road, thence on new location easterly and southeasterly, generally paralleling the New York Central Railroad to the vicinity of Northern boulevard, continuing easterly and southeasterly to the Albany city line, on a new bridge over the Hudson river in the vicinity of Lower Patroon island, including traffic interchanges with the Crosstown Route, Mid-Crosstown Arterial and the Riverfront Route. Approximate length 6.3 miles.

Crosstown Route, beginning at the southerly city line near Krumkill road, thence northeasterly in the vicinity of

Seminole avenue extended, Seminole avenue and Brevator street to Washington avenue, thence northwesterly to an intersection with the Washington Avenue-Northside Route. Approximate length 2.2 miles.

Mid-Crosstown Arterial, beginning at the southerly city line, state highway nine thousand one hundred one, thence northerly along Southern boulevard to a traffic interchange with the Southside Route near McCarty avenue, thence continuing northerly on new location to Second avenue near Frisbie avenue, thence northerly and northeasterly on new location crossing Delaware and Holland avenues to a point on Myrtle avenue west of Lark street, thence northerly and northeasterly on new location through Washington park, thence northeasterly on new location generally paralleling Northern boulevard to a traffic interchange with the Washington Avenue-Northside Route and continuing northeasterly and northerly on or in the vicinity of Loudonville road to the northerly city line, state highway twenty-two, including connections with certain existing streets and/or relocations of certain existing streets as determined by the commissioner; also from the intersection of Loudonville road at or near Northern boulevard, thence northeasterly on or along Northern boulevard and northerly on or along Van Rensselaer boulevard to the city line, at state highway one thousand five hundred eighteen. Portions of the arterial route within and in the vicinity of Washington park may be built as a depressed highway as determined by the commissioner. Approximate length 4.9 miles.

Sheridan Valley Arterial, beginning at an intersection with the Riverfront Route in the vicinity of Livingston avenue, as determined by the commissioner, thence generally westerly and northwesterly in the vicinity of Clinton avenue to the vicinity of the Mid-Crosstown Arterial, as determined by the commissioner, including connections with existing streets and/or relocations of such existing streets. Approximate length 1.0 mile.

Mall Arterial, beginning at an interchange with the Riverfront Route in the vicinity of Madison avenue, thence generally northwesterly on new location in the vicinity of Hudson avenue to a traffic interchange with the Mid-Crosstown Arterial, as determined by the commissioner, including connections with existing streets and/or relocations of such existing streets. Approximate length 1.1 miles.

Notwithstanding the provisions of section three hundred forty-nine-c of this article, the commissioner of transportation may acquire at state expense, at anytime prior to April first, nineteen hundred sixty-nine, for state highway purposes, pursuant to section thirty of this chapter, property within three hundred fifty feet of right of way acquired for arterial highways or interstate highways in the city of Albany, for the purpose of controlling access to such highways.

City of Amsterdam

Beginning at a point on the northwesterly city line of Amsterdam, at state highway one hundred eight, thence on or along West Main street to the vicinity of Caroline street, thence on new location south of and generally parallel to West Main street and East Main street to a point on the southeasterly city line of Amsterdam, at state highway one hundred eighty, including necessary connections to East Main street in the vicinity of Railroad street; also from a point on this route in the vicinity of Schuyler street, returning northwesterly on new location to a point in the vicinity of the intersection of Liberty street and Grove street, thence on or along Grove street to Market street, thence generally westerly to a connection with the arterial route in the vicinity of Wall street. Approximate length 4.4 miles.

Beginning at the southwesterly city line of Amsterdam, at state highway thirty-two, thence northeasterly along Minaville street to the vicinity of DeStefano avenue, thence northeasterly on new location to River street, including a connection to Bridge street in the vicinity of River street, continuing northeasterly on The New Amsterdam Bridge crossing the Mohawk river and the N. Y. C. R. R. (Main Line) to Church street at East Main street, including a connection from the northerly end of said new bridge southeasterly to a point on the arterial route on new location south of and generally parallel to East Main Street, continuing along Church street to the vicinity of Gardiner lane, including any necessary connections between Church street and Guy Park avenue in the vicinity of High street, thence on new location northerly to Market street in the vicinity of Prospect street, including a connection between Church street and

Market street, continuing northerly on or in the vicinity of Market street to the northerly city line of Amsterdam, at state highway nine thousand forty-three; also from a point on this route in the vicinity of Prospect street southwesterly along Market street to a point in the vicinity of Greene street, thence on new location to Pearl street at Division street, thence on or along Pearl street to the intersection of West Main street in the vicinity of Pearl street, also continuing from a point near this intersection and on new location southeasterly to the approach of said new bridge crossing the Mohawk river. Approximate length 3.5 miles.

Beginning at a point to be determined by the commissioner of transportation on the westerly city line of Amsterdam south of Broadway, thence on new location easterly to the vicinity of and on or along DeStefano avenue to the vicinity of Saint John street, thence on new location easterly to a point to be determined by the commissioner of transportation on the southerly city line of Amsterdam, in the vicinity of state highway five hundred thirteen. Approximate length 1.6 miles.

Beginning on Church street in the vicinity of Gardiner lane, thence northeasterly, easterly and northeasterly along Church street to the easterly city line of Amsterdam, at state highway two hundred ninety-eight. Approximate length 1.5 miles.

City of Auburn

1. Beginning at the westerly Auburn city line, south of Clark street, thence easterly on new location to Washington street, easterly on or in the vicinity of Clark and Dill streets and new location to Franklin street, Franklin street to Grant avenue and northeasterly along Grant avenue to the northerly Auburn city line, state highway five hundred ninety-two; also returning from Franklin street in the vicinity of John street westerly on new location to Jefferson street. Approximate length 4.4 miles.

2. Beginning at the intersection of North street in the vicinity of Water street, thence northerly along North street to the northerly Auburn city line, state highway one thousand three hundred seventeen. Approximate length 1.4 miles.

3. Beginning at the intersection of East Genesee and John streets, thence easterly along East Genesee street to the easterly Auburn city line, state highway nine thousand thirty-seven. Approximate length 1.2 miles.

4. Beginning at the southerly Auburn city line, state highway three hundred eighty-three, thence northwesterly and northerly on or in the vicinity of Owasco and Fulton streets to an intersection with Franklin street, including a connection from Fulton street along Grant avenue to Franklin street; also from the intersection of Walnut and Owasco streets northwesterly on or in the vicinity of Owasco and John streets to Franklin street. Approximate length 1.4 miles.

5. Beginning at a point on the westerly Auburn city line in the vicinity of West Genesee street, as determined by the commissioner of transportation, thence generally southerly and southeasterly on new location to the southerly Auburn city line. Approximate length 0.9 mile.

City of Batavia

Beginning at a point on the westerly Batavia city line, at State Highway five hundred eighty-six, thence easterly along West and East Main Streets to the easterly city line at state highway fifty-one hundred forty-five-A. Approximate length 2.7 miles.

Beginning at a point on the southwesterly Batavia city line, at state highway eighty-two hundred eighty-three, thence northeasterly along Pearl Street to a point between Brooklyn Avenue and Franklin Street, thence northeasterly, over new location, crossing South Main Street and Tonawanda Creek to West Main Street in the vicinity of Oak Street.

Approximate length 1.0 mile.

Beginning at a point on Oak Street on the northerly Batavia city line, as [n1] state highway eight hundred fifty-three, thence southerly along Oak Street to its intersection with West Main Street. Approximate length 1.2 miles.

Beginning at a point on Clinton Street on the easterly Batavia city line, at state highway eighty-one hundred seventy-nine, thence southwesterly along Clinton Street to its intersection with East Main Street. Approximate length 0.7 mile.

Beginning at a point on Walnut Street on the southerly Batavia city line, at state highway eighty-one hundred seventy-seven, thence northeasterly along Walnut Street to its intersection with West Main Street. Approximate length 0.7 mile.

Beginning at a point on Ellicott Street on the southerly Batavia city line, at state highway eighty-one hundred eighty-two, thence northwesterly along Ellicott Street to its intersection with East Main Street. Approximate length 1.6 miles.

City of Beacon

North-South route, beginning at the southerly city line, at a state highway as determined by the commissioner of transportation, thence generally northerly on new location to be determined by the commissioner of transportation, to Bank Square, thence through Bank Square to Main street, thence generally northeasterly on or in the vicinity of North avenue to be determined by the commissioner of transportation, to a state highway at the northerly city line. Approximate length 2.4 miles.

City of Binghamton

Beginning on Court street at the eastern city line of Binghamton, state highway one hundred twenty-seven, extending westerly along Court street to the Brandywine interchange, including a new bridge over the Susquehanna river in the vicinity of Tompkins street, thence southwesterly on new right of way along the north bank of the Susquehanna river to the [fig 1] State street bridge interchange including a connection from this interchange to the Memorial bridge over the Chenango river, a new bridge over the Susquehanna river in the vicinity of the confluence of the Chenango river and the Susquehanna river, and necessary connections and separations of intersecting streets, thence southerly on the [fig 2] State street bridge over the Susquehanna river to an interchange, thence westerly along an arterial highway to the western city line of Binghamton, state highway one thousand six hundred thirteen. Approximate length 6.5 miles.

Beginning at the Brandywine interchange and extending northerly on new location to Robinson street, including grade separations of the Erie-Lackawanna railroad, the Delaware and Hudson railroad, thence along a new location generally parallel to the Erie-Lackawanna railroad to the nothern city line. The total cost of highway-railroad separations, of the two railroads described in this paragraph, shall be borne by the state and be paid for from any state or federal moneys available for the construction and reconstruction of highways, and such separations shall be progressed in accordance with the provisions of subdivision five of section three hundred forty-nine-c of this article. Approximate length 1.7 miles.

City of Buffalo

Beginning at Fuhrmann boulevard and the south city line of Buffalo, thence northerly on or in the vicinity of Fuhrmann boulevard to the Buffalo river, thence northerly across the Buffalo river to the vicinity of Church Street and the Upper and Lower Terrace to Court Street and in a general northwesterly direction to the Virginia-Carolina Arterial Route, including connections with the Niagara Section of the New York State Thruway on Church Street, Genesee Street and Court Street. Approximate length 4.6 miles. The elevated portion of said route shall be designated and known as "The Buffalo Skyway" and the high level bridge thereon, over the Union Ship canal, shall be designated and known as "The Father Baker Memorial Bridge" in honor of the Right Reverend Monsignor Nelson H. Baker, P.A., V.G., who devoted sixty years of his life in ministering to the poor of Erie county and western New York.

Beginning at Broadway and the east city line of Buffalo (State Highway No. 914), thence westerly along Broadway to Oak Street. Approximate length 3.5 miles.

Beginning at or in the vicinity of Walden avenue and the east city line of Buffalo, thence westerly on location to be determined by the commissioner of transportation to an interchange with the Kensington expressway in the vicinity of the intersection of Best street and Herman street. Approximate length 2.6 miles.

Beginning at a point to be determined by the commissioner of transportation on the east city line of Buffalo, thence westerly on new location south of and generally paralleling Roosevelt avenue and Andover avenue, crossing the Erie-Lackawanna railway to the vicinity of Kensington avenue as established by the commissioner of transportation, thence southwesterly on or in the vicinity of Kensington avenue to an intersection with Humboldt parkway at East Delavan avenue, thence southerly along Humboldt parkway and an extension to Best street, continuing southerly in the vicinity of Herman street to the vicinity of Cherry street extended, thence southwesterly on or in the vicinity of Cherry street and its extension, to Goodell street as determined by the commissioner of transportation, thence westerly in the vicinity of Goodell street to the vicinity of Main street, thence westerly in the vicinity of Edward street to the vicinity of Delaware avenue, as determined by the commissioner of transportation. Approximate length 6.5 miles.

Beginning at Main street at the north city line of Buffalo state highway sixty-nine, thence southwesterly on or along Main street to an arterial route in the vicinity of Goodell street as determined by the commissioner of transportation; also from such arterial route in the vicinity of Goodell street southerly [fig 1] along Elm and Oak streets to a connection with an interchange on the Niagara thruway. Approximate length 6.7 miles.

Beginning at Delaware avenue and the north city line of Buffalo (State Highway No. 9220), thence southerly along Delaware avenue to West Tupper street. Approximate length 5.0 miles.

Beginning at Delaware avenue and the Delaware park roads crossing an intersection just south of Nottingham terrace, thence easterly and southeasterly along the southerly side of Delaware park to and along Humboldt parkway, and continuing to East Delavan avenue. Approximate length 1.3 miles.

Beginning at a point on the Niagara thruway north of Forest avenue and south of the north city line, thence generally northeasterly and easterly to Delaware avenue, as determined by the commissioner of transportation. Approximate length 2.6 miles.

Beginning at the intersection of Delaware avenue and the Delaware Park roads, thence generally westerly, following the course of Scajaquada creek, to a connection with the Niagara Thruway.

Beginning at the Church street connection with the New York State Thruway, easterly on or along Church street to Main street, thence from the intersection at Main street near South Division street southeasterly on new location to Washington street, continuing easterly on or along South Division street to Elm street; also from the intersection of North Division street and Elm street westerly on or along North Division street to Washington street, and continuing on new location southwesterly to Church street. Approximate length 0.9 mile.

City of Canandaigua

Beginning at the northerly Canandaigua city line at state highway four hundred eighty-four, thence southerly along North Main Street and continuing along South Main Street to Henry and Moran Streets. Approximate length 2.0 miles.

Beginning at South Main street in the vicinity of Henry and Moran streets, thence easterly and southeasterly, on new location to a point on the easterly Canandaigua city line to be determined by the commissioner of transportation. Approximate length 1.2 miles.

Beginning at the westerly Canandaigua city line on state highway fifty-five hundred seventy-six, thence easterly on new location, south of West Avenue to Thadchapin Street, thence along West Avenue to South Main Street. Approximate length 0.9 mile.

Beginning at the easterly Canandaigua city line on state highway twelve hundred seventy-eight, thence westerly along Gibson Street to North Main Street. Approximate length 1.0 mile.

Beginning at the westerly Canandaigua city line south of Parrish Street, thence easterly on new location to South Main Street, in the vicinity of Henry and Moran Streets. Approximate length 1.0 mile.

Beginning at or near the intersection of state highway two hundred seven and state highway one hundred eighty-nine at or near the south city line, thence northerly, on new location, to a point on the easterly city line to be determined by the commissioner of transportation. Approximate length 0.13 mile.

City of Cohoes

[fig 1] Beginning at the southerly city line of Cohoes, thence northwesterly on or near Dyke avenue to Saratoga street, thence northerly on or near Saratoga street to [fig 2] the northerly line of the city of Cohoes. Approximate length [fig 3] 1.3 miles.

City of Corning

Beginning at the new bridge across the Chemung River, at the easterly city line, thence in a northwesterly direction through Denison Park to Erie Avenue, thence continuing westerly on Erie Avenue to State Street, thence continuing in a westerly direction on new location crossing the New York Central Railroad and the Chemung River by a new bridge henceforth to be known as the "Benjamin Patterson bridge," to the westerly city line of Corning. Approximate length 3.04 miles.

Beginning at the northerly city line of Corning, at state highway number one thousand seven hundred forty-five, continuing southerly on Baker Street or a new location to East Pulteney Street, thence southerly on Centerway or a new location, crossing the Chemung river on a new structure, thence along Cedar Street to a junction with state highway fifty-three nineteen. Approximate length 1.3 miles.

Beginning at or near the intersection of Erie Avenue and Conhocton Street, thence southerly along Park Avenue to the southerly city line of Corning State Highway No. 850. Approximate length 0.45 miles.

City of Cortland

Beginning at a point on the north city line of Cortland, east of the west branch of the Tioughnioga River, thence

southeasterly, easterly and generally paralleling the west branch of the Tioughnioga River to a point on the easterly line of the city of Cortland. Approximate length 1.4 miles.

Beginning at the southwest city line of Cortland, State Highway No. 215, thence northeasterly along Tompkins Street to South Main Street and easterly along Port Watson Street to the easterly city line, State Highway No. 378. Approximate length 2.3 miles.

Beginning at the intersection of Port Watson and Church Streets, thence northerly along North Church Street to Grant Street, continuing northerly and northwesterly on new location to the northerly line of the city of Cortland, east of Homer Avenue. Approximate length 1. miles.

Beginning at the westerly city line, State Highway No. 8522, thence northeasterly along West Street to the northerly city line, State Highway No. 8522. Approximate length 0.7 miles.

Beginning at the intersection of Church Street and Clinton Avenue in the city of Cortland, thence northeasterly along Clinton Avenue to the northerly line of the city of Cortland, State Highway No. 738. Approximate length 1.2 miles.

City of Dunkirk

Beginning at the Dunkirk city line, state highway eight thousand three hundred forty-four, thence northeasterly along Lake Shore drive to the city line of Dunkirk, state highway eight thousand three hundred four. Approximate length 3.1 miles.

Beginning at the southerly city line of Dunkirk, state highway FASH 65-14, thence northwesterly on or in the vicinity of Lamphere street to Maple avenue, continuing on or in the vicinity of Maple avenue, and on or in the vicinity of Main street [fig 1] to a connection with the Lake Shore Drive. Approximate length [fig 2] 1.0 miles.

City of Elmira

1. Beginning at the southerly city line of Elmira, state highway twenty-nine, thence northeasterly along Pennsylvania avenue and Sly street to and on Madison avenue, northerly to a point north of the D.L. & W.R.R. underpass as determined by the commissioner of transportation, thence generally northeasterly on new location to an intersection with the "Elmira-Horseheads Connection," described in section three hundred forty-one of this chapter, including necessary connections to local streets. Approximate length 3.5 miles.

2. Beginning at the westerly city line of Elmira, state highway nine hundred forty-six, thence easterly along West Church street and East Church street to an intersection with said "Elmira-Horseheads Connection". Approximate length 2.4 miles.

3. Beginning at the southwesterly or southerly city line of Elmira, at a state highway as determined by the commissioner of transportation, thence generally northeasterly or northerly on new location crossing the Chemung river on a new structure and continuing on a route to be determined by the commissioner of transportation to a point in the vicinity of state highway one thousand three hundred seventy-eight, at the north city line of Elmira, including necessary connections to local streets and other arterial routes. Approximate length 4.2 miles.

City of Fulton

1. Beginning at the southeasterly Fulton city line, to state highway five thousand two hundred fifty-one, thence northwesterly along South First street to South Fourth street, thence northerly along South Fourth street to a point north of the former New York, Ontario and Western railway crossing, thence northwesterly on new location to South Second street in the vicinity of Division street, thence northerly along South Second street, North Second street and new location to the northerly city line of Fulton, state highway five thousand three hundred eighty-two. Approximate length 3.0 miles.

2. Beginning at a point on the westerly city line of Fulton, to be determined by the commissioner of transportation, in the vicinity of Phillips street, thence southeasterly, on new location, to a point on West Broadway in the vicinity of West Fifth street, thence easterly along West Broadway and East Broadway to the vicinity of Eighth street, thence northeasterly and northerly on new location to a point on Oneida street in the vicinity of Eleventh street, thence easterly along Oneida street to the easterly Fulton city line, state highway one thousand four hundred twenty-seven. Approximate length 2.7 miles.

City of Geneva

Beginning at the westerly Geneva city line, at state highway fifty-four hundred seventy-three, thence easterly along Hamilton Street to South Main Street, including a traffic interchange to South Main Street, thence easterly and northerly, on new location, along the Seneca Lake, crossing the Lake Road, thence easterly and generally parallel to and north of the Lake Road, on new location, to the easterly Geneva city line, including a traffic interchange connection with an arterial route in the vicinity of Evans Street. Approximate length 2.5 miles.

City of Glen Cove

Beginning at a point to be determined by the commissioner of transportation on the southerly city line of Glen Cove, west of Cedar Swamp road, thence northerly and northwesterly on new location to Pratt boulevard. Approximate length 1.1 miles.

City of Glens Falls

1. Beginning at the southerly city line at state highway five thousand five hundred ninety-eight, thence northwesterly along Glen street to the northerly city line, state highway four hundred seventeen. Approximate length 1.7 miles.

2. Beginning at the intersection of Chester and Glen streets, thence easterly along Chester street, Grand street and Dix avenue to a point near the east city line as established by the commissioner of transportation, thence on new location southerly to connect with Warren street at the east city line, state highway six hundred fifty-six. Approximate length 2.0 miles.

City of Gloversville

Beginning at a point on the westerly city line of Gloversville to be determined by the commissioner of transportation, thence easterly and northeasterly generally paralleling the southerly city line of Gloversville to a point, to be determined by the commissioner of transportation, on the southerly city line of Gloversville south of Steele avenue, including connections to Harrison street and South Kingsboro avenue; also at the intersection of Harrison street and the above described arterial route southerly along Harrison street to the southerly city line of Gloversville, state highway

five hundred forty-four. Approximate length 1.5 miles.

City of Hornell

Beginning at a point on the southerly city line, in the vicinity of state highway five thousand two hundred twelve, thence northerly on or along Canisteo street and continuing northerly on new location, as determined by the commissioner of transportation, to the north city line, in the vicinity of state highway five thousand one hundred thirty. Notwithstanding any provision of law to the contrary, the commissioner of transportation shall, pending completion of the portion of the above route on new location between Canisteo street and the north city line, take over, for purposes of maintenance and repair as a part of the system of highways of the state, Seneca street, including the bridge over Canacadea Creek, between Main street and the north city line. The commissioner of transportation, as he determines is necessary, shall repair, alter or reconstruct said highway and bridge in order to provide a safe highway and bridge for use as a part of state touring route thirty-six and as a haul road for the construction of the portion of the above route on new location. Upon completion of the above route, the commissioner of transportation shall by an official order abandon the state's rights in said Seneca street, including the bridge over Canacadea Creek, to the city of Hornell; said street to be maintained thereafter as a part of the street system of such city. Approximate length 2.1 miles.

Beginning at the western city line, state highway five thousand three hundred forty-two, thence southeasterly along West Main street and Main street, to an intersection with the arterial route described in the above paragraph. Approximate length 0.6 mile.

City of Hudson

Beginning at the Hudson city line, State Highway No. 5073, (Touring Route No. 9), thence northerly along Worth Avenue to Warren Street, thence northwesterly along Warren Street to Park Place, thence northeasterly along Park Place to Columbia Street, thence easterly along Columbia Street to Green Street, thence northeasterly and easterly along Green Street to Fairview Avenue, thence northerly along Fairview Avenue to the Hudson city line, (Touring Route No. 9), connecting with State Highway No. 341. Approximate length 1.3 miles.

Beginning at the Hudson city line, State Highway No. 8341, (Touring Route No. 9-G), thence northerly along South Third Street to North Third Street, thence northerly along North Third Street to Columbia Street, thence southeasterly along Columbia Street to Park Place, in the city of Hudson, (Touring Route No. 9-G connecting with Touring Route No. 9). Approximate length 1.5 miles.

Beginning at the intersection of Green Street and Fairview Avenue, in the city of Hudson, (Touring Route No. 23 connecting with Touring Route No. 9), thence southeasterly along Green Street to the Hudson city line, (Touring Route No. 23), connecting with State Highway No. 650. Approximate length 0.1 mile.

City of Ithaca

1. Beginning at a point on the northerly Ithaca city line, east of Cliff street, to be determined by the commissioner of transportation, thence southerly and southeasterly, on new location, crossing over the Lehigh Valley railroad tracks, Taughannock boulevard and Cayuga Inlet to North Meadow street, as determined by the commissioner of transportation, including a connection with Taughannock boulevard, thence southerly along North Meadow street and South Meadow street to Elmira road and southwesterly along Elmira road to the southerly Ithaca city line, state highway four hundred fifty-four. Approximate length 3.1 miles.

2. Beginning at the southerly Ithaca city line, state highway seventy-two, thence northwesterly and westerly along East State street to a point on East State street, west of Schuyler Place, to be determined by the commissioner of transportation, thence northwesterly on new location, to East Seneca street, east of North Aurora street, thence westerly along East Seneca street and West Seneca street to North Meadow street. Approximate length 1.9 miles.

3. Beginning at the intersection of South Meadow street and Green street, thence easterly along Green street to South Tioga street, thence easterly and northeasterly, on new location, crossing South Aurora street, to a point on East State street, west of Schuyler Place, to be determined by the commissioner of transportation. Approximate length 0.8 mile.

City of Jamestown

1. Beginning at a point on the westerly city line of Jamestown, state highway one thousand three hundred eighty-A, thence easterly on or near Fairmount avenue to or near its intersection with West Sixth street, thence easterly along West Sixth street and East Sixth street to Prendergast avenue, thence southerly on or in the vicinity of Prendergast avenue to East Fourth street, also from a point on Fairmount avenue on or near its intersection with West Sixth street, thence generally easterly to West Fifth street, thence easterly along West Fifth street and East Fifth street to Prendergast avenue, with a connection from East Sixth street southerly on or in the vicinity of Spring street to East Fourth street, thence easterly along East Fourth street to East Second street, thence northeasterly on or near East Second street to the easterly city line of Jamestown, state highway five thousand sixty-seven. Approximate length 4.4 miles.

2. Beginning at a point on state highway one thousand twenty-six near the northern city line of Jamestown, thence westerly and southerly on new location to the intersection of Fluvanna avenue and Washington street. Approximate length 0.6 miles.

3. Beginning at the westerly city line of Jamestown, state highway five thousand two hundred seventeen, thence southeasterly along Fluvanna avenue to Washington street, thence southerly along Washington street to West Second street, thence southerly on new location passing over the tracks of the Erie Railroad and the Chadakoin river, on a new structure over Steele street and Barrett avenue including connections to both thoroughfares, thence easterly on new location to South Main street at or near its intersection with Allen street, continuing easterly on or in the vicinity of Allen street to Foote avenue, thence southerly along Foote avenue to the southerly city line of Jamestown, state highway nine hundred forty. Approximate length 3.6 miles.

4. Beginning at a point on the southern city line of Jamestown thence running northeasterly along Forest avenue to a point on a state arterial 62-5. Approximate length 1.1 miles.

5. Notwithstanding the provisions of section three hundred forty-nine-d, the arterial highway described in paragraph four above shall, as of April first, nineteen hundred eighty, be deemed a portion of the system of state arterial highways.

6. Beginning at the intersection of McDaniel avenue and Fairmont avenue near the western city line of Jamestown, thence southerly along McDaniel avenue and easterly along Third street to Washington street. Approximate length 1.4 miles.

City of Johnstown

1. Beginning at a point, to be determined by the commissioner of transportation, on the southerly city line of Johnstown, thence northeasterly and northerly to East State street, thence northerly and northeasterly to a point, to be determined by the commissioner of transportation, on the easterly city line of Johnstown, including connections to South Melcher street, South Pearl street, Glebe street, Fonclair street, East State street, state highway three hundred

sixty-one, Main street and Briggs street. Approximate length 3.2 miles.

2. Beginning at a point, to be determined by the commissioner of transportation, on the westerly city line of Johnstown, thence easterly on new location to Pleasant avenue between Hoffman and Mason streets, continuing easterly on new location to Baker street, continuing easterly on Baker and Briggs streets to an intersection with an arterial highway, thence northeasterly on new location to North East avenue near St. Anthony's Cemetery, continuing northeasterly on North East avenue to the easterly city line of Johnstown, state highway five hundred forty-four. Approximate length 1.6 miles.

City of Kingston

Beginning at the Kingston city line, state highway five thousand one hundred seventy-three, thence southerly along Washington avenue to North Front street in the city of Kingston. Approximate length 0.4 mile.

Beginning at a point on the south city line of Kingston, state highway five thousand five hundred ninety-nine-D, on a new bridge over Rondout creek east of Broadway, thence generally northerly on new location crossing Delaware avenue and continuing east of East Chester street to the northerly city line of Kingston, state highway nine thousand three hundred sixty. Approximate length 1.9 miles. The entire length of which shall be designated and known as "The Frank Koenig Boulevard".

Beginning at a point on the arterial route in the vicinity of Delaware avenue, thence on or along Delaware avenue to Broadway, thence northwesterly along Broadway to the vicinity of Saint James street to a connection with interstate route connection 530, including thereat an intersection with Albany avenue. Approximate length 1.3 miles.

Beginning at the intersection of Broadway, East Saint James street and Albany avenue, in the city of Kingston, thence northeasterly along Albany avenue to the northerly city line of Kingston, state highway five thousand. Approximate length 1.2 miles.

City of Lackawanna

1. Beginning at the southerly line of the city of Lackawanna, state highway five thousand seventy-one, thence northerly along Hamburg turnpike to the Lackawanna-Buffalo city line. Approximate length 2.0 miles.

2. Beginning at the southerly line of the city of Lackawanna, McKinley parkway, thence northerly on new location to a point to be determined by the commissioner of transportation on the Lackawanna-Buffalo city line. Approximate length 2.0 miles.

3. Beginning at Hamburg turnpike north of Smokes creek, thence easterly on new location to a connection with a north-south arterial route in the vicinity of Martin road and the B. & O.R.R. Approximate length 1.8 miles.

4. Beginning at a connection with an arterial route in the city of Lackawanna, thence easterly along Ridge road to the easterly line of the city of Lackawanna. Approximate length 1.1 miles.

City of Little Falls

1. Beginning at the westerly Little Falls city line, state highway four hundred fifty-seven, thence northeasterly along West Main street to the vicinity of West John street, easterly on and along West John and East John streets to South Second street, and continuing on new location to a point, to be determined by the commissioner of transportation,

on High Level road, thence easterly and southeasterly along High Level road to the easterly Little Falls city line, state highway eight thousand four hundred ninety-eight-A; also from the intersection of East and West John streets with South Ann street, thence northerly along South Ann street to Albany street, thence westerly along Albany street and new location to a connection with the arterial route on and along West John street in the vicinity of Fifth street, including necessary connections to local streets. Approximate length 3.1 miles.

2. Beginning at a point, to be determined by the commissioner of transportation, on the southerly Little Falls city line east of the Mohawk river, thence northeasterly and northerly on new location crossing the Barge canal and the Mohawk river to the bridge over the Penn Central railroad, continuing northerly to Albany street, including connections to local streets. Approximate length 1.0 mile.

3. Beginning at a point, to be determined by the commissioner of transportation, on High Level road, thence easterly on new location to a point, to be determined by the commissioner of transportation, on the easterly Little Falls city line south of Loomis street. Approximate length 0.4 mile.

4. Beginning at a point, in the vicinity of East Main and Ward streets, on an arterial highway, thence southeasterly on new location to a point on the Little Falls city line, resuming on new location from a point on the city line, southeasterly to a point on the Little Falls city line, continuing from a point on the Little Falls city line southerly and southeasterly on new location, crossing the Mohawk river and the Barge canal to a point on the easterly city line between the Barge canal and the West Shore branch of the Penn Central railroad. Approximate length 1.1 miles.

City of Lockport

1. Beginning at the westerly city line from state highway nine thousand ninety-four, thence easterly along West avenue, West Genesee street and West Genesee street extended onto a new structure over the Barge canal to Walnut street, thence northeasterly along Walnut street and Walnut street extended to a point to be determined by the commissioner of transportation on the easterly city line of Lockport. Approximate length 3.3 miles.

2. Beginning at a point on the south side of the westerly "City Line Extension", west of Upper Mountain road, to be determined by the commissioner of transportation, thence northerly on new location to a point to be determined by the commissioner of transportation on the north side of the said City Line Extension, west of Upper Mountain road. Approximate length 0.05 mile.

3. Beginning at a point on the southerly city line from state highway five hundred seven, thence northerly along South Transit street to its intersection with the West Genesee street-Walnut street arterial. Approximate length 1.1 miles.

4. Beginning at the intersection with the West Genesee street-Walnut street arterial, thence northerly along North Transit street to West avenue, thence generally northeasterly on new location to Gooding street in the vicinity of Clinton street as determined by the commissioner of transportation, continuing generally northeasterly on new location or along Clinton street and Lake avenue, as determined by the commissioner of transportation, to the northerly city line, at state highway seven hundred fifty-nine. Approximate length 2.0 miles.

5. Beginning at the southerly city line of Lockport, thence running generally northwesterly across the New York State Barge Canal, thence continuing generally northwesterly to the westerly city line of Lockport. Approximate length 1.06 miles.

City of Long Beach

Beginning at the westerly Long Beach city line, Park avenue, thence easterly along Park avenue to the easterly Long Beach city line, connecting with Long Beach expressway as projected in subdivision twenty-nine of section three hundred forty-one of the highway law. Approximate length three miles.

City of Mechanicville

1. Beginning at a point on the southerly Mechanicville city line west of the Delaware and Hudson railway, to be determined by the commissioner of transportation, thence northerly, on new location, westerly of the Delaware and Hudson railway to a point on Central avenue, to be determined by the commissioner of transportation, thence continuing northerly along Central avenue to Saratoga avenue, thence northerly on new location, westerly of the Boston and Maine railroad to a point on the northerly Mechanicville city line, in the vicinity of Mulberry avenue, to be determined by the commissioner of transportation. Approximate length 1.5 miles.

2. Beginning at a point to be determined by the commissioner of transportation south of Warsaw avenue, thence westerly, on new location, north of and generally parallel to Saratoga avenue to a point on the westerly Mechanicville city line, to be determined by the commissioner of transportation. Approximate length 0.4 mile.

3. Notwithstanding the provisions of section three hundred forty-nine-d of this article, the commissioner is hereby authorized and directed to assume jurisdiction for state arterial highway purposes over the bridge described as follows: "all of that bridge structure spanning the Hudson river lying within the city limits of Mechanicville, and known as the Mechanicville-Hemstreet Park bridge".

City of Middletown

1. Beginning at the southerly Middletown city line, state highway ninety-five, thence northeasterly on new location to Genung street, continuing generally northerly on new location on or in the vicinity of the abandoned right of way of the New York, Ontario and Western railway to the northerly Middletown city line, as determined by the commissioner [fig 1] , including a connection to state highway five thousand two hundred ten at the northerly Middletown city line. Approximate length 2.3 miles.

2. Beginning at a point to be determined by the commissioner on the easterly Middletown city/Wallkill town line, thence westerly along Wickam avenue to a point to be determined by the commissioner just west of Wisner avenue. Approximate length 0.3 miles.

City of Mt. Vernon

1. Cross-Westchester arterial, from a point, to be determined by the commissioner of transportation, on the westerly city line of Mt. Vernon, south on Mount Vernon avenue, thence southeasterly, on new location crossing the Bronx river to the vicinity of the Penn Central railroad, thence easterly on or in the vicinity of Penn Central railroad to the abandoned right of way of the New York, Westchester and Boston railroad, east of North Columbus avenue, continuing generally easterly on or in the vicinity of the abandoned railroad right of way to the vicinity of Lincoln avenue, thence southeasterly on new location to a point, to be determined by the commissioner of transportation, on the easterly city line of Mt. Vernon, south of Lincoln avenue. Approximate length 2.1 miles.

2. Beginning at a point on the southerly city line of Mt. Vernon, thence northeasterly and northerly on or in the vicinity of the abandoned right of way of the New York, Westchester and Boston railroad to the vicinity of Fourth street, continuing northerly on new location to a connection with the Cross-Westchester arterial north of the Penn

Central railroad in the vicinity of North Fulton avenue. Approximate length 2.0 miles.

3. Beginning at an interchange with the Cross-Westchester arterial in the vicinity of Wilson Woods park, thence northeasterly on or in the vicinity of the abandoned right of way of the New York, Westchester and Boston railroad to the north city line of Mt. Vernon, east of Cross County parkway. Approximate length 0.9 mile.

City of Newburgh

Route 9W alternate, beginning at a point, to be determined by the commissioner, on the southerly city line of Newburgh, west of Lake street, thence northwesterly and northerly to a connection with interstate route 503 in the vicinity of the northerly city line of Newburgh, including traffic interchanges at Broadway and South street. Approximate length 1.7 miles.

South street arterial, beginning at the westerly city line of Newburgh, state highway eight thousand four hundred eight, thence southeasterly and easterly along DuPont avenue and South street to Downing park, continuing easterly through Downing park to and along South street to Liberty street in the city of Newburgh. Approximate length 2.1 miles.

Broadway connection, beginning at the westerly city line of Newburgh, state highway one hundred thirteen, hence easterly along Broadway to Route 9W alternate, and continuing to a connection to West street. Approximate length 0.8 mile.

Riverfront route, beginning at a point, to be determined by the commissioner, on the southerly city line of Newburgh, at a state highway, thence generally northerly on or parallel to Water street and on new location as determined by the commissioner, to the northerly city line. Approximate length 2.1 miles.

City of New Rochelle

1. Post Road Arterial, beginning at the westerly city line, State Highway No. 5374, thence easterly along Main Street to the easterly city line, State Highway No. 5372; also beginning at the easterly intersection of Huguenot Street and Main Street, thence westerly along Huguenot Street to its westerly intersection with Main Street near Webster Avenue. Approximate length 3.4 miles.

2. Memorial Highway, beginning at the intersection of Mechanic and Main Streets, thence northerly along Mechanic Street to its junction with Division Street, thence southerly along Division Street to an intersection with Main Street, resuming from the junction of Mechanic and Division Streets, northerly along Division Street and a new location to Cross-Westchester Arterial, including a connection to Lincoln Avenue. Approximate length 1.0 mile.

3. Cross-Westchester Arterial, beginning at the westerly city line, at a point on or in the vicinity of the abandoned right of way of the New York, Westchester and Boston Railroad, thence easterly along the said abandoned railroad right of way to North Avenue, including a connection with the New England Thruway Interchange. Approximate length 1.0 mile.

4. Pine Brook Arterial, beginning at a point on State Highway No. 19, to be determined by the commissioner of transportation, thence southerly and westerly along Pine Brook Boulevard and new location to an intersection with Palmer Avenue, thence westerly along Palmer Avenue Extension, to Cedar Street. Approximate length 4.4 miles.

5. Cedar Street Arterial, beginning at a point on the New England Thruway Interchange, thence southerly along Cedar Street to Huguenot Street, and southerly on new location to an intersection with Main Street at Franklin Avenue,

with a connection along Harrison Street to Main Street, thence from a point at the intersection of Harrison Street and Main Street in a general southwesterly direction to Locust Avenue; also from the intersection of Main Street and Echo Avenue northerly along Echo Avenue and River Street across Palmer Avenue Extension to a point on the New England Thruway Interchange in the vicinity of Cedar Street. Approximate length 1.10 miles.

City of Niagara Falls

1. Beginning at a traffic interchange with Niagara section of the New York State Thruway, in the vicinity of sixty-fifth street, thence easterly along the right of way of the Penn-Central railroad to a point on the easterly city line of Niagara Falls, north of Buffalo avenue. Approximate length 2.3 miles.

2. Beginning in the vicinity of the intersection of Niagara street and Main street, thence along Main street to Ferry avenue, thence easterly along Ferry avenue and its continuations to an intersection with Packard road and Pine avenue, continuing easterly along Pine avenue to the easterly city line of Niagara Falls. Also from an intersection with Packard road and Pine avenue westerly along Walnut avenue to Main street, thence along Main street to Ferry avenue. Approximate length 8.8 miles.

3. Beginning at the intersection of Main street and First street, thence southerly on or near First street to Jefferson avenue, thence on or near Jefferson avenue to a connection with an arterial route in the vicinity of Buffalo avenue, including necessary connections, as determined by the commissioner of transportation. Approximate length 1.0 mile.

4. Beginning at an interchange with the Robert Moses parkway in the vicinity of Porter park, thence generally northerly to Walnut avenue between eighth and ninth streets, thence northeasterly to eleventh street in the vicinity of Portage road, thence generally northerly on or along eleventh street to Garden avenue, thence northeasterly on or in the vicinity of Highland avenue to an intersection with Hyde park boulevard, including connections to Whirlpool street via Cleveland and Niagara avenues. Approximate length 4.3 miles.

5. Beginning at an interchange with an east-west arterial route in the vicinity of Buffalo avenue, thence northwesterly along Hyde Park boulevard to the northerly city line of Niagara Falls, including necessary connections to Buffalo avenue. Approximate length 3.8 miles.

6. Beginning at an interchange with interstate route 506, at or near the North Grand Island bridge, thence generally in a westerly direction to a point at or near the southerly approach of Rainbow bridge in the city of Niagara Falls.

7. Beginning at the intersection of Pine avenue and Military road, thence northwesterly on or along Military Road to the northerly city line, state highway nine thousand two hundred ninety. Approximate length 0.15 mile.

City of North Tonawanda

1. Beginning at a point on the southerly North Tonawanda city line, on a new bridge to be constructed over the Tonawanda creek, to be determined by the commissioner of transportation, in the vicinity of Division street extended, thence northerly on new location, to Division street, thence northerly along Division street to Erie avenue, including a connection to Sweeney street and Nash road, also Wheatfield street, thence northeasterly along Erie avenue to Niagara Falls boulevard, thence southeasterly along Niagara Falls boulevard to Shawnee road, thence northerly along Shawnee road to the northerly North Tonawanda city line, state highway seven hundred thirteen. Approximate length 3.0 miles.

2. Beginning at a point on the southerly North Tonawanda city line, on a new bridge to be constructed over the Tonawanda creek, west of Main street, to be determined by the commissioner of transportation, thence northerly, on new location, to a point on River road between Thompson street and Robinson street, to be determined by the

commissioner of transportation, including connections to Goundry street and Thompson street, thence northerly and northwesterly along River road to the westerly North Tonawanda city line, state highway sixteen hundred thirty-five. Approximate length 3.0 miles.

3. Beginning at the intersection of Division street and Erie avenue, thence northwesterly on or along the old international railway right-of-way to an intersection with Payne avenue, thence northwesterly on or along Payne avenue to Warner avenue and westerly on or along Warner avenue to the west city line, state highway one thousand six hundred thirty-five; also from Warner avenue northerly on or along Ward road to the north city line, state highway six hundred forty-three. Approximate length 3.0 miles.

4. Beginning at the intersection of River Road and Wheatfield street, thence easterly on or along Wheatfield street to Nash road. Approximate length 0.92 mile.

City of Norwich

1. Beginning at the southerly Norwich city line, state highway five thousand four hundred fourteen, thence northerly along South Broad and North Broad streets to the northerly city line, state highway five hundred five. Approximate length 1.7 miles.

2. Beginning at the intersection of Broad and East Main streets in the city of Norwich, thence easterly along East Main street to the vicinity of Olendorf Place, thence on new location northeasterly to a point, as determined by the commissioner of transportation, on the easterly city line. Approximate length 0.9 mile.

City of Ogdensburg

1. Beginning at a point on the southwesterly Ogdensburg city line, as determined by the commissioner of transportation, thence easterly on new location to a point on the south city line, west of the Oswegatchie river; also farther east on the south city line from a point in the vicinity of Rosseel street, thence northeasterly on new location to Proctor avenue, including connections therefrom to Ford street in the vicinity of Proctor avenue and to Proctor avenue at the approach to the bridge to Canada, thence continuing easterly on or near Proctor avenue to a point on the east city line as determined by the commissioner of transportation. Approximate length 3.9 miles.

2. Beginning at the southerly Ogdensburg city line; state highway one thousand three hundred eighty-eight, thence northerly along State street to Washington street. Approximate length 1.0 mile.

3. Beginning from a state highway on the westerly city line, thence easterly on or in the vicinity of Main street to Adams avenue, continuing on new location crossing the Oswegatchie river to a connection with Green and Washington streets, thence on or along Green street to Ford street approach, returning westerly on Ford street and on new location and on or along Washington street to the Oswegatchie river crossing approach. Approximate length 4.5 miles.

City of Olean

Beginning at the westerly Olean city line, state highway six hundred one, thence easterly along West State street to and along East State street to the easterly Olean city line, state highway seven hundred seven hundred [so in original] thirty-one. Approximate length 3.3 miles.

Beginning at the southerly Olean city line, state highway nine thousand ninety-two, thence northeasterly and northerly along South Union street and North Union street to Main street, thence on new location northerly and

northeasterly to a point, to be determined by the commissioner, on Main street and continuing northerly on Main street to the northerly Olean city line, state highway five thousand sixty-six. Approximate length 3.1 miles.

Beginning at the intersection of Front street and East State street in the city of Olean, thence northerly and northwesterly along Front street to Main street, thence on new location northwesterly to an intersection with the north-south arterial route in the city of Olean. Approximate length 1.0 mile.

Beginning at a traffic interchange with the Southern Tier expressway, in the vicinity of Buffalo street, thence generally southeasterly on or in the vicinity of Buffalo street, and continuing to the Penn-Central railroad tracks, thence generally southerly to a connection with West State street, as determined by the commissioner. Approximate length 1.0 mile.

City of Oneida

1. Beginning at the southerly Oneida city line, Main street, thence northwesterly along Main street and North Main street to the vicinity of Monahan street, continuing northwesterly on new location to a point on the northerly Oneida city line, east of North Main street as determined by the commissioner of transportation, including a connection to Williams street in the vicinity of Gladwell avenue. Approximate length 2.5 miles.

2. Beginning at the westerly Oneida city line, state highway one thousand eight hundred twenty-one, thence easterly along Lenox avenue to Main street, continuing easterly on new location to Lexington avenue in the vicinity of Pearl street, continuing easterly along or in the vicinity of Pearl street and across the former N.Y.O. & W. Ry. to Walnut street in the vicinity of Prospect street, continuing easterly on or in the vicinity of Prospect street to a point on the easterly Oneida city line, as determined by the commissioner of transportation. Approximate length 1.7 miles.

City of Oneonta

Beginning at a point to be determined by the commissioner on the southwesterly city line in the vicinity of the Delaware and Hudson railroad, thence generally easterly on new location north of and generally parallel to the Susquehanna river to the city line east of Grand Street extended, this route also includes the following: a connection northerly to the north city line, as determined by the commissioner, in the vicinity near the southwesterly city line; also a connection northerly along Grand street extended and northerly on or near Grand street to Main street; also from a point on the city line in the vicinity of Factory street generally easterly to a point on the northerly city line as determined by the commissioner. Approximate length 4.9 miles.

Beginning at the southerly city line at state highway five thousand four hundred fifty-five, thence northerly and northeasterly along Main street to a point near Grand street. Approximate length 0.9 mile.

City of Oswego

1. Beginning at the westerly Oswego city line from state highway two hundred eighty northeasterly along West Seneca street to West Bridge street, thence easterly along West Bridge street to East Bridge street, continuing easterly along East Bridge street to a point, to be determined by the commissioner of transportation, on East Bridge street between Duer street and East 10th street, thence southeasterly on new location to a point, to be determined by the commissioner of transportation, on State road between East 11th street and East 12th street, thence easterly along State road to the city line at state highway five hundred nine. Approximate length 3.5 miles.

2. Beginning at the southerly city line from state highway five thousand three hundred eighty-two, thence northerly along East River road to a point, to be determined by the commissioner of transportation, south of the intersection of East River road and Syracuse avenue, thence northwesterly on new location along the east shore of the Oswego river to an intersection with East First street south of East Albany street, thence northerly along East First street to the East Bridge street arterial. Approximate length 2.5 miles.

3. Beginning at the southerly city line from state highway two hundred seventy-nine northerly and northwesterly along West River road to West First street, thence northerly along West First street to the West Bridge street arterial. Approximate length 2.3 miles.

City of Peekskill

Beginning at the southerly city line at Peekskill, state highway six hundred fifty-seven, thence northerly along the Briarcliff-Peekskill parkway (Route 9 By-pass) to and across the Peekskill Bay bridge to the northerly city line of Peekskill, state highway nine thousand two hundred ninety-seven. Approximate length 2.6 miles.

Beginning at a point, to be determined by the commissioner of transportation, on Main street, west of Spring street, thence easterly on new location to Central avenue, west of Depew street, thence northeasterly along Central avenue, Park street, East Park street and new location to and along Main street in the vicinity of the easterly city line of Peekskill connecting with state highway one thousand three hundred nine, including a spur easterly to a point, to be determined by the commissioner of transportation, on the city line in the vicinity of McGregory brook, also returning from a point on this route westerly to Main street, east of Husted avenue and continuing westerly along Main street to a traffic interchange with the Briarcliff-Peekskill parkway (Route 9 By-pass) in the city of Peekskill. Approximate length 4.0 miles.

Beginning at the intersection of the Briarcliff-Peekskill parkway (Route 9 By-pass) and the Peekskill Bay Bridge, thence generally northeasterly and easterly along the Bear Mountain state parkway in the city of Peekskill to the northeasterly city line. Approximate length 2.2 miles.

City of Plattsburgh

1. Beginning at a point on the westerly line of the city of Plattsburgh, south of Rugar street, as determined by the commissioner of transportation, thence northeasterly on new location to Rugar street, south of Broad street, continuing northeasterly along Rugar street to Broad street, and easterly along Broad street to Oak street northerly along Oak street and new location to the northerly city line, and returning southerly along North Catherine street extended, to and along North Catherine Street to Broad street. Approximate length 4.3 miles.

2. Beginning at the westerly city line, state highway seven hundred seventy-seven, thence easterly along Cornelia street to Broad street, and southeasterly along Broad street to Rugar street. Approximate length 0.8 mile.

3. Beginning at the westerly city line, south of Miller road, thence northeasterly on new location to the north city line west of Prospect avenue. Approximate length 0.4 mile.

City of Port Jervis

1. Beginning at the northwesterly Port Jervis city line at a point to be determined by the commissioner of transportation, thence on new location southeasterly and northeasterly to Canal street, and on or near Canal street to the

vicinity of Hamilton street, thence on new location northeasterly to a point on the northeast city line to be determined by the commissioner of transportation. Approximate length 2.4 miles.

2. Beginning at a point on the arterial route in the vicinity of Canal street, thence on new location, southwesterly, including an addition to the existing separation of grades with the Erie Lackawanna railway, to King street and on or near King street to a point to be determined by the commissioner of transportation in the vicinity of Fourth street, continuing southeasterly on new location to a point on the Port Jervis southeasterly city line to be determined by the commissioner of transportation. Approximate length 1.5 miles.

3. Beginning at the Delaware River bridge in the city of Port Jervis, thence northeasterly along Pike street to another arterial on or in the vicinity of King street. Approximate length 0.1 mile.

City of Poughkeepsie

1. Beginning at the southerly Poughkeepsie city line, state highway two hundred twenty-three, thence northerly along South avenue to Phoenix street, and northerly and northwesterly on new location to Prospect street in the vicinity of Livingston street, thence northerly on or in the vicinity of Prospect and Tulip streets to an interchange with the easterly approach of the Franklin Delano Roosevelt Mid-Hudson bridge, continuing northerly on new location to North Water street, thence northeasterly on or in the vicinity of North Water street and its extension to a point on the northerly city line, to be determined by the commissioner of transportation, west of Delafield street. Approximate length 2.5 miles.

2. Beginning at the easterly approach of the Franklin Delano Roosevelt Mid-Hudson bridge, thence easterly on or in the vicinity of Church street to a point at or near the junction of Main and Church streets, thence continuing easterly on new location to the easterly city line in the vicinity of state highway five hundred forty-nine;

ALSO, BEGINNING at the easterly city line in the vicinity of Maple street, thence westerly along Maple street to Pershing avenue, thence on new location to Winnikee avenue and continuing on or in the vicinity of Winnikee avenue and Mill street to Washington street. Thence southerly on or along Washington street and Washington street extended to Church street.

City of Rensselaer

Beginning at the east approach of the South Mall Expressway bridge near the intersection Columbia street and Broadway, thence southerly on or along Columbia street to the easterly Rensselaer city line, connecting with state highway two hundred two. Approximate length 0.6 mile.

Beginning at the southerly Rensselaer city line, state highway one thousand one hundred fifteen, thence running generally northerly on or in the vicinity of South street to a connection with the Columbia street arterial highway. Approximate length 1.0 mile.

City of Rochester

Beginning at the westerly Rochester city line, state highway two hundred fifty-four, thence northeasterly on or in the vicinity of Chili avenue to a point near Rugby avenue to be determined by the commissioner of transportation, thence easterly on new location to a point on Genesee street south of Clifton street to be determined by the commissioner, thence continuing easterly on new location generally parallel to Tremont street to a crossing of the Penn

Central railroad, thence northeasterly on new location crossing Clarissa street south of Atkinson street and continuing to an intersection in the vicinity of Troup street and Plymouth avenue south, thence easterly on or in the vicinity of Troup street to Exchange street, thence easterly on new location crossing the Genesee river to South avenue near Howell street, thence easterly on or in the vicinity of Howell street to Monroe avenue, thence easterly over new location to intersect Union street at a point between George street and Monroe avenue, thence northerly on or in the vicinity of Union street to Main street East, thence northwesterly on or in the vicinity of Joslyn Place and Delevan street to North street, thence westerly on or in the vicinity of Cumberland street to intersect North Water street in the vicinity of Central avenue, thence westerly on or in the vicinity of Central avenue crossing the Genesee river to State street, thence westerly on or in the vicinity of Allen street to intersect Plymouth avenue North, thence southerly on or in the vicinity of Plymouth avenue North to intersect Main street West, thence continuing southerly on or in the vicinity of Plymouth avenue South to Broad street, thence continuing southerly on or in the vicinity of School Alley to an intersection in the vicinity of School Alley and Troup street. Approximate length 5.52 miles.

Beginning at the westerly Rochester city line, state highway eighty-three, thence easterly and northeasterly on or in the vicinity of Buffalo road to a point west of Mt. Read boulevard to be determined by the commissioner of transportation, thence northeasterly over new location to an intersection near Independence street and Handy street. Approximate length 0.7 mile.

Beginning at the westerly Rochester city line, state highway two hundred fifty-three, thence easterly on or in the vicinity of Lyell avenue to an intersection at Mt. Read boulevard. Approximate length 0.84 mile.

Beginning at the westerly Rochester city line, state highway six, thence easterly and southeasterly along Ridge road to and crossing the Genesee river on the Veterans Memorial bridge to Keeler street, thence easterly on or in the vicinity of Keeler street and Keeler street extended to a point to be determined by the commissioner of transportation on the easterly Rochester city line. Approximate length 3.4 miles.

Beginning at Ridge road and Lake avenue intersection, thence southerly along Lake avenue to State street, thence southeasterly along State street to an intersection with Central avenue. Approximate length 2.86 miles.

Beginning at Keeler street and North Clinton avenue intersection, thence southerly on or in the vicinity of North Clinton avenue to Norton street, thence southeasterly and southerly over new location east of and generally parallel to North Clinton avenue to Kelley street at Joiner street, thence southerly on or in the vicinity of Joiner street to Ward street, thence southerly on or near North Clinton avenue crossing the New York Central R.R. to Cumberland street, including a connection to Joseph avenue. Approximate length 2.49 miles.

Beginning at the easterly Rochester city line, state highway ninety-eight, thence westerly on or in the vicinity of Clifford avenue to the intersection of Clifford avenue and North Goodman street, thence southwesterly on or in the vicinity of North Goodman street on an intersection with Central Park, thence westerly on or in the vicinity of Central Park to Union street, thence southerly on or in the vicinity of Union street to the intersection of Union street with Main street east. Approximate length 1.9 miles.

Beginning at a point on the northerly Rochester city line to be determined by the commissioner of transportation, east of Winton road, thence southerly over new location generally paralleling Carlisle road to Winstead road, thence southerly on new location to the easterly Rochester city line at a point to be determined by the commissioner of transportation, north of Atlantic avenue. Approximate length 0.9 mile.

Beginning at the southerly Rochester city line, state highway ninety-four, thence northwesterly on or in the vicinity of Monroe avenue to a point between Highland avenue and Culver road, thence northerly and northwesterly on new location to a point in the right of way of the Rochester Rapid Transit and Industrial Railway, to be determined by the commissioner of transportation, near Culver road, thence westerly on new location in the right of way of the Rochester Rapid Transit and Industrial Railway to the inner loop at a point in the vicinity of South Clinton avenue and South

avenue, including a spur connection on or in the vicinity of Union street to a point between Monroe avenue and George street to be determined by the commissioner of transportation. Approximate length 2.2 miles.

Beginning at a point on the easterly Rochester city line to be determined by the commissioner of transportation, north of East avenue, thence westerly on new location crossing East avenue near Rockwood street and continuing westerly in the right of way of the Rochester Rapid Transit and Industrial Railway to an intersection to be determined by the commissioner of transportation, near Culver road. Approximate length 1.5 miles.

Beginning at the southerly Rochester city line, state highway sixty-two, thence northerly on or in the vicinity of Mt. Hope Avenue to South Avenue, thence northerly on or in the vicinity of South Avenue to the intersection of South Avenue and Interstate Route 580. Approximate length 2.9 miles.

Beginning at the southerly Rochester city line, state highway four hundred ninety-four, thence northerly on or in the vicinity of East Henrietta Road to an intersection with Mt. Hope Avenue near Crittenden Boulevard. Approximate length 0.7 mile.

Beginning at a point on the southerly city line of the city of Rochester in the vicinity of the Rochester subway, thence northerly along or in the vicinity of the Rochester subway to the vicinity of East avenue, thence northeasterly and easterly to the east city line of the city of Rochester to a point to be determined by the commissioner of transportation. Approximate length 0.8 mile.

Beginning at a point on the westerly city line north of Chili avenue, to be determined by the commissioner of transportation, thence northeasterly on new location to Mt. Read boulevard in the vicinity of Maple street, thence northerly on or in the vicinity of Mt. Read boulevard to an intersection with Ridge road and continuing northerly to a point on the northerly Rochester city line near Mt. Read boulevard to be determined by the commissioner of transportation. Approximate length 4.4 miles.

The total cost of highway-railroad separations, necessary in the construction of the last above described arterial highway from a point at an intersection of the Mt. Read boulevard in the vicinity of Maple street, thence northerly on or in the vicinity of Mt. Read boulevard to an intersection with Ridge road and continuing northerly to a point on the northerly Rochester city line near Mt. Read boulevard to be determined by the commissioner of transportation, shall be borne by the state and be paid for from any state or federal moneys available for the construction and reconstruction of highways, and such separations shall be progressed in accordance with the provisions of subdivision five of section three hundred forty-nine-c of this article.

Beginning at the southerly Rochester city line, state highway sixty-three, thence northeasterly on or in the vicinity of Scottsville road to an intersection with Elmwood avenue at Genesee street. Approximate length 0.4 mile.

Beginning at a point on the westerly Rochester city line to be determined by the commissioner of transportation, near Brooks avenue, thence easterly on or in the vicinity of Brooks avenue to an intersection with Genesee Park boulevard near Brooks avenue. Approximate length 0.2 mile.

Beginning at the westerly Rochester city line, state highway three hundred ninety-nine, thence easterly on or in the vicinity of Latta road to a point west of Stutson street with a suitable connection to the Lake Ontario state parkway at the northerly Rochester city line, thence southeasterly in the vicinity of Stutson street to a point on Lake avenue, as determined by the commissioner, including a connection crossing the Genesee river to a point on the easterly Rochester city line as determined by the commissioner; also from a point near Stutson street on Lake avenue southerly on or in the vicinity of Lake avenue to an intersection with Ridge road west, including a connection from Lake avenue westerly on or in the vicinity of Stonewood avenue to a point on the westerly Rochester city line, said connection to be built with control of access. Approximate length 4.6 miles.

City of Rome

Beginning at the intersection of East Dominick street and Black River boulevard, thence following Black River boulevard to an interchange circle on East Whitesboro street, thence continuing northwesterly and westerly along West Whitesboro-street, Armstrong avenue, Armstrong avenue extension and on or near Erie boulevard to a junction with state highway five hundred sixty-three at or near the northwest inner corporation line of the city of Rome, including a connection with State highway one thousand one hundred fifty-seven. Approximate length 2.6 miles.

Beginning at the intersection of East Dominick street and Black River boulevard and extending northeasterly on or near Black River boulevard and continuing on new location northerly to a junction with state highway five hundred sixty-two at or near the northerly inner corporation line of the city of Rome. Approximate length 3.2 miles.

Beginning at the interchange circle on East Whitesboro street and extending southerly along East Whitesboro street and thence on new location crossing the barge canal and the main line of the Penn-Central railroad to the southern inner corporation line of the city of Rome. Approximate length 1.0 mile.

Beginning at a point on the southerly inner corporation line of the city of Rome, in the general vicinity of Taft avenue extended, as determined by the commissioner, thence generally northeasterly on new location and continued easterly on or near River road to the easterly inner corporation line of the city of Rome, state highway five hundred sixty including necessary connections with existing streets as determined by the commissioner. Approximate length 1.0 mile.

Beginning at a point to be determined by the commissioner, at the intersection of East Chestnut street and the eastern inner corporation line of the city of Rome, thence running generally northwesterly along East Chestnut street to a point, to be determined by the commissioner, at the intersection of East Chestnut street and state highway number nine thousand three hundred eighty-three. Approximate length .38 miles.

City of Rye

Beginning at the south city line northeasterly along Post Road to a point about 0.1 mile south of New York, New Haven and Hartford Railroad Bridge. Approximate length 2.8 miles.

Beginning at a point south of Railroad Bridge northeasterly along Post Road and new location to north city line. 1-way northbound on new location and 1-way southbound on Post Road. Approximate length 1.0 miles.

That section of Midland Avenue from its intersection with Peck Avenue northeasterly to the city line of the city of Rye. Approximate length .36 miles.

City of Salamanca

1. Beginning at the westerly city line of Salamanca state highway eight thousand three hundred eight, thence easterly along Front street to a point to be determined by the commissioner of transportation west of Center street, thence continuing easterly on new location to Center street at Broad street, thence southeasterly along Broad street and Clinton street to a point to be determined by the commissioner of transportation near Parkway drive, thence northeasterly on new location crossing the Allegheny river on a new bridge to Wildwood avenue, thence easterly along Wildwood avenue to the easterly city line of Salamanca, state highway five thousand two hundred sixty-five. Approximate length 4.5 miles.

2. Beginning at the intersection of Broad and Center streets in the city of Salamanca, thence northerly along Center

street to the northerly city line of Salamanca, state highway five thousand two hundred sixty-five. Approximate length 0.9 mile.

3. Beginning at the intersection of Wildwood and Central avenues in the city of Salamanca, thence northerly along Central avenue to the northerly city line. Approximate length 1.0 mile.

4. Beginning at the intersection of Parkway drive and Clinton street in the city of Salamanca, southerly and westerly along the scenic highway to the boundary of the Allegany State Park at a point to be determined by the commissioner of transportation. Approximate length 1.1 miles.

City of Saratoga Springs

1. North-South arterial, beginning at the southerly Saratoga Springs corporation line, state highway six hundred eleven, thence northerly along or near South Broadway as determined by the commissioner of transportation, to Union street, continuing northerly along or near Union street as determined by the commissioner of transportation, to the Delaware and Hudson railway near Ash street, thence northerly and northeasterly on and adjacent to the abandoned right of way of the Delaware and Hudson railway to the northeasterly Saratoga Springs corporation line, including a connection on Marion avenue to the northerly Saratoga Springs corporation line. Approximate length 3.1 miles. Also that portion of South Broadway, Saratoga Springs, beginning at the southerly Saratoga Springs corporation line thence to its intersection with West Circular street, as determined by the commissioner of transportation, which portion is presently known as state route nine. Also a portion of West Circular street, to be determined by the commissioner of transportation, from South Broadway to the Delaware and Hudson railway bed.

2. Ballston arterial, beginning at the southerly or westerly Saratoga Springs corporation line, west of Ballston avenue, thence northeasterly on new location in the abandoned right of way of the Delaware and Hudson railway to a point north of Congress avenue, as determined by the commissioner of transportation, continuing easterly to Union street at Lincoln avenue. Approximate length 1.0 mile.

3. Church Street arterial, beginning at the westerly Saratoga Springs corporation line, state highway four hundred forty-three, thence easterly and southeasterly along Church street to a connection with the North-South arterial. Approximate length 0.6 mile.

City of Schenectady

Beginning at the westerly Schenectady city line in the vicinity of Fawn avenue, thence northeasterly on new location, crossing State street and continuing northeasterly on new location, generally parallel to Oregon avenue, to the easterly city line of Schenectady near the Parkview cemetery. Approximate length 1.7 miles.

Beginning at the westerly Schenectady city line on Broadway, state highway one hundred sixty-three, thence along Broadway, Millard street, Veeder avenue and Nott Terrace to Union street. Thence on new location through the Union College campus grounds to South avenue, thence northwesterly along South avenue and over new location to [fig 1] Erie boulevard in the vicinity of Jefferson street. Approximate length [fig 2] 2.9 miles.

Beginning at [fig 3] the traffic circle along the interstate route 550 connection, thence northeasterly along Erie boulevard crossing Jefferson street to the vicinity of Nott street. Thence on new location to the northwest Schenectady city line in the vicinity of Freeman's Bridge road. Approximate length [fig 4] 1.7 miles.

Beginning at the traffic circle [fig 5] along the interstate route 550 connection, thence northerly along Washington avenue to State street continuing westerly on State street over the great Western Gateway bridge to the west city line of

Schenectady. Approximate length 0.3 mile.

City of Syracuse

Beginning at the [fig 1] intersection of Shonnard street and South West street, thence northerly along South West street to Erie boulevard, thence easterly along Erie boulevard, through the Clinton square urban renewal project to the easterly city line of Syracuse connecting with state highway four hundred twenty-nine. This route also includes a secondary section beginning at the intersection of South West street and Shonnard and Seymour streets, thence easterly along Shonnard and Seymour streets, Oneida and Adams streets to a point on interstate route 505 in the vicinity of Almond street as determined by the commissioner. Portions of this arterial route within and in the vicinity of the Clinton square urban renewal project may be built as a depressed highway as determined by the commissioner. Approximate length [fig 2] 4.3 miles.

Beginning at a point at the southerly city line to be determined by the commissioner of transportation and extending northerly on new location west of Lafayette road, generally parallel to Lafayette road and the Erie Lackawanna railway to South Townsend street, thence northerly along South Townsend street to Canal street, thence westerly along Canal street to North State street, thence northerly along North State street connecting with Oswego boulevard at Ash street, thence northerly along Oswego boulevard to Court street, thence northeasterly along new location to Washington Square and Lemoyne avenue, thence northeasterly along Lemoyne avenue to the north city line. This route also includes the following: Beginning at the intersection of South Townsend street and Washington street, thence westerly along Washington street to Montgomery street, thence northerly along Montgomery street and Oswego boulevard to Ash street. Approximate length 8.0 miles.

Beginning at the intersection of Erie boulevard and West street, thence westerly along Erie boulevard to Plum street, thence northwesterly on new location to Leavenworth avenue, thence northerly along Leavenworth avenue to Belden avenue, thence northwesterly along new location under the Penn Central railroad, thence westerly along new location generally parallel to the Penn Central railroad to the State Fair boulevard at a point northwest of Hiawatha boulevard, thence northwesterly along the State Fair boulevard to the Syracuse city line connecting with state highway number one thousand three hundred fifty-three. This route also includes the following: Beginning at the intersection of Park avenue and North West street, thence westerly along Park avenue to Leavenworth avenue. Approximate length 2.4 miles.

Beginning at the intersection of West street and Erie boulevard, thence northerly along West street to Genesee street, thence easterly along new location and Herald Place to Franklin street, thence northerly along Franklin street to Laurel street, thence easterly along Laurel street to Oswego boulevard, thence northerly on Oswego boulevard and on new location to a point on the northerly city line and there connecting with state highway number five thousand two hundred seventy-four. Approximate length 2.1 miles. This route also includes a secondary section beginning at the easterly terminus of the spur extending from arterial route designated as "City of Syracuse: State Fair Boulevard" at Spencer street; thence northeasterly on new location to Bear street, thence northeasterly along Bear street to Oswego boulevard thereby connecting State Fair arterial boulevard and Oswego arterial boulevard. Approximate length 0.8 mile.

[Syracuse arterial route along Midler Avenue and Tyson Place, repealed]

Beginning at the easterly Syracuse city line, at a point on state highway four hundred twenty-nine, thence northerly along or near Thompson road, as determined by the commissioner of transportation, to the northerly Syracuse city line, connecting with state highway four hundred twenty-nine. Approximate length 0.9 mile.

City of Tonawanda

1. Beginning at the southerly Tonawanda city line, in the vicinity of Eggert road, as determined by the commissioner of transportation, thence northwesterly on or along Young street and on new location, to a point on the northerly Tonawanda city line, on a new bridge to be constructed over the Tonawanda creek, to be determined by the commissioner of transportation, in the vicinity of Division street extended. Approximate length 1.6 miles.

2. Beginning at the southerly Tonawanda city line, state highway nine thousand two hundred twenty-one, thence northerly along Main street to the vicinity of Seymour street, thence northwesterly along Seymour street to the vicinity of Niagara street, thence northerly, on new location, to a point on the northerly Tonawanda city line, on a new bridge to be constructed over the Tonawanda creek, to be determined by the commissioner of transportation, west of Main street. Approximate length 1.5 miles.

3. Beginning at the westerly Tonawanda city line, state highway one hundred twenty-nine, thence easterly on or along Niagara street to Seymour street. Approximate length 2.0 miles.

City of Troy

1. Beginning at the easterly approach of the Troy-Menands bridge, thence northerly along Burden avenue to Fourth street, continuing on or east of Fourth street to the vicinity of Fifth avenue and on new location to Congress street, continuing northerly between Seventh avenue and Eighth street to the vicinity of Rensselaer street, crossing northwesterly over River street and northerly on new location generally paralleling the Hudson river to Second avenue near One Hundred Second street, following along Second avenue to One Hundred Twenty-sixth street and thence on new location northeasterly to the north city line, including connections to the easterly approaches of One Hundred Twelfth street bridge and the Troy-Waterford bridge. Approximate length 6.2 miles.

2. Beginning on the southerly Troy city line west of Winter street, thence northwesterly on new location to Campbell's highway near Spring avenue, following on or near Spring avenue to and including a connection with the north-south arterial route. Approximate length 2.1 miles.

3. Beginning on the southerly Troy city line, thence northeasterly on new location passing to the east of the Troy airport to and including a connection with another arterial route and continuing northeasterly to and including a connection with Pawling avenue via Munro court. Approximate length 1.0 mile.

4. Beginning at the westerly city line, thence easterly on a new bridge over the Hudson river to and along Hoosick street to the easterly city line, state highway ten. Approximate length 1.6 miles.

5. Beginning at a point on the westerly Troy city line, on a new bridge to be constructed over the Hudson river south of Congress street, to be determined by the commissioner of transportation, thence easterly to and along Ferry street to Congress street; also from a point on Congress street near Thirteenth street northwesterly and westerly along Congress street to the easterly approach of said new bridge to be constructed over the Hudson river south of Congress street, including connections with existing streets as determined by the commissioner of transportation, this route also includes a connection from a point on Congress street to College avenue, at a point to be determined by the commissioner of transportation. Approximate length 1.1 miles.

City of Utica

1. Beginning at the westerly Utica city line, state highway eight thousand four hundred eighty-four, including an interchange with Whitesboro street, thence easterly along Oriskany street West to Broadway, continuing along Oriskany street West and Liberty street to Genesee street, thence along Oriskany street East and Jay street to Park avenue, northeasterly along Park avenue to a point, to be determined by the commissioner of transportation, between Broad and

Main streets, thence on new location easterly to a point to be determined by the commissioner on the east city line, including a traffic interchange at Broad street, Gilbert street and Culver avenue. Approximate length 5.2 miles.

2. Beginning at the west city line, state highway two hundred ninety-seven, thence easterly [fig 1] on new location generally parallel to the New York state thruway to a traffic interchange at the state arterial highway on or in the vicinity of Horatio street, thence [fig 2] easterly on new location [fig 3] generally parellel to [fig 4] the New York state thruway to North Genesee street, thence easterly [fig 5] on new location generally parallel to the New York state thruway to a point east of the thruway toll booth interchange, thence easterly along Herkimer road to the east city line, state highway four hundred fifty-nine; also from [fig 6] Herkimer road returning westerly [fig 7] at a point east of the thruway toll booth interchange, on new location generally parallel to the New York state thruway to an interchange with North Genesee street and [fig 8] Riverside drive, thence westerly on new location generally parallel to the New York state thruway to a traffic interchange at the state arterial highway in the vicinity of Horatio street, thence westerly [fig 9] on new location generally parallel to the New York state thruway to its connection with [fig 10] state highway two hundred ninety-seven at the west city line. Approximate length [fig 11] 3.7 miles.

3. Beginning at a point to be determined by the commissioner of transportation on the southwest Utica city line, south of the former N. Y. O. & W. Ry. right of way, thence northeasterly on new location crossing Burrstone road, including necessary connections to or from this route, continuing northeasterly on or in the vicinity of Wheeler avenue to Roberts street, thence on new location between Fay street and State street to a traffic interchange at Oriskany street West, continuing on new location to traffic interchanges with the Mohawk thruway and Riverside drive at Horatio street, northeasterly on or in the vicinity of Horatio street to the northerly Utica city line. Approximate length 5.3 miles.

4. Beginning on the southwest city line of Utica in the vicinity north of Genesee street, as determined by the commissioner of transportation, thence generally northwesterly on new location to traffic interchange with an arterial route in the vicinity of the northwesterly city line. Approximate length 0.4 mile.

5. Beginning at the intersection of Oriskany street west and east with Genesee street, thence northerly and northeasterly to and along North Genesee street [fig 1] to Herkimer road, including connections with existing streets, and/or relocations of such existing streets [fig 2] ; also from [fig 3] Herkimer road returning southwesterly on new location westerly and generally parallel to [fig 4] North Genesee street to a connection to the last mentioned route in the vicinity of the New York State thruway [fig 5] . Approximate length [fig 6] 1.5 miles.

6. Beginning at the westerly Utica city line, state highway nineteen hundred forty-three, thence easterly on or along Burrstone road to a point as determined by the commissioner of transportation, thence continuing easterly and generally parallel to and north of Edith and Alder streets to a traffic interchange between the state arterial highway and Burrstone road in the vicinity of Lincoln avenue. Approximate length 0.7 mile.

7. Upon completion and acceptance of the portion of the aforementioned route in paragraph two of this subdivision which lies between a point on state highway two hundred ninety-seven at the west city line and a point on or near an interchange with North Genesee street, the commissioner is hereby authorized and directed to issue an official order of abandonment to the city of Utica of the road described as follows: beginning at the west city line, thence easterly on or in the vicinity of Riverside drive to a traffic interchange at the state arterial highway on or in the vicinity of Horatio street, thence southeasterly and easterly on new location south of and generally parallel to Riverside drive to a point on or near an interchange with North Genesee street, including connections between Riverside drive and the new location. Upon the filing of certified copies of such official order with the city clerk, the state shall cease to maintain those portions specified for abandonment in such official order, and all the rights and obligations of the state therein shall revert to and become the responsibility of the city of Utica.

8. Upon completion and acceptance of the aforementioned route in paragraph five of this subdivision, the commissioner is hereby authorized and directed to issue an official order of abandonment to the city of Utica of the roads described as follows: that portion of the route described as "beginning at the intersection of Oriskany street west

and east with Genesee street, thence northerly and northeasterly to and along North Genesee street to Coventry avenue including connections with existing streets, thence along Coventry avenue to the northerly Utica city line, state highway five thousand six hundred four" which lies along Coventry avenue between a point on Herkimer road and a point near Servis place; those portions of the route described as "also from a connection to the last mentioned route in the vicinity of Servis place, returning southwesterly on new location westerly and generally parallel to Coventry avenue and North Genesee street to a connection to the last mentioned route in the vicinity of the New York state thruway with all necessary connections to Trenton avenue" which lie between a point on Coventry avenue near Servis place and a point on Riverside drive west of Coventry avenue, and between a point on Trenton avenue southwest of Servis place and a point on Trenton avenue at or near its intersection with Coventry avenue. Upon the filing of certified copies of such official order with the city clerk, the state shall cease to maintain those portions specified for abandonment in such official order, and all the rights and obligations of the state therein shall revert to and become the responsibility of the city of Utica.

City of Watertown

1. Beginning at the easterly Watertown city line at State Highway No. 5005, thence westerly along Water Street to the vicinity of Spring Street and northwesterly on new location across the New York Central Railroad, Watertown Branch, thence westerly to an intersection with an arterial route, continuing westerly across Pearl Street in the vicinity of Starbuck Avenue, to and along Moulton Street, to Mill Street, thence northwesterly on new location to Main Street west in the vicinity of Curtis Street, and continuing along Main Street west to [fig 1] Edmund Street. Approximate length [fig 2] 2.6 miles.

2. Beginning at the northerly Watertown city line at State Highway No. 5140, thence southwesterly along Bradley Street to [fig 1] Main Street west. Approximate length 0.9 mile.

3. Beginning at the westerly Watertown city line, State Highway No. 237, thence easterly along Arsenal Street to Massey Street north, thence northeasterly on Massey Street north to Court Street and along Court Street crossing the Black River to an arterial route on the north side of the Black River. Approximate length 2.1 miles.

4. Beginning at the southerly Watertown city line at State Highway No. 147, thence northerly along Gifford Street to State Street and northwesterly along State Street to a point between Pleasant Street and Hamilton Street, thence northeasterly on new location between Pleasant Street north and Hamilton Street north, crossing the New York Central Railroad, Carthage Branch, the Black River, Water Street, and the New York Central Railroad, Watertown Branch, to an intersection with an arterial route on the north side of the Black River. Approximate length 1.90 miles.

5. Beginning at an intersection with the above described arterial at State street and Eastern boulevard, thence northeasterly along Eastern boulevard to state highway five thousand five at the easterly Watertown city line. Approximate length 1.1 miles.

6. Notwithstanding the provisions of section three hundred forty-nine-d of this article, the commissioner is hereby authorized and directed to assume jurisdiction for state arterial highway purposes over the city streets described in paragraph five and as follows: beginning at the southerly Watertown city line at state highway one hundred forty-seven, thence northerly along Gifford street to State street to an intersection with another arterial route at Eastern boulevard.

City of Watervliet

1. River Front route, beginning at a point to be determined by the commissioner of transportation on the southerly city line of Watervliet east of Broadway, thence northeasterly along the west bank of the Hudson river to the vicinity of Twenty-Second street and northerly to a point to be determined by the commissioner on the north city line of

Watervliet, east of Cohoes road. Approximate length 2.0 miles.

2. Beginning at the westerly city line of Watervliet, state highway six hundred thirty, thence easterly along Nineteenth street to the west approach of the Congress street bridge, including connections to the above described River Front route. Approximate length 1.0 mile.

City of White Plains

1. Beginning at a point, to be determined by the commissioner, on the westerly line of the city of White Plains, south of Old Mamaroneck road, thence northerly on new location to and on or along Bloomingdale road to Westchester avenue, thence easterly on or in the vicinity of Westchester avenue to the easterly line of the city of White Plains. Approximate length 1.5 miles.

2. Beginning at or near the intersection of Westchester avenue and Bloomingdale road in the city of White Plains, thence westerly on or in the vicinity of Westchester avenue to North Broadway, thence northwesterly on or in the vicinity of North Broadway to Hamilton avenue, thence generally westerly on or in the vicinity of Hamilton avenue to Central avenue, thence northwesterly on or in the vicinity of Central avenue to the northerly city line of White Plains, west of the Bronx River parkway; also returning from a point at or near Central avenue and Hamilton avenue southeasterly along or in the vicinity of Central avenue to Main street, thence generally easterly on or in the vicinity of Main street to North Broadway, thence southeasterly on or in the vicinity of North Broadway to Armory place, thence northeasterly on or in the vicinity of Armory place to Westchester avenue. Approximate length 2.6 miles.

3. Beginning with an arterial route described in paragraph two above, thence northerly on or in the vicinity of Grove street to or in the vicinity of North Lexington avenue and northwesterly on new location to Central Park avenue, thence southwesterly on or in the vicinity of Central Park avenue to the westerly city line of White Plains, state highway one thousand three hundred seventy; also returning from a point near North Lexington avenue, thence southerly on or in the vicinity of North and South Lexington avenue to the arterial route described in paragraph two above, including connections from this arterial route on or in the vicinity of South Lexington avenue and Grove street with existing streets. Approximate length 1.9 miles.

City of Yonkers

Nepperhan arterial, with that portion beginning at a connection to South Broadway thence continuing to the connection of the Pulaski crossway designated as a portion of the Pulaski crossway in the vicinity of Nepperhan avenue, thence continuing northerly on or in the vicinity of Nepperhan avenue, and new location to Saw Mill river road in the vicinity of Tuckahoe road, including a connection to Roberts avenue, thence northerly on or in the vicinity of Saw Mill river road to the northerly city line, state highway one thousand one hundred sixty-seven. Approximate length 4.1 miles.

[fig 1] Pulaski crossway arterial, from a point on the Nepperhan arterial to be determined by the commissioner of transportation, thence generally easterly on or in the vicinity of Yonkers avenue and new location to the east city line connecting to an arterial highway in Mt. Vernon. Approximate length 3.0 miles.

Central Park avenue arterial, from a point on [fig 2] Pulaski crossway arterial to be determined by the commissioner of transportation, thence generally northerly on or in the vicinity of Central Park avenue to state highway five thousand two hundred thirty-one. Approximate length 5.1 miles.

Tuckahoe road arterial, from a point on the Nepperhan arterial, to be determined by the commissioner of transportation, thence easterly on or in the vicinity of Tuckahoe road to a point on Central Park avenue arterial, to be determined by the commissioner of transportation. Approximate length 1.7 miles.

Riverdale arterial, beginning at the New York city-Yonkers city line, in the vicinity of Riverdale avenue, thence on or in the vicinity of Riverdale avenue to the vicinity of Main street, including a connection to the Nepperhan arterial. Approximate length 1.7 miles.

HISTORY: Add, L 1944, ch 543, amd, L 1946, ch 914, L 1947, ch 765, L 1948, ch 560, L 1948, ch 669, L 1948, ch 693, L 1949, ch 303, L 1949, ch 413.

Amd, insofar as it relates to the following cities:

Albany, L 1951, ch 323, L 1955, ch 713, L 1957, ch 385, L 1964, ch 207, eff Mar 29, 1964.

Albany, first unnumbered par, amd, L 1968, ch 1026, eff June 22, 1968.

Albany, second unnumbered par, amd, L 1968, ch 1026, eff June 22, 1968.

Albany, fourth unnumbered par, amd, L 1968, ch 770, eff June 16, 1968.

Albany, sixth unnumbered par, amd, L 1968, ch 770, eff June 16, 1968.

Albany, seventh unnumbered par, add, L 1964, ch 207, amd, L 1968, ch 770, eff June 16, 1968.

Albany, eighth unnumbered par, add, L 1964, ch 207, amd, L 1968, ch 770, eff June 16, 1968.

Albany, last unnumbered par, add, L 1964, ch 207, amd, L 1967, ch 305, L 1971, ch 1110, § 194, eff July 2, 1971.

Amsterdam, L 1954, ch 784, L 1964, ch 139, L 1968, ch 196, eff Apr 11 1968.

Amsterdam, second unnumbered par, amd, L 1973, ch 141, eff April 3, 1973.

Auburn, L 1958, ch 367, L 1964, ch 881, L 1966, ch 103, eff March 29, 1966.

Auburn, par 5, add, L 1964, ch 881, amd, L 1971, ch 1110, § 195, eff July 2, 1971.

Batavia, L 1949, ch 656, eff Apr 16, 1949.

Beacon, amd, L 1967, ch 210, L 1971, ch 1110, § 196, L 1973, ch 21, eff Feb 20, 1973.

Binghamton, L 1957, ch 545, L 1965, ch 642, L 1970, ch 792, eff May 12, 1970.

Third par, deleted, L 1965, ch 642, eff July 2, 1965.

Buffalo, L 1953, ch 441, L 1954, ch 749, L 1955, ch 414, L 1956, ch 690, L 1957, ch 587, L 1960, ch 420, eff Apr 12, 1960.

Buffalo, first unnumbered paragraph, amd, L 1961, ch 121, eff Mar 13, 1961.

Buffalo, third unnumbered par, amd, L 1971, ch 1110, § 197, eff July 2, 1971.

Buffalo, fourth unnumbered par, amd, L 1971, ch 1110, § 197, L 1976, ch 947, eff July 27, 1976.

Buffalo, fifth unnumbered par, amd, L 1966, ch 430, L 1971, ch 1110, § 198, eff July 2, 1971.

Buffalo, eighth unnumbered par, amd, L 1971, ch 1110, § 197, eff July 2, 1971.

Buffalo, last unnumbered par, add, L 1963, ch 908, amd, L 1965, ch 452, eff June 23, 1965.

Canandaigua, L 1949, ch 684, L 1952, ch 561, L 1963, ch 348, eff Apr 16, 1963.

Canandaigua, second unnumbered par, amd, L 1971, ch 1110, § 199, eff July 2, 1971.

Canandaigua, last unnumbered par, amd, L 1971, ch 1110, § 199, eff July 2, 1971.

Cohoes, amd, L 1956, ch 533, L 1971, ch 1110, § 200, eff July 2, 1971.

Corning, L 1958, ch 521, eff Apr 9, 1958.

Corning, second unnumbered par, amd, L 1974, ch 232, eff April 23, 1974.

Cortland, L 1955, ch 399, eff Apr 15, 1955.

Dunkirk, L 1957, ch 468, L 1968, ch 55, eff Mar 19, 1968.

Elmira, amd, L 1953, ch 534, L 1971, ch 1110, § 201, eff July 2, 1971.

Sub 1, amd, L 1971, ch 1110, § 201, eff July 2, 1971.

Sub 2, amd, L 1971, ch 1110, § 201, eff July 2, 1971.

Sub 3, amd, L 1971, ch 1110, § 201, eff July 2, 1971. (This is the same paragraph as the following paragraph, amended by a different 1971 act.).

Last unnumbered par, amd, L 1971, ch 308, eff May 25, 1971. (This is the same paragraph as the preceding paragraph, amended by a different 1971 act.).

Fulton, amd, L 1953, ch 75, L 1971, ch 1110, § 202, eff July 2, 1971.

Geneva, L 1949, ch 303, L 1958, ch 163, L 1965, ch 220, eff May 17, 1965.

Last two pars, deleted, L 1965, ch 220, eff May 17, 1965.

Glen Cove, amd, L 1956, ch 416, L 1971, ch 1110, § 203, eff July 2, 1971.

Glens Falls, amd, L 1959, ch 104, L 1971, ch 1110, § 204, eff July 2, 1971.
Gloversville, amd, L 1951, ch 328, L 1956, ch 195, L 1967, ch 42, L 1971, ch 1110, § 205, eff July 2, 1971.
Hornell, L 1955, ch 432, L 1963, ch 372, L 1968, ch 766, L 1970, ch 130, eff April 14, 1970.
Ithaca, L 1950, ch 214, L 1957, ch 584, § 1, L 1959, ch 784, L 1963, ch 827, L 1971, ch 1110, § 206, eff July 2, 1971.
Jamestown, L 1952, ch 323, L 1955, ch 419, L 1965, ch 276, eff May 24, 1965.
Jamestown, first unnumbered par, amd, L 1969, ch 232, eff Apr 25, 1969.
Jamestown, third unnumbered par, amd, L 1968, ch 63, eff Mar 19, 1968.
Johnstown, amd, L 1951, ch 330, L 1971, ch 1110, § 207, eff July 2, 1971.
Kingston, L 1954, ch 413, L 1956, ch 860, L 1966, ch 743, eff Aug 1, 1966.
Second par, add, L 1966, ch 743, eff Aug 1, 1966.
Lackawanna, amd, L 1956, ch 414, L 1971, ch 1110, § 208, eff July 2, 1971.
Little Falls, amd, L 1971, ch 1110, § 209, eff July 2, 1971.
Little Falls, first unnumbered par, amd, L 1967, ch 333, eff Apr 18, 1967.
Lockport, L 1952, ch 384, L 1953, ch 739, L 1966, ch 363, L 1971, ch 1110, § 210, eff July 2, 1971.
Long Beach, L 1946, ch 914, eff Apr 22, 1946.
Mechanicville, amd, L 1950, ch 406, L 1971, ch 1110, § 211, eff July 2, 1971.
Middletown, amd, L 1962, ch 372, L 1971, ch 1110, § 212, eff July 2, 1971.
Mt. Vernon, amd, L 1956, ch 795, L 1971, ch 1110, § 213, eff July 2, 1971.
Newburgh, L 1956, ch 657, L 1959, ch 147, L 1969, ch 484, eff May 10, 1969.
Fourth unnumbered par, add, L 1969, ch 484, eff May 10, 1969.
New Rochelle, L 1950, ch 574, L 1955, ch 389, L 1958, ch 399, L 1961, ch 660, L 1962, ch 666, L 1970, ch 432, eff May 1, 1970.
Niagara Falls, L 1955, ch 444, L 1960, ch 255, L 1967, ch 505, L 1968, ch 562, eff June 5, 1968.
Third par, add, L 1967, ch 505, eff Apr 24, 1967.
Niagara Falls, par 4, amd, L 1971, ch 351, eff June 1, 1971.
Niagara Falls, par 5, amd, L 1969, ch 71, eff March 18, 1969.
Par 6, add, L 1959, ch 471, eff Apr 16, 1959.
Par 7, add, L 1967, ch 365, eff Apr 18, 1967.
North Tonawanda, L 1950, ch 377, L 1957, ch 1032, L 1959, ch 100, eff Mar 17, 1959.
North Tonawanda, par 1, amd, L 1971, ch 1110, § 214, eff July 2, 1971.
North Tonawanda, par 2, amd, L 1971, ch 1110, § 214, eff July 2, 1971.
Norwich, amd, L 1954, ch 203, L 1971, ch 1110, § 215, eff July 2, 1971.
Ogdensburg, amd, L 1955, ch 846, L 1971, ch 1110, § 216, eff July 2, 1971.
Ogdensburg, sub 1, amd, L 1975, ch 202, eff June 10, 1975.
Ogdensburg, sub 2, amd, L 1975, ch 202, eff June 10, 1975.
Ogdensburg, sub 3, add, L 1975, ch 202, eff June 10, 1975.
Olean, amd, L 1953, ch 234, L 1968, ch 409, L 1971, ch 845, eff June 25, 1971.
Fourth par, add, L 1968, ch 409, eff May 31, 1968.
Oneida, amd, L 1954, ch 249, L 1971, ch 1110, § 217, eff July 2, 1971.
Oneonta, L 1959, ch 330, L 1965, ch 206, L 1968, ch 271, eff May 14, 1968.
First par, add, L 1965, ch 206, eff May 17, 1965.
Former first par, deleted, L 1965, ch 206, eff May 17, 1965.
Second par, amd, L 1965, ch 206, eff May 17, 1965.
Oswego, amd, L 1952, ch 130, L 1971, ch 1110, § 218, eff July 2, 1971.
Peekskill, L 1956, ch 902, L 1967, ch 299, eff Sept 1, 1967.
Peekskill, second unnumbered par, amd, L 1971, ch 1110, § 219, eff July 2, 1971.
Last par, add, L 1967, ch 299, eff Sept 1, 1967.
Plattsburgh, L 1953, ch 831, L 1955, ch 292, L 1971, ch 1110, § 220, eff July 2, 1971.
Port Jervis, amd, L 1956, ch 441, L 1971, ch 1110, § 221, eff July 2, 1971.
Poughkeepsie, L 1953, ch 233, L 1966, ch 734, L 1971, ch 1110, § 222, eff July 2, 1971.

Rensselaer, amd, L 1967, ch 203, eff Apr 10, 1967.
Second par, deleted, L 1967, ch 203, eff Apr 10, 1967.
Unnumbered par, add, L 1968, ch 268, eff May 14, 1968.
Rochester, L 1949, ch 777, L 1951, ch 425, L 1954, ch 436, L 1955, ch 734, § 3 and § 4, L 1955, ch 200, L 1956, ch 494, L 1962, ch 591, eff Apr 19, 1962.
Rochester, first unnumbered par, amd, L 1971, ch 1110, § 223, eff July 2, 1971.
Rochester, second unnumbered par, amd, L 1971, ch 1110, § 223, eff July 2, 1971.
Rochester, fourth unnumbered par, amd, L 1971, ch 1110, § 223, eff July 2, 1971.
Rochester, eighth unnumbered par, amd, L 1971, ch 1110, § 223, eff July 2, 1971.
Rochester, ninth unnumbered par, amd, L 1971, ch 1110, § 224, eff July 2, 1971.
Rochester, tenth unnumbered par, amd, L 1971, ch 1110, § 224, eff July 2, 1971.
Rochester, eleventh unnumbered par, add, L 1976, ch 927, eff Aug 26, 1976.
Former eleventh unnumbered par, amd, L 1962, ch 591, L 1971, ch 1110, § 225, repealed, L 1975, ch 634, eff Oct 4, 1975.
Rochester, twelfth unnumbered par [first setout], add, L 1976, ch 927, eff Aug 26, 1976.
Rochester, twelfth unnumbered par [second setout], amd, L 1971, ch 1110, § 226, eff July 2, 1971.
Rochester, thirteenth unnumbered par, amd, L 1971, ch 1110, § 227, eff July 2, 1971.
Rochester, fourteenth unnumbered par, amd, L 1971, ch 1110, § 223, eff July 2, 1971.
Rochester, sixteenth unnumbered par, amd, L 1971, ch 1110, § 223, eff July 2, 1971.
Rochester, last unnumbered par, amd, L 1968, ch 20, eff March 5, 1968.
Rome, L 1949, ch 837, L 1950, ch 378, L 1967, ch 82, L 1968, ch 1002, L 1969, ch 365, L 1970, ch 685, eff May 8, 1970.
First par, added, L 1967, ch 82, deleted, L 1968, ch 1002, eff June 22, 1968.
Last par, add, L 1969, ch 365, eff May 2, 1969.
Rye, L 1956, ch 435, eff Apr 9, 1956.
Salamanca, amd, L 1952, ch 324, L 1971, ch 1110, § 228, eff July 2, 1971.
Saratoga Springs, L 1953, ch 256, L 1961, ch 560, L 1971, ch 1110, § 229, eff July 2, 1971.
Saratoga Springs, first par, amd, L 1969, ch 881, eff May 22, 1969.
Schenectady, L 1949, ch 413, eff April 6, 1949.
Syracuse, L 1956, ch 856, eff Apr 19, 1956.
Syracuse, first unnumbered par, amd, L 1962, ch 220, L 1968, ch 511, eff June 5, 1968.
Syracuse, second unnumbered par, amd, L 1971, ch 1110, § 230, eff July 2, 1971.
Syracuse, third unnumbered par, amd, L 1971, ch 1110, § 230, eff July 2, 1971.
Syracuse, fourth unnumbered par, amd, L 1971, ch 1110, § 230, eff July 2, 1971.
Syracuse, last unnumbered par, add, L 1964, ch 698, amd, L 1971, ch 1110, § 230, eff July 2, 1971.
Syracuse arterial route along Midler Avenue and Tyson Place par, repealed, L 1964, ch 698, eff Apr 22, 1964.
Tonawanda, L 1950, ch 378, L 1955, ch 286, L 1958, ch 409, L 1967, ch 125, L 1971, ch 1110, § 231, eff July 2, 1971.
Third par, add, L 1967, ch 125, eff March 28, 1967.
Troy, L 1960, ch 648, eff Apr 18, 1960.
Sub 1, amd, L 1964, ch 903, eff Apr 23, 1964.
Troy, par 4, amd, L 1971, ch 1110, § 232, eff July 2, 1971.
Troy, par 5, amd, L 1967, ch 468, L 1971, ch 1110, § 232, eff July 2, 1971.
Utica, amd, L 1952, ch 383, L 1971, ch 1110, § 233, eff July 2, 1971.
Sub 1, amd, L 1971, ch 1110, § 233, eff July 2, 1971.
Sub 2 [first setout], amd, L 1958, ch 868, L 1971, ch 1110, § 233, eff July 2, 1971.
Sub 2 [second setout], amd, L 1958, ch 868, L 1971, ch 240, eff May 11, 1971.
Sub 3, amd, L 1957, ch 317, L 1971, ch 1110, § 233, eff July 2, 1971.
Sub 4, amd, L 1965, ch 641, L 1971, ch 1110, § 233, eff July 2, 1971.
Sub 5 [first setout], amd, L 1958, ch 868, L 1971, ch 1110, § 233, eff July 2, 1971.

Sub 5 [second setout], amd, L 1958, ch 868, L 1971, ch 240, eff May 11, 1971.
Sub 6, add, L 1966, ch 335, amd, L 1968, ch 21, eff March 5, 1968.
Watertown, amd, L 1956, ch 182, eff Mar 23, 1956.
Watervliet, amd, L 1956, ch 531, L 1971, ch 1110, § 234, eff July 2, 1971.
White Plains, L 1955, ch 533, L 1961, ch 695, repealed and re-enacted, L 1962, ch 512, amd, L 1969, ch 926, eff May 22, 1969.
White Plains, par 2, amd, L 1976, ch 791, eff July 24, 1976.
Yonkers, L 1959, ch 563, L 1967, ch 227, eff Apr 10, 1967.
Yonkers, second unnumbered par, amd, L 1971, ch 1110, § 235, eff July 2, 1971.
Yonkers, third unnumbered par, amd, L 1971, ch 1110, § 235, eff July 2, 1971.
Yonkers, fourth unnumbered par, amd, L 1971, ch 1110, § 235, eff July 2, 1971.
Riverdale arterial, add, L 1968, ch 996, eff June 22, 1968.
Binghamton, amd, L 1980, ch 450, § 1, eff June 23, 1980.
The 1980 act deleted at figs 1 and 2 "Collier". Buffalo, fifth unnumbered par, amd, L 1977, ch 596, eff Aug 1, 1977.
The 1977 act deleted at fig 1 "on new location between". Cohoes, amd, L 1981, ch 570, § 1, eff Sept 1, 1981.
The 1981 act deleted at fig 1 "1.", at fig 2 "Ontario street, thence easterly along Ontario street to the westerly approach to the one hundred and twelfth street bridge", at fig 3 "1.9" and at fig 4 "2. Beginning at a point, to be determined by the commissioner of transportation, on the southerly city line of Cohoes, thence northeasterly along the southerly shore of Van Schaick Island and northerly between the D. & H. Ry. and Continental avenue to the northerly line of the city of Cohoes, including necessary connections and service roads. Approximate length 1.5 miles." Dunkirk, amd, L 1999, ch 361, § 1 eff July 27, 1999.
Dunkirk, second undesignated par, amd, L 1999, ch 361, § 1 eff July 27, 1999.
The 1999 act deleted at fig 1 "to a point near Wright street, thence northeasterly on or in the vicinity of Wright street, as determined by the commissioner, thence continuing northwesterly on or in the vicinity of Franklin avenue to Main street, thence on or in the vicinity of Main street to a connection with Lake Shore drive; resuming from Lake Shore drive on or in the vicinity of Park avenue and on new location south- easterly to an intersection in the vicinity of Main street and East Fifth street; this route includes a connection in the vicinity of East Third street between Park avenue and Main street, as determined by the commissioner" and at fig 2 "1.7" Jamestown, pars 1, 2 and 3, so numbered, L 1979, ch 302, § 4, eff Apr 1, 1980.
Jamestown, sub 2, add, L 1982, ch 488, § 1, eff July 13, 1982.
Former Jamestown, sub 2, repealed, L 1982, ch 488, § 1, eff July 13, 1982.
Jamestown, par 4, add, L 1979, ch 302, § 4, eff Apr 1, 1980.
Jamestown, par 5, add, L 1979, ch 302, § 4, eff Apr 1, 1980.
Jamestown, sub 6, add, L 1982, ch 488, § 2, eff July 13, 1982.
Kingston, second undesignated par, amd, L 1980, ch 162, § 1, eff May 27, 1980.
Lockport, par 5, add, L 1990, ch 574, § 3, eff Sept 1, 1990.
Mechanicville, add, L 1980, ch 321, § 3, eff April 1, 1981.
Middletown, par 1, formerly entire par, so designated and amd, L 1991, ch 300, § 1, eff July 15, 1991.
The 1991 act deleted at fig 1 "of transportation" Middletown, par 2, add, L 1991, ch 300, § 1, eff July 15, 1991.
Poughkeepsie, par 1, amd, L 1994, ch 698, § 3, eff Nov 15, 1994.
Poughkeepsie, par 2, amd, L 1994, ch 698, § 3, eff Nov 15, 1994.
Poughkeepsie, par 2, first undesignated par, amd, L 1994, ch 698, § 3, eff Nov 15, 1994.
Rome, fifth undesignated par, add, L 1998, ch 614, § 2, eff Oct 6, 1998.
Rye, third undesignated par, add, L 1982, ch 378, § 1, eff June 28, 1982.
Former Rye, third undesignated par, repealed, L 1982, ch 378, § 1, eff June 28, 1982.
Schenectady, amd, L 1981, ch 571, § 1, eff Sept 1, 1981.
The 1981 act deleted at fig 1 "the northerly city line on a new bridge over the Mohawk river in the vicinity of the New York Central and Hudson River Railroad bridge", at fig 2 "3.2", at fig 3 "a point on Erie boulevard in the vicinity of Jefferson street thence southwesterly crossing State street and continuing to the traffic circle on the Mohawk thruway spur connection", at fig 4 "0.9 mile" and at fig 5 "on the Mohawk thruway spur connection". Syracuse, first

unnumbered par, amd, L 1983, ch 304, § 2, eff June 21, 1983.

The 1983 act deleted at fig 1 "westerly city line at a point on new location in the vicinity of Grand avenue and Velasko road, thence easterly along Grand avenue to South Geddes street, thence northerly along South Geddes street to Shonnard and Seymour streets, thence easterly along Shonnard and Seymour streets to South West street" and at fig 2 "7.1". Utica, par 2, amd, L 1984, ch 144, § 2, eff May 25, 1984.

The 1984 act delected at fig 1 "along Riverside drive", at fig 2 "southeasterly and", at fig 3 "south of and", at fig 4 "Riverside drive", at fig 5 "along Auert avenue to Herkimer road", at fig 6 "the intersection of Auert avenue and", at fig 7 "along Herkimer road to", at fig 8 "Coventry avenue", at fig 9 "along Riverside drive and southwesterly", at fig 10 "the last mentioned route at a point west of North Genesee street, including a connection to Riverside drive" and at fig 11 "3.9". Utica, par 5, amd, L 1984, ch 144, § 2, eff May 25, 1984.

The 1984 act deleted at fig 1 "to Coventry avenue", at fig 2 ", thence along Coventry avenue to the northerly Utica city line, state highway five thousand six hundred four", at fig 3 "a connection to the last mentioned route in the vicinity of Servis place,", at fig 4 "Coventry avenue and", at fig 5 ", with all necessary connections to Trenton avenue" and at fig 6 "2.5". Utica, par 7, add, L 1984, ch 144, § 3, eff May 25, 1984.

Utica, par 8, add, L 1984, ch 144, § 3, eff May 25, 1984.

Watertown, par 1, so numbered and, amd, L 1979, ch 293, § 2, eff Aug 1, 1979.

The 1979 act deleted at fig 1 "the northerly city line at State Highway No. 1845" and at fig 2 "3.3". Watertown, par 2, so numbered and, amd, L 1979, ch 293, § 2, eff Aug 1, 1979.

The 1979 act deleted at fig 1 "the above described arterial route at". Watertown, pars 3 and 4, so numbered and reenacted L 1979, ch 293, § 2, eff Aug 1, 1979.

Watertown, par 5, add, L 1979, ch 293, § 2, eff Aug 1, 1979.

Watertown, par 6, add, L 1979, ch 293, § 2, eff Aug 1, 1979.

Yonkers, amd, L 1977, ch 359, eff June 28, 1977.

The 1977 act deleted at figs 1 and 2 "Cross-Westchester"

NOTES:

Editor's Notes

Laws 1967, ch 299, § 4, provides as follows:

§ 4. In order to effect the provisions of this act, the superintendent of public works is authorized and directed to enter an official order assuming jurisdiction for state highway purposes over all the real property, in which title is vested in the state, heretofore acquired and used or designated for use in connection with the Bear mountain state parkway which comprises a portion of the Taconic state parkway system. Certified copies of such official order shall be filed with the Westchester county clerk, the clerk of the board of supervisors of such county, the state comptroller, and the chairman of the East Hudson parkway authority and such property shall for all purposes be deemed to have been acquired for state highway purposes pursuant to section thirty of the highway law.

Laws 1972, ch 141, §§ 1 and 3, provide as follows:

Section 1. The new bridge erected on the state arterial highway over the Mohawk River in the city of Amsterdam is hereby designated and shall be known as "The New Amsterdam Bridge".

§ 3. The commissioner of transportation shall cause to be erected and thereafter maintained at such point on such bridge as he may deem fitting a suitable bronze tablet containing the name of the bridge as aforesaid and other historical or other data as he may deem appropriate and the cost of securing, erecting and maintaining such tablet shall be deemed a part of the cost of constructing and maintaining such bridge, and shall be paid out of any funds available therefor.

Laws 1976, ch 947, § 2, provides as follows:

§ 2. It is the intention of the legislature that the project known as the West Side arterial in the city of Buffalo be hereby discontinued from inclusion in the state arterial system. Provided, however, no provision hereof shall be deemed or construed as prohibiting that the existing streets be improved, pursuant to an agreement between the governing body of the city of Buffalo and the commissioner of transportation, with the use of state, city and federal funds in the same manner as if it were a state arterial highway solely for funding purposes.

[1960 (ch 648)] This act substitutes new descriptions of the state arterial routes in the city of Troy for the descriptions

heretofore contained in that part of section 349-e, relating to the city of Troy.

[1964 (ch 698)] The paragraph relating to arterial route along Midler Avenue and Tyson Place, repealed by section two of this act, described the route of such arterial.

[1975] The eleventh unnumbered paragraph of that part of § 349-e of the highway law which related to the city of Rochester, repealed by L 1975, ch 634, described the arterial route on the southerly Rochester city line, in the vicinity of Clinton Avenue.

City of Elmira, sub 3, is printed here pursuant to the determination of the Legislative Bill Drafting Commission that the language contained in L 1971, chs 308 and 1110, is reconcilable.

New York References:

This section referred to in § 349-c

This section referred to in § 349-c

FOOTNOTES:

[n1] So in original.

208 of 400 DOCUMENTS

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*** THROUGH RELEASED CH. 1 THROUGH 14, 16 THROUGH 49, 52, AND 56 THROUGH 68 ***

HIGHWAY LAW
ARTICLE XII-C. NEW YORK STATE SCENIC BYWAYS PROGRAM

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NY CLS High Article XII-C Note (2009)

High Article XII-C Note

HISTORY: Add, L 1992, ch 556, § 1, eff July 24, 1992.

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HIGHWAY LAW
ARTICLE XII-C. NEW YORK STATE SCENIC BYWAYS PROGRAM

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NY CLS High § 349-aa (2009)

§ 349-aa. Statement of intent

The legislature hereby finds that certain portions of the state highway system are notable for their scenic, historic, recreational, cultural and archeological value and worthy of designation as scenic byways to provide special consideration of their unique features and special role in the highway system.

The legislature further finds that the public interest would be served by the formation of a coordinated scenic byways program to enhance recreation, preserve and protect scenic, historic, recreational, cultural and archeological resources, encourage economic development through tourism, improve the transportation system, and educate residents and visitors of the history and culture of this state.

The legislature further finds that several programs administered by various agencies of state government exist to assess scenic quality of highway corridors, to maintain state highways and rights-of-way, and to plan for recreation to promote economic development through tourism.

The legislature further finds that several not-for-profit organizations exist to encourage public participation in the enhancement of designated highway routes, and to coordinate and promote tourism along such designated highway routes.

It is therefore the intent of the legislature to establish a scenic byways program in the department of transportation to guide and coordinate the activities of state agencies, local governments and not-for-profit organizations in order to create a comprehensive program that will better serve the public interest.

HISTORY: Add, L 1992, ch 556, § 1, eff July 24, 1992.

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HIGHWAY LAW
ARTICLE XII-C. NEW YORK STATE SCENIC BYWAYS PROGRAM

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NY CLS High § 349-bb (2009)

§ 349-bb. New York state scenic byways program

1. The commissioner shall establish within the department a program to be known as the New York state scenic byways program (hereinafter referred to as scenic byways program or program)to encourage and coordinate state actions and the activities of others which relate to the development, protection, promotion and management of scenic byways. For the purposes of this article, a "scenic byway" is a transportation route and adjacent area of particular scenic, historic, recreational, cultural or archeological characteristics which is managed to protect such characteristics and to encourage economic development through tourism and recreation.

2. [n1]To carry out the purposes of the scenic byways program, the commissioner is authorized:

(a) to plan, design, and develop the New York state scenic byways system;

(b) to make safety improvements to a highway designated as a scenic byway under this article to the extent such improvements are necessary to accommodate increased traffic, and changes in the types of vehicles using the highway due to such designation;

(c) to construct along the highway facilities for the use of pedestrians and bicyclists, rest areas, turnouts, highway shoulder improvements, passing lanes, overlooks, and interpretive facilities;

(d) to improve the highway to enhance access to an area for the purpose of recreation, including water-related recreation;

(e) to protect historical and cultural resources in areas adjacent to the highway; and

(f) to develop and provide tourist information to the public, including interpretive information about the scenic byway.

2. [n2]The commissioner is hereby authorized to apply for funding from any appropriate sources to further the purposes of the scenic byways program.

3. The commissioner is hereby authorized to enter into contracts with qualified, responsible not-for-profit organizations involved in scenic byways activities and the upstate New York tourism council for services relating to the development of the New York state scenic byways program or services relating to the operation, development or promotion of a specific scenic byway.

4. The commissioner is authorized to promulgate such regulations as may be necessary or desirable to implement the New York state scenic byways program.

HISTORY: Add, L 1992, ch 556, § 1, eff July 24, 1992.
Sub 3, amd, L 2001, ch 383, § 5 (Part Z), eff Oct 29, 2001.

FOOTNOTES:

[n1] There are two subsections two.

[n2] There are two subsections two.

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HIGHWAY LAW
ARTICLE XII-C. NEW YORK STATE SCENIC BYWAYS PROGRAM

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NY CLS High § 349-cc (2009)

§ 349-cc. New York state scenic byways advisory board

1. An advisory board of state agencies with responsibilities related to the designation and management of scenic byways and not-for-profit organizations related to the promotion and development of scenic byways is hereby formed to advise and assist the department in the operation of its scenic byways program. The advisory board shall consist of one member appointed by the temporary president of the senate, one member appointed by the speaker of the assembly, the secretary of state, and the commissioners of the department of agriculture and markets, the department of economic development, and the department of environmental conservation, and the office of parks, recreation and historic preservation or their duly designated representatives. The commissioner shall appoint as members of the advisory board the chief executive officer, or his or her duly authorized representative, of not-for-profit organizations related to the promotion and development of a scenic byway designated pursuant to this article, three representatives of organizations concerned with the preservation of scenic qualities, the motoring public and tourism development and members or representatives of the upstate New York tourism council and of the downstate New York tourism council. The commissioner, or his or her duly designated representative, shall serve as chair. Members of the advisory board shall receive no pay, but shall be eligible to receive actual and necessary expenses from their respective agencies, or for the expenses of representatives of organizations related to the promotion and development of a scenic byway, the preservation of scenic qualities, the motoring public and tourism development, from the department. The advisory board shall consult with the Adirondack Park Agency regarding scenic byways within the Adirondack Park. The advisory board shall also consult with the Hudson River Valley Communities Council regarding scenic byways within the Hudson River Valley Greenway as defined in article forty-four of the environmental conservation law. The advisory board shall consult with the Niagara River Greenway Commission regarding scenic byways within the Niagara River Greenway as defined in article thirty-nine of the parks, recreation and historic preservation law. The advisory board shall consult with the upstate New York tourism council regarding scenic byways in the upstate New York region, and with the downstate New York tourism council regarding scenic byways in the downstate New York region.

2. The New York state scenic byways advisory board shall have the following duties:

(a) To develop and make recommendations to the commissioner on the organization and operation of a scenic byways program. Such recommendations shall include recommendations on the following:

(i) consideration of the scenic beauty and historic significance of highways proposed for designation as scenic byways and the areas surrounding such highways;

(ii) operation and management standards for highways designated as scenic byways, including strategies for maintaining or improving the qualities for which a highway is designated as a scenic byway, for protecting and enhancing the landscape and view corridors surrounding such a highway, and for minimizing traffic congestion on such a highway;

(iii) standards for scenic byway related signs, including those which identify highways as scenic byways;

(iv) standards for maintaining highway safety on the scenic byway system;

(v) measures to safely accommodate the largest variety of scenic byway users including, but not limited to, persons travelling by automobile, recreation vehicle, motor coach, bicycle, snowmobile, watercraft, horse and by foot;

(vi) design review procedures for location of highway facilities, landscaping, and travellers facilities on the scenic byway system;

(vii) procedures for reviewing and terminating the designation of a highway designated as a scenic byway;

(viii) such other matters as may be necessary or desirable to further the purposes of this program.

(b) To evaluate and recommend to the commissioner and the legislature amendments of the statutes and regulations relevant to the furtherance of a cohesive system of scenic byways.

3. The advisory board shall report to the governor and the legislature within one year of the effective date of this article, and by January first each year thereafter on the implementation of this program. In the first report required by this subdivision, the advisory board shall provide a scenic byways program implementation plan identifying essential components for the New York state scenic byways system, and recommending actions by the legislature that may be necessary to implement a cohesive and coordinated scenic byways program that will serve the goals of preserving and protecting scenic, historic, recreational, cultural and archeological resources, enhancing recreation, economic development through tourism and education in the history and culture of New York state.

HISTORY: Add, L 1992, ch 556, § 1, eff July 24, 1992.

Sub 1, formerly first undesignated sub, so designated sub 1 and amd, L 1993, ch 9, § 1, eff March 22, 1993; amd, L 2001, ch 383, § 6 (Part Z), eff Oct 29, 2001; amd, L 2004, ch 460, § 2, eff March 20, 2005, L 2005, ch 399, § 1, eff March 20, 2005.

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*** THIS SECTION IS CURRENT AS OF JUNE 25, 2009 ***
*** THROUGH RELEASED CH. 1 THROUGH 14, 16 THROUGH 49, 52, AND 56 THROUGH 68 ***

HIGHWAY LAW
ARTICLE XII-C. NEW YORK STATE SCENIC BYWAYS PROGRAM

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NY CLS High § 349-dd (2009)

§ 349-dd. Components

1. The New York state scenic byways system is comprised of the following components:

(a) Adirondack Trail as designated by section three hundred forty-two-b of this chapter;

(b) Roosevelt-Marcy Memorial Highway as designated by section three hundred forty-two-e of this chapter;

(c) Seaway Trail as designated by section three hundred forty-two-f of this chapter;

(d) Olympic Trail as designated by section three hundred forty-two-i of this chapter;

(e) Revolutionary Trail as designated by section three hundred forty-two-j of this chapter;

(f) Black River Trail as designated by section three hundred forty-two-k of this chapter;

(g) Military Trail as designated by section three hundred forty-two-l of this chapter;

(h) Central Adirondack Trail as designated by section three hundred forty-two-m of this chapter;

(i) Dude Ranch Trail as designated by section three hundred forty-two-n of this chapter;

(j) Lakes to Locks Passage [fig 1] as designated by section three hundred [fig 2] forty-two-tt of this chapter;

(j-1) Route 90 Scenic Corridor which shall consist of all that portion of state route 90 beginning at Montezuma in Cayuga county, traveling south along Cayuga lake turning east in King Ferry to Homer in Cortland county.

(j-2) [Repealed]

(j-3) Upper Delaware byway which shall consist of all that portion of the highway system beginning at the intersection of United States route six and county route fifteen at the southeastern city boundary of the city of Port Jervis, Orange county along United States route six to the intersection of United States routes six/two hundred nine and

state routes ninety-seven/forty-two and along state routes ninety-seven/forty-two to the end of the ninety-seven/forty-two overlap and continuing along state route ninety-seven westerly and then northerly in Sullivan county to the Delaware/Fremont town line; and all that portion of the highway system along state route ninety-seven beginning at the southeastern boundary of the village of Hancock in Delaware county continuing north and then west to its end at state route seventeen;

(j-4) Cayuga Lake byway which shall consist of all that portion of the state highway system beginning at the intersection of state route eighty-nine and the overlap of state route five and United States route twenty in the town of Tyre, Seneca county, and continuing southerly on state route eighty-nine to the intersection of state route eighty-nine and state route ninety-six in the city of Ithaca, Tompkins county, then continuing along the overlap of state routes ninety-six and eighty-nine to the intersections of state routes thirty-four and thirteen, continuing along the overlap of state routes thirty-four and thirteen in the city of Ithaca northerly to the vicinity of the interchange of state routes thirteen and thirty-four and state route thirty-four in the town of Ithaca, then northerly on state route thirty-four to its intersection with state route thirty-four-B in the town of Lansing, then north northwesterly on state route thirty-four-B to its intersection with state route ninety in the town of Genoa, Cayuga county, northerly on state route ninety to its intersection with the overlap of state route five and United States route twenty in the town of Montezuma, Cayuga county, and then west on overlapping state route five and United States route twenty to the intersection of state route eighty-nine in the town of Tyre, Seneca county;

(j-5) Southern Adirondack Trail as designated by section three hundred forty-three-gg of this chapter;

(j-6) North Fork Trail byway which shall consist of all that portion of the state highway system known as state route twenty-five in the town of Southold, Suffolk county, beginning at the boundary between the town of Riverhead and the town of Southold, continuing northeasterly to Orient Point and to the end of state route twenty-five, and all that portion of the local highway system known as Sound avenue beginning at the boundary between the town of Riverhead and the town of Southold continuing easterly to the overlap of Sound avenue and county route forty-eight and continuing along county route forty-eight generally northeasterly to the intersection of county route forty-eight and state route twenty-five north of the village of Greenport, Suffolk county;

(j-7) Mohawk Towpath byway which shall consist of all that portion of the highway system beginning at the intersection of [fig 1] state route thirty-two on Broad street and Eighth street in the village of Waterford, Saratoga county, continuing southerly along state route thirty-two to the intersection of New Courtland street in the city of Cohoes, Albany county, continuing northwesterly along New Courtland street and then along North Mohawk street and then along Cohoes Crescent road to the intersection of United States route nine in the town of Colonie, and then northerly along United States route nine to the intersection of Crescent-Vischer Ferry road, continuing westerly along Crescent-Vischer Ferry road to the intersection of Canal road in the town of Halfmoon, southwesterly along Canal road to the intersection of Clamsteam road, northerly along Clamsteam road to the intersection of Riverview road, westerly along Riverview road to the intersection of state route one hundred forty-six in the hamlet of Rexford, town of Clifton Park, and continuing southerly along state route one hundred forty-six to the intersection of Aqueduct road in the town of Niskayuna, Schenectady county, and continuing southwesterly along Aqueduct road to and then onto Maxon road in the city of Schenectady and then southwesterly along Maxon road to the intersection of Erie boulevard, continuing southerly to the [fig 2] intersection of state route five (State street) in the city of Schenectady and all that portion of the highway system beginning at the intersection of United States route nine and [fig 3] Crescent-Vischer Ferry road proceeding northerly along United States route nine to the intersection of United States route nine and county route ninety-nine (Church Hill road) in the hamlet of Crescent, town of Halfmoon, Saratoga county, and continuing along county route ninety-nine to the intersection of county route ninety-four and easterly along county route ninety-four to the intersection of county route ninety-six, continuing southeasterly along county route ninety-six to the intersection of county route ninety-seven, town of Waterford, continuing south and southeasterly along county route ninety-seven [fig 4] and then along Washington avenue, village of Waterford, to the intersection of Eighth street, and continuing southerly along Eighth street to the intersection of state route thirty-two (Broad street);

(j-8) Route twenty byway which shall consist of all that portion of the highway system beginning at the intersection of United States route twenty and interstate route eighty-eight in the town of Duanesburg, Schenectady county, continuing westerly along United States route twenty and terminating at the intersection of United States route twenty and interstate route eighty-one in the town of Lafayette, Onondaga county, and all that portion of county route fifty-four from its intersection with United States route twenty in the town of Cherry Valley and continuing westerly along county route fifty-four to its intersection with United States route twenty in the vicinity of East Springfield.

(j-9) Shawangunk mountains scenic byway which shall consist of all that portion of the highway system beginning at the intersection of state route two hundred ninety-nine and exit eighteen of the New York state thruway in the town of New Paltz, Ulster county, continuing westerly along state route two hundred ninety-nine to its junction with the overlap of United States route forty-four and state route fifty-five, in the town of Gardiner, Ulster county, continuing westerly along the United States route forty-four and state route fifty-five overlap to the intersection of United States route two hundred nine and then southerly along the overlap United States route two hundred nine and state route fifty-five to the intersection with state route fifty-two in the village of Ellenville, Ulster county, and then generally southeasterly along state route fifty-two to the intersection with state route three hundred two in Pine Bush and continuing southerly along state route three hundred two to the junction of state route seventeen-K, and continuing easterly along state route fifty-two from the intersection of state route three hundred two and route fifty-two in Pine Bush to the intersection of the overlap Orange county route fourteen and Ulster county route nine, then northerly along Orange county route fourteen and Ulster county route nine to the intersection with Ulster county route eighteen, then generally easterly on county route eighteen into the hamlet of Wallkill, where it meets with state route two hundred eight and continuing in a generally northerly direction along state route two hundred eight to the intersection of state route two hundred eight and state route two hundred ninety-nine in the village of New Paltz, and continuing from the junction of state route two hundred ninety-nine and Ulster county route seven continuing northerly along Ulster county route seven to its junction with state route two hundred thirteen then generally westerly along state route two hundred thirteen to the intersection of Ulster county route one then generally southwesterly along Ulster county route one to the junction with United States route two hundred nine and along United States route two hundred nine to the intersection of two hundred nine and United States route forty-four and state route fifty-five in Kerhonkson.

(j-10) The Western New York Southtowns scenic byway which shall consist of all that portion of the highway system beginning at the intersection of state route four hundred and United States route twenty-A (Quaker road) in the village of East Aurora, town of Aurora, Erie county, westerly along United States route twenty-A to the Big Tree road and United States route twenty-A interchange with United States route two hundred nineteen in the town of Orchard Park, Erie county, then continuing southerly along United States route two hundred nineteen, through the towns of Boston and Concord, Erie county, to the Springville and route thirty-nine interchange, then easterly along state route thirty-nine, through the village of Springville to the intersection with state route two hundred forty, then northerly along state route two hundred forty, through the towns of Concord and Colden, Erie county, to the intersection with county road forty-seven (Mill road) in the town of Aurora, then northeasterly along county road forty-seven, reconnecting with United States route twenty-A in the town of Aurora, and an alternate route beginning at the state road one hundred seventy-nine (Mile Strip road) intersection with state road two hundred seventy-seven (Chestnut Ridge road, Boston Ridge road) in the town of Orchard Park, southerly along state road two hundred seventy-seven to the intersection with state road three hundred ninety-one and Boston State road, continuing southerly along the Boston State road through the town of Boston, continuing southerly along the Springville Boston road through the town of Concord, then continuing southerly on Buffalo street in the village of Springville where it reconnects with state route thirty-nine.

(k) highways designated as scenic roads pursuant to article forty-nine of the environmental conservation law;

(l) parkways as listed in the regulations of the commissioner of the office of parks, recreation and historic preservation pursuant to section 13.03 of the parks, recreation and historic preservation law and similar highways operated and maintained by other state agencies.

(m), (n) [Redesignated]

2. As part of its reports to the governor and the legislature, the scenic byways advisory board shall recommend amendments to this article adding, deleting or modifying components of the New York state scenic byways system.

HISTORY: Add, L 1992, ch 556, § 1, eff July 24, 1992.
Sub 1, par (j), amd, L 2003, ch 224, § 2, eff July 29, 2003.
The 2003 act deleted at fig 1 "Champlain Trial" and at fig 2 "forty-two-t" Sub 1, par (j-1), add, L 1999, ch 392, § 1, eff July 27, 1999.
Sub 1, par (j-2), add, L 2001, ch 494, § 1, eff Nov 21, 2001; repealed, L 2003, ch 224, § 3, eff July 29, 2003.
Sub 1, par (j-3), add, L 2002, ch 296, § 1, eff Aug 6, 2002.
Another sub 1, par (j-3), redesignated sub 1, par (j-4), L 2003, ch 138, § 2, eff July 22, 2003.
Sub 1, par (j-4), formerly another sub 1, par (j-3), add, L 2002, ch 447, § 1, eff Aug 20, 2002; so designated sub 1, par (j-4), L 2003, ch 138, § 2, eff July 22, 2003.
Sub 1, par (j-5), add, L 2002, ch 456, § 2, eff Aug 20, 2002.
Sub 1, par (j-6), add, L 2002, ch 443, § 1, eff Aug 20, 2002.
Sub 1, par (j-7), add, L 2003, ch 138, § 1, eff July 22, 2003; amd, L 2007, ch 166, § 1, eff July 3, 2007.
The 2007 act deleted at fig 1 "United States route four and", at fig 2 "intersection of Union street and westerly along Union street to the intersection of Church street and southerly along Church street to the", at fig 3 "Cresent-Vischer" and at fig 4 "to the intersection of Washington street, village of Waterford, and continuing southeasterly along Washington street to the intersection of Park place and then easterly along Park place to the intersection of Sixth street, continuing southerly along Sixth street" Sub 1, par (j-8), add, L 2005, ch 492, § 1, eff Aug 10, 2005.
Sub 1, par (j-9), add, L 2006, ch 666, § 1, eff Sept 13, 2006.
Sub 1, par (j-10), add, L 2008, ch 248, § 1, eff July 7, 2008.
Sub 1, par (k), formerly sub 1, par (m), so designated par (k), L 1993, ch 9, § 2, eff March 22, 1993.
Former sub 1, par (k), deleted, L 1993, ch 9, § 2, eff March 22, 1993.
Sub 1, par (l), formerly sub 1, par (n), so designated par (l), L 1993, ch 9, § 2, eff March 22, 1993.
Former sub 1, par (l), deleted, L 1993, ch 9, § 2, eff March 22, 1993.
Sub 1, pars (m) and (n), redesignated sub 1, pars (k) and (l), respectively, L 1993, ch 9, § 2, eff March 22, 1993.

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*** THIS SECTION IS CURRENT AS OF JUNE 25, 2009 ***
*** THROUGH RELEASED CH. 1 THROUGH 14, 16 THROUGH 49, 52, AND 56 THROUGH 68 ***

PARKS, RECREATION AND HISTORIC PRESERVATION LAW
TITLE G. HERITAGE AREAS
ARTICLE 39. NIAGARA RIVER GREENWAY COMMISSION

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NY CLS PRHPL § 39.01 (2009)

§ 39.01. Legislative findings and intent

The Niagara River corridor is of unique ecological, cultural and economic importance to western New York connecting Lake Erie and Lake Ontario communities and ecologies. This corridor has played an important role in the history of the Niagara Frontier and it can and should continue to define the western New York experience into the twenty-first century. Niagara Falls is a National Natural Landmark under state stewardship for more than a century that draws more than fourteen million visitors from throughout the world to the region each year. The cities of Niagara Falls and Buffalo are at the heart of the river corridor where much of their waterfront has in the past been dedicated to industrial uses. During the last few decades those uses have begun to wane and there is now an opportunity to redefine the waterfront in a way that creates a balance of economic interests with a welcoming waterfront environment. For more than a century there have been those who have expressed a vision for the Niagara river corridor of a necklace of open space and conservation areas spread along the river. With many areas no longer being used for heavy industry it is now time to complete that vision. Many areas have established parks along the corridor including eleven state parks and fourteen local parks. New York state's only National Scenic Byway, the Seaway Trail, runs through the entire corridor. It is the intent of the legislature to establish the Niagara river greenway commission as a cooperative regional organization established to work with participating state agencies, municipalities, organizations and residents in order to implement or cause to be implemented a linear system of parks and conservation areas that will, consistent with the purpose of the commission as set forth in this article, redefine the Niagara riverfront by increasing landside access to the river; creating complementary access to the greenway from the river; augmenting economic revitalization efforts, and celebrating the region's industrial heritage.

HISTORY: Add, L 2004, ch 460, § 1, eff March 20, 2005.

GENERAL STATUTES OF NORTH CAROLINA
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*** Statutes current through the 2008 Regular Session ***
*** Annotations are current through January 12, 2009 ***

CHAPTER 18B. REGULATION OF ALCOHOLIC BEVERAGES
ARTICLE 1. GENERAL PROVISIONS

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N.C. Gen. Stat. § 18B-101 (2009)

§ 18B-101. Definitions

As used in this Chapter, unless the context requires otherwise:

(1) "ABC law" or "ABC laws" means any statute or statutes in this Chapter or in Article 2C of Chapter 105, and the rules issued by the Commission under the authority of this Chapter.

(2) "ABC permit" or "permits" means any written or printed authorization issued by the Commission pursuant to the provisions of this Chapter, other than a purchase-transportation permit. Unless the context clearly requires otherwise, as in the provisions concerning applications for permits, "ABC permit" or "permit" means a presently valid permit.

(3) "ABC system" means a local board and all ABC stores operated by it, its law-enforcement branch, and all its employees.

(4) "Alcoholic beverage" means any beverage containing at least one-half of one percent (0.5%) alcohol by volume, including malt beverages, unfortified wine, fortified wine, spirituous liquor, and mixed beverages.

(5) "ALE Division" means the Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety.

(5a) "Bailment surcharge" means the charge imposed on each case of liquor shipped from a Commission warehouse as provided in G.S. 18B-208. This bailment surcharge is in addition to the bailment charge imposed by G.S. 18B-804(b)(2).

(6) "Commission" means the North Carolina Alcoholic Beverage Control Commission established under G.S. 18B-200.

(7) "Fortified wine" means any wine, of more than sixteen percent (16%) and no more than twenty-four percent (24%) alcohol by volume, made by fermentation from grapes, fruits, berries, rice, or honey; or by the addition of pure cane, beet, or dextrose sugar; or by the addition of pure brandy from the same type of grape, fruit, berry, rice, or honey

that is contained in the base wine and produced in accordance with the regulations of the United States.

(7a) "Historic ABC establishment" means a restaurant or hotel that meets all of the following requirements:

a. Is on the national register of historic places or located within a State historic district.

b. Is a property designed to attract local, State, national, and international tourists located on a State Route (SR) and with a property line located within 1.5 miles of the intersection of a designated North Carolina scenic byway as defined in G.S. 136-18(31).

c. Is located within 15 miles of a national scenic highway.

d. Is located in a county in which the on-premises sale of malt beverages or unfortified wine is authorized in two or more cities in the county.

(7b) "Keg" means a portable container designed to hold and dispense 7.75 gallons or more of malt beverage.

(8) "Local board" means a city or county ABC board, or local board created pursuant to the provisions of G.S. 18B-703. A local board is an independent local political subdivision of the State. Nothing in this Chapter shall be construed as constituting a local board the agency of a city or county or of the Commission.

(8a) "Lottery law" or "lottery laws" means any provision of Chapter 18C of the General Statutes and the rules issued by the Lottery Commission under the authority of Chapter 18C of the General Statutes.

(9) "Malt beverage" means beer, lager, malt liquor, ale, porter, and any other brewed or fermented beverage except unfortified or fortified wine as defined by this Chapter, containing at least one-half of one percent (0.5%), and not more than fifteen percent (15%), alcohol by volume. Any malt beverage containing more than six percent (6%) alcohol by volume shall bear a label clearly indicating the alcohol content of the malt beverage.

(10) "Mixed beverage" means either of the following:

a. A drink composed in whole or in part of spirituous liquor and served in a quantity less than the quantity contained in a closed package.

b. A premixed cocktail served from a closed package containing only one serving.

(11) "Nontaxpaid alcoholic beverage" means any alcoholic beverage upon which the taxes imposed by the United States, this State, or any other territorial jurisdiction in which the alcoholic beverage was purchased have not been paid.

(12) "Person" means an individual, firm, partnership, association, corporation, limited liability company, other organization or group, or other combination of individuals acting as a unit.

(12a) "Premises" means all areas, whether inside or outside the licensed premises, where the permittee has control of the property through a lease, deed, or other legal process.

(13) "Sale" means any transfer, trade, exchange, or barter, in any manner or by any means, for consideration.

(13a) *(See note)* "Special ABC area" means an area that meets the following requirements:

Either:

a. The area has fewer than 500 permanent residents, and the area:

1. Is located in a county that borders another state, that has at least one city that has approved the operation of

an ABC store, and in which the sale of unfortified wine and malt beverages is permitted countywide or in one city; and

2. Contains more than 500 contiguous acres made up of privately-owned land and land owned by an association or a club that is exempt from income tax on its membership income under Article 4 of Chapter 105 of the General Statutes, has more than 200 members, was created for municipal and recreational purposes, and, for three or more years, has levied assessments or dues and provided municipal services; or

b. The area has more than 500 permanent residents, and the area:

1. Is located in a county:

I. Where ABC stores have heretofore been established but in which the sale of mixed beverages has not been approved;

II. That borders on a county that has approved the sale of alcoholic beverages countywide and contains an international airport; and

III. Borders on a county where ABC stores have heretofore been established by petition pursuant to law; and

2. Contains more than 500 contiguous acres made up of privately-owned land and land owned by an association or a club that is exempt from income tax on its membership income under Article 4 of Chapter 105 of the General Statutes, has more than 200 members, was created for municipal and recreational purposes, and, for three or more years, has levied assessments or dues and provided municipal services; or

c. The area is an area of a county where the following requirements are met:

1. The county borders on the Atlantic Ocean and has a seaport supporting oceangoing vessels;

2. ABC stores have been established in the county and the sale of mixed beverages is allowed in six or more municipalities;

3. The population of the county, according to the 2000 census, exceeds 52,000;

4. The tourism economy of the county is made up of more than 3,000 tourism-related jobs; and

5. Tourism expenditures within the county exceed two hundred million dollars ($ 200,000,000) annually.

(14) "Spirituous liquor" or "liquor" means distilled spirits or ethyl alcohol, including spirits of wine, whiskey, rum, brandy, gin and all other distilled spirits and mixtures of cordials, liqueur, and premixed cocktails, in closed containers for beverage use regardless of their dilution.

(14a) "Tourism ABC establishment" means a restaurant or hotel that meets both of the following requirements:

a. Is located on property, a property line of which is located within 1.5 miles of the end of an entrance or exit ramp of a junction on a national scenic parkway designed to attract local, State, national, and international tourists between the State line and Milepost 460.

b. Is located in a county in which the on-premises or off-premises sale of malt beverages or unfortified wine is authorized in at least one city.

(14b) "Tourism resort" means:

a. Any restaurant and lodging facility, whether public or private, owned and operated as a resort property offering food, beverage, lodging, and meeting facilities to travelers and tourists and featuring one or more golf courses

and two or more tennis courts along with other recreational and sporting activities, or

b. Any restaurant, whether public or private, owned and operated as a resort property offering food and beverage to travelers and tourists and featuring an equestrian center and two or more tennis courts along with other recreational and sporting activities.

Receipts from sporting and recreational activities of a tourism resort shall be at least twenty-five percent (25%) of total gross receipts. Receipts from the sale of alcoholic beverages shall not exceed fifty percent (50%) of total gross receipts. A tourism resort open to the public shall advertise at least quarterly in a regional or national travel or sports industry publication, or in the State travel guide published by the North Carolina Department of Commerce.

(15) "Unfortified wine" means any wine of sixteen percent (16%) or less alcohol by volume made by fermentation from grapes, fruits, berries, rice, or honey; or by the addition of pure cane, beet, or dextrose sugar; or by the addition of pure brandy from the same type of grape, fruit, berry, rice, or honey that is contained in the base wine and produced in accordance with the regulations of the United States.

HISTORY: 1981, c. 412, s. 2; 1981 (Reg. Sess., 1982), c. 1262, s. 2; c. 1285, s. 1; 1983, c. 435, s. 41; 1985, c. 69; 1987, c. 443, s. 1; 1989, c. 629, s. 1; 1989 (Reg. Sess., 1990), c. 1024, s. 5; 1991 (Reg. Sess., 1992), c. 920, ss. 1, 10; 1993, c. 415, ss. 1, 2; 1995, c. 466, s. 1; 1997-443, s. 16.27(b); 1999-461, s. 1; 1999-462, ss. 1, 13; 2001-515, s. 1; 2004-135, s. 1; 2004-203, s. 23; 2005-276, s. 31.1(x); 2005-277, s. 1; 2005-344, s. 10.1(a); 2005-392, s. 1; 2005-435, s. 25(a); 2006-253, s. 2; 2006-264, s. 95.

NOTES: LOCAL MODIFICATION. --Graham and Swain: 2001-515, s. 2; village of Bald Head Island: 1985, c. 156.

EDITOR'S NOTE. --Session Laws 1987, c. 443, which added former subdivision (16), defining "Unincorporated area", which was rewritten in 1989 to define "Special ABC area" and renumbered subdivision (13a), provided in s. 3 that the act would not include Robeson, Cleveland, Rutherford and Polk Counties.

Session Laws 1989, c. 629, which amended former subdivision (16) (now subdivision (13a)), provides in s. 4, as amended by Session Laws 1999-462, s. 11: "This act shall not include Columbus, Caswell, Person, Granville, Vance, Warren, Halifax, Robeson, Cleveland, Rutherford, Polk, Davidson, and Davie Counties."

Session Laws 2006-253, s. 1, provides: "This act shall be known as 'The Motor Vehicle Driver Protection Act of 2006.'"

EFFECT OF AMENDMENTS. --Session Laws 2004-135, s. 1, effective October 1, 2004, rewrote subdivision (7) and subdivision (15).

Session Laws 2004-203, s. 23, effective August 17, 2004, added "or located within a State historic district" in subdivision (7A)a.; and made a minor punctuation change.

Session Laws 2005-344, s. 10.1(a), as added by Session Laws 2005-276, s. 31.1(x), effective August 31, 2005, added subdivision (8a).

Session Laws 2005-277, s. 1, effective August 13, 2005, in subdivision (9), substituted "fifteen percent (15%)" for "six percent (6%)" and added the last sentence.

Session Laws 2005-392, s. 1, effective December 1, 2005, and applicable to offenses committed on or after that date, added subdivision (12a).

Session Laws 2005-435, s. 25(a), effective September 27, 2005, deleted "pure" preceding the first occurrence of "grapes" in subdivision (15).

Session Laws 2006-253, s. 2, effective December 1, 2006, and applicable to offenses committed on or after that date, added subdivision (7b).

Session Laws 2006-264, s. 95, effective August 27, 2006, inserted "except unfortified or fortified wine as defined by this Chapter," in subdivision (9).

LEGAL PERIODICALS. --For article, "A History of Liquor-by-the-Drink Legislation in North Carolina," see 1

Campbell L. Rev. 61 (1979).
For survey of 1978 administrative law, see 57 N.C.L. Rev. 831 (1979).
For comment, "Liability of Commercial Vendors, Employers, and Social Hosts for Torts of the Intoxicated," see 19 Wake Forest L. Rev. 1013 (1983).

CASE NOTES

EDITOR'S NOTE. --Many of the cases below were decided under similar provisions of former Chapters 18 and 18A.

ALCOHOLIC CONTENT. --The State's evidence was sufficient for the jury in a prosecution of defendant for illegal possession of intoxicating liquor for the purpose of sale in violation of former G.S. 18A-7 where it tended to show that defendant had in his constructive possession more than four liters of liquor with an alcoholic content of greater than 21%. State v. Harrell, 50 N.C. App. 531, 274 S.E.2d 353 (1981).

THE GENERAL ASSEMBLY CLEARLY INTENDED TO PREEMPT THE REGULATION OF MALT BEVERAGES in order to prevent local governments from enacting regulatory ordinances. State v. Williams, 283 N.C. 550, 196 S.E.2d 756 (1973).
Allowing local governments to regulate malt beverages contrary to State law would result in an intolerable situation whereby citizens lawfully possessing beer in one county would be violating a criminal law in another. The legislature preempted the field in order to avoid such confusion. State v. Williams, 283 N.C. 550, 196 S.E.2d 756 (1973).

MALT BEVERAGE EVIDENCE LACKING. --State did not provide substantial evidence to show defendant's actual or constructive possession of a malt beverage to prove that defendant had been a person less than 21-years-old in possession of a malt beverage in violation of G.S. 18B-302(b)(1). In particular, the State did not have anyone testify that the alcohol that defendant consumed or which had been in the vehicle that defendant had been driving was a malt beverage, as defined by G.S. 18B-101(9) according to the percentage of alcohol present in a drink. State v. Hensley, -- N.C. App. --, 661 S.E.2d 18 (2008).

A PERMIT GRANTS A PRIVILEGE. It does not convey either a constitutional right or a property right. Hursey v. Town of Gibsonville, 284 N.C. 522, 202 S.E.2d 161 (1974).

IT IS SUBJECT TO CANCELLATION BY THE ISSUING AUTHORITY FOR CAUSE. Hursey v. Town of Gibsonville, 284 N.C. 522, 202 S.E.2d 161 (1974).

THOSE WINES FORMERLY CALLED "SWEET WINES" ARE NOW CALLED "FORTIFIED WINES." Clark v. North Carolina Bd. of Alcoholic Control, 14 N.C. App. 464, 188 S.E.2d 705 (1972).

APPLIED in State v. Daughtry, 61 N.C. App. 320, 300 S.E.2d 719 (1983).

CITED in In re Hardy, 39 N.C. App. 610, 251 S.E.2d 643 (1979); Clark v. Inn West, 89 N.C. App. 275, 365 S.E.2d 682 (1988); State v. Fletcher, 92 N.C. App. 50, 373 S.E.2d 681 (1988).

OPINIONS OF THE ATTORNEY GENERAL

WHAT CONSTITUTES SALE OF BEER. --See opinion of Attorney General to Mr. Lee P. Phillips, Director of Enforcement, State Board of Alcoholic Control, 40 N.C.A.G. 3 (1970).

GENERAL STATUTES OF NORTH CAROLINA
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*** Statutes current through the 2008 Regular Session ***
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CHAPTER 40A. EMINENT DOMAIN
ARTICLE 1. GENERAL

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N.C. Gen. Stat. § 40A-3 (2009)

§ 40A-3. By whom right may be exercised

(a) Private Condemnors. -- For the public use or benefit, the persons or organizations listed below shall have the power of eminent domain and may acquire by purchase or condemnation property for the stated purposes and other works which are authorized by law.

(1) Corporations, bodies politic or persons have the power of eminent domain for the construction of railroads, power generating facilities, substations, switching stations, microwave towers, roads, alleys, access railroads, turnpikes, street railroads, plank roads, tramroads, canals, telegraphs, telephones, electric power lines, electric lights, public water supplies, public sewerage systems, flumes, bridges, and pipelines or mains originating in North Carolina for the transportation of petroleum products, coal, gas, limestone or minerals. Land condemned for any liquid pipelines shall:

a. Not be less than 50 feet nor more than 100 feet in width; and

b. Comply with the provisions of G.S. 62-190(b).

The width of land condemned for any natural gas pipelines shall not be more than 100 feet.

(2) School committees or boards of trustees or of directors of any corporation holding title to real estate upon which any private educational institution is situated, have the power of eminent domain in order to obtain a pure and adequate water supply for such institution.

(3) Franchised motor vehicle carriers or union bus station companies organized by authority of the Utilities Commission, have the power of eminent domain for the purpose of constructing and operating union bus stations: Provided, that this subdivision shall not apply to any city or town having a population of less than 60,000.

(4) Any railroad company has the power of eminent domain for the purposes of: constructing union depots; maintaining, operating, improving or straightening lines or of altering its location; constructing double tracks; constructing and maintaining new yards and terminal facilities or enlarging its yard or terminal facilities; connecting two of its lines already in operation not more than six miles apart; or constructing an industrial siding.

(5) A condemnation in fee simple by a State-owned railroad company for the purposes specified in subdivision (4) of this subsection and as provided under G.S. 124-12(2).

The width of land condemned for any single or double track railroad purpose shall be not less than 80 feet nor more than 100 feet, except where the road may run through a town, where it may be of less width, or where there may be deep cuts or high embankments, where it may be of greater width.

No rights granted or acquired under this subsection shall in any way destroy or abridge the rights of the State to regulate or control any railroad company or to regulate foreign corporations doing business in this State. Whenever it is necessary for any railroad company doing business in this State to cross the street or streets in a town or city in order to carry out the orders of the Utilities Commission, to construct an industrial siding, the power is hereby conferred upon such railroad company to occupy such street or streets of any such town or city within the State. Provided, license so to do be first obtained from the board of aldermen, board of commissioners, or other governing authorities of such town or city.

No such condemnor shall be allowed to have condemned to its use, without the consent of the owner, his burial ground, usual dwelling house and yard, kitchen and garden, unless condemnation of such property is expressly authorized by statute.

The power of eminent domain shall be exercised by private condemnors under the procedures of Article 2 of this Chapter.

(b) Local Public Condemnors -- Standard Provision. -- For the public use or benefit, the governing body of each municipality or county shall possess the power of eminent domain and may acquire by purchase, gift or condemnation any property, either inside or outside its boundaries, for the following purposes.

(1) Opening, widening, extending, or improving roads, streets, alleys, and sidewalks. The authority contained in this subsection is in addition to the authority to acquire rights-of-way for streets, sidewalks and highways under Article 9 of Chapter 136. The provisions of this subdivision (1) shall not apply to counties.

(2) Establishing, extending, enlarging, or improving any of the public enterprises listed in G.S. 160A-311 for cities, or G.S. 153A-274 for counties.

(3) Establishing, enlarging, or improving parks, playgrounds, and other recreational facilities.

(4) Establishing, extending, enlarging, or improving storm sewer and drainage systems and works, or sewer and septic tank lines and systems.

(5) Establishing, enlarging, or improving hospital facilities, cemeteries, or library facilities.

(6) Constructing, enlarging, or improving city halls, fire stations, office buildings, courthouse jails and other buildings for use by any department, board, commission or agency.

(7) Establishing drainage programs and programs to prevent obstructions to the natural flow of streams, creeks and natural water channels or improving drainage facilities. The authority contained in this subdivision is in addition to any authority contained in Chapter 156.

(8) Acquiring designated historic properties, designated as such before October 1, 1989, or acquiring a designated landmark designated as such on or after October 1, 1989, for which an application has been made for a certificate of appropriateness for demolition, in pursuance of the purposes of G.S. 160A-399.3, Chapter 160A, Article 19, Part 3B, effective until October 1, 1989, or G.S. 160A-400.14, whichever is appropriate.

(9) Opening, widening, extending, or improving public wharves.

The board of education of any municipality or county or a combined board may exercise the power of eminent domain under this Chapter for purposes authorized by Chapter 115C of the General Statutes.

The power of eminent domain shall be exercised by local public condemnors under the procedures of Article 3 of this Chapter.

(b1) Local Public Condemnors -- Modified Provision for Certain Localities. -- For the public use or benefit, the governing body of each municipality or county shall possess the power of eminent domain and may acquire by purchase, gift or condemnation any property or interest therein, either inside or outside its boundaries, for the following purposes.

(1) Opening, widening, extending, or improving roads, streets, alleys, and sidewalks. The authority contained in this subsection is in addition to the authority to acquire rights-of-way for streets, sidewalks and highways under Article 9 of Chapter 136. The provisions of this subdivision (1) shall not apply to counties.

(2) Establishing, extending, enlarging, or improving any of the public enterprises listed in G.S. 160A-311 for cities, or G.S. 153A-274 for counties.

(3) Establishing, enlarging, or improving parks, playgrounds, and other recreational facilities.

(4) Establishing, extending, enlarging, or improving storm sewer and drainage systems and works, or sewer and septic tank lines and systems.

(5) Establishing, enlarging, or improving hospital facilities, cemeteries, or library facilities.

(6) Constructing, enlarging, or improving city halls, fire stations, office buildings, courthouse jails and other buildings for use by any department, board, commission or agency.

(7) Establishing drainage programs and programs to prevent obstructions to the natural flow of streams, creeks and natural water channels or improving drainage facilities. The authority contained in this subdivision is in addition to any authority contained in Chapter 156.

(8) Acquiring designated historic properties, designated as such before October 1, 1989, or acquiring a designated landmark designated as such on or after October 1, 1989, for which an application has been made for a certificate of appropriateness for demolition, in pursuance of the purposes of G.S. 160A-399.3, Chapter 160A, Article 19, Part 3, effective until October 1, 1989, or G.S. 160A-400.14, whichever is appropriate.

(9) Opening, widening, extending, or improving public wharves.

(10) Engaging in or participating with other governmental entities in acquiring, constructing, reconstructing, extending, or otherwise building or improving beach erosion control or flood and hurricane protection works, including, but not limited to, the acquisition of any property that may be required as a source for beach renourishment.

(11) Establishing access for the public to public trust beaches and appurtenant parking areas.

The board of education of any municipality or county or a combined board may exercise the power of eminent domain under this Chapter for purposes authorized by Chapter 115C of the General Statutes.

The power of eminent domain shall be exercised by local public condemnors under the procedures of Article 3 of this chapter.

This subsection applies only to Carteret and Dare Counties, the Towns of Atlantic Beach, Carolina Beach, Caswell Beach, Emerald Isle, Holden Beach, Indian Beach, Kill Devil Hills, Kitty Hawk, Kure Beach, Nags Head, North

Topsail Beach, Oak Island, Ocean Isle Beach, Pine Knoll Shores, Sunset Beach, Surf City, Topsail Beach, and Wrightsville Beach, and the Village of Bald Head Island.

(c) Other Public Condemnors. -- For the public use or benefit, the following political entities shall possess the power of eminent domain and may acquire property by purchase, gift, or condemnation for the stated purposes.

(1) A sanitary district board established under the provisions of Part 2 of Article 2 of Chapter 130A for the purposes stated in that Part.

(2) The board of commissioners of a mosquito control district established under the provisions of Part 2 of Article 12 of Chapter 130A for the purposes stated in that Part.

(3) A hospital authority established under the provisions of Part B of Article 2 of Chapter 131E for the purposes stated in that Part, provided, however, that the provisions of G.S. 131E-24(c) shall continue to apply.

(4) A watershed improvement district established under the provisions of Article 2 of Chapter 139 for the purposes stated in that Article, provided, however, that the provisions of G.S. 139-38 shall continue to apply.

(5) A housing authority established under the provisions of Article 1 of Chapter 157 for the purposes of that Article, provided, however, that the provisions of G.S. 157-11 shall continue to apply.

(6) A corporation as defined in G.S. 157-50 for the purposes of Article 3 of Chapter 157, provided, however, the provisions of G.S. 157-50 shall continue to apply.

(7) A commission established under the provisions of Article 22 of Chapter 160A for the purposes of that Article.

(8) An authority created under the provisions of Article 1 of Chapter 162A for the purposes of that Article.

(9) A district established under the provisions of Article 4 of Chapter 162A for the purposes of that Article.

(10) A district established under the provisions of Article 5 of Chapter 162A for purposes of that Article.

(11) The board of trustees of a community college established under the provisions of Article 2 of Chapter 115D for the purposes of that Article.

(12) A district established under the provisions of Article 6 of Chapter 162A for the purposes of that Article.

(13) A regional public transportation authority established under Article 26 of Chapter 160A of the General Statutes for the purposes of that Article.

The power of eminent domain shall be exercised by a public condemnor listed in this subsection under the procedures of Article 3 of this Chapter.

HISTORY: 1852, c. 92, s. 1; R.C., c. 61, s. 9; 1874-5, c. 83; Code, s. 1698; Rev., s. 2575; 1907, cc. 39, 458, 783; 1911, c. 62, ss. 25, 26, 27; 1917, cc. 51, 132; C.S., s. 1706; 1923, c. 205; Ex. Sess. 1924, c. 118; 1937, c. 108, s. 1; 1939, c. 228, s. 4; 1941, c. 254; 1947, c. 806; 1951, c. 1002, ss. 1, 2; 1953, c. 1211; 1957, c. 65, s. 11; c. 1045, s. 1; 1961, c. 247; 1973, c. 507, s. 5; c. 1262, s. 86; 1977, c. 771, s. 4; 1981, c. 919, s. 1; 1983, c. 378, s. 2; 1983 (Reg. Sess., 1984), c. 1084; 1985, c. 689, s. 10; c. 696, s. 2; 1987, c. 2, s. 1; c. 564, s. 13; c. 783, s. 6; 1989, c. 706, s. 3; c. 740, s. 1.1; 2000-146, s. 8; 2001-36, ss. 1, 3; 2001-478, s. 2; 2001-487, s. 58; 2002-172, s. 4.1; 2003-282, ss. 1, 2; 2004-203, s. 32(a), (b); 2006-224, s. 2; 2006-259, s. 47.

NOTES: LOCAL MODIFICATION. --Guilford: 1987, c. 669, s. 3; Iredell: 1985, c. 570, s. 25; Stanly: 1985, c. 433, s. 2; 1989 (Reg. Sess., 1990), c. 839; Wake: 1985, c. 640, s. 1; 1993, c. 137, s. 2; city of Asheville: 1985, c. 556, s. 2;

cities of Greensboro and High Point: 1987, c. 669, s. 3; city of Monroe: 1985, c. 177; 2000-35, s. 1; city of Morganton: 1987, c. 265, s. 1; city of Raleigh: 1985, c. 556, s. 2; city of Statesville: 1985, c. 570, s. 25; 1987, c. 265, s. 1; town of Carrboro: 1987, c. 476, s. 1; town of Cary: 1993, c. 137, s. 2; town of Wrightsville Beach: 1993, c. 187, s. 1; Grandfather Village: 1987, c. 419, s. 1; village of Pinehurst: 1985, c. 379, s. 2; Winston-Salem/Forsyth County Utility Commission: 1989 (Reg. Sess., 1990), c. 849.

CROSS REFERENCES. --As to the power given railroad companies to condemn land, see G.S. 62-220. As to condemnation of land for school buildings, etc., see G.S. 115C-517. As to the power of local governments and water companies to condemn land for public water systems, see G.S. 130A-319. As to condemning lands for roads, see G.S. 136-19. As to requirement for consent of board of commissioners in certain counties before land may be condemned or acquired by a unit of local government outside the county, see G.S. 153A-15. As to condemnation for drainage ditches, see G.S. 156-1 et seq.

EDITOR'S NOTE. --Section 139-38, referred to in subdivision (c)(4), was repealed by Session Laws 1993, c. 391, s. 24, effective July 19, 1993.

Session Laws 2001-36, s. 1, amended subsection (b) by substituting "property or interest therein" for "property" in the introductory paragraph and adding subdivision (b)(10) and (b)(11). Section 3 of the act, as amended by Session Laws 2001-478, s. 2, made this amendment applicable only to Carolina Beach, Carteret County, Dare County, and the Towns of Atlantic Beach, Emerald Isle, Holden Beach, Indian Beach, Kill Devil Hills, Kitty Hawk, Kure Beach, Nags Head, North Topsail Beach, Pine Knoll Shores, Surf City, Topsail Beach, and Wrightsville Beach. The amended subdivision (b) was set out as new subsection (b1) at the direction of the Revisor of Statutes.

Session Laws 2003-282, s. 2, provides that Session Laws 2002-172 is reenacted.

EFFECT OF AMENDMENTS. --Session Laws 2004-203, s. 32(a), (b), effective August 17, 2004, added "Standard Provision" to the catchline of subsection (b); added "Modified Provision for Certain Localities" to the catchline of subsection (b1); and made minor punctuation changes.

Session Laws 2006-224, s. 2, effective August 15, 2006, in subsections (b) and (b1), substituted "Chapter 115C of the General Statutes" for "other statutes" in the second paragraph.

Session Laws 2006-259, s. 47, effective August 23, 2006, amended Session Laws 2006-224, s. 2, by changing the effective date from July 1, 2006, to August 15, 2006."

LEGAL PERIODICALS. --For comment on subdivision (8) of former G.S. 40-2 (substantially the same as subdivision (a)(3) of this section), see 19 N.C.L. Rev. 480 (1941).

For comment on possibility of this section imposing a limitation on G.S. 136-19, see 28 N.C.L. Rev. 403 (1950).

For note on public use in North Carolina, see 44 N.C.L. Rev. 1142 (1966).

For article on recent developments in North Carolina law of eminent domain, see 48 N.C.L. Rev. 767 (1970).

For a comment on the acquisition, abandonment, and preservation of rail corridors in North Carolina, see 75 N.C.L. Rev. 1989 (1997).

CASE NOTES

I. General Consideration.
II. Public Use.
III. Private Condemnors.
A. In General.
B. Railroad Rights-of-Way.
IV. Public Condemnors.
V. Condemnation of Burial Grounds or Dwellings.
VI. Judicial Review.

I. GENERAL CONSIDERATION.

EDITOR'S NOTE. --Many of the cases below were decided under similar former provisions.

CHAPTER IS APPLICABLE TO PRIVATE LANDOWNERS. --Even though private landowners are not specifically mentioned in this section, they are bound by the provisions of this Chapter. Smith v. City of Charlotte, 79 N.C. App. 517, 339 S.E.2d 844 (1986).

SUBDIVISION ORDINANCE AS APPLIED BY DEFENDANT CONSTITUTED AN EXACTION requiring the court to determine whether the exaction amounted to an unconstitutional taking; therefore, summary judgment for defendant was inappropriate as to that issue. Franklin Rd. Properties v. City of Raleigh, 94 N.C. App. 731, 381 S.E.2d 487 (1989).

IMPLIED PROMISE TO PAY FOR PROPERTY TAKEN. --Whenever the government in the exercise of its governmental rights takes property, the ownership of which it concedes to be in an individual, it impliedly promises to pay therefor. Lloyd v. Venable, 168 N.C. 531, 84 S.E. 855 (1915).

REMEDY FOR ABUSE. --If, after acquiring land under condemnation for a public use, a company should devote it to private purposes, that is a remedy by quo warranto and otherwise. Wadsworth Land Co. v. Piedmont Traction Co., 162 N.C. 314, 78 S.E. 297 (1913).

APPLIED in City of Burlington v. Isley Place Condominium Ass'n, 105 N.C. App. 713, 414 S.E.2d 385 (1992).

CITED in Batch v. Town of Chapel Hill, 92 N.C. App. 601, 376 S.E.2d 22 (1989); Pinehurst v. Regional Invs., 97 N.C. App. 114, 387 S.E.2d 222 (1990); Board of Educ. v. Seagle, 120 N.C. App. 566, 463 S.E.2d 277 (1995), cert. denied, 343 N.C. 509, 471 S.E.2d 63 (1996); Stout v. City of Durham, 121 N.C. App. 716, 468 S.E.2d 254 (1996).

II. PUBLIC USE.

TAKING OF PRIVATE PROPERTY MUST BE FOR PUBLIC USE. --In the exercise of the sovereign power of eminent domain, private property can be taken only for a public use and upon the payment of just compensation. State Hwy. Comm'n v. Batts, 265 N.C. 346, 144 S.E.2d 126 (1965).

MEANING OF "PUBLIC USE". --"Public use," as applied in the exercise of the power of eminent domain, is not capable of a precise definition applicable to all situations. The term is elastic, and keeps pace with changing conditions, since the progressive demands of society and changing concepts of governmental duties and functions are constantly bringing new subjects forward as being for "public use." State Hwy. Comm'n v. Batts, 265 N.C. 346, 144 S.E.2d 126 (1965).

The statutory phrase "the public use or benefit" is incapable of a precise definition applicable to all situations. Rather, because of the progressive demands of an ever-changing society and the perpetually fluid concept of governmental duty and function, the phrase is elastic and keeps pace with the changing times. Carolina Tel. & Tel. Co. v. McLeod, 321 N.C. 426, 364 S.E.2d 399 (1988).

TEST OF PUBLIC USE OR BENEFIT. --On judicial determination of whether a condemnor's intended use is an action for "the public use or benefit" under this section, courts in this and other states have employed essentially two approaches to this problem. The first approach -- the public use test -- asks whether the public has a right to a definite use of the condemned property. The second approach -- the public benefit test -- asks whether some benefit accrues to the public as a result of the desired condemnation. Carolina Tel. & Tel. Co. v. McLeod, 321 N.C. 426, 364 S.E.2d 399 (1988).

QUESTION OF LAW. --While the delegation of the power of eminent domain is for the legislature, the determination

of whether a condemnor's intended use of the land is for "the public use or benefit" is a question of law for the courts. Carolina Tel. & Tel. Co. v. McLeod, 321 N.C. 426, 364 S.E.2d 399 (1988).

A TAKING CAN BE FOR PUBLIC USE OR BENEFIT EVEN WHEN THERE IS ALSO A SUBSTANTIAL PRIVATE USE, so long as the private use in question is incidental to the paramount public use. Carolina Tel. & Tel. Co. v. McLeod, 321 N.C. 426, 364 S.E.2d 399 (1988).

THE PROVISION OF TELEPHONE SERVICE, irrespective of the number of customers affected, is an action for "the public use or benefit." Carolina Tel. & Tel. Co. v. McLeod, 321 N.C. 426, 364 S.E.2d 399 (1988).

TRANSPORT OF NATURAL GAS IS A PUBLIC PURPOSE. --Property taken for the transport of natural gas between states and for its distribution within this state is a public purpose. Transcontinental Gas Pipe Line Corp. v. Calco Enters., 132 N.C. App. 237, 511 S.E.2d 671 (1999).

CITY AUTHORIZED TO EXPAND SEWER --In a declaratory judgment action challenging a city's condemnation proceeding for expansion of the city's sewer system, a judgment for the city was proper because the intended use of the condemnation satisfied the public use and public benefit test as all city residents, including the landowners whose property was being condemned, would have the equal right to connect to the expanded sewer system, which was an essential service. Tucker v. City of Kannapolis, 159 N.C. App. 174, 582 S.E.2d 697 (2003).

TERM "PUBLIC PURPOSES" IS EMPLOYED IN THE SAME SENSE IN THE LAW OF TAXATION AND OF EMINENT DOMAIN. Thus, if the General Assembly may authorize a State agency to expend public money for the purpose of aiding in the construction of a hospital facility to the leased to and ultimately conveyed to a private agency, it may also authorize the acquisition of a site for such facility by exercise of the power of eminent domain. Foster v. North Carolina Medical Care Comm'n, 283 N.C. 110, 195 S.E.2d 517 (1973).

THE USE WHICH WILL JUSTIFY THE TAKING OF PRIVATE PROPERTY under the exercise of the right of eminent domain is the use by or for the government, the general public, or some portion thereof as such, and not the use by or for particular individuals or for the benefit of particular estates. The use may be limited to the inhabitants of a small locality, but the benefit must be in common. State Hwy. Comm'n v. Batts, 265 N.C. 346, 144 S.E.2d 126 (1965).

SCENIC VALUE OF ROAD MAY BE CONSIDERED. --The scenic value of a road and its necessity as a part of the system of scenic highways for the public may be considered in determining whether taking over the road is for a public or private purpose. State Hwy. Comm'n v. Batts, 265 N.C. 346, 144 S.E.2d 126 (1965).

USE OF THE WORDS "COMMERCIAL RAILWAY" IN A PETITION did not indicate that the land was to be used for private purposes, for the company was engaging in commerce when it carried articles of merchandise for the public. Wadsworth Land Co. v. Piedmont Traction Co., 162 N.C. 314, 78 S.E. 297 (1913).

CONDEMNATION NOT PROHIBITED. --Summary judgment was properly entered in a declaratory action regarding the applicability of G.S. 153A-15(b) because a condemnation action by a city in order to facilitate the construction of a water supply and distribution facility did not require any approval since the city and the land were located in the same county; moreover, the evidence showed that the real and substantial benefits of the condemnation accrued to the city in question, and not other parties in the case that were located in different counties. Caswell County v. Town of Yanceyville, 170 N.C. App. 124, 611 S.E.2d 451 (2005).

III. PRIVATE CONDEMNORS.

A. IN GENERAL.

RIGHT TO EXERCISE EMINENT DOMAIN -- RAILROADS. --Railroads are quasi-public corporations, created to serve primarily the public good and convenience, and as such they exercise public franchise rights, including that of eminent domain. Seaboard Air Line R.R. v. Atlantic Coast Line R.R., 240 N.C. 495, 82 S.E.2d 771 (1954).

SAME -- PUBLIC SERVICE CORPORATIONS GENERALLY. --A public service corporation has no power to condemn land by reason of its being a riparian proprietor, but only under authority given to it by a valid statute to do so. Carolina-Tennessee Power Co. v. Hiawassee River Power Co., 175 N.C. 668, 96 S.E. 99 (1918), appeal dismissed, 252 U.S. 341, 40 S. Ct. 330, 64 L. Ed. 601 (1920).

SAME -- PUBLIC SERVICE CORPORATIONS GENERATING ELECTRICITY. --Where a corporation is authorized by its charter to generate and sell electricity and to build dams and hydroelectric plants necessary to the generation of such hydroelectric power, and is therein given power of eminent domain to acquire the necessary rights-of-way and lands for its dams and the ponding of water, such corporation is a public service corporation and has the power of eminent domain, and it cannot be successfully contended that its taking of lands for ponding water necessary for one of its dams is a taking of private lands for a private use, nor does the fact that such public service corporation also engages in private enterprises not connected with its public service alter this result. Whiting Mfg. Co. v. Carolina Aluminum Co., 207 N.C. 52, 175 S.E. 698 (1934).

A corporation furnishing electricity for public use may condemn lands of a private owner necessary for its transmission lines, but it is unlawful for a power company to enter upon and take the lands of the owner for such purpose without complying with the statutory procedure. Crisp v. Nantahala Power & Light Co., 201 N.C. 46, 158 S.E. 845 (1931).

CONDEMNATION RIGHTS NOT IMPAIRED BY CHARTER RIGHTS OF PRIVATE NATURE. --The right of a corporation to condemn lands for a public use is not affected or impaired because in its charter it may be given rights of a more private nature to which the right of condemnation may not attach. Mountain Retreat Ass'n v. Mount Mitchell Dev. Co., 183 N.C. 43, 110 S.E. 524 (1922).

Where a corporation is authorized to operate a street railway, it may exercise the right of eminent domain in respect to this business given to it by its charter and by law, notwithstanding it is also authorized to conduct business of a private nature. Wadsworth Land Co. v. Piedmont Traction Co., 162 N.C. 314, 78 S.E. 297 (1913).

POWER NOT EXHAUSTED BY SINGLE EXERCISE. --The power of eminent domain conferred on electric public service corporations is not necessarily exhausted by a single exercise of the power, but, within the limits established by the general law or special charter, a subsequent or further exercise of the power may be permissible. Yadkin River Power Co. v. Wissler, 160 N.C. 269, 76 S.E. 267 (1912).

PURCHASE OF ADDITIONAL RIGHTS AS NEEDED TO SERVE PUBLIC. --If the property owned by a corporation having the right of eminent domain is inadequate for its corporate purposes, it may purchase such additional rights as it may need to serve the public. Such purchase may be with the consent of the owner or by condemnation, a purchase without the owner's consent being at the value of the property taken. VEPCO v. King, 259 N.C. 219, 130 S.E.2d 318 (1963).

THE LANGUAGE "PIPELINES ORIGINATING IN NORTH CAROLINA" in former G.S. 40-2 held not to impose a limitation on G.S. 62-190. Colonial Pipeline Co. v. Neill, 296 N.C. 503, 251 S.E.2d 457 (1979).

CONDEMNATION BY RAILROAD FOR UNION DEPOT. --Former G.S. 40-4 conferred upon any railroad company the right to condemn land for the purpose of getting to a union depot required by the order of the Utilities Commission to be built. State ex rel. Corp. Comm'n v. Southern Ry., 185 N.C. 435, 117 S.E. 563 (1923).

Former G.S. 40-4 conferred on a railroad company the incidental right to make such changes in its line and route as are necessary to accomplish the purpose designed and to make the depot available and accessible to the traveling public as contemplated by statute. Dewey v. Atlantic Coast Line R.R., 142 N.C. 392, 55 S.E. 292 (1906).

Where the Utilities Commission, acting under former G.S. 40-4, selected a site after due inquiry, the railroads would not be enjoined, at the instance of citizens and property owners, from erecting the depot, either on the ground that the city was being sidetracked or that property would be damaged by the proposed change. Dewey v. Atlantic Coast Line R.R., 142 N.C. 392, 55 S.E. 292 (1906).

INSTALLATION OF WATER AND SEWER LINES SOLELY FOR THE BENEFIT OF ONE INDIVIDUAL'S MANUFACTURING PLANT involved a private use, despite petitioner's argument that the plant would benefit the public by employing 30 people and thus contribute to the public welfare; and dismissal of petitioner's condemnation proceeding would be affirmed. City of Statesville v. Roth, 77 N.C. App. 803, 336 S.E.2d 142 (1985).

THE POWER OF CONDEMNATION GRANTED UNDER FORMER § 40-8, relating to taking material from adjacent lands, is not confined to a right-of-way, delimited by surface boundaries, but may be extended to the cutting of trees or removing of obstructions outside of these boundaries when required for the reasonable preservation and protection of their lines and other property. Yadkin River Power Co. v. Wissler, 160 N.C. 269, 76 S.E. 267 (1912).

THE LEGISLATURE MAY BY EMINENT DOMAIN AUTHORIZE THE CONSOLIDATION OF RAILROADS and, in effect, condemn the shares of dissenting stockholders. Spencer v. Seaboard Air Line R.R., 137 N.C. 107, 49 S.E. 96 (1904).

B. RAILROAD RIGHTS-OF-WAY.

WIDTH OF RIGHT-OF-WAY. --If the charter prescribes no maximum or minimum width of the right-of-way, then subsection (a) of former G.S. 40-29 (substantially the same as the second unnumbered paragraph of subsection (a) of this section) applies, and the law presumes the width therein specified, subject to the right of the owner to recover compensation by compliance with G.S. 1-51. Griffith v. Southern Ry., 191 N.C. 84, 131 S.E. 413 (1926).

A RIGHT-OF-WAY OF SPECIFIED WIDTH MUST BE LOCATED AND CONSTRUCTED IN ORDER TO BE EXCLUSIVE. Goldsboro Lumber Co. v. Hines Bros. Lumber Co., 126 N.C. 254, 35 S.E. 458 (1900).

A RAILROAD COMPANY MAY OCCUPY ITS RIGHT-OF-WAY TO ITS FULL EXTENT whenever the proper management and business necessities of the road, in its own judgment, may require it, though the owner of the land can use and occupy a part of the right-of-way not used by the railroad in a manner not inconsistent with its full enjoyment of the easement. Atlantic Coast Line R.R. v. Bunting, 168 N.C. 579, 84 S.E. 1009 (1915); Tighe v. Seaboard Air Line R.R., 176 N.C. 239, 97 S.E. 164 (1918).

A railroad company may use and occupy a right-of-way acquired by it under condemnation proceedings when, in its own judgment, the proper management and business necessities of the road may require it. Virginia & C.S.R.R. v. McLean, 158 N.C. 498, 74 S.E. 461 (1912).

EASEMENT ACQUIRED OVER PORTION NOT OCCUPIED. --A railroad corporation acquires by condemnation an easement over that portion of its right-of-way not actually occupied by its roadbed, tracks, drains and side ditches. Griffith v. Southern Ry., 191 N.C. 84, 131 S.E. 413 (1926).

OWNER'S RIGHT TO USE LAND COVERED BY RIGHT-OF-WAY. --To the extent that land covered by a right-of-way is not presently required for the purpose of the road, the owner may continue to occupy and use it in a manner not inconsistent with the full and proper enjoyment of the easement. Raleigh & Augusta Air Line R.R. v. Sturgeon, 120 N.C. 225, 26 S.E. 779 (1897); Goldsboro Lumber Co. v. Hines Bros. Lumber Co., 126 N.C. 254, 35 S.E. 458 (1900); Seaboard Air Line R.R. v. Olive, 142 N.C. 257, 55 S.E. 263 (1906); Earnhardt v. Southern R.R., 157 N.C. 358, 72 S.E. 1062 (1911); Virginia & C.S.R.R. v. McLean, 158 N.C. 498, 74 S.E. 461 (1912); Coit v. Owenby-Wofford Co., 166 N.C. 136, 81 S.E. 1067 (1914).

To the extent that the right-of-way is not presently required for the purpose of the road, it may be occupied and used

by the original owner in any manner not inconsistent with the easement acquired. Goldsboro Lumber Co. v. Hines Bros. Lumber Co., 126 N.C. 254, 35 S.E. 458 (1900); Virginia & C.S.R.R. v. McLean, 158 N.C. 498, 74 S.E. 461 (1912).

The grant of a right-of-way of a specified width does not preclude the grantor from such use of his land himself or by others with his permission which is not in conflict therewith. Goldsboro Lumber Co. v. Hines Bros. Lumber Co., 126 N.C. 254, 35 S.E. 458 (1900).

CULTIVATION OF LAND BY OWNER. --While land included in the right-of-way of a railroad company, not necessary for the purposes of the company, may be cultivated by the servient owner, the crop must not be of such inflammable or combustible nature, when matured or maturing, as to endanger the safety of the company's passengers or cause injury to adjoining lands in case of ignition of such crops by sparks from the company's engines; in such a case, the company would have the right to enter and remove such crops. Raleigh & Augusta Air Line R.R. v. Sturgeon, 120 N.C. 225, 26 S.E. 779 (1897).

Unless the land is needed for some use, the occupation and cultivation by the owner of the servient tenement will be disturbed only when it becomes necessary for the company to enter in order to remove something which endangers the safety of its passengers, or which might, if undisturbed, subject the owner to liability for injury to adjacent lands or property. Ward v. Wilmington & W.R.R., 109 N.C. 358, 13 S.E. 926 (1891); Ward v. Wilmington & W.R.R., 113 N.C. 566, 18 S.E. 211 (1893); Blue v. Aberdeen & W.E.R.R., 117 N.C. 644, 23 S.E. 275 (1895).

DUTY OF COMPANY TO CLEAR RIGHT-OF-WAY. --A railroad company is not negligent in failing to cut down bushes or weeds on the right-of-way beyond the portion over which it is exercising actual control for corporate purposes, but is required to keep the right-of-way clear of such growth to the outside of the side ditches on either side of the track. Ward v. Wilmington & W.R.R., 109 N.C. 358, 13 S.E. 926 (1891).

Where a railroad company permitted dry grass or leaves or other combustible rubbish to remain near its track and the same took fire from sparks emitted from one of its locomotives which had no spark arrester, and the fire was thereby communicated to the plaintiff's adjoining land, destroying timber, etc., it was held that the injury resulted from the negligence of the defendant company. Aycock v. Raleigh & Augusta Air Line R.R., 89 N.C. 321 (1883).

ONLY EASEMENT RIGHTS HELD ACQUIRED. --Only an easement in lands passes from the owner to a railroad company under condemnation proceedings divesting all the rights of owners who are parties to the proceedings in such easement during the corporate existence of the company, but allowing them to use and occupy the right-of-way in any manner not inconsistent with the easement acquired. Phillips v. Postal Tel. Cable Co., 130 N.C. 513, 41 S.E. 1022, rev'd on other grounds on rehearing, 131 N.C. 225, 42 S.E. 587 (1902); Virginia & C.S.R.R. v. McLean, 158 N.C. 498, 74 S.E. 461 (1912).

IV. PUBLIC CONDEMNORS.

PUBLIC RECREATIONAL FACILITY NEED NOT BE DESIGNED BEFORE LAND IS ACQUIRED. --Neither subdivision (b)(3) of this section, which vests municipalities with the power of eminent domain to establish, enlarge or improve parks, playgrounds and other recreational facilities, nor G.S. 160A-353, of similar import, nor any other statute contains any requirement that the city design a public facility authorized by resolution before the land for the facility is acquired. City of Charlotte v. Rousso, 82 N.C. App. 588, 346 S.E.2d 693 (1986).

LOCAL ZONING LAWS. --While municipalities or counties may exercise the power of eminent domain for the construction, enlarging or improving of those buildings listed in subdivision (b)(6), the power of eminent domain does not include locating a particular building in violation of another jurisdiction's zoning laws, by virtue of the fact that through G.S. 153A-347 and 160A-392 the Legislature has made zoning regulations with regard to buildings specifically applicable to political subdivisions. The same zoning restrictions do not apply, however, to the construction, establishment, enlargement, improvement, maintenance, ownership or operation of a public enterprise unless the Legislature has clearly manifested a contrary intent. Davidson County v. City of High Point, 85 N.C. App. 26, 354 S.E.2d 280, modified and aff'd, 321 N.C. 252, 362 S.E.2d 553 (1987).

A MUNICIPAL CORPORATION CAN ONLY EXERCISE THE RIGHT OF EMINENT DOMAIN WHEN AUTHORIZED to do so by its charter or by general law, being a creature of the Legislature. Mount Olive v. Cowan, 235 N.C. 259, 69 S.E.2d 525 (1952).

CONDEMNATION BY MUNICIPALITIES FOR OPERATION OF WATER AND SEWER SYSTEMS. --The right of eminent domain has been conferred upon municipalities operating water and sewer systems. If such corporation is unable to agree with a landowner for the purchase of land it needs for such purpose, it may acquire the land, or an easement therein, by following the procedure set forth. City of Randleman v. Hinshaw, 267 N.C. 136, 147 S.E.2d 902 (1966).

THE OPENING AND CLOSING OF STREETS IS A GOVERNMENTAL FUNCTION. Bessemer Imp. Co. v. City of Greensboro, 247 N.C. 549, 101 S.E.2d 336 (1958).

EXERCISE OF DISCRETION IN WIDENING STREETS OF TOWN. --Where it appeared that the governing authorities of a town took lands to widen a street intersecting with other streets so as to lessen the danger to traffic thereon, and that doing so was a reasonable exercise of discretion, finding that such course was unnecessary was not binding on the Supreme Court, the question being, primarily, whether the administrative authorities of the town so grossly and manifestly abused the exercise of their discretionary powers as to render their action ineffectual. Lee v. Town of Waynesville, 184 N.C. 565, 115 S.E. 51 (1922).

ACQUISITION OF STORM SEWER EASEMENT BY PAYMENT OF PERMANENT DAMAGES. --Where plaintiff landowners demanded permanent damages in their action against a municipality for trespass based upon the construction by the municipality of a storm sewer line over their lands, and defendant municipality prayed for an easement for the purpose of maintaining such drainage system, under the verdict and judgment awarding permanent damages the municipality, upon payment of the damages awarded, acquired a permanent easement to maintain its storm sewer line so long as it was kept in proper repair. McLean v. Town of Mooresville, 237 N.C. 498, 75 S.E.2d 327 (1953).

MUNICIPAL AIRPORTS. --The provisions of this Chapter now control cities' eminent domain actions with respect to airports. Smith v. City of Charlotte, 79 N.C. App. 517, 339 S.E.2d 844 (1986).

IMPROVEMENTS HELD NO BAR TO CONDEMNATION. --The governing authorities of a town are not estopped to condemn land for the widening or improvement of its streets by reason of an owner having put extensive improvements on his land a long time prior to the time it was condemned for that purpose, the power of condemnation, in cases of such character, being a continuing one to be exercised when and to the extent that the public good may require it. Lee v. Town of Waynesville, 184 N.C. 565, 115 S.E. 51 (1922).

CONDEMNATION PROCEEDINGS FOR A SCHOOL SITE must be considered as instituted under former G.S. 40-2 (similar to this section) pursuant to authority conferred by former G.S. 115-125 (see now G.S. 115C-517). Topping v. State Bd. of Educ., 249 N.C. 291, 106 S.E.2d 502 (1959).

IT WAS NOT ERROR TO FIND THAT PLAINTIFF WAS AUTHORIZED TO ACQUIRE LAND FOR PARKS, RECREATIONAL PROGRAMS AND FACILITIES through exercise of power of eminent domain. Town of Chapel Hill v. Burchette, 100 N.C. App. 157, 394 S.E.2d 698 (1990).

V. CONDEMNATION OF BURIAL GROUNDS OR DWELLINGS.

TO WHOM LIMITATION APPLICABLE. --Limitation in former G.S. 40-10 as to condemnation of the owner's dwelling, burial grounds, etc., was only upon such corporations as were defined and named in the former article, when exercising the power of eminent domain granted in such article in connection with the construction of the works or

projects enumerated therein, and pursuant to the authority granted thereby. Mount Olive v. Cowan, 235 N.C. 259, 69 S.E.2d 525 (1952).

HOUSING PROJECT NOT COVERED. --Prohibition against condemnation of burial grounds, dwelling houses, etc., without the consent of the owner is not applicable to proceeding to condemn lands for housing project. In re Housing Auth., 233 N.C. 649, 65 S.E.2d 761 (1951).

NOR WAS FORMER PARK COMMISSION. --Former North Carolina National Park Commission created by Public Acts 1927, c. 48, was an agency of the State created by statute, vested with the power of eminent domain, and was not subject to the limitations provided for corporations by former G.S. 40-8 and 40-11. Yarbrough v. North Carolina Park Comm'n, 196 N.C. 284, 145 S.E. 563 (1928).

POWER OF MUNICIPALITY TO ACQUIRE DWELLINGS BY CONDEMNATION. --The governing body of a municipality, for the purpose of erecting an elevated water storage tank as an addition to its water system, has the power, in the exercise of a sound discretion, to acquire dwelling-house properties either within or outside the city by condemnation. City of Raleigh v. Edwards, 235 N.C. 671, 71 S.E.2d 396 (1952), commented on in, 31 N.C.L. Rev. 125 (1952). See also Mount Olive v. Cowan, 235 N.C. 259, 69 S.E.2d 525 (1952).

ABSENT CHARTER RESTRICTIONS TO THE CONTRARY. --Where a city, under its charter, is given the same power to condemn lands of private owners for municipal purposes that is given to railroads and other public utilities, it is bound by the restrictions placed on them by this section. Selma v. Nobles, 183 N.C. 322, 111 S.E. 543 (1922).

THIS SECTION DOES NOT APPLY TO TENANT HOUSES, but only to the dwellings of the owner of the lands, which are preserved to him for sentimental reasons, and which could not exist where such owner is a corporation renting dwellings to its tenants. Raleigh, C. & S.R.R. v. Mecklenburg Mfg. Co., 166 N.C. 168, 82 S.E. 5 (1914).

USE BY OWNER SUBSEQUENT TO ACQUISITION OF RIGHT-OF-WAY NOT PROTECTED. --When a provision in a charter of a railroad company or a deed granting it a right-of-way prohibited it from entering upon the yard, garden, burial ground, etc., of the defendants, but no portion of the right-of-way was so used at the date of its acquisition, the right of the company would not be interfered with by the fact that it has since been appropriated to such use. Dargan v. Carolina Cent. R.R., 131 N.C. 623, 42 S.E. 979 (1902); Seaboard Air Line R.R. v. Olive, 142 N.C. 257, 55 S.E. 263 (1906).

MAINTENANCE OF NUISANCE AS VIOLATION OF PROHIBITION. --The creation and maintenance of a nuisance which sensibly impairs the value of lands of private owners is a "taking" within the principle of eminent domain and condemnation proceedings thereunder, and falls within the exception as to dwellings. Selma v. Nobles, 183 N.C. 322, 111 S.E. 543 (1922).

HOUSE STANDING ON THE RIGHT-OF-WAY DOES NOT BECOME THE PROPERTY OF THE CONDEMNOR. Shields v. Norfolk & C.R.R., 129 N.C. 1, 39 S.E. 582 (1901); Raleigh, C. & S.R.R. v. Mecklenburg Mfg. Co., 166 N.C. 168, 82 S.E. 5 (1914).

NO DISCRETION AS TO STATUTORY EXCEPTIONS. --The principle arising under the general power to condemn, leaving the matter largely within the discretion of the governing authorities seeking condemnation, does not apply to the statutory exceptions. Selma v. Nobles, 183 N.C. 322, 111 S.E. 543 (1922).

VI. JUDICIAL REVIEW.

WHAT IS PUBLIC USE AS QUESTION FOR COURT. --In any proceeding for condemnation under the sovereign power of eminent domain, what is a public use is a judicial question for ultimate decision by the court as a matter of

law, reviewable upon appeal. State Hwy. Comm'n v. Batts, 265 N.C. 346, 144 S.E.2d 126 (1965).

TO DETERMINE WHETHER AN EXACTION AMOUNTS TO AN UNCONSTITUTIONAL TAKING, the court shall: (1) identify the condition imposed; (2) identify the regulation which caused the condition to be imposed; (3) determine whether the regulation substantially advances a legitimate state interest. If the regulation substantially advances a legitimate state interest, the court shall then determine (4) whether the condition imposed advances that interest; and (5) whether the condition imposed is proportionally related to the impact of the development. Franklin Rd. Properties v. City of Raleigh, 94 N.C. App. 731, 381 S.E.2d 487 (1989), citing Batch v. Town of Chapel Hill, 92 N.C. App. 601, 376 S.E.2d 22 (1989), rev'd on other grounds, 326 N.C. 1, 387 S.E.2d 655, cert. denied, 496 U.S. 931, 110 S. Ct. 2631, 110 L. Ed. 2d 651 (1990).

DISCRETION OF CONDEMNORS AS TO EXTENT AND LIMIT OF RIGHTS TO BE ACQUIRED. --The extent and limit of the rights to be acquired are primarily and very largely referred to the companies or grantees of the power, and only become an issuable question, usually determinable by the court, on allegation of fact tending to show bad faith on the part of the companies or an oppressive or manifest abuse of their discretion. Yadkin River Power Co. v. Wissler, 160 N.C. 269, 76 S.E. 267 (1912).

In determining what property is necessary for a public housing site, a broad discretion is vested by statute in housing authority commissioners, to whom the power of eminent domain is delegated. Housing Auth. v. Wooten, 257 N.C. 358, 126 S.E.2d 101 (1962); Philbrook v. Chapel Hill Housing Auth., 269 N.C. 598, 153 S.E.2d 153 (1967).

CONDEMNORS' DISCRETION NOT SUBJECT TO REVIEW ABSENT ABUSE. --Where the general power to condemn exists, the right of selection as to route, quantity, etc., is left largely to the discretion of the company or corporation, and does not become the subject of judicial inquiry except on allegations of fact tending to show bad faith on the part of the company or corporation or an oppressive and manifest abuse of the discretion conferred upon them by the law. Selma v. Nobles, 183 N.C. 322, 111 S.E. 543 (1922); Redevelopment Comm'n v. Grimes, 277 N.C. 634, 178 S.E.2d 345 (1971).

Where an agency has the power of condemnation, the choice of route is primarily in its discretion and will not be reviewed on the ground that another route may have been more appropriately chosen, unless it appears that there has been an abuse of discretion. Duke Power Co. v. Ribet, 25 N.C. App. 87, 212 S.E.2d 182 (1975).

The exercise of discretion by the condemnor will not be interfered with on the ground that the condemnor acted unreasonably and without justification when there is neither allegation nor evidence that the condemnor acted either arbitrarily or capriciously or in a manner constituting an abuse of discretion in the selection of the route to condemn. Duke Power Co. v. Ribet, 25 N.C. App. 87, 212 S.E.2d 182 (1975).

EXISTENCE OF LESS INTRUSIVE MEANS NOT ABUSE OF DISCRETION. --Gas pipeline company did not abuse its discretion by not using the less intrusive means of seeking variance from local zoning ordinances. Transcontinental Gas Pipe Line Corp. v. Calco Enters., 132 N.C. App. 237, 511 S.E.2d 671 (1999).

GENERAL STATUTES OF NORTH CAROLINA
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*** Statutes current through the 2008 Regular Session ***
*** Annotations are current through January 12, 2009 ***

CHAPTER 113. CONSERVATION AND DEVELOPMENT
SUBCHAPTER 02 . STATE FORESTS AND PARKS
ARTICLE 2C. STATE PARKS ACT

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N.C. Gen. Stat. § 113-44.15 (2009)

§ 113-44.15. Parks and Recreation Trust Fund

(a) Fund Created. -- There is established a Parks and Recreation Trust Fund in the State Treasurer's Office. The Trust Fund shall be a nonreverting special revenue fund consisting of gifts and grants to the Trust Fund, monies credited to the Trust Fund pursuant to G.S. 105-228.30(b), and other monies appropriated to the Trust Fund by the General Assembly. Investment earnings credited to the assets of the Fund shall become part of the Fund.

(b) Use. -- Funds in the Trust Fund are annually appropriated to the North Carolina Parks and Recreation Authority and, unless otherwise specified by the General Assembly or the terms or conditions of a gift or grant, shall be allocated and used as follows:

(1) Sixty-five percent (65%) for the State Parks System for capital projects, repairs and renovations of park facilities, and land acquisition, and to retire debt incurred for these purposes under Article 9 of Chapter 142 of the General Statutes.

(2) Thirty percent (30%) to provide matching funds to local governmental units or public authorities as defined in G.S. 159-7 on a dollar-for-dollar basis for local park and recreation purposes. The appraised value of land that is donated to a local government unit or public authority may be applied to the matching requirement of this subdivision. These funds shall be allocated by the North Carolina Parks and Recreation Authority based on criteria patterned after the Open Project Selection Process established for the Land and Water Conservation Fund administered by the National Park Service of the United States Department of the Interior.

(3) Five percent (5%) for the Coastal and Estuarine Water Beach Access Program.

(b1) Geographic Distribution. -- In allocating funds in the Trust Fund under this section, the North Carolina Parks and Recreation Authority shall make geographic distribution across the State to the extent practicable.

(b2) Administrative Expenses. -- Of the funds appropriated to the North Carolina Parks and Recreation Authority from the Trust Fund each year, no more than three percent (3%) may be used by the Department for operating expenses

associated with managing capital improvements projects, acquiring land, and administration of local grants programs.

(c) Reports. -- The North Carolina Parks and Recreation Authority shall report no later than October 1 of each year to the Joint Legislative Commission on Governmental Operations, the House and Senate Appropriations Subcommittees on Natural and Economic Resources, the Fiscal Research Division, and the Environmental Review Commission on allocations from the Trust Fund from the prior fiscal year. The Authority also shall provide a progress report no later than March 15 of each year to the same recipients on the activities of and the expenditures from the Trust Fund for the current fiscal year.

(d) Debt. -- The Authority may allocate up to fifty percent (50%) of the portion of the annual appropriation identified in subdivision (b)(1) of this section to reimburse the General Fund for debt service on special indebtedness to be issued or incurred under Article 9 of Chapter 142 of the General Statutes for the purposes provided in subdivision (b)(1) of this section and for waterfront access. In order to allocate funds for debt service reimbursement, the Authority must identify to the State Treasurer the specific parks projects for which it would like special indebtedness to be issued or incurred and the annual amount it intends to make available, and request the State Treasurer to issue or incur the indebtedness. After special indebtedness has been issued or incurred for a parks project requested by the Authority, the Authority must credit to the General Fund each year the actual aggregate principal and interest payments to be made in that year on the special indebtedness, as identified by the State Treasurer.

HISTORY: 1993 (Reg. Sess., 1994), c. 772, s. 1; 1995, c. 456, s. 2; 1995 (Reg. Sess., 1996), c. 646, s. 20; 1998-212, ss. 14.6(a), 14.7; 2001-114, s. 1; 2001-487, s. 73; 2004-179, s. 2.4; 2007-323, ss. 12.8, 29.14(f).

NOTES: LAND AND WATER CONSERVATION STUDY COMMISSION. --Session Laws 2006-223 provides in the preamble:

"Whereas, North Carolina has more than 3,000 miles of streams that fail to meet State water quality standards; and

"Whereas, North Carolina is losing natural areas, historic sites, and agricultural and forestry lands at a rate of over 100,000 acres per year; and

"Whereas, North Carolina's waters, open lands, and historic properties are critical to our State's economic future and quality of life; and

"Whereas, land costs are increasing rapidly; and

"Whereas, Article XIV, Section V of the State Constitution states, 'North Carolina must use every appropriate way to preserve as part of the common heritage of this State its forests, wetlands, estuaries, beaches, historical sites, open lands and places of beauty;' and

"Whereas, G.S. 113A-241(a) provides, 'The State of North Carolina shall encourage, facilitate, plan, coordinate, and support appropriate federal, State, local, and private land protection efforts so that an additional one million acres of farmland, open space, and conservation lands in the State are permanently protected by December 31, 2009.'; and

"Whereas, traditional methods for funding the State's Clean Water Management Trust Fund, Parks and Recreation Trust Fund, Natural Heritage Trust Fund, Agricultural Development and Farmland Preservation Trust Fund, and economic development efforts related to land and water conservation have failed to keep pace with conservation needs and rapidly rising land costs and are not able to meet the State's conservation goals at current funding levels; Now, therefore,"

Session Laws 2006-223, ss. 1-12, provide:

"SECTION 1. Commission Established. -- The Land and Water Conservation Commission is hereby established.

"SECTION 2. Membership. -- The Commission shall consist of 16 members as follows:

"(1) Five members appointed by the President Pro Tempore of the Senate.

"(2) Five members appointed by the Speaker of the House of Representatives.

"(3) The State Treasurer or the State Treasurer's designee.

"(4) The Director of the Governor's Policy Office or the Director's designee.

"(5) The Secretary of Environment and Natural Resources or the Secretary's designee.

"(6) Three representatives from the public at large appointed by the Governor.

"SECTION 3. Cochairs. -- The Commission shall have two cochairs, one designated by the President Pro Tempore of the Senate and one designated by the Speaker of the House of Representatives from among their respective appointees. The Commission shall meet upon the call of the cochairs.

"SECTION 4. Quorum. -- A quorum of the Commission shall consist of nine members.

"SECTION 5. Vacancies. -- Any vacancy on the Commission shall be filled by the original appointing authority.

"SECTION 6. Purpose and Duties. -- The Commission shall:

"(1) Identify and evaluate the existing sources of State funding for: (i) the public acquisition of land or interests in land to protect drinking water quality and prevent polluted runoff, conserve rivers, wetlands, floodplains, coastal waters, working farms, working forests, local parks, State parks, game lands and other natural areas, urban forests, and land visible from scenic highways in North Carolina; (ii) historic preservation; and (iii) economic and community development tied to land and water conservation and historic preservation.

"(2) Collect research and information from North Carolina and other states and jurisdictions regarding incentive based techniques and management tools used to protect land and water and assess the applicability of such tools and techniques to land conservation in North Carolina.

"(3) Prepare a draft report with a statement of the issues, a summary of the research, and recommendations to address funding needs and other issues affecting land and water conservation in North Carolina.

"(4) Hold at least three public meetings, including at least one meeting in the Mountains, Piedmont, and the Coastal Plain region of the State to present the draft report and recommendations to the public and user groups.

"SECTION 7. Expenses of Members. -- Members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate.

"SECTION 8. Staff. -- Upon the prior approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to the Commission to aid in its work.

"SECTION 9. Consultants. -- The Commission may hire consultants to assist with the study as provided in G.S. 120-32.02(b).

"SECTION 10. Meetings. -- The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

"SECTION 11. Report. -- The Commission shall report its findings and recommendations to the General Assembly and the Environmental Review Commission on or before 1 February 2007, at which time the Commission shall terminate.

"SECTION 12. Funding. -- From funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the purpose of conducting the study provided for in this act."

WATERFRONT DEVELOPMENT INITIATIVE. --Session Laws 2007-323, s. 29.14(a)-(e), provides: "(a) Authorization. -- In accordance with G.S. 142-83, this part authorizes the issuance or incurrence of special indebtedness in the maximum principal amount of one hundred twenty million dollars ($120,000,000) to be used as provided in this section to finance the cost of land acquisitions, waterfront properties, and the development of facilities for the purposes of providing and improving public and commercial waterfront access. Special indebtedness authorized by this section shall be issued or incurred only in accordance with Article 9 of Chapter 142 of the General Statutes.

"(b) Maximum Amount. -- Of the special indebtedness authorized by this section, no more than the applicable maximum principal amount listed in this subsection may be issued for each stated purpose:

"(1) State Park Land Acquisition. -- A maximum amount of fifty million dollars ($50,000,000) to be used to finance the cost of land acquisitions for the expansion of the State Park System and Mountains to Sea Trail.

"(2) Natural Heritage Land Acquisition. -- A maximum amount of fifty million dollars ($50,000,000) to be used to finance the cost of land acquisitions to conserve ecological diversity of the State pursuant to G.S. 113-77.9.

"(3) Waterfront Access and Marine Industry Fund. -- A maximum of twenty million dollars ($20,000,000) to be used to acquire waterfront properties or develop facilities for the purposes of providing public and commercial waterfront access and improving and developing the same.

"(c) State Park Land Acquisition. -- The specific land acquisitions for which the special indebtedness for State Park Land Acquisition may be used are to be identified by the North Carolina Parks and Recreation Authority for the purpose of expanding the State Park System and Mountains to Sea Trail pursuant to G.S. 113-44.15, notwithstanding subsection

(b) of that section. Land acquisitions shall support the conservation priorities set out by the One North Carolina Naturally Program.

"(d) Natural Heritage Land Acquisition. -- The specific land acquisitions for which the special indebtedness for Natural Heritage Land Acquisition may be used are to be identified by the Trustees of the Natural Heritage Trust Fund as provided in G.S. 113-77.9. Land acquisitions shall represent the ecological diversity of the State and support the conservation priorities set out by the One North Carolina Naturally Program.

"(e) Waterfront Access and Marine Industry Fund. -- The Director of the Division of Marine Fisheries shall establish a program by which the special indebtedness for Waterfront Access and the Marine Industry Fund may be used. The Director may consult with representatives of the commercial fishing industry and other marine industries and with State, local, or nonprofit agencies that have expertise in waterfront access issues and property acquisitions. The Director may establish a committee to review potential property acquisitions and capital and infrastructure improvements.

"Prior to the expenditure of any funds, the Division shall report to the Joint Legislative Committee on Seafood and Aquaculture. The Division also shall report to the Joint Legislative Committee on Seafood and Aquaculture on the use of these funds on a quarterly basis until the funding expires."

EDITOR'S NOTE. --Session Laws 2004-179, part 2, authorizes the issuance of special indebtedness to be used to finance park projects. Session Laws 2004-179, s. 2.2, provides: "Identification of Parks Projects. -- The specific parks projects for which the special indebtedness may be used are to be identified by the North Carolina Parks and Recreation Authority as provided in G.S. 113-44.15, but are limited to the following projects:

"(1) Acquisition by conservation easement or fee simple up to 17,000 acres near North Carolina military bases in order to prevent encroachment by incompatible development.

"(2) Acquisition of up to 6,000 acres to expand an existing State park, provide gamelands to help protect North Carolina rivers, and provide two new State parks along North Carolina rivers; and capital improvements to an existing State park as part of its expansion."

Session Laws 2004-179, ss. 8.1 and 8.2, provide: "SECTION 8.1 It is the intent of the General Assembly that the proceeds of special indebtedness issued under parts 2 through 4 of this act shall be applied for the purposes provided in those parts, including the acquisition by conservation easement, or otherwise, of land near military bases to prevent encroachment. This acquisition shall be a high priority because of its vital importance to the State of North Carolina.

"SECTION 8.2 None of the proceeds of special indebtedness authorized by parts 2 through 4 of this act may be used to acquire any property by eminent domain."

Session Laws 2004-179, s. 8.3, contains a severability clause.

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

EFFECT OF AMENDMENTS. --Session Laws 2004-179, s. 2.4, effective August 5, 2004, added subheadings in each subsection; added "and to retire debt incurred for these purposes under Article 9 of Chapter 142 of the General Statutes" at the end of subdivision (b)(1); in subsection (b1), substituted "section" for "subsection," and substituted "make" for "consider"; and added subsection (d).

Session Laws 2007-323, ss. 12.8 and 29.14(f), effective July 1, 2007, added the last sentence in subsection (a) and added "and for waterfront access" at the end of the first sentence in subsection (d).

GENERAL STATUTES OF NORTH CAROLINA
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*** Statutes current through the 2008 Regular Session ***
*** Annotations are current through January 12, 2009 ***

CHAPTER 136. ROADS AND HIGHWAYS
ARTICLE 2. POWERS AND DUTIES OF DEPARTMENT AND BOARD OF TRANSPORTATION

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N.C. Gen. Stat. § 136-18 (2009)

Legislative Alert: LEXSEE 2009 N.C. ALS 266 -- See section 6.

§ 136-18. Powers of Department of Transportation

The said Department of Transportation is vested with the following powers:

(1) The general supervision over all matters relating to the construction of the State highways, letting of contracts therefor, and the selection of materials to be used in the construction of State highways under the authority of this Chapter.

(2) To take over and assume exclusive control for the benefit of the State of any existing county or township roads, and to locate and acquire rights-of-way for any new roads that may be necessary for a State highway system, and subject to the provisions of G.S. 136-19.5(a) and (b) also locate and acquire such additional rights-of-way as may be necessary for the present or future relocation or initial location, above or below ground, of telephone, telegraph, broadband communications, electric and other lines, as well as gas, water, sewerage, oil and other pipelines, to be operated by public utilities as defined in G.S. 62-3(23) and which are regulated under Chapter 62 of the General Statutes, or by municipalities, counties, any entity created by one or more political subdivisions for the purpose of supplying any such utility services, electric membership corporations, telephone membership corporations, or any combination thereof, with full power to widen, relocate, change or alter the grade or location thereof and to change or relocate any existing roads that the Department of Transportation may now own or may acquire; to acquire by gift, purchase, or otherwise, any road or highway, or tract of land or other property whatsoever that may be necessary for a State highway system and adjacent utility rights-of-way: Provided, all changes or alterations authorized by this subdivision shall be subject to the provisions of G.S. 136-54 to 136-63, to the extent that said sections are applicable: Provided, that nothing in this Chapter shall be construed to authorize or permit the Department of Transportation to allow or pay anything to any county, township, city or town, or to any board of commissioners or governing body thereof, for any existing road or part of any road heretofore constructed by any such county, township, city or town, unless a contract has already been entered into with the Department of Transportation.

(3) To provide for such road materials as may be necessary to carry on the work of the Department of Transportation, either by gift, purchase, or condemnation: Provided, that when any person, firm or corporation owning a

deposit of sand, gravel or other material, necessary, for the construction of the system of State highways provided herein, has entered into a contract to furnish the Department of Transportation any of such material, at a price to be fixed by said Department of Transportation, thereafter the Department of Transportation shall have the right to condemn the necessary right-of-way under the provisions of Article 9 of Chapter 136, to connect said deposit with any part of the system of State highways or public carrier, provided that easements to material deposits, condemned under this Article shall not become a public road and the condemned easement shall be returned to the owner as soon as the deposits are exhausted or abandoned by the Department of Transportation.

(4) To enforce by mandamus or other proper legal remedies all legal rights or causes of action of the Department of Transportation with other public bodies, corporations, or persons.

(5) To make rules, regulations and ordinances for the use of, and to police traffic on, the State highways, and to prevent their abuse by individuals, corporations and public corporations, by trucks, tractors, trailers or other heavy or destructive vehicles or machinery, or by any other means whatsoever, and to provide ample means for the enforcement of same; and the violation of any of the rules, regulations or ordinances so prescribed by the Department of Transportation shall constitute a Class 1 misdemeanor: Provided, no rules, regulations or ordinances shall be made that will conflict with any statute now in force or any ordinance of incorporated cities or towns, except the Department of Transportation may regulate parking upon any street which forms a link in the State highway system, if said street be maintained with State highway funds.

(6) To establish a traffic census to secure information about the relative use, cost, value, importance, and necessity of roads forming a part of the State highway system, which information shall be a part of the public records of the State, and upon which information the Department of Transportation shall, after due deliberation and in accordance with these established facts, proceed to order the construction of the particular highway or highways.

(7) To assume full and exclusive responsibility for the maintenance of all roads other than streets in towns and cities, forming a part of the State highway system from date of acquiring said roads. The Department of Transportation shall have authority to maintain all streets constructed by the Department of Transportation in towns of less than 3,000 population by the last census, and such other streets as may be constructed in towns and cities at the expense of the Department of Transportation, whenever in the opinion of the Department of Transportation it is necessary and proper so to do.

(8) To give suitable names to State highways and change the names as determined by the Board of Transportation of any highways that shall become a part of the State system of highways.

(9) To employ appropriate means for properly selecting, planting and protecting trees, shrubs, vines, grasses or legumes in the highway right-of-way in the promotion of erosion control, landscaping and general protection of said highways; to acquire by gift or otherwise land for and to construct, operate and maintain roadside parks, picnic areas, picnic tables, scenic overlooks and other appropriate turnouts for the safety and convenience of highway users; and to cooperate with municipal or county authorities, federal agencies, civic bodies and individuals in the furtherance of those objectives. None of the roadside parks, picnic areas, picnic tables, scenic overlooks or other turnouts, or any part of the highway right-of-way shall be used for commercial purposes except (i) for materials displayed in welcome centers in accordance with G.S. 136-89.56, and (ii) for vending machines permitted by the Department of Transportation and placed by the Division of Services for the Blind, Department of Health and Human Services, as the State licensing agency designated pursuant to Section 2(a)(5) of the Randolph-Sheppard Act (20 USC 107a(a)(5)). The Department of Transportation shall regulate the placing of the vending machines in highway rest areas and shall regulate the articles to be dispensed. Every other use or attempted use of any of these areas for commercial purposes shall constitute a Class 1 misdemeanor and each day's use shall constitute a separate offense.

(10) To make proper and reasonable rules, regulations and ordinances for the placing or erection of telephone, telegraph, electric and other lines, above or below ground, signboards, fences, gas, water, sewerage, oil, or other

pipelines, and other similar obstructions that may, in the opinion of the Department of Transportation, contribute to the hazard upon any of the said highways or in any way interfere with the same, and to make reasonable rules and regulations for the proper control thereof. And whenever the order of the said Department of Transportation shall require the removal of, or changes in, the location of telephone, telegraph, electric or other lines, signboards, fences, gas, water, sewerage, oil, or other pipelines, or other similar obstructions, the owners thereof shall at their own expense, except as provided in G.S. 136-19.5(c), move or change the same to conform to the order of said Department of Transportation. Any violation of such rules and regulations or noncompliance with such orders shall constitute a Class 1 misdemeanor.

(11) To regulate, abandon and close to use, grade crossings on any road designated as part of the State highway system, and whenever a public highway has been designated as part of the State highway system and the Department of Transportation, in order to avoid a grade crossing or crossings with a railroad or railroads, continues or constructs the said road on one side of the railroad or railroads, the Department of Transportation shall have power to abandon and close to use such grade crossings; and whenever an underpass or overhead bridge is substituted for a grade crossing, the Department of Transportation shall have power to close to use and abandon such grade crossing and any other crossing adjacent thereto.

(12) The Department of Transportation shall have such powers as are necessary to comply fully with the provisions of the Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. No. 102-240, 105 Stat. 1914 (1991), as amended, and all other federal aid acts and programs the Department is authorized to administer. The said Department of Transportation is hereby authorized to enter into all contracts and agreements with the United States government relating to survey, construction, improvement and maintenance of roads, urban area traffic operations studies and improvement projects on the streets on the State highway system and on the municipal system in urban areas, under the provisions of the present or future congressional enactments, to submit such scheme or program of construction or improvement and maintenance as may be required by the Secretary of Transportation or otherwise provided by federal acts, and to do all other things necessary to carry out fully the cooperation contemplated and provided for by present or future aid acts of Congress for the construction or improvement and maintenance of federal aid of State highways. The good faith and credit of the State are further hereby pledged to make available funds necessary to meet the requirements of the acts of Congress, present or future, appropriating money to construct and improve rural post roads and apportioned to this State during each of the years for which federal funds are now or may hereafter be apportioned by the said act or acts, to maintain the roads constructed or improved with the aid of funds so appropriated and to make adequate provisions for carrying out such construction and maintenance. The good faith and credit of the State are further pledged to maintain such roads now built with federal aid and hereafter to be built and to make adequate provisions for carrying out such maintenance. Upon request of the Department of Transportation and in order to enable it to meet the requirements of acts of Congress with respect to federal aid funds apportioned to the State of North Carolina, the State Treasurer is hereby authorized, with the approval of the Governor and Council of State, to issue short term notes from time to time, and in anticipation of State highway revenue, and to be payable out of State highway revenue for such sums as may be necessary to enable the Department of Transportation to meet the requirements of said federal aid appropriations, but in no event shall the outstanding notes under the provisions of this section amount to more than two million dollars ($ 2,000,000).

(12a) The Department of Transportation shall have such powers as are necessary to establish, administer, and receive federal funds for a transportation infrastructure banking program as authorized by the Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. 102-240, as amended, and the National Highway System Designation Act of 1995, Pub. L. 104-59, as amended. The Department of Transportation is authorized to apply for, receive, administer, and comply with all conditions and requirements related to federal financial assistance necessary to fund the infrastructure banking program. The infrastructure banking program established by the Department of Transportation may utilize federal and available State funds for the purpose of providing loans or other financial assistance to governmental units, including toll authorities, to finance the costs of transportation projects authorized by the above federal aid acts. Such loans or other financial assistance shall be subject to repayment and conditioned upon the

establishment of such security and the payment of such fees and interest rates as the Department of Transportation may deem necessary. The Department of Transportation is authorized to apply a municipality's share of funds allocated under G.S. 136-41.1 or G.S. 136-44.20 as necessary to ensure repayment of funds advanced under the infrastructure banking program. The Department of Transportation shall establish jointly, with the State Treasurer, a separate infrastructure banking account with necessary fiscal controls and accounting procedures. Funds credited to this account shall not revert, and interest and other investment income shall accrue to the account and may be used to provide loans and other financial assistance as provided under this subdivision. The Department of Transportation may establish such rules and policies as are necessary to establish and administer the infrastructure banking program. The infrastructure banking program authorized under this subdivision shall not modify the regional distribution formula for the distribution of funds established by G.S. 136-17.2A. Governmental units may apply for loans and execute debt instruments payable to the State in order to obtain loans or other financial assistance provided for in this subdivision. The Department of Transportation shall require that applicants shall pledge as security for such obligations revenues derived from operation of the benefited facilities or systems, other sources of revenue, or their faith and credit, or any combination thereof. The faith and credit of such governmental units shall not be pledged or be deemed to have been pledged unless the requirements of Article 4, Chapter 159 of the General Statutes have been met. The State Treasurer, with the assistance of the Local Government Commission, shall develop and adopt appropriate debt instruments for use under this subdivision. The Local Government Commission shall develop and adopt appropriate procedures for the delivery of debt instruments to the State without any public bidding therefor. The Local Government Commission shall review and approve proposed loans to applicants pursuant to this subdivision under the provisions of Articles 4 and 5, Chapter 159 of the General Statutes, as if the issuance of bonds was proposed, so far as those provisions are applicable. Loans authorized by this subdivision shall be outstanding debt for the purpose of Article 10, Chapter 159 of the General Statutes.

(12b) To issue "GARVEE" bonds (Grant Anticipation Revenue Vehicles) or other eligible debt-financing instruments to finance federal-aid highway projects using federal funds to pay a portion of principal, interest, and related bond issuance costs, as authorized by 23 U.S.C. § 122, as amended (the National Highway System Designation Act of 1995, Pub. L. 104-59). These bonds shall be issued by the State Treasurer on behalf of the Department and shall be issued pursuant to an order adopted by the Council of State under G.S. 159-88. The State Treasurer shall develop and adopt appropriate debt instruments, consistent with the terms of the State and Local Government Revenue Bond Act, Article 5 of Chapter 159 of the General Statutes, for use under this subdivision. Prior to issuance of any "GARVEE" or other eligible debt instrument using federal funds to pay a portion of principal, interest, and related bond issuance costs, the State Treasurer shall determine (i) that the total outstanding principal of such debt does not exceed the total amount of federal transportation funds authorized to the State in the prior federal fiscal year; or (ii) that the maximum annual principal and interest of such debt does not exceed fifteen percent (15%) of the expected average annual federal revenue shown for the seven-year period in the most recently adopted Transportation Improvement Program. Notes issued under the provisions of this subdivision may not be deemed to constitute a debt or liability of the State or of any political subdivision thereof, or a pledge of the full faith and credit of the State or of any political subdivision thereof, but shall be payable solely from the funds and revenues pledged therefor. All the notes shall contain on their face a statement to the effect that the State of North Carolina shall not be obligated to pay the principal or the interest on the notes, except from the federal transportation fund revenues as shall be provided by the documents governing the revenue note issuance, and that neither the faith and credit nor the taxing power of the State of North Carolina or of any of its political subdivisions is pledged to the payment of the principal or interest on the notes. The issuance of notes under this Part shall not directly or indirectly or contingently obligate the State or any of its political subdivisions to levy or to pledge any form of taxation whatever or to make any appropriation for their payment.

(13) The Department of Transportation may construct and maintain all walkways and driveways within the Mansion Square in the City of Raleigh and the Western Residence of the Governor in the City of Asheville including the approaches connecting with the city streets, and any funds expended therefor shall be a charge against general maintenance.

(14) The Department of Transportation shall have authority to provide roads for the connection of airports in the State with the public highway system, and to mark the highways and erect signals along the same for the guidance and protection of aircraft.

(15) The Department of Transportation shall have authority to provide facilities for the use of waterborne traffic and recreational uses by establishing connections between the highway system and the navigable and nonnavigable waters of the State by means of connecting roads and piers. Such facilities for recreational purposes shall be funded from funds available for safety or enhancement purposes.

(16) The Department of Transportation, pursuant to a resolution of the Board of Transportation, shall have authority, under the power of eminent domain and under the same procedure as provided for the acquirement of rights-of-way, to acquire title in fee simple to parcels of land for the purpose of exchanging the same for other real property to be used for the establishment of rights-of-way or for the widening of existing rights-of-way or the clearing of obstructions that, in the opinion of the Department of Transportation, constitute dangerous hazards at intersections. Real property may be acquired for such purposes only when the owner of the property needed by the Department of Transportation has agreed in writing to accept the property so acquired in exchange for that to be used by the Department of Transportation, and when, in the opinion of the Department of Transportation, an economy in the expenditure of public funds and the improvement and convenience and safety of the highway can be effected thereby.

(17) The Department of Transportation is hereby authorized and required to maintain and keep in repair, sufficient to accommodate the public school buses, roads leading from the state-maintained public roads to all public schools and public school buildings to which children are transported on public school buses to and from their homes. Said Department of Transportation is further authorized to construct, pave, and maintain school bus driveways and sufficient parking facilities for the school buses at those schools. The Department of Transportation is further authorized to construct, pave, and maintain all other driveways and entrances to the public schools leading from public roads not required in the preceding portion of this subdivision.

(18) To cooperate with appropriate agencies of the United States in acquiring rights-of-way for and in the construction and maintenance of flight strips or emergency landing fields for aircraft adjacent to State highways.

(19) To prohibit the erection of any informational, regulatory, or warning signs within the right-of-way of any highway project built within the corporate limits of any municipality in the State where the funds for such construction are derived in whole or in part from federal appropriations expended by the Department of Transportation, unless such signs have first been approved by the Department of Transportation.

(20) The Department of Transportation is hereby authorized to maintain and keep in repair a suitable way of ingress and egress to all public or church cemeteries or burial grounds in the State notwithstanding the fact that said road is not a part of the state-maintained system of roads. For the purpose of this subdivision a public or church cemetery or burial ground shall be defined as a cemetery or burial ground in which there are buried or permitted to be buried deceased persons of the community in which said cemetery or burial ground is located, but shall not mean a privately owned cemetery operated for profit or family burial plots.

(21) The Department of Transportation is hereby authorized and directed to remove all dead animals from the traveled portion and rights-of-way of all primary and secondary roads and to dispose of such animals by burial or otherwise. In cases where there is evidence of ownership upon the body of any dead dog, the Department of Transportation shall take reasonable steps to notify the owner thereof by mail or other means.

(22) No airport or aircraft landing area shall be constructed or altered where such construction or alteration when undertaken or completed may reasonably affect motor vehicle operation and safety on adjoining public roads except in accordance with a written permit from the Department of Transportation or its duly authorized officers. The Department of Transportation is authorized and empowered to regulate airport and aircraft landing area construction and alteration

in order to preserve safe clearances between highways and airways and the Department of Transportation is authorized and empowered to make rules, regulations, and ordinances for the preservation of safe clearances between highways and airways. The Department of Transportation shall be responsible for determining safe clearances and shall fix standards for said determination which shall not exceed the standards adopted for similar purposes by the United States Bureau of Public Roads under the Federal Aid Highway Act of 1958. Any person, firm, corporation or airport authority constructing or altering an airport or aircraft landing area without obtaining a written permit as herein provided, or not in compliance with the terms of such permit, or violating the provisions of the rules, regulations or ordinances promulgated under the authority of this section shall be guilty of a Class 1 misdemeanor; provided, that this subdivision shall not apply to publicly owned and operated airports and aircraft landing areas receiving federal funds and subject to regulation by the Federal Aviation Authority.

(23) When in the opinion of the Department of Transportation an economy in the expenditure of public funds can be effected thereby, the Department of Transportation shall have authority to enter into agreements with adjoining states regarding the planning, location, engineering, right-of-way acquisition and construction of roads and bridges connecting the North Carolina State highway system with public roads in adjoining states, and the Department of Transportation shall have authority to do planning, surveying, locating, engineering, right-of-way acquisition and construction on short segments of roads and bridges in adjoining states with the cost of said work to be reimbursed by the adjoining state, and may also enter into agreements with adjoining states providing for the performance of and reimbursement to the adjoining state of the cost of such work done within the State of North Carolina by the adjoining state: Provided, that the Department of Transportation shall retain the right to approve any contract for work to be done in this State by an adjoining state for which the adjoining state is to be reimbursed.

(24) The Department of Transportation is further authorized to pave driveways leading from state-maintained roads to rural fire district firehouses which are approved by the North Carolina Fire Insurance Rating Bureau and to facilities of rescue squads furnishing ambulance services which are approved by the North Carolina State Association of Rescue Squads, Inc.

(25) The Department of Transportation is hereby authorized and directed to design, construct, repair, and maintain paved streets and roads upon the campus of each of the State's institutions of higher education, at state-owned hospitals for the treatment of tuberculosis, state-owned orthopedic hospitals, juvenile correction centers, mental health hospitals and retarded centers, schools for the deaf, and schools for the blind, when such construction, maintenance, or repairs have been authorized by the General Assembly in the appropriations bills enacted by the General Assembly. Cost for such construction, maintenance, and repairs shall be borne by the Highway Fund. Upon the General Assembly authorizing the construction, repair, or maintenance of a paved road or drive upon any of the above-mentioned institutions, the Department of Transportation shall give such project priority to insure that it shall be accomplished as soon as feasible, at the minimum cost to the State, and in any event during the biennium for which the authorization shall have been given by the General Assembly.

(26) The Department of Transportation, at the request of a representative from a board of county commissioners, is hereby authorized to acquire by condemnation new or additional right-of-way to construct, pave or otherwise improve a designated State-maintained secondary road upon presentation by said board to the Department of Transportation of a duly verified copy of the minutes of its meeting showing approval of such request by a majority of its members and by the further presentation of a petition requesting such improvement executed by the abutting owners whose frontage on said secondary road shall equal or exceed seventy-five percent (75%) of the linear front footage along the secondary road sought to be improved. This subdivision shall not be construed to limit the authority of the Department of Transportation to exercise the power of eminent domain.

(27) The Department of Transportation is authorized to establish policies and promulgate rules providing for voluntary local government, property owner or highway user participation in the costs of maintenance or improvement of roads which would not otherwise be necessary or would not otherwise be performed by the Department of Transportation and which will result in a benefit to the property owner or highway user. By way of illustration and not

as a limitation, such costs include those incurred in connection with drainage improvements or maintenance, driveway connections, dust control on unpaved roads, surfacing or paving of roads and the acquisition of rights-of-way. Local government, property owner and highway user participation can be in the form of materials, money, or land (for right-of-way) as deemed appropriate by the Department of Transportation. The authority of this section shall not be used to authorize, construct or maintain toll roads or bridges.

(28) The Department of Transportation may obtain land, either by gift, lease or purchase which shall be used for the construction and maintenance of ridesharing parking lots. The Department may design, construct, repair, and maintain ridesharing parking facilities.

(29) The Department of Transportation may establish policies and adopt rules about the size, location, direction of traffic flow, and the construction of driveway connections into any street or highway which is a part of the State Highway System. The Department of Transportation may require the construction and public dedication of acceleration and deceleration lanes, and traffic storage lanes and medians by others for the driveway connections into any United States route, or North Carolina route, and on any secondary road route with an average daily traffic volume of 4,000 vehicles per day or more.

(29a) To coordinate with all public and private entities planning schools to provide written recommendations and evaluations of driveway access and traffic operational and safety impacts on the State highway system resulting from the development of the proposed sites. All public and private entities shall, upon acquiring land for a new school or prior to beginning construction of a new school, relocating a school, or expanding an existing school, request from the Department a written evaluation and written recommendations to ensure that all proposed access points comply with the criteria in the current North Carolina Department of Transportation "Policy on Street and Driveway Access". The Department shall provide the written evaluation and recommendations within a reasonable time, which shall not exceed 60 days. This subdivision shall not be construed to require the public or private entities planning schools to meet the recommendations made by the Department, except those highway improvements that are required for safe ingress and egress to the State highway system.

(30) Consistent with G.S. 130A-309.14(a1), the Department of Transportation shall review and revise its bid procedures and specifications set forth in Chapter 136 of the General Statutes to encourage the purchase or use of reusable, refillable, repairable, more durable, and less toxic supplies and products. The Department of Transportation shall require the purchase or use of such supplies and products in the construction and maintenance of highways and bridges to the extent that the use is practicable and cost-effective. The Department shall prepare an annual report on October 1 of each year to the Environmental Review Commission as required under G.S. 130A-309.14(a1).

(31) The Department of Transportation is authorized to designate portions of highways as scenic highways, and combinations of portions of highways as scenic byways, for portions of those highways that possess unusual, exceptional, or distinctive scenic, recreational, historical, educational, scientific, geological, natural, wildlife, cultural or ethnic features. The Department shall remove, upon application, from any existing or future scenic highway or scenic byway designation, highway sections that:

a. Have no scenic value,

b. Have been designated or would be so designated solely to preserve system continuity, and

c. Are adjacent to property on which is located one or more permanent structures devoted to a commercial or industrial activity and on which a commercial or industrial activity is actually conducted, in an unzoned area or an area zoned commercial or industrial pursuant to a State or local zoning ordinance or regulation, except for commercial activity related to tourism or recreation.

The Department shall adopt rules and regulations setting forth the criteria and procedures for the designation of scenic highways and scenic byways under this subsection.

Those portions of highways designated as scenic by the Department prior to July 1, 1993, are considered to be designated as scenic highways and scenic byways under this subsection but the Department shall remove from this designation portions of those highway sections that meet the criteria set forth in this subsection, if requested.

(32) The Department of Transportation may perform dredging services, on a cost reimbursement basis, for a unit of local government if the unit cannot obtain the services from a private company at a reasonable cost. A unit of local government is considered to be unable to obtain dredging services at a reasonable cost if it solicits bids for the dredging services in accordance with Article 8 of Chapter 143 of the General Statutes and does not receive a bid, considered by the Department of Transportation Engineering Staff, to be reasonable.

(33) The Department of Transportation is empowered and directed, from time to time, to carefully examine into and inspect the condition of each railroad, its equipment and facilities, in regard to the safety and convenience of the public and the railroad employees. If the Department finds any equipment or facilities to be unsafe, it shall at once notify the railroad company and require the company to repair the equipment or facilities.

(34) The Department of Transportation may conduct, in a manner consistent with federal law, a program of accident prevention and public safety covering all railroads and may investigate the cause of any railroad accident. In order to facilitate this program, any railroad involved in an accident that must be reported to the Federal Railroad Administration shall also notify the Department of Transportation of the occurrence of the accident.

(35) To establish rural planning organizations, as provided in Article 17 of this Chapter.

(36) To oversee the safety of fixed guideway transit systems in the State not regulated by the Federal Railroad Administration, pursuant to the Intermodal Surface Transportation Efficiency Act of 1991 (49 U.S.C. § 5330). The Department shall adopt rules in conformance with 49 U.S.C. § 5330 concerning its oversight of the safety of fixed guideway transit systems.

(37) To permit private use of and encroachment upon the right-of-way of a State highway or road for the purpose of construction and maintenance of a privately owned bridge for pedestrians or motor vehicles, if the bridge shall not unreasonably interfere with or obstruct the public use of the right-of-way. Any agreement for an encroachment authorized by this subdivision shall be approved by the Board of Transportation, upon a finding that the encroachment is necessary and appropriate, in the sole discretion of the Board. Locations, plans, and specifications for any pedestrian or vehicular bridge authorized by the Board for construction pursuant to this subdivision shall be approved by the Department of Transportation. For any bridge subject to this subdivision, the Department shall retain the right to reject any plans, specifications, or materials used or proposed to be used, inspect and approve all materials to be used, inspect the construction, maintenance, or repair, and require the replacement, reconstruction, repair, or demolition of any partially or wholly completed bridge that, in the sole discretion of the Department, is unsafe or substandard in design or construction. An encroachment agreement authorized by this subdivision may include a requirement to purchase and maintain liability insurance in an amount determined by the Department of Transportation. The Department shall ensure that any bridge constructed pursuant to this subdivision is regularly inspected for safety. The owner shall have the bridge inspected every two years by a qualified private engineering firm based on National Bridge Inspection Standards and shall provide the Department copies of the Bridge Inspection Reports where they shall be kept on file. Any bridge authorized and constructed pursuant to this subdivision shall be subject to all other rules and conditions of the Department of Transportation for encroachments.

(38) To enter into agreements with municipalities, counties, governmental entities, or nonprofit corporations to receive funds for the purpose of advancing the construction schedule of a project identified in the Transportation Improvement Program. If these funds are subject to repayment by the Department, prior to receipt of funds, reimbursement of all funds received by the Department shall be shown in the existing Transportation Improvement Program and shall be reimbursed within seven years of receipt.

(39) To enter into partnership agreements with the North Carolina Turnpike Authority, private entities, and authorized political subdivisions to finance, by tolls, contracts, and other financing methods authorized by law, the cost of acquiring, constructing, equipping, maintaining, and operating transportation infrastructure in this State, with priority given to highways, roads, streets, and bridges, and to plan, design, develop, acquire, construct, equip, maintain, and operate highways, roads, streets, bridges, and existing rail, as well as properties adjoining existing rail lines in this State. An agreement entered into under this subdivision requires the concurrence of the Board of Transportation. The Department shall report to the Chairs of the Joint Legislative Transportation Oversight Committee, the Chairs of the House of Representatives Appropriations Subcommittee on Transportation, and the Chairs of the Senate Appropriations Committee on the Department of Transportation, at the same time it notifies the Board of Transportation of any proposed agreement under this subdivision. Any contracts for construction of highways, roads, streets, and bridges which are awarded pursuant to an agreement entered into under this section shall comply with the competitive bidding requirements of Article 2 of this Chapter.

(40) To expand public access to coastal waters in its road project planning and construction programs. The Department shall work with the Wildlife Resources Commission, other State agencies, and other government entities to address public access to coastal waters along the roadways, bridges, and other transportation infrastructure owned or maintained by the Department. The Department shall adhere to all applicable design standards and guidelines in implementation of this enhanced access. The Department shall report on its progress in expanding public access to coastal waters to the Joint Legislative Commission on Seafood and Aquaculture and to the Joint Legislative Transportation Oversight Commission no later than March 1 of each year.

HISTORY: 1921, c. 2, s. 10; 1923, c. 160, s. 1; c. 247; C.S., s. 3846(j); 1929, c. 138, s. 1; 1931, c. 145, ss. 21, 25; 1933, c. 172; c. 517, c. 1; 1935, c. 213, s. 1; c. 301; 1937, c. 297, s. 2; c. 407, s. 80; 1941, c. 47; c. 217, s. 6; 1943, c. 410; 1945, c. 842; 1951, c. 372; 1953, c. 437; 1957, c. 65, s. 11; c. 349, s. 9; 1959, c. 557; 1963, cc. 520, 1155; 1965, c. 879, s. 1; 1967, c. 1129; 1969, c. 794, s. 2; 1971, cc. 289, 291, 292, 977; 1973, c. 507, s. 5; 1977, c. 460, ss. 1, 2; c. 464, ss. 7.1, 14, 42; 1981, c. 682, s. 19; 1983, c. 84; c. 102; 1985, c. 718, ss. 1, 6; 1987, c. 311; c. 417, ss. 1, 2; 1989, c. 158; 1989 (Reg. Sess. 1990), c. 962, s. 1; 1993, c. 197, s. 2; c. 488, s. 1; c. 524, s. 4; c. 539, ss. 974-977; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 247, s. 1; c. 507, s. 18.2; 1995 (Reg. Sess., 1996), c. 673, s. 4; 1996, 2nd Ex. Sess., c. 18, s. 19.10(a); 1997-428, s. 1; 1997-443, s. 11A.118(a); 2000-123, s. 1; 2000-140, s. 102; 2001-424, s. 27.27; 2003-184, s. 1; 2003-267, s. 1; 2004-168, s. 1; 2005-403, s. 2; 2006-230, s. 1(a); 2007-428, s. 1; 2007-439, s. 1; 2007-485, s. 3.1; 2008-164, s. 1; 2008-180, ss. 2, 8.

NOTES: CROSS REFERENCES. --As to motor vehicles generally, see Chapter 20. As to authority to designate and mark truck routes, see G.S. 20-141(i). As to the Utilities Commission generally, see Chapter 62. As to Department's power of eminent domain, see G.S. 136-19. As to power to determine the maximum load limit for bridges, see G.S. 136-72. As to authority of Department to cooperate with counties in establishing and operating solid waste disposal facilities, see G.S. 153A-291. As to sale, lease, exchange and joint use of governmental property by State and local governmental units, see G.S. 160A-274.

EDITOR'S NOTE. --Session Laws 1977, c. 460, s. 2, as amended by Session Laws 1977, c. 780, s. 1, provided: "This act [which added subdivision (26) of this section] shall not be construed to limit the authority of the Department of Transportation to exercise the power of eminent domain."

Session Laws 1995 (Reg. Sess., 1996), c. 673, s. 1, provides: "The statutory authority, powers, duties, and functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds, including the functions of budgeting and purchasing, of the Rail Safety Section of the Transportation Division of the North Carolina Utilities Commission, is transferred to the Department of Transportation."

Session Laws 2003-284, s. 29.3, provides: "The Department of Transportation may establish two pilot programs to test incentive pay for employees as a means for increasing efficiency and productivity.

"One of the pilot programs shall involve the highway resurfacing program using road oil. Up to one-fourth of one percent (0.25%) of the budget allocation for this program may be used to provide employee incentive payments.

"The other pilot project may be selected by the Department of Transportation, and up to twenty-five thousand dollars ($25,000) may be used from existing budgets for incentives.

"Incentive payments shall be based on quantifiable measures and production schedules determined prior to the implementation of the pilot programs that shall last no more than two years.

"The Department of Transportation shall report to the Joint Legislative Transportation Oversight Committee on the pilot programs at least 30 days prior to their implementation."

Session Laws 2003-284, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2003'."

Session Laws 2003-284, s. 49.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2003-2005 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2003-2005 fiscal biennium."

Session Laws 2003-284, s. 49.5 is a severability clause.

Session Laws 2004-199, s. 61, provides: "The Department of Transportation shall install highway directional guide signs at limited-access highway terminals for the nonresidential campuses of colleges or universities located in North Carolina, if the nonresidential campus is located within one mile from the limited-access highway terminal and if the college or university is licensed by the Board of Governors of The University of North Carolina, offers both undergraduate and graduate degree programs, and has a minimum of 350 students enrolled at the nonresidential campus. The college or university requesting the sign installment shall pay for all charges related to the construction of the sign."

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 28.9(a), provides: "The Department of Transportation may continue the productivity pilot programs in the road oil and bridge inspection units implemented under Section 29.3 of S.L. 2003-284. The Department of Transportation may expend up to one-half of one percent (.50%) of the budget allocation for these programs for employee incentive payments to maintain the increased efficiency and productivity under these programs."

Session Laws 2005-276, s. 28.9(b), provides: "The Department of Transportation may establish two additional pilot programs to test incentive pay for employees as a means of increasing and maintaining efficiency and productivity.

"One of the new pilot programs shall involve the Pavement Markings Unit. The other pilot program may be selected by the Department of Transportation. Up to one-half of one percent (.50%) of the budget allocation for these programs may be used to provide employee incentive payments.

"Incentive payments shall be based on quantifiable measures and production schedules determined prior to the implementation of the pilot programs. Pilot programs implemented under this subsection shall last no more than two years.

"The Department of Transportation shall report to the Joint Legislative Transportation Oversight Committee on the pilot programs developed under this subsection at least 30 days prior to their implementation."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2005-403, s. 1, provides: "The Secretary of the Department of Transportation and the State Treasurer shall jointly form a committee to develop a plan to implement the provisions of this act. The plan shall address all financial, legal, and practical issues involved in issuing "GARVEE" bonds. The plan shall be submitted to the Board of Transportation for review and comment. Following review of the plan by the Board, the two Departments shall jointly submit their implementation plan to the cochairs of the Transportation Appropriations Subcommittee and the cochairs of the Joint Legislative Transportation Oversight Committee by December 1, 2005."

Session Laws 2007-323, s. 27.9(a)-(c), provides: "(a) The Department of Transportation may continue the productivity pilot programs in the road oil, bridge inspection and pavement markings units implemented under Section 29.3 of S.L. 2003-284 and Section 28.9 of S.L. 2005-276. The Department of Transportation may expend up to one-half of one percent (0.50%) of the budget allocation for these programs for employee incentive payments to maintain the increased efficiency and productivity under these programs.

"(b) The Department of Transportation may establish up to two additional pilot programs to test incentive pay for

employees as a means of increasing and maintaining efficiency and productivity.

"These programs may be selected by the Department of Transportation. Up to one-half of one percent (0.50%) of the budget allocation for these programs may be used to provide employee incentive payments.

"Incentive payments shall be based on quantifiable measures and production schedules determined prior to the implementation of the pilot programs. Pilot programs implemented under this subsection shall last no more than two years.

"(c) The Department of Transportation shall report to the Joint Legislative Transportation Oversight Committee on the pilot programs developed under this section at least 30 days prior to their implementation."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2007-485, s. 3.2, provides: "The first report required by G.S. 136-18, as enacted by this section, is due no later than March 1, 2008."

Session Laws 2008-107, s. 25.2, provides: "(a) The Department of Transportation shall cease annual production of the North Carolina State Transportation Map and Coastal Boating Guide and shall produce a biennial North Carolina State Transportation Map and may provide funding for a biennial Coastal Boating Guide, in conjunction with the Wildlife Resources Commission, beginning in the 2008-2009 fiscal year.

"(b) The Department shall provide a written report to the Joint Legislative Transportation Oversight Committee on the biennial map production plan and identify any cost savings for nonproduction years. The report shall also include historical budget and production information for the past five years. The report is due by March 1, 2009."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

EFFECT OF AMENDMENTS. --Session Laws 2004-168, s. 1, effective August 2, 2004, added subdivision (38).

Session Laws 2005-403, s. 2, effective February 1, 2006, added subdivision (12b).

Session Laws 2006-230, s. 1(a), effective August 1, 2006, substituted "is" for "shall be" in the middle of the introductory paragraph and added paragraph (39).

Session Laws 2007-428, s. 1, effective August 23, 2007, added "except those highway improvements that are required for safe ingress and egress to the State highway system" at the end of the last sentence in subdivision (29a).

Session Laws 2007-439, s. 1, effective August 23, 2007, in subdivision (39), inserted "contracts" and substituted "transporation infrastructure in this State, with priority given to highways, roads, streets, and bridges" for "highways, roads, streets, and bridges in this State" in the first sentence, and added the last sentence.

Session Laws 2007-485, s. 3.1, effective August 30, 2007, added subdivision (40).

Session Laws 2008-164, s. 1, effective August 3, 2008, in subdivision (39), added "and to plan, design, develop, acquire, construct, equip, maintain, and operate highways, roads, streets, bridges, and existing rail, as well as properties adjoining existing rail lines in this State" at the end of the first sentence, and added the last sentence.

Session Laws 2008-180, ss. 2 and 8, effective August 4, 2008, in subdivision (2), inserted "broadband communications"; and in subdivision (27), inserted "local government" in the first sentence, and inserted "Local government" at the beginning of the next-to-last sentence.

LEGAL PERIODICALS. --For article on remedies for trespass to land in North Carolina, see 47 N.C.L. Rev. 334 (1969).

For survey of 1977 law on property, see 56 N.C.L. Rev. 1111 (1978).

For survey of 1984 administrative law, "A Declining Role for the Attorney General," see 63 N.C.L. Rev. 1051 (1985).
For a comment on the acquisition, abandonment, and preservation of rail corridors in North Carolina, see 75 N.C.L. Rev. 1989 (1997).
For a survey of 1996 developments in constitutional law, see 75 N.C.L. Rev. 2252 (1997).

CASE NOTES

I. General Consideration.
II. Power of Eminent Domain.

I. GENERAL CONSIDERATION.

DEPARTMENT OF TRANSPORTATION HAS EXCLUSIVE CONTROL OF HIGHWAY SYSTEM. --The State Highway Commission (now Department of Transportation) has been granted exclusive control over the State highway system. Van Leuven v. Akers Motor Lines, 261 N.C. 539, 135 S.E.2d 640 (1964).

THE WORD "HIGHWAY" INCLUDES THE WORD "FERRY," a public ferry being merely a part of a highway. Wilmington Shipyard, Inc. v. North Carolina State Hwy. Comm'n, 6 N.C. App. 649, 171 S.E.2d 222 (1969).

POWERS OF DEPARTMENT ARE INCIDENTAL TO PURPOSE FOR WHICH IT WAS CREATED. --The State Highway Commission (now Department of Transportation) is the State agency created for the purpose of constructing and maintaining public highways. All the other powers it possesses are incidental to the purpose for which it was created. De Bruhl v. State Hwy. & Pub. Works Comm'n, 245 N.C. 139, 95 S.E.2d 553 (1956); C.C.T. Equip. Co. v. Hertz Corp., 256 N.C. 277, 123 S.E.2d 802 (1962).
The Commission (now Department) is vested with the power of "general supervision over all matters relating to the construction of the State highways ...." All the other powers it possesses are incidental to the purpose for which it was created. State Hwy. Comm'n v. Batts, 265 N.C. 346, 144 S.E.2d 126 (1965).

POWERS IMPLIED FROM GENERAL AUTHORITY GIVEN AND DUTY IMPOSED. --Where a course of action is reasonably necessary for the effective prosecution of the State Highway Commission's (now Department of Transportation's) obligation to supervise the construction, repair and maintenance of public highways, the power to take such action must be implied from the general authority given and the duty imposed. C.C.T. Equip. Co. v. Hertz Corp., 256 N.C. 277, 123 S.E.2d 802 (1962).

RIGHT TO SUE AND BE SUED. --The statutes creating the State Highway Commission (now Department of Transportation) enumerate its powers and duties in the construction, maintenance, etc., of highways for public benefit, without either expressly or impliedly giving it the right to sue and be sued, but manifestly it is an agency of the State for the purpose of exercising administrative and governmental functions. Carpenter v. Atlanta & Charlotte Air Line Ry., 184 N.C. 400, 114 S.E. 693 (1922).
The State Highway Commission (now Department of Transportation) cannot be sued for tort or trespass, even though the trespass allegedly occurs in the building of a public highway. Moore v. Clark, 235 N.C. 364, 70 S.E.2d 182 (1952).

SUIT FOR INJUNCTION WILL NOT LIE. --Plaintiffs sued the State Highway and Public Works Commission (now Department of Transportation) to enjoin it from enforcing its ordinance restricting the placing of advertising signs along the State highways, alleging that the ordinance was in excess of the authority vested in the Commission (now Department) and was unconstitutional. It was held that defendant's demurrer was properly sustained, since injunction will not lie against a State agency to prevent it from committing a wrong. Schloss v. State Hwy. & Pub. Works Comm'n, 230 N.C. 489, 53 S.E.2d 517 (1949). See Moore v. Clark, 235 N.C. 364, 70 S.E.2d 182 (1952).

THE DEPARTMENT OF TRANSPORTATION HAS THE STATUTORY AUTHORITY TO DETERMINE THE

NATURE AND EXTENT OF THE PROPERTY REQUIRED FOR ITS PURPOSES. Frink v. North Carolina Bd. of Transp., 27 N.C. App. 207, 218 S.E.2d 713 (1975).

POWER TO ACQUIRE RESIDENCES. --The State Highway Commission (now Department of Transportation) does not have authority to acquire residences, either by purchase or by eminent domain, unless such residence is needed for construction or maintenance of the highway system. De Bruhl v. State Hwy. & Pub. Works Comm'n, 245 N.C. 139, 95 S.E.2d 553 (1956).

STATUTES GIVE BROAD DISCRETION IN CHANGING ROADS. --Subdivision (2) of this section and G.S. 136-45 give broad discretionary powers to the State Highway Commission (now Department of Transportation) in establishing, altering, and changing the route of county roads that are or are proposed to be absorbed in the State highway system of public roads. Road Comm'n v. State Hwy. Comm'n, 185 N.C. 56, 115 S.E. 886 (1923).

CONSTRUCTION OF NEW ROADS. --In view of subdivision (2) of this section the State Highway Commission (now Department of Transportation) may construct new roads. Board of Comm'rs v. State Hwy. Comm'n, 195 N.C. 26, 141 S.E. 539 (1928).

PROTECTING INTEGRITY OF RIGHTS-OF-WAY. --It is clear that the authority and powers set forth in subsection (10) of this section are intended to allow the Department of Transportation (DOT) to protect the integrity of its rights-of-way, which are there to begin with to accommodate the construction and maintenance of roads and highways. Baldwin v. GTE S., Inc., 110 N.C. App. 54, 428 S.E.2d 857, cert. denied, 334 N.C. 619, 435 S.E.2d 331 (1993), rev'd on other grounds, 335 N.C. 544, 439 S.E.2d 108 (1994).

DEPARTMENT MAY CONTROL USE OF LAND EMBRACED BY EASEMENT. --The effect of this section is to give dominance to the easement acquired by the State. Under the terms thereof the Highway Commission (now Department of Transportation) has authority to control the uses to which the land embraced within the easement may be put. If it deems it wise or expedient so to do in the interest of the traveling public, it may altogether exclude the imposition of any additional easement or burden. It may not be held that the legislature intended thereby to declare that the construction and maintenance of a telephone line is a legitimate highway purpose and embraced within the easement acquired for highway use. The Commission (now Department) is merely authorized to do whatever is necessary to be done in order to make a safe, convenient, public way for travel, including the right, if necessary, to exclude the owner and others from using any part of the surface of the way for any permanent or private purpose. Hildebrand v. Southern Bell Tel. & Tel. Co., 219 N.C. 402, 14 S.E.2d 252 (1941).

USE OF RIGHT-OF-WAY BY OWNER OF FEE. --Except for the purpose of ingress and egress the owner of the fee uses the same, whether for building or cultivation, by permission and not as a matter of right. Hildebrand v. Southern Bell Tel. & Tel. Co., 219 N.C. 402, 14 S.E.2d 252 (1941).

USE BY TELEPHONE AND TELEGRAPH COMPANIES. --The Commission (now Department of Transportation) has been granted exclusive control over the State highway system and may in its discretion authorize the use of a highway right-of-way by telephone and telegraph companies, and prescribe the manner and extent of such use, subject to the right of the owner of the servient estate to payment of compensation for the additional burden. Hildebrand v. Southern Bell Tel. & Tel. Co., 221 N.C. 10, 18 S.E.2d 827 (1942). See also Hildebrand v. Southern Bell Tel. & Tel. Co., 219 N.C. 402, 14 S.E.2d 252 (1941); Van Leuven v. Akers Motor Lines, 261 N.C. 539, 135 S.E.2d 640 (1964).

The State Highway Commission (now Department of Transportation) has full authority to make proper and reasonable rules, regulations and ordinances for the placing or erection of telephone, telegraph or other poles within the right-of-way, and it may, at any time, require the removal of, change in, or relocation of any such poles. Van Leuven v. Akers Motor Lines, 261 N.C. 539, 135 S.E.2d 640 (1964).

PEDESTRIAN MEMBER OF PROTECTED CLASS. --Plaintiff, as a pedestrian lawfully and properly using a

telephone booth, was a member of the Class A regulation prohibiting installation of phone booths in rights-of-way was intended to protect. Baldwin v. GTE S., Inc., 335 N.C. 544, 439 S.E.2d 108 (1994).

REGULATION AND CLOSING OF GRADE CROSSINGS. --The Highway Commission (now Department of Transportation) is authorized to regulate, abandon, and close grade crossings and intersections. Snow v. North Carolina State Hwy. Comm'n, 262 N.C. 169, 136 S.E.2d 678 (1964).

DUTY TO POST ADEQUATE SIGNAGE AT RAILROAD GRADE CROSSING. --North Carolina Department of Transportation was liable under the Tort Claims Act, G.S. 143-291 et seq., for failing to post adequate signage at a railroad crossing that was difficult to cross for low vehicles due to the grade of the road, because it had a duty to put up signs to warn of the risk, pursuant to G.S. 136-18(5), and it instead chose to direct trucks on an alternate route after finding that signs often went unheeded; despite the alternate route recommendation, the Department had a duty to warn drivers of the crossing, the failure to post such warnings was a breach of its duty and was the proximate cause of a truck driver's tractor-trailer getting stuck on the crossing and thereafter hit by a train, and there was no contributory negligence by the truck driver who bypassed the alternate route because there were no warning signs or weight limit signs posted pursuant to G.S 20-116(h). Smith v. N.C. DOT, 156 N.C. App. 92, 576 S.E.2d 345 (2003).

COUNTY COMMISSIONERS MAY NOT REOPEN ABANDONED GRADE CROSSING. --The commissioners of a county are without power to order a grade crossing abandoned by the Highway Commission (now Department of Transportation) reopened to the public, and this power is not given the county by G.S. 136-67. Rockingham County v. Norfolk & W. Ry., 197 N.C. 116, 147 S.E. 832 (1929).

LIABILITY OF TOWN FOR INJURY CAUSED BY DANGEROUS CONDITION ON STREET. --Where the State Highway Commission (now Department of Transportation) has taken over the construction of a town street and bridge, the town is not thereby relieved of liability for an injury proximately caused by a dangerous condition of the street at the bridge, when the town had implied notice of such condition, which had existed for several months, as subdivision (7) of this section expressly excepts from its provisions streets in towns and cities. Pickett v. Carolina & N.W. Ry., 200 N.C. 750, 158 S.E. 398 (1931).

LIABILITY OF CONTRACTOR CONSTRUCTING ROAD UNDER CONTRACT WITH DEPARTMENT. --One who contracts with a public body for the performance of public work is entitled to share the immunity of the public body from liability for incidental injuries necessarily involved in the performance of the contract, where he is not guilty of negligence. Gilliam v. Propst Constr. Co., 256 N.C. 197, 123 S.E.2d 504 (1962).

Defendant contractor owed plaintiff no duty to warn the public that a road constructed in accordance with the State Highway Commission's (now Department of Transportation's) plans could not be used at a speed in excess of 25 m.p.h., when the Commission (now Department) had accepted the work by directing that the road be opened for traffic, posting such signs thereon as it deemed proper. Gilliam v. Propst Constr. Co., 256 N.C. 197, 123 S.E.2d 504 (1962).

VIOLATION OF ADMINISTRATIVE REGULATION IS NEGLIGENCE PER SE. --When the violation of an administrative regulation enacted for safety purposes is criminal (subsection (10)), that violation is negligence per se in a civil trial unless otherwise provided. Baldwin v. GTE S., Inc., 335 N.C. 544, 439 S.E.2d 108 (1994).

REQUIREMENTS AS TO SIGNS AND FLAGMEN DID NOT GIVE CONTRACTOR RIGHT-OF-WAY. --Where a contractor for the improvement of an airport was granted permission by the Highway Commission (now Department of Transportation) to construct a dirt ramp over the highway to protect it from heavy equipment, the Commission's (now Department's) requirements with reference to signs and flagmen were primarily for the protection of the users of the highway and did not confer on the contractor special privileges in respect to right-of-way. C.C. Mangum, Inc. v. Gasperson, 262 N.C. 32, 136 S.E.2d 234 (1964).

JUDICIAL NOTICE OF HIGHWAY ORDINANCE. --An ordinance of the Highway Commission (now Department of

Transportation) does not come within that class of legislative enactments of which the courts will take judicial notice. State v. Toler, 195 N.C. 481, 142 S.E. 715 (1928).

INSPECTION OF EQUIPMENT AND FACILITIES. --As to the jurisdiction of the Utilities Commission to require rail carrier to open drainage ditches along its tracks and to keep its drainage ditches open, see State ex rel. Utils. Comm'n v. Seaboard C.L.R.R., 62 N.C. App. 631, 303 S.E.2d 549.

APPLIED in Cahoon v. Roughton, 215 N.C. 116, 1 S.E.2d 362 (1939); as to subdivision (7), in Shaver Motor Co. v. City of Statesville, 237 N.C. 467, 75 S.E.2d 324 (1953); North Carolina State Hwy. Comm'n v. Asheville School, Inc., 5 N.C. App. 684, 169 S.E.2d 193 (1969); North Carolina State Hwy. Comm'n v. Asheville School, Inc., 276 N.C. 556, 173 S.E.2d 909 (1970); Tice v. DOT, 67 N.C. App. 48, 312 S.E.2d 241 (1984); Welch Contr., Inc. v. N.C. DOT, 175 N.C. App. 45, 622 S.E.2d 691 (2005).

CITED in Radford v. Young, 194 N.C. 747, 140 S.E. 806 (1927); State v. Henderson, 207 N.C. 258, 176 S.E. 758 (1934); Wood v. Carolina Tel. & Tel. Co., 228 N.C. 605, 46 S.E.2d 717 (1948); Smith v. State Hwy. Comm'n, 257 N.C. 410, 126 S.E.2d 87 (1962); North Carolina Tpk. Auth. v. Pine Island, Inc., 265 N.C. 109, 143 S.E.2d 319 (1965); Watkins v. Lambe-Young, Inc., 37 N.C. App. 30, 245 S.E.2d 202 (1978); DOT v. Overton, 111 N.C. App. 857, 433 S.E.2d 471 (1993); DOT v. Rowe, 138 N.C. App. 329, 531 S.E.2d 836 (2000); Rifenburg Constr., Inc. v. Brier Creek Assocs., L.P., 160 N.C. App. 626, 586 S.E.2d 812 (2003), aff'd sub nom. Rifenburg Constr., Inc. v. Brier Creek Assocs.L.P., 358 N.C. 218, 593 S.E.2d 585 (2004); Town of Highlands v. Hendricks, 164 N.C. App. 474, 596 S.E.2d 440 (2004), cert. denied, -- N.C. --, 605 S.E.2d 149 (2004); DOT v. M.M. Fowler, Inc., 361 N.C. 1, 637 S.E.2d 885 (2006).

II. POWER OF EMINENT DOMAIN.

DEPARTMENT HAS NO POWER TO CONDEMN PROPERTY FOR PRIVATE ROAD. --This section and G.S. 136-45 vest in the State Highway Commission (now Department of Transportation) broad discretionary powers in establishing, constructing, and maintaining highways as part of a statewide system of hard-surfaced and other dependable highways, but the State Commission (now Department) has no power to condemn private property to construct a road for the private use of any person or group of persons, and if it does so, it is an arbitrary act and an abuse of the discretion vested in the Commission (now Department). State Hwy. Comm'n v. Batts, 265 N.C. 346, 144 S.E.2d 126 (1965).

CONDEMNATION OR CURTAILMENT OF ABUTTING LANDOWNER'S RIGHT OF ACCESS TO LIMITED-ACCESS HIGHWAY. --The power and authority vested in the State Highway and Public Works Commission (now Department of Transportation) by virtue of the statutes enacted by the General Assembly, to acquire by gift, purchase, or otherwise, any road or highway, or tract of land or other property whatsoever that may be necessary for a State highway system, to condemn private property as it may deem necessary and suitable for road construction, to make rules, regulations and ordinances for the use of, and to police traffic on, the State highways, and to have such powers as are necessary to comply fully with the provisions of the present or future federal aid grants, is expressed in language broad and extensive and general and comprehensive enough and the object so general and prospective in operation as to authorize the Commission (now Department) to exercise the power of eminent domain to condemn or severely curtail an abutting landowner's right of access to a State public highway adjacent to his property for the construction or reconstruction, maintenance and repair of a limited-access highway upon the payment of just compensation. Hedrick v. Graham, 245 N.C. 249, 96 S.E.2d 129 (1957).

OWNER OF LAND SUBJECT TO HIGHWAY EASEMENT IS ENTITLED TO NOMINAL DAMAGES FOR ENCROACHMENT. --It may be conceded that an easement acquired by the State for a public highway is, under existing law, so extensive in nature, and the control exercised by the State Highway Commission (now Department of Transportation) is so exclusive in extent, that the subservient estate in the land, from a practical standpoint, amounts to

little more than the right of reverter in the event the easement is abandoned. Nevertheless, the subservient estate still exists, and any encroachment thereon entitles the owner to nominal damages at least. Van Leuven v. Akers Motor Lines, 261 N.C. 539, 135 S.E.2d 640 (1964).

SUBSTITUTE CONDEMNATION DESCRIBED. --Substitute condemnation, provided for by subdivision (16) of this section, is a transaction in which the State or an agency with the power of eminent domain takes land under an agreement to compensate its owner with land to be taken in condemnation proceedings from a third person, instead of with money. North Carolina State Hwy. Comm'n v. Farm Equip. Co., 281 N.C. 459, 189 S.E.2d 272 (1972).

WHEN SUBSTITUTE CONDEMNATION IS VALID. --Substitute condemnation, provided for by subdivision (16) of this section, is a valid exercise of a power of eminent domain only when the substitution of other property is the sole method by which the owner of land taken for public use can be justly compensated and the practical problems resulting from the taking can be solved. North Carolina State Hwy. Comm'n v. Farm Equip. Co., 281 N.C. 459, 189 S.E.2d 272 (1972).

Substitute condemnation of land for exchange under subdivision (16) of this section can only be justified when the property for which it is substituted accomplishes the public purpose for which it was taken, and the cost is not disproportionate to the benefit derived. North Carolina State Hwy. Comm'n v. Farm Equip. Co., 281 N.C. 459, 189 S.E.2d 272 (1972).

PROHIBITION AGAINST TAKING PROPERTY FOR PRIVATE USES APPLIES TO SUBDIVISION (16). --Any exercise of the power of eminent domain under subdivision (16) of this section is subject to the constitutional prohibition against the taking of property for private uses. North Carolina State Hwy. Comm'n v. Farm Equip. Co., 281 N.C. 459, 189 S.E.2d 272 (1972).

VALUE OF LAND CONDEMNED UNDER SUBDIVISION (16). --See North Carolina State Hwy. Comm'n v. Helderman, 285 N.C. 645, 207 S.E.2d 720 (1974).

CONDEMNATION OF PROPERTY FOR EXCHANGE FOR RAILROAD RIGHT-OF-WAY. --Under subdivision (16) of this section, the State Highway Commission (now Department) is without authority to condemn land in fee simple for the purpose of exchanging it for railroad right-of-way property to be used in a highway construction project. The Commission (now Department) may only condemn an easement to be used for railroad purposes. North Carolina State Hwy. Comm'n v. Farm Equip. Co., 281 N.C. 459, 189 S.E.2d 272 (1972).

THE OBSTRUCTION OF VIEW OF PLAINTIFF'S BILLBOARDS DUE TO THE VEGETATION AND TREES planted by Department of Transporation (DOT) as part of the highway beautification project did not amount to a taking of plaintiff's property. Adams Outdoor Adv. v. North Carolina DOT, 112 N.C. App. 120, 434 S.E.2d 666 (1993).

OPINIONS OF THE ATTORNEY GENERAL

STATE HIGHWAY COMMISSION (NOW DEPARTMENT OF TRANSPORTATION) MAY DISPOSE OF ABANDONED, JUNKED MOTOR VEHICLES. --See opinion of Attorney General to Mr. F. L. Hutchinson, Division Engineer, State Highway Commission, 40 N.C.A.G. 437 (1969). 309 N.C. 324, 307 S.E.2d 168 (1983), cert. denied and appeal dismissed.

REGULATORY AUTHORITY OVER STATE HIGHWAY SYSTEM STREETS. --The Department of Transportation is vested with general regulatory authority over the use of State Highway System streets. The general grant of authority to municipalities over streets is subordinate to the Department of Transportation's rights and duties to maintain the State Highway System. See opinion of the Attorney General to Mr. Ralph D. Karpinos, Town Attorney, Chapel Hill, N.C., 58 N.C.A.G. 17 (Feb. 26, 1988).

GENERAL STATUTES OF NORTH CAROLINA
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*** Statutes current through the 2008 Regular Session ***
*** Annotations are current through January 12, 2009 ***

CHAPTER 136. ROADS AND HIGHWAYS
ARTICLE 11. OUTDOOR ADVERTISING CONTROL ACT

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N.C. Gen. Stat. § 136-129.2 (2009)

§ 136-129.2. Limitation of outdoor advertising devices adjacent to scenic highways, State and National Parks, historic areas and other places

(a) In addition to the limitations contained in G.S. 136-129 and G.S. 136-129.1, in order to further the purposes set forth in Article 10 of this Chapter and to promote the reasonable, orderly, and effective display of outdoor advertising devices along highways adjacent to scenic and historical areas, while protecting the public investment in these highways and promoting the safety and recreational value of public travel, and to preserve natural beauty, no outdoor advertising sign shall be erected adjacent to any highway which is either:

(1) a. A scenic highway or scenic byway designated by the Board of Transportation;

b. Within 1,200 feet, on the same side of the highway, of the boundary line of a North Carolina State Park, a National Park, a State or national wildlife refuge, or a designated wild and scenic river; or

c. Within 500 feet, on the same side of the highway, of the boundary lines of any historic districts and other properties listed in the National Register of Historic Places or State rest areas, or within the boundary lines of any historic district;

except as permitted under G.S. 136-129(1), (2), (2a), or (3); or

(2) Within one-third of the applicable distances under sub-subdivision (a)(1)b. and (a)(1)c. of this section, along the opposite side of the highway from any of the properties designated in sub-subdivision (a)(1)b. and (a)(1)c. of this section, except as permitted under G.S. 136-129(1), (2), (2a), (3), (4), or (5).

(b) The distances set forth in this section shall be measured horizontally in linear feet extending in each direction along the edge of the pavement of the highway from any point on the boundary of the subject property, or any point on the opposite side of the highway perpendicular to any point on the boundary line of the subject property.

(c) As used in sub-subdivision (a)(1)b. and (a)(1)c. of this section, the term "highway" means a highway that is designated as a part of the interstate or federal-aid primary highway system as of June 1, 1991, or any highway which is

or becomes a part of the National Highway System.

HISTORY: 1993, c. 524, s. 1.

NOTES:

LexisNexis 50 State Surveys, Legislation & Regulations

Billboards and Outdoor Advertising

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CHAPTER 143. STATE DEPARTMENTS, INSTITUTIONS, AND COMMISSIONS
ARTICLE 21. WATER AND AIR RESOURCES
PART 1. ORGANIZATION AND POWERS GENERALLY; CONTROL OF POLLUTION

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N.C. Gen. Stat. § 143-211 (2009)

§ 143-211. Declaration of public policy

(a) It is hereby declared to be the public policy of this State to provide for the conservation of its water and air resources. Furthermore, it is the intent of the General Assembly, within the context of this Article and Articles 21A and 21B of this Chapter, to achieve and to maintain for the citizens of the State a total environment of superior quality. Recognizing that the water and air resources of the State belong to the people, the General Assembly affirms the State's ultimate responsibility for the preservation and development of these resources in the best interest of all its citizens and declares the prudent utilization of these resources to be essential to the general welfare.

(b) It is the public policy of the State to maintain, protect, and enhance water quality within North Carolina. Further, it is the public policy of the State that the cumulative impact of transfers from a source river basin shall not result in a violation of the antidegradation policy set out in 40 Code of Federal Regulations § 131.12 (1 July 1997 Edition) and the statewide antidegradation policy adopted pursuant thereto.

(c) It is the purpose of this Article to create an agency which shall administer a program of water and air pollution control and water resource management. It is the intent of the General Assembly, through the duties and powers defined herein, to confer such authority upon the Department of Environment and Natural Resources as shall be necessary to administer a complete program of water and air conservation, pollution abatement and control and to achieve a coordinated effort of pollution abatement and control with other jurisdictions. Standards of water and air purity shall be designed to protect human health, to prevent injury to plant and animal life, to prevent damage to public and private property, to insure the continued enjoyment of the natural attractions of the State, to encourage the expansion of employment opportunities, to provide a permanent foundation for healthy industrial development and to secure for the people of North Carolina, now and in the future, the beneficial uses of these great natural resources. It is the intent of the General Assembly that the powers and duties of the Environmental Management Commission and the Department of Environment and Natural Resources be construed so as to enable the Department and the Commission to qualify to administer federally mandated programs of environmental management and to qualify to accept and administer funds from the federal government for such programs.

HISTORY: 1951, c. 606; 1967, c. 892, s. 1; 1973, c. 1262, s. 23; 1977, c. 771, s. 4; 1979, 2nd Sess., c. 1158, s. 2; 1989,

c. 135, s. 1; c. 727, s. 218(102); 1997-443, s. 11A.119(a); 1998-168, s. 1; 2006-259, ss. 31(b), 31(c).

NOTES: CROSS REFERENCES. --As to enforcement of environmental requirements in manufacturing redevelopment districts, see G.S. 66-343. See note at G.S. 143-214.7 relating to Session Laws 2004-163 and Phase II Stormwater Permit application and standards. As to organization of the Department of Environment and Natural Resources, see G.S. 143B-279.1 et seq. As to the Environmental Management Commission, see G.S. 143B-282 through 143B-285.

EXPRESS REVIEW PILOT PROGRAM. --Session Laws 2003-284, ss. 11.4A(a)-(e), provide: "(a) The Department of Environment and Natural Resources may develop the Express Review Pilot Program, a pilot program to provide express permit and certification reviews. Participation in the Express Review Pilot Program is voluntary, and the program is to become supported by the fees determined pursuant to subsection (b) of this section. The Department of Environment and Natural Resources shall determine the project applications to review under the Express Review Pilot Program from those who request to participate in the Pilot Program. The Express Review Pilot Program may be applied to any one or all of the permits, approvals, or certifications in the following programs: the erosion and sedimentation control program, the coastal management program, and the water quality programs, including water quality certifications and stormwater management. The Express Review Pilot Program shall focus on the following permits or certifications:

"(1) Stormwater permits under Part 1 of Article 21 of Chapter 143 of the General Statutes.

"(2) Stream origination certifications under Article 21 of Chapter 143 of the General Statutes.

"(3) Water quality certification under Article 21 of Chapter 143 of the General Statutes.

"(4) Erosion and sedimentation control permits under Article 4 of Chapter 113A of the General Statutes.

"(5) Permits under the Coastal Area Management Act (CAMA), Part 4 of Article 7 of Chapter 113A of the General Statutes.

"(b) The Department of Environment and Natural Resources may establish up to eight positions to administer the Express Review Pilot Program and may determine the fees for express application review under the Pilot Program. Notwithstanding G.S. 143-215.3D, the maximum permit application fee to be charged under subsection (a) of this section for the express review of a project application requiring all of the permits under subdivisions (1) through (5) of subsection (a) of this section shall not exceed five thousand five hundred dollars ($5,500). Notwithstanding G.S. 143-215.3D, the maximum permit application fee to be charged for the express review of a project application requiring all of the permits under subdivisions (1) through (4) of subsection (a) of this section shall not exceed four thousand five hundred dollars ($4,500). Notwithstanding G.S. 143-215.3D, the maximum permit application fee charged for the express review of a project application for any other combination of permits under subdivisions (1) through (5) of subsection (a) of this section shall not exceed four thousand dollars ($4,000). Express review of a project application involving additional permits or certifications issued by the Department of Environment and Natural Resources other than those under subdivisions (1) through (5) of subsection (a) of this section may be allowed by the Department, and, notwithstanding G.S. 143-215.3D or any other statute or rule that sets a permit fee, the maximum permit application fee charged for the express review of a project application shall not exceed four thousand dollars ($4,000), plus one hundred fifty percent (150%) of the fee that would otherwise apply by statute or rule for that particular permit or certification. Additional fees, not to exceed fifty percent (50%) of the original permit application fee under this section, may be charged for subsequent reviews due to the insufficiency of the permit applications. The Department of Environment and Natural Resources may establish the procedure by which the amount of the fees under this subsection is determined, and the fees and procedures are not rules under G.S. 150B-2(8a) for the Express Review Pilot Program under this section.

"(c) The funds appropriated to the Department of Environment and Natural Resources in this act for the 2003-2004 fiscal year shall be used for the costs of implementing the Express Review Pilot Program under this section during the 2003-2004 fiscal year.

"(d) The Express Review Fund is created as a special nonreverting fund. The Express Review Fund shall be used for the costs of implementing the Express Review Pilot Program under this section. All fees collected under this section shall be credited to the Express Review Fund. If the Express Review Pilot Program is abolished, the funds in the Express Review Fund shall be credited to the General Fund.

"(e) No later than May 1, 2004, the Department of Environment and Natural Resources shall report to the General

Assembly its findings on the success of the Express Review Pilot Program and whether it recommends that the Pilot Program be continued or expanded."

Session Laws 2001-355, ss. 1 to 6 provide for the implementation of the Tar-Pamlico River Basin-Nutrient Sensitive Waters Management Strategy: Agricultural Nutrient Control Strategy, as adopted by the Environmental Management Commission on 12 October 2000 and approved by the Rules Review Commission on 20 November 2000, to become effective on 1 September 2001. A Local Advisory Committee is to be appointed in each county or watershed, as specified in the Basin Oversight Committee, within the Tar-Pamlico River Basin; these committees terminate upon a finding by the Environmental Management Commission that the long-term maintenance of nutrient loads is assured. Under the act, the Soil and Water Commission is to approve best management practices for pasture-based production or management of livestock, including a point system applicable thereto. Harvesting of trees is also addressed. Furthermore, the Basin Oversight Committee is to develop a nutrient loading accounting methodology, to be approved by the Environmental Management Commission no later than 1 March 2003. The Environmental Management Commission may adopt and revise a temporary rule incorporating the provisions of the act until a permanent rule can be adopted. Session Laws 2001-355, s. 7, provides that ss. 2 and 3 of the act expire when the temporary rule becomes effective, and s. 4 expires upon a finding that the long-term maintenance of nutrient loads in the Tar-Pamlico River Basin is assured.

EXPAND EXPRESS REVIEW PILOT PROGRAM. --Session Laws 2004-124, ss. 12.9(a)-(f), provides: "(a) The Department of Environment and Natural Resources shall continue the Express Review Pilot Program established by Section 11.4A of S.L. 2003-284 that was implemented in the Wilmington and Raleigh regional offices and shall expand the Express Review Pilot Program to two additional regional offices within the Department, to be selected by the Department based on the Department's determination of where the Pilot Program is most needed.

"(b) The Department of Environment and Natural Resources shall continue and support the eight positions that were authorized under Section 11.4A of S.L. 2003-284 to administer the expanded Express Review Pilot Program under this section. This expanded Program and these positions and support shall be funded from the Express Review Fund, created by Section 11.4A of S.L. 2003-284.

"(c) The Department of Environment and Natural Resources may establish and support four additional positions to administer the expanded Express Review Pilot Program under this section. These positions and support may be funded for the 2004-2005 fiscal year from funds appropriated in this act to the Department of Environment and Natural Resources for this purpose. It is the intent of the General Assembly that these positions and support be funded in future fiscal years from the Express Review Fund.

"(d) The Department of Environment and Natural Resources may establish and support four additional positions to administer the expanded Express Review Pilot Program under this section. These positions and support shall be funded from the Express Review Fund, created by Section 11.4A of S.L. 2003-284.

"(e) No later than March 1, 2005, the Department of Environment and Natural Resources shall report to the Fiscal Research Division and the Environmental Review Commission its findings on the success of the continued Express Pilot Review Program and whether it recommends that the Program be continued or expanded and any other findings or recommendations, including any legislative proposals, that it deems pertinent.

"(f) Subsection (c) of this section becomes effective January 1, 2005. The remaining subsections of this section become effective July 1, 2004."

LEGISLATIVE FINDINGS. --Session Laws 2005-190, s. 1, effective July 15, 2005, provides: "The General Assembly finds that:

"(1) Drinking water supply reservoirs are an essential source of water needed to meet municipal, industrial, and agricultural needs.

"(2) Drinking water supply reservoirs provide recreational opportunities and wildlife habitat and, if properly managed, improve water quality.

"(3) Management and protection of the quality and quantity of water in drinking water supply reservoirs are essential to the economic vitality of North Carolina.

"(4) Excessive nutrients are a major source of impairment of water quality in drinking water supply reservoirs.

"(5) It would be beneficial for the State to study the condition of drinking water supply reservoirs and to develop nutrient control criteria to prevent drinking water supply reservoirs from becoming impaired.

"(6) It would be beneficial for the State to develop calibrated nutrient response models and nutrient management strategies to ensure that drinking water supply reservoirs that are showing evidence of impairment are protected, as envisioned by Part 1 of Article 21 of Chapter 143 of the General Statutes and S.L. 1997-458, the Clean Water Responsibility and Environmentally Sound Policy Act."

STUDY OF DRINKING WATER SUPPLY RESERVOIRS. --Session Laws 2005-190, s. 2(a), effective July 15, 2005, provides: "The Environmental Management Commission shall study the water quality in the drinking water supply reservoirs in the State to determine whether the reservoirs meet current water quality standards. The Commission shall analyze existing data and report its findings and recommendations to the Environmental Review Commission by 1 May 2006."

NUTRIENT CONTROL CRITERIA. --Session Laws 2005-190, s. 2(b), effective July 15, 2005, provides: "Based on the results of the study of drinking water supply reservoirs and an evaluation of current water quality standards, the Environmental Management Commission shall identify any nutrient control criteria necessary to prevent excess nutrient loading in each drinking water supply reservoir in order to protect public health and other designated uses by 1 January 2009. The Commission shall adopt final nutrient control criteria for each drinking water supply reservoir by 1 May 2010. If the Commission finds that the nutrient control criteria for any drinking water supply reservoir are not being achieved, the Commission shall develop and implement a plan for enhanced water quality monitoring in that drinking water supply reservoir within one year of the determination. The Commission shall report its progress in implementing this section, including its findings and recommendations, to the Environmental Review Commission as a part of each quarterly report it makes pursuant to G.S. 143B-282(b)."

APPLICABILITY OF SECTION TO CERTAIN RESERVOIRS. --Session Laws 2005-190, s. 3(a), effective July 15, 2005, provides: "This section applies only to drinking water supply reservoirs that meet all of the following criteria as of 1 July 2005:

"(1) The reservoir serves a population greater than 300,000 persons.

"(2) The Environmental Management Commission has classified all or any part of the water in the reservoir as a nutrient sensitive water (NSW).

"(3) Water quality monitoring data indicates that water quality in the reservoir violates the chlorophyll A standard.

"(4) The Division of Water Quality of the Department of Environment and Natural Resources has not prepared or updated a calibrated nutrient response model for the reservoir since 1 July 2002."

TEMPORARY LIMITATION ON INCREASED NUTRIENT LOADING. --Session Laws 2005-190, s. 3(b), effective July 15, 2005, provides: "If the Environmental Management Commission determines either that water quality in all or in any part of a drinking water supply reservoir to which this section applies does not meet current water quality standards or that it is likely that water quality will not meet water quality standards at any time prior to 1 July 2010, the Commission shall not make any new or increased nutrient loading allocation to any person who is required to obtain a permit under G.S. 143-215 for an individual wastewater discharge directly or indirectly into that reservoir. This limitation on new or increased nutrient loading allocation shall not be construed to prohibit a person who holds a permit for a wastewater discharge into a drinking water supply reservoir from purchasing a nutrient loading allocation from another person who holds a permit for a wastewater discharge into the same drinking water supply reservoir. This subsection expires with respect to a drinking water supply reservoir when permanent rules adopted by the Commission to implement the nutrient management strategy for that reservoir become effective."

NUTRIENT MANAGEMENT STRATEGY. --Session Laws 2005-190, s. 3(c), as amended by Session Laws 2006-259, s. 31(a), effective July 1, 2005, provides: "The Environmental Management Commission shall develop a nutrient management strategy for drinking water supply reservoirs to which this section applies by 1 July 2009. The nutrient management strategy shall be based on a calibrated nutrient response model that meets the requirement of G.S.

143-215.1(c5). The nutrient management strategy shall include specific mandatory measures to achieve the reduction goals. The Commission shall consider the cost of the proposed measures in relation to the effectiveness of the measures. These measures could include, but are not limited to, buffers, erosion and sedimentation control requirements, post-construction stormwater management, agricultural nutrient reduction measures, the addition of nutrient removal treatment processes to point source permitted wastewater treatment plants, the removal of point source discharging wastewater treatments through regionalization and conversion to non-discharge treatment technologies, and any other measures that the Commission determines to be necessary to meet the nutrient reduction goals. To the extent that one or more other State programs already mandate any of these measures, the nutrient management strategy shall incorporate the mandated measures and any extension of those measures and any additional measures that may be necessary to achieve the nutrient reduction goals. In making a nutrient loading allocation to a permit holder, the Commission shall, to the extent allowed by federal and State law, give consideration to all voluntary efforts taken by the permit holder to protect water quality prior to the development of the nutrient management strategy."

IMPLEMENTATION; RULEMAKING. --Session Laws 2005-190, s. 3(e), as amended by Session Laws 2006-259, s. 31(b), effective July 15, 2005, provides: "The Environmental Management Commission shall adopt permanent rules to implement the nutrient management strategies required by this section by 1 July 2009. The rules shall require that reductions in nutrient loading from all sources begin no later than five years after the rules become effective."

REPORTS. --Session Laws 2005-190, s. 3(f), effective July 15, 2005, provides: "The Environmental Management Commission shall report its progress in implementing this section to the Environmental Review Commission as a part of each quarterly report it makes pursuant to G.S. 143B-282(b)."

OTHER DRINKING WATER SUPPLY RESERVOIRS. --Session Laws 2005-190, s. 4, as amended by Session Laws 2006-259, s. 31(c), effective July 15, 2005, provides: "The Environmental Management Commission shall not make any new or increased nutrient loading allocation to any person who is required to obtain a permit under G.S. 143-215 for an individual wastewater discharge directly or indirectly into any drinking water supply reservoir for which the Division of Water Quality of the Department of Environment and Natural Resources has prepared or updated a calibrated nutrient response model since 1 July 2002 until permanent rules adopted by the Commission to implement the nutrient management strategy for that reservoir become effective. The Commission shall report its progress in developing and implementing nutrient management strategies for reservoirs to which this section applies to the Environmental Review Commission by 1 April of each year beginning 1 April 2006."

EXPAND EXPRESS REVIEW PROGRAM STATEWIDE. --Session Laws 2005-276, s. 12.2(b), effective July 1, 2005, provides: "The Department of Environment and Natural Resources shall expand to a statewide program that operates in each regional office of the Department the Express Review Pilot Program established by Section 11.4A of S.L. 2003-284 and expanded by Section 12.9 of S.L. 2004-124, and the provisions of G.S. 143B-279.13, as enacted by subsection (a) of this section, shall apply to this statewide program."

LAND AND WATER CONSERVATION STUDY COMMISSION. --Session Laws 2006-223, ss. 1-12, effective August 10, 2006, provide: "1. Commission Established. -- The Land and Water Conservation Commission is hereby established.

"2. Membership. --The Commission shall consist of 16 members as follows:

"(1) Five members appointed by the President Pro Tempore of the Senate.

"(2) Five members appointed by the Speaker of the House of Representatives.

"(3) The State Treasurer or the State Treasurer's designee.

"(4) The Director of the Governor's Policy Office or the Director's designee.

"(5) The Secretary of Environment and Natural Resources or the Secretary's designee.

"(6) Three representatives from the public at large appointed by the Governor.

"3. Cochairs. -- The Commission shall have two cochairs, one designated by the President Pro Tempore of the Senate and one designated by the Speaker of the House of Representatives from among their respective appointees. The

Commission shall meet upon the call of the cochairs.

"4. Quorum. -- A quorum of the Commission shall consist of nine members.

"5. Vacancies. -- Any vacancy on the Commission shall be filled by the original appointing authority.

"6. Purpose and Duties. -- The Commission shall:

"(1) Identify and evaluate the existing sources of State funding for: (i) the public acquisition of land or interests in land to protect drinking water quality and prevent polluted runoff, conserve rivers, wetlands, floodplains, coastal waters, working farms, working forests, local parks, State parks, game lands and other natural areas, urban forests, and land visible from scenic highways in North Carolina; (ii) historic preservation; and (iii) economic and community development tied to land and water conservation and historic preservation.

"(2) Collect research and information from North Carolina and other states and jurisdictions regarding incentive based techniques and management tools used to protect land and water and assess the applicability of such tools and techniques to land conservation in North Carolina.

"(3) Prepare a draft report with a statement of the issues, a summary of the research, and recommendations to address funding needs and other issues affecting land and water conservation in North Carolina.

"(4) Hold at least three public meetings, including at least one meeting in the Mountains, Piedmont, and the Coastal Plain region of the State to present the draft report and recommendations to the public and user groups.

"7. Expenses of Members. -- Members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate.

"8. Staff. -- Upon the prior approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to the Commission to aid in its work.

"9. Consultants. -- The Commission may hire consultants to assist with the study as provided in G.S. 120-32.02(b).

"10. Meetings. -- The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

"11. Report. -- The Commission shall report its findings and recommendations to the General Assembly and the Environmental Review Commission on or before 1 February 2007, at which time the Commission shall terminate.

"12. Funding. -- From funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the purpose of conducting the study provided for in this act."

ESTABLISHMENT OF TIER II HAZARDOUS CHEMICAL INVENTORY DATABASE AND WEB-BASED ACCESS APPLICATION. --Session Laws 2007-107, s. 5.1(a), provides: "The Division of Information Technology Services of the Department of Environment and Natural Resources, in collaboration with the Division of Emergency Management of the Department of Crime Control and Public Safety, shall establish a Tier II Hazardous Chemicals Inventory Database and Web-based access application that will accept uploads of Tier II data from local government systems acting as partners in the project and from the University of Texas at Dallas E-Plan repository until all Tier II hazardous chemical inventory is in the database. The database shall include data on sites listed in the planned Toxic Release Inventory exchange and the Department's existing Facilities Registry System. The Facilities Registry System is a database of facilities for which the Department has environmental concerns, including facilities that are subject to an environmental permit for water, air, waste, land quality, wetlands, public water supply, wastewater treatment, and other environmental permits. The database shall be connected via Web services to the North Carolina Exchange Node. The purposes of this database are to provide a one-stop, real-time information source for all hazardous and toxic materials release sites and all sites that are subject to an environmental permit in order to enhance the operational effectiveness of the Department of Environment and Natural Resources, the Division of Emergency Management of the Department of Crime Control and Public Safety, first responders and emergency management officials, local government officials, and any others with a role in emergency management or planning; to remove the burden of data reentry in multiple systems; to reduce the dependence on paper submissions for Tier II reporting; to extend the Network for the Exchange Node community; and to reuse information already deployed at the Department. The Tier II Hazardous Chemicals Inventory Database and Web-based access application shall be maintained by the Division of Emergency Management of the Department of Crime Control and Public Safety."

EDITOR'S NOTE. --Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and

Capital Improvements Appropriations Act of 2004'."
Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."
Session Laws 2004-124, s. 33.5, contains a severability clause.
Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."
Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."
Session Laws 2005-276, s. 46.5 is a severability clause.

LEGAL PERIODICALS. --For comment on this article, see 29 N.C.L. Rev. 365 (1951).
For article, "Introduction to Water Use Law in North Carolina," see 46 N.C.L. Rev. 1 (1967).
For note on coastal land use development and area-wide zoning, see 49 N.C.L. Rev. 866 (1971).
For note on estuarine pollution, see 49 N.C.L. Rev. 921 (1971).
For comment, "Legal Analysis of the Constitutionality of the Water Supply Watershed Protection Act of 1989 and the Hyde Bill," see 29 Wake Forest L. Rev. 1279 (1994).
For a survey of 1996 developments in constitutional law, see 75 N.C.L. Rev. 2252 (1997).
For legislative survey, see 21 Campbell L. Rev. 323 (1999).
For legislative survey, see 22 Campbell L. Rev. 253 (2000).
For article, "Now Open for Development?: The Present State of Regulation of Activities in North Carolina Wetlands," see 79 N.C.L. Rev. 1667 (2001).
For article, "The Evolution of Modern North Carolina Environmental and Conservation Policy Legislation," see 29 Campbell L. Rev. 535 (2007).

LexisNexis 50 State Surveys, Legislation & Regulations

1. Water Quality

2. Water Rights

CASE NOTES

PURPOSE. --This section sets the goal which the General Assembly wants to reach in the administration of its water program. Town of Spruce Pine v. Avery County, 346 N.C. 787, 488 S.E.2d 144 (1997).

BECAUSE THE STATE REGULATION OF THE LAND APPLICATION OF RESIDUALS THROUGH G.S. 143-211 WAS COMPREHENSIVE, CONSTITUTING A COMPLETE AND INTEGRATED REGULATORY SCHEME, the county did not have authority to enact ordinances that also purported to specifically regulate that conduct; the trial court properly found the county ordinance invalid. Granville Farms, Inc. v. County of Granville, 170 N.C. App. 109, 612 S.E.2d 156 (2005).
Fact that county permit for land application of biosolids stated that it "does not preclude" compliance with the rules of local governments "which have jurisdiction" did not provide jurisdiction to the county to enact regulations that duplicated and conflicted with what was a comprehensive state regulatory scheme in G.S. 143-211. Granville Farms, Inc. v. County of Granville, 170 N.C. App. 109, 612 S.E.2d 156 (2005).
G.S. 143-211, coupled with the permit requirements set forth in the applicable regulations, were so comprehensive in scope that they were intended to comprise a "complete and integrated regulatory scheme" on a statewide basis, thus leaving no room for further local regulation. Granville Farms, Inc. v. County of Granville, 170 N.C. App. 109, 612

S.E.2d 156 (2005).

County's biosolids ordinance, which required those in business of application of biosolids to obtain county permit as well as state permit already required and to record warnings in chain of title if biosolids had been applied to land, was invalid because it was preempted by G.S. 143-211, which, coupled with regulations, was a complete and integrated regulatory scheme on a statewide basis, thus it left no room for further local regulation. Granville Farms, Inc. v. County of Granville, 170 N.C. App. 109, 612 S.E.2d 156 (2005).

GENERAL ASSEMBLY'S OMISSION OF CITIZEN SUIT PROVISION ONLY BEARS ON CITIZEN ENFORCEMENT OF STATE REGULATORY SCHEME rather than demonstrating any legislative intent to preempt private rights of action at common law. Biddix v. Henredon Furn. Indus., Inc., 76 N.C. App. 30, 331 S.E.2d 717 (1985).

EVIDENCE OF INJURY SUFFICIENT TO BE "PERSON AGGRIEVED." --Where person alleged sufficient injury in fact to interests within the zone of those to be protected and regulated by the statute, and rules and standards promulgated pursuant thereto, he was, therefore, a "person aggrieved" within the meaning and intent of the Air Pollution Control Act. Empire Power Co. v. North Carolina Dep't of Env't, Health & Natural Resources, 337 N.C. 569, 447 S.E.2d 768, rehearing denied, 338 N.C. 314, 451 S.E.2d 634 (1994).

GENERAL ASSEMBLY DID NOT INTEND TO ACT WITH RESPECT TO COMMON LAW RIGHTS. --Notwithstanding the General Assembly's omission of specific statutory language reserving common law rights, by enacting legislation to seek state administration of the Federal Water Pollution Control Act the General Assembly did not intend to act with respect to common law riparian rights for waste discharges in excess of a National Pollutant Discharge Elimination System permit. Biddix v. Henredon Furn. Indus., Inc., 76 N.C. App. 30, 331 S.E.2d 717 (1985).

COMMON-LAW ACTIONS OF NUISANCE AND CONTINUING TRESPASS NOT PREEMPTED. --The Clean Water Act does not preempt the common-law actions of nuisance and continuing trespass to land for the discharge of industrial waste in violation of an applicable National Pollutant Discharge Elimination System permit. Biddix v. Henredon Furn. Indus., Inc., 76 N.C. App. 30, 331 S.E.2d 717 (1985).

The very complex and comprehensive set of regulatory requirements and controls established under the pertinent provisions of Chapter 143 of the General Statutes are clearly distinguishable from the parameters of a private nuisance as that term was understood under common law. State ex rel. Cobey v. Ballard, 110 N.C. App. 486, 429 S.E.2d 735 (1993).

AUTHORITY AND DISCRETION OF COMMISSION. --The trial court properly applied the whole record test, where it found that the North Carolina Department of Environment and Natural Resources and the Environmental Management Commission did not exceed their discretion and authority under G.S. 143-211(c), 143-215.107(a)(1), (3), and 143-215.114A(a)(1) in finding that the contractor had open burning piles within 1,000 feet from a dwelling. MW Clearing & Grading, Inc. v. N.C. Dep't of Env't & Natural Res., 171 N.C. App. 170, 614 S.E.2d 568 (2005), cert. denied, 360 N.C. 65, 623 S.E.2d 585 (2005), rev'd in part, 360 N.C. 392, 628 S.E.2d 379 (2006) (as to finding violations rather than one).

THE CASE AT BAR SHOULD HAVE BEEN CHARACTERIZED AS AN ACTION IN NUISANCE, thus qualifying it as a cause of action which existed at the adoption of our State's 1868 Constitution and satisfying the first prong of the test in State ex rel. Rhodes v. Simpson, 325 N.C. 514, 385 S.E.2d 329 (1989). State ex rel. Cobey v. Ballard, 110 N.C. App. 486, 429 S.E.2d 735 (1993).

CITED in Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975); State ex rel. Tenn. Dep't of Health & Env't v. Environmental Mgt. Comm'n, 78 N.C. App. 763, 338 S.E.2d 781 (1986); In re Envtl. Mgt. Comm'n, 80 N.C. App. 1, 341 S.E.2d 588 (1986); Rudd v. Electrolux Corp., 982 F. Supp. 355 (M.D.N.C. 1997); N.C. Home Bldrs. Ass'n v. Envtl. Mgmt. Comm'n, 155 N.C. App. 408, 573 S.E.2d 732 (2002), cert. denied, 357 N.C. 62, 579 S.E.2d 392 (2003); Brinkman v. Barrett Kays & Assocs., P.A., 155 N.C. App. 738, 575 S.E.2d 40 (2003); N.C. Forestry Ass'n v. N.C. Dep't

of Env't & Natural Res., 162 N.C. App. 467, 591 S.E.2d 549 (2004).

GENERAL STATUTES OF NORTH CAROLINA
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*** Statutes current through the 2008 Regular Session ***
*** Annotations are current through January 12, 2009 ***

CHAPTER 143. STATE DEPARTMENTS, INSTITUTIONS, AND COMMISSIONS
ARTICLE 25B. STATE NATURE AND HISTORIC PRESERVE DEDICATION ACT

Go to the North Carolina Code Archive Directory

N.C. Gen. Stat. § 143-260.6 (2009)

§ 143-260.6. Short title

This Article shall be known and may be cited as the State Nature and Historic Preserve Dedication Act.

HISTORY: 1973, c. 443, s. 1.

NOTES: NATIONAL HERITAGE AREA DESIGNATION COMMISSION. --Session Laws 2001-491, ss. 18.1 to 18.10, creates the National Heritage Area Designation Commission. The Commission is directed to seek designation as a National Heritage Area of the 23 county mountain region of North Carolina comprised of the counties designated to be served by the Western North Carolina Regional Economic Development Commission under G.S. 158-8.1: Alleghany, Ashe, Avery, Burke, Buncombe, Caldwell, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, Watauga, Wilkes, and Yancey. In ss. 18.1 and 18.2 the General Assembly makes the following findings:

"Section 18.1. The General Assembly finds that the following physical and cultural features in the mountain region of Western North Carolina are of national significance:

"(1) The Great Smoky Mountains National Park is the most visited national park in America.

"(2) The Blue Ridge Parkway is the nation's longest scenic highway.

"(3) The Joyce Kilmer Memorial Forest is the last remaining stand of virgin timber in the eastern United States.

"(4) The Linville Gorge wilderness area is the first wilderness in the eastern United States and the deepest gorge east of the Mississippi River.

"(5) Mount Mitchell is the highest mountain in the eastern United States.

"(6) The New River is the second oldest river in the world and was designated as an American Heritage River in 1998.

"(7) Fontana Dam is the highest dam in eastern America that was built by the Tennessee Valley Authority and is known as one of the country's greatest engineering feats in history.

"(8) Grandfather Mountain is the oldest mountain in the eastern United States, was designated as an International Biosphere Reserve by the United Nations, and is the only mountain that is privately owned.

"(9) The Cherokee Indian Qualla Boundary is the home of the Eastern Band of the Cherokee Indians, and the Trail of Tears is a National Heritage Trail.

"(10) Roan Mountain is the world's largest natural Catawba rhododendron garden.

"(11) The Appalachian Trail is the longest national hiking trail in the United States.
"(12) Whiteside Mountain has the highest cliffs of perpendicular bare rock east of the Rockies.
"(13) The Nantahala River is the most popular white-water rafting river in America.
"(14) The Biltmore Estate is America's largest private residence.
"(15) The Cradle of Forestry in America National Historic Site is the first forestry school in America.
"(16) The Cherohala Skyway is a National Scenic Byway.
"(17) The Carl Sandburg Home is a National Historic Site.
"Section 18.2. The General Assembly further finds that:
"(1) The National Park Service's definition of a National Heritage Area is a place designated by Congress where natural, cultural, historic, and scenic resources combine to form a cohesive, nationally distinctive landscape arising from patterns of human activity shaped by geography. These patterns make National Heritage Areas representative of the national experience through the physical features that remain and the traditions that have evolved in them. Continued use of the National Heritage Area by people whose traditions helped to shape the landscape enhances their significance.
"(2) Designation by the United States Congress of the North Carolina Appalachian Heritage Area, the 23-county mountain region of Western North Carolina, as a National Heritage Area would recognize the nationally distinctive landscape of this area and the role of this distinctive landscape in defining the collective American cultural landscape. The natural, cultural, historic, and recreation resources in this 23-county region combine to form a cohesive, nationally distinctive landscape arising from patterns of human activity shaped by geography. These patterns make the mountain region of Western North Carolina representative of the national experience through the physical features that remain and the traditions that have evolved in the area. Continued use of this area by people whose traditions helped to shape the landscape enhances its significance.
"(3) Since 1916, the National Park Service has been the federal agency responsible for preserving nationally significant natural and historic resources for present and future generations.
"(4) The National Park Service provides technical expertise to assist in all stages of the process for seeking designation as a National Heritage Area.
"(5) Congress has designated 18 National Heritage Areas.
"(6) Residents, business interests, nonprofit organizations, and governments within the proposed National Heritage Area are interested and committed to completing the suitability and feasibility study that must be completed prior to Congress's designating a National Heritage Area.
"(7) The National Heritage Area designation by the United States Congress for the 23-county mountain region of Western North Carolina would help to preserve and celebrate the uniqueness of this area and its defining landscape in North Carolina and offers the potential to ensure key educational and inspirational opportunities in perpetuity, without compromising traditional local control over, and use of, the landscape."

EDITOR'S NOTE. --Session Laws 2001-491, s. 18.9, provides that notwithstanding G.S. 158-8.1, the Western North Carolina Regional Economic Development Commission shall provide administrative and funding support to the National Heritage Area Designation Commission.
Session Laws 2001-491, s. 18.10, provides: "Notwithstanding G.S. 158-8.1, the Western North Carolina Regional Economic Development Commission shall develop a regional heritage tourism plan and shall present the plan to the 2002 Regular Session of the 2001 General Assembly no later than May 1, 2002."

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*** Statutes current through the 2008 Regular Session ***
*** Annotations are current through January 12, 2009 ***

CHAPTER 158. LOCAL DEVELOPMENT
ARTICLE 2. ECONOMIC DEVELOPMENT COMMISSIONS

Go to the North Carolina Code Archive Directory

N.C. Gen. Stat. § 158-8.1 (2009)

§ 158-8.1. Creation of Western North Carolina Regional Economic Development Commission

(a) There is created the Western North Carolina Regional Economic Development Commission to serve Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, McDowell, Macon, Madison, Polk, Rutherford, Swain, Transylvania, and Yancey Counties, and any other county assigned to the Commission by the Department of Commerce as authorized by law. The Commission shall be located administratively in the Department of Commerce but shall exercise its statutory powers and duties independently of the Department of Commerce. Funds appropriated for the Commission by the General Assembly shall be disbursed directly to the Commission at the beginning of each fiscal year.

(b) The Commission shall consist of 19 members appointed as follows:

(1) Three members shall be appointed by the Governor;

(2) Two members shall be appointed by the Lieutenant Governor;

(3) Seven members shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121; and

(4) Seven members shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(c) The appointing authority shall designate two of the initial appointees pursuant to subdivision (b)(1), one of the initial appointees pursuant to subdivision (b)(2), two of the initial appointees pursuant to subdivision (b)(3), and two of the initial appointees pursuant to subdivision (b)(4) to serve for terms ending June 30, 1995; the remainder of the initial appointees shall serve for terms ending June 30, 1997. Their successors shall serve for four-year terms ending on June 30 quadrennially thereafter. The appointing authority shall designate the additional appointees under subsections (b3) and (b4) that were added to the Commission membership pursuant to an act of the 1995 General Assembly to serve for terms ending June 30, 1999.

Any appointment to fill a vacancy on the Commission shall be for the balance of the unexpired term. Vacancies in appointments made by the General Assembly shall be in accordance with G.S. 120-122.

(c1) The initial meeting shall be called by the Secretary of the Department of Commerce.

(d) Members of the Commission who are State employees shall receive travel expenses as provided in G.S. 138-6. Other Commission members shall receive per diem of one hundred dollars ($ 100.00) a day for each day of service when the Commission meets and shall be reimbursed for travel and subsistence as provided in G.S. 138-5. The Commission may adopt policies authorizing additional per diem of one hundred dollars ($ 100.00) a day for non-State employee members' additional days of service including Commission subcommittee meetings or other Commission activities, plus reimbursement for related travel and subsistence as provided in G.S. 138-5.

(e) In addition to the powers and duties granted to economic development commissions in this Article, the Western North Carolina Regional Economic Development Commission shall:

(1) Survey Western North Carolina and determine the assets, liabilities, and resources that the region contributes to the economic development process.

(2) Develop and evaluate alternatives for Western North Carolina economic development.

(3) Develop a preferred economic development plan for the region and establish strategies for implementing the plan.

(4) Coordinate activities with and enter into contracts with any nonprofit corporation created to assist the Commission in carrying out its powers and duties.

(5) Repealed by Session Laws 1999-237, s. 16.5(a), effective July 1, 1999.

HISTORY: 1993, c. 321, s. 309(a); c. 561, s. 17(a); 1993 (Reg. Sess., 1994), c. 769, ss. 28.7(j), 28.8(a), 28.8(b); 1995, c. 488, s. 49(a), (b); c. 507, s. 25.5(a); c. 509, ss. 103-105; 1999-237, s. 16.5(a).

NOTES: CROSS REFERENCES. --For note regarding the creation of a Regional Economic Development Commission Expansion Program and appropriation for allocation to regional economic development commissions, see the editor's note under G.S. 158-8.

EDITOR'S NOTE. --Session Laws 2001-491, s. 1, provides: "This act shall be known as 'The Studies Act of 2001.'"

Session Laws 2001-491, ss. 18.1 to 18.10, creates the National Heritage Area Designation Commission. The Commission is directed to seek designation as a National Heritage Area of the 23 county mountain region of North Carolina comprised of the counties designated to be served by the Western North Carolina Regional Economic Development Commission under G.S. 158-8.1: Alleghany, Ashe, Avery, Burke, Buncombe, Caldwell, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, Watauga, Wilkes, and Yancey. In ss. 18.1 and 18.2 the General Assembly makes the following findings:

"Section 18.1. The General Assembly finds that the following physical and cultural features in the mountain region of Western North Carolina are of national significance:

"(1) The Great Smoky Mountains National Park is the most visited national park in America.

"(2) The Blue Ridge Parkway is the nation's longest scenic highway.

"(3) The Joyce Kilmer Memorial Forest is the last remaining stand of virgin timber in the eastern United States.

"(4) The Linville Gorge wilderness area is the first wilderness in the eastern United States and the deepest gorge east of the Mississippi River.

"(5) Mount Mitchell is the highest mountain in the eastern United States.

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"(7) Fontana Dam is the highest dam in eastern America that was built by the Tennessee Valley Authority and is

known as one of the country's greatest engineering feats in history.

"(8) Grandfather Mountain is the oldest mountain in the eastern United States, was designated as an International Biosphere Reserve by the United Nations, and is the only mountain that is privately owned.

"(9) The Cherokee Indian Qualla Boundary is the home of the Eastern Band of the Cherokee Indians, and the Trail of Tears is a National Heritage Trail.

"(10) Roan Mountain is the world's largest natural Catawba rhododendron garden.

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"(16) The Cherohala Skyway is a National Scenic Byway.

"(17) The Carl Sandburg Home is a National Historic Site.

"Section 18.2. The General Assembly further finds that:

"(1) The National Park Service's definition of a National Heritage Area is a place designated by Congress where natural, cultural, historic, and scenic resources combine to form a cohesive, nationally distinctive landscape arising from patterns of human activity shaped by geography. These patterns make National Heritage Areas representative of the national experience through the physical features that remain and the traditions that have evolved in them. Continued use of the National Heritage Area by people whose traditions helped to shape the landscape enhances their significance.

"(2) Designation by the United States Congress of the North Carolina Appalachian Heritage Area, the 23-county mountain region of Western North Carolina, as a National Heritage Area would recognize the nationally distinctive landscape of this area and the role of this distinctive landscape in defining the collective American cultural landscape. The natural, cultural, historic, and recreation resources in this 23-county region combine to form a cohesive, nationally distinctive landscape arising from patterns of human activity shaped by geography. These patterns make the mountain region of Western North Carolina representative of the national experience through the physical features that remain and the traditions that have evolved in the area. Continued use of this area by people whose traditions helped to shape the landscape enhances its significance.

"(3) Since 1916, the National Park Service has been the federal agency responsible for preserving nationally significant natural and historic resources for present and future generations.

"(4) The National Park Service provides technical expertise to assist in all stages of the process for seeking designation as a National Heritage Area.

"(5) Congress has designated 18 National Heritage Areas.

"(6) Residents, business interests, nonprofit organizations, and governments within the proposed National Heritage Area are interested and committed to completing the suitability and feasibility study that must be completed prior to Congress's designating a National Heritage Area.

"(7) The National Heritage Area designation by the United States Congress for the 23-county mountain region of Western North Carolina would help to preserve and celebrate the uniqueness of this area and its defining landscape in North Carolina and offers the potential to ensure key educational and inspirational opportunities in perpetuity, without compromising traditional local control over, and use of, the landscape."

Session Laws 2001-491, s. 18.9, provides that notwithstanding G.S. 158-8.1, the Western North Carolina Regional Economic Development Commission shall provide administrative and funding support to the National Heritage Area Designation Commission.

Session Laws 2001-491, s. 18.10, provides: "Notwithstanding G.S. 158-8.1, the Western North Carolina Regional Economic Development Commission shall develop a regional heritage tourism plan and shall present the plan to the 2002 Regular Session of the 2001 General Assembly no later than May 1, 2002."

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH JULY 6, 2009 ***
*** ANNOTATIONS CURRENT THROUGH APRIL 1, 2009 ***
*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JUNE 1, 2009 ***

TITLE 3. COUNTIES
CHAPTER 303. COUNTY RURAL ZONING; RENEWAL OF SLUMS AND BLIGHTED AREAS

Go to the Ohio Code Archive Directory

ORC Ann. 303.02 (2009)

§ 303.02. County regulation of land use in unincorporated territory; landscaping and architectural standards; modifications to ensure constitutionality of adult entertainment establishment regulations

(A) Except as otherwise provided in this section, in the interest of the public health and safety, the board of county commissioners may regulate by resolution, in accordance with a comprehensive plan, the location, height, bulk, number of stories, and size of buildings and other structures, including tents, cabins, and trailer coaches, percentages of lot areas that may be occupied, set back building lines, sizes of yards, courts, and other open spaces, the density of population, the uses of buildings and other structures, including tents, cabins, and trailer coaches, and the uses of land for trade, industry, residence, recreation, or other purposes in the unincorporated territory of the county. Except as otherwise provided in this section, in the interest of the public convenience, comfort, prosperity, or general welfare, the board, by resolution, in accordance with a comprehensive plan, may regulate the location of, set back lines for, and the uses of buildings and other structures, including tents, cabins, and trailer coaches, and the uses of land for trade, industry, residence, recreation, or other purposes in the unincorporated territory of the county, and may establish reasonable landscaping standards and architectural standards excluding exterior building materials in the unincorporated territory of the county. Except as otherwise provided in this section, in the interest of the public convenience, comfort, prosperity, or general welfare, the board may regulate by resolution, in accordance with a comprehensive plan, for nonresidential property only, the height, bulk, number of stories, and size of buildings and other structures, including tents, cabins, and trailer coaches, percentages of lot areas that may be occupied, sizes of yards, courts, and other open spaces, and the density of population in the unincorporated territory of the county. For all these purposes, the board may divide all or any part of the unincorporated territory of the county into districts or zones of such number, shape, and area as the board determines. All such regulations shall be uniform for each class or kind of building or other structure or use throughout any district or zone, but the regulations in one district or zone may differ from those in other districts or zones.

For any activities permitted and regulated under Chapter 1513. or 1514. of the Revised Code and any related processing activities, the board of county commissioners may regulate under the authority conferred by this section only in the interest of public health or safety.

(B) A board of county commissioners that pursuant to this chapter regulates adult entertainment establishments, as defined in section 2907.39 of the Revised Code, may modify its administrative zoning procedures with regard to adult entertainment establishments as the board determines necessary to ensure that the procedures comply with all applicable constitutional requirements.

HISTORY:

GC § 3180-1; 122 v 597; Bureau of Code Revision, 10-1-53; 127 v 363. Eff 9-17-57; 150 v H 148, § 1, eff. 11-5-04; 150 v H 411, § 1, eff. 5-6-05; 150 v S 18, § 1, eff. 5-27-05; 151 v H 23, § 1, eff. 8-17-06.

NOTES:

Section Notes

The provisions of § 4 of 151 v H 23 read as follows:

SECTION 4. Section 303.02 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 411 and Am. Sub. S.B. 18 of the 125th General Assembly. * * * The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

The provisions of § 3 and 4 of H.B. 148 (150 v --) read as follows:

SECTION 3. It is not the intent of the General Assembly in amending sections 303.02 and 519.02 of the Revised Code in this act to confer any authority on a county or township to preempt state law, including any statute requiring a person to obtain a permit, by including the "general welfare" of the public as a purpose for which a board of county commissioners or board of township trustees may adopt zoning regulations.

SECTION 4. Nothing in this act allows or shall be construed to allow any county or township authority to establish a minimum price for a house or lot.

EFFECT OF AMENDMENTS

151 v H 23, effective August 17, 2006, added (B).

Related Statutes & Rules

Cross-References to Related Statutes

Penalty, RC § 303.99.

County regulations inapplicable to municipal territory; exceptions, RC § 303.18.

County rural zoning commission, RC § 303.04.

Recommendations, organization, powers and compensation of county rural zoning commission, RC § 303.05.

County rural zoning regulations take precedence over township; exception, RC § 519.22.

Creation of new municipality, RC § 713.14.

Municipal zoning, RC § 713.06 et seq.

Planned-unit developments, RC § 303.02.2.

Powers not conferred by chapter, RC §§ 303.21, 303.21.1.

Powers of county board of zoning appeals, RC § 303.14.

Township zoning, RC § 519.01 et seq.

Practice Manuals & Treatises

Ohio Transaction Guide: Real Estate Law & Forms § 31.22 Transportation and Installation of Mobile Homes

Ohio Transaction Guide: Real Estate Law & Forms § 23.23 Authority to Enact Zoning

Ohio Transaction Guide: Real Estate Law & Forms § 23.24 Authorized Scope of Zoning Ordinances

Ohio Transaction Guide: Real Estate Law & Forms § 23.26 Zoning Ordinances Regulating Building Size and Placement

ALR

Application of zoning regulations to motels or motor courts. 23 ALR3d 1210.

Application of zoning requirements to research and laboratory facilities. 98 ALR2d 225.

Construction and application of zoning laws setting minimum lot size requirement. 2 ALR5th 553.

Use of trailer or similar structure for residence purposes as within limitation of restrictive covenant, zoning provision, or building regulation. 96 ALR2d 232.

Validity and application of zoning regulations relating to mobile home or trailer parks. 42 ALR3d 598.

Validity of building height regulations. 8 ALR2d 963.

Validity of front setback provisions in zoning ordinance or regulation. 93 ALR2d 1223.

Validity of ordinance restricting number of unrelated persons who can live together in residential zone. 12 ALR4th 238.

Validity of ordinances restricting location of "adult entertainment" or sex-oriented businesses. 10 ALR5th 538.

Validity of zoning laws setting minimum lot size requirements. 1 ALR5th 622.

Validity of zoning or building regulations restricting mobile homes or trailers to established mobile home or trailer parks. 17 ALR4th 106.

Validity of zoning ordinances prohibiting or regulating outside storage of house trailers, motor homes, campers,

vans, and the like in residential neighborhoods. 95 ALR3d 378.

Validity of zoning regulation prohibiting residential use in industrial district. 38 ALR2d 1141.

Validity of zoning regulations prescribing minimum area for house lots or requiring an area proportionate to number of families to be housed. 95 ALR2d 716.

What is "mobile home," "house trailer," "trailer house," or "trailer" within meaning of restrictive covenant. 83 ALR5th 651.

Zoning regulation of intoxicating liquor as pre-empted by state law. 65 ALR4th 555.

Zoning regulations as applied to private and parochial schools below the college level. 74 ALR3d 14.

Zoning regulations as applied to public elementary and high schools. 74 ALR3d 136.

Case Notes & OAGs

ANALYSIS Constitutionality Generally Accessory buildings Adult entertainment establishments Advertising devices Billboards Breweries Building code Churches, religious facilities Conditional use County charter Drainage of waters Economic feasibility Fences Financial office Gas and oil Guide plan Home occupations Landfills Lot sizes Mobile homes, manufactured homes Motor vehicles generally Motor vehicle repairs Parking restrictions Permitted uses Political signs Residential zoning generally Restrictive covenant Shopping center Signs generally Surface mining Survival game Temporary takings Trucks Underground water Zoning map errors

CONSTITUTIONALITY.

In a declaratory judgment action challenging the constitutionality of a zoning ordinance as applied, the focal point of the analysis is the ordinance, not the landowner's proposed use. The analysis begins with a presumption that the ordinance is constitutional. If application of the ordinance prevents the owner from using the property in a particular way, the proposed use is relevant but only as one factor to be considered in analyzing the ordinance's application to the particular property: Jaylin Invs., Inc. v. Vill. of Moreland Hills, 107 Ohio St. 3d 339, 839 N.E.2d 903, 2006 Ohio LEXIS 18, 2006 Ohio 4, (2006).

In a challenge to the constitutionality of a zoning classification, the issue is whether the existing classification is arbitrary and unreasonable. It is not whether the prohibition against a proposed use is arbitrary or unreasonable: Visconsi-Royalton, Ltd. v. City of Strongsville, 146 Ohio App. 3d 287, 765 N.E.2d 971, 2001 Ohio App. LEXIS 4336 (2001).

The U-2-A zoning classification was unconstitutional where it was unsupported by any legitimate governmental health, safety and welfare concerns, and the property was unsuitable for residential use: Shemo v. Mayfield Heights, 88 Ohio St. 3d 7, 722 N.E.2d 1018, 2000 Ohio LEXIS 204, 2000 Ohio 258, (2000).

A zoning regulation is presumed to be constitutional unless determined by a court to be clearly arbitrary and unreasonable and without substantial relation to the public health, safety, morals, or general welfare of the community: Goldberg Cos. v. Council of Richmond Heights, 81 Ohio St. 3d 207, 690 N.E.2d 510, 1998 Ohio LEXIS 565, 1998 Ohio 456, (1998).

A challenge to a zoning ordinance solely on the grounds that it is unconstitutional on its face cannot be brought under RC Chapter 2506.: Grossman v. City of Cleveland Heights, 120 Ohio App. 3d 435, 698 N.E.2d 76, 1997 Ohio App. LEXIS 2777 (1997).

In order to invalidate a zoning ordinance on constitutional grounds, the party attacking the regulation must establish, beyond fair debate, that the zoning classification denies the owner an economically viable use of the zoned property and that the zoning classification fails to advance a legitimate governmental interest: Central Motors Corp. v. City of Pepper Pike, 73 Ohio St. 3d 581, 653 N.E.2d 639, 1995 Ohio LEXIS 1868, 1995 Ohio 289, (1995).

A landowner may contest the constitutionality of a zoning ordinance by means of a declaratory judgment action without exhausting administrative remedies where such remedies are effectively unavailable or would be onerous and unduly expensive. Knowledge of zoning restrictions prior to acquiring land does not necessarily preclude a challenge of the restrictions: Perrico Property Sys. v. City of Independence, 96 Ohio App. 3d 134, 644 N.E.2d 714, 1994 Ohio App. LEXIS 2982 (1994).

Where the zoning of a parcel has been held to be unconstitutional in a declaratory judgment action, the burden is on the zoning authority to show that a subsequent rezoning to the same classification is now permissible: Maysom Ltd. Partnership v. Village of Mayfield, 96 Ohio App. 3d 543, 645 N.E.2d 763, 1994 Ohio App. LEXIS 3411 (1994).

A party who attacks a municipal zoning ordinance on constitutional grounds must prove, beyond fair debate, both that the enactment deprives him or her of an economically viable use and that it fails to advance a legitimate governmental interest: Gerijo, Inc. v. City of Fairfield, 70 Ohio St. 3d 223, 638 N.E.2d 533, 1994 Ohio LEXIS 1988, 1994 Ohio 432, (1994).

In order for a zoning ordinance to be found unconstitutional, it must be "beyond fair debate" that the zoning classification prohibits the economically viable use of the land, without substantially advancing a legitimate interest in the health, safety, or welfare of the community. A landowner does not have a right to have his land zoned for its most advantageous economic use; the mere fact that the property would be substantially more valuable if used an alternate way is, in itself, insufficient to invalidate a zoning ordinance: Smythe v. Butler Township, 85 Ohio App. 3d 616, 620 N.E.2d 901, 1993 Ohio App. LEXIS 1527 (1993).

A zoning ordinance, rule or resolution which violates an explicit statutory command of the General Assembly is clearly preempted and is therefore invalid and unenforceable: Newbury Township Bd. of Township Trustees v. Lomak Petroleum (Ohio), 62 Ohio St. 3d 387, 583 N.E.2d 302, 1992 Ohio LEXIS 6 (1992).

The constitutionality of a zoning ordinance may be attacked in two ways. An appeal from an administrative zoning decision can be taken pursuant to RC Chapter 2506. In addition, or in the alternative, a declaratory judgment action pursuant to RC Chapter 2721. can be pursued (Driscoll v. Austintown Associates :1975], 42 OS2d 263, 71 OO2d 247, 328 NE2d 395, approved, followed and explained): Karches v. Cincinnati, 38 Ohio St. 3d 12, 526 N.E.2d 1350 (1988).

GENERALLY.

A zoning ordinance which deprives an owner of all uses except those which are highly improbable or practically impossible under the circumstances is impermissibly restrictive. Traffic volume and noise levels are highly relevant to the impracticality of a residential use. Where a city fails to rezone property as ordered, the court may permit an intended use to go forward: W.O. Brisben Co. v. City of Montgomery, 92 Ohio App. 3d 812, 637 N.E.2d 347, 1994 Ohio App. LEXIS 3 (1994).

A trial court must uphold a municipal zoning ordinance when there is competent, credible evidence that the ordinance allows the landowners to retain an economically viable use of their land and that the ordinance substantially advances a legitimate governmental interest in the health, safety or welfare of the community: Columbia Oldsmobile, Inc. v. Montgomery, 56 Ohio St. 3d 60, 564 N.E.2d 455, 1990 Ohio LEXIS 1715 (1990).

Under OConst art II, § 1, and with the exception of the home rule amendment, the police power of this state is entrusted to the Ohio General Assembly. In the area of zoning or land use control, the general assembly has delegated a portion of its police power to the Ohio counties in RC § 303.02: Homes, Inc. v. Butler Cty. Bd. of Zoning Appeals, 35

Ohio App. 3d 161, 520 N.E.2d 605 (1987).

In providing for rural zoning, RC Chapter 303. (formerly Chapter 6 of the Ohio General Code) provides a method for the establishment of an over-all plan of zoning for the unincorporated area of the county. That chapter of the Code also provides methods for amending, or supplementing, the over-all plan: Kreutz v. Lauderbaugh, 60 Ohio Op. 48, 136 N.E.2d 627 (CP 1956).

A township may be made subject to an existing zoning plan in the unincorporated part of a county by the procedures set forth in RC §§ 303.03 to 303.11, inclusive: 1964 OAG No. 1299 (1964).

ACCESSORY BUILDINGS.

Under the zoning code, accessory buildings required a certificate only if they rested on a fixed location. To the extent the "edifices" in question were mobile, or at least not "fixed," they were not subject to the resolution: State v. Mezget, 169 Ohio App. 3d 714, 864 N.E.2d 678, 2006 Ohio App. LEXIS 6303, 2006 Ohio 6347, (2006).

ADULT ENTERTAINMENT ESTABLISHMENTS.

The resolution requiring an adult cabaret license was a content-neutral regulation of sexually oriented businesses for the legitimate purpose of ameliorating the negative secondary effects of such businesses upon the community at large: Union Twp. Bd. of Trustees v. Old 74 Corp., 137 Ohio App. 3d 289, 738 N.E.2d 477, 2000 Ohio App. LEXIS 1812 (2000).

There was no indication that the comprehensive zoning scheme was adopted to restrain first amendment rights of an adult entertainment business. The administrative determination that neither an adult entertainment business nor a clothing and gift boutique was a primary permitted use in a highway service district was presumptively reasonable: Interstate Indep. Corp. v. Fayette County Bd. of Zoning Appeals, 123 Ohio App. 3d 511, 704 N.E.2d 611, 1997 Ohio App. LEXIS 4666 (1997).

In determining whether an adult entertainment facility was a sufficient distance from residential districts, the city could not consider residential districts outside the city. The sheltered adult workshop was not an "institutional use" for minimum distance purposes: Raceway Video & Bookshop v. Cleveland Bd. of Zoning Appeals, 118 Ohio App. 3d 264, 692 N.E.2d 656, 1997 Ohio App. LEXIS 399 (1997).

ADVERTISING DEVICES.

Other than through the zoning powers conferred upon boards of county commissioners by RC Chapter 303., such boards are without authority to regulate the placement of advertising devices along roads or highways within the county that have been designated as scenic byways by the Ohio Director of Transportation pursuant to RC § 5516.05: OAG No. 2000-032 (2000).

BILLBOARDS.

Pursuant to the zoning powers conferred upon a board of county commissioners and a board of township trustees by RC §§ 303.02 and 519.02, respectively, such boards may regulate by resolution the location, height, bulk, and size of free-standing billboards in the unincorporated area of such county or township: OAG No. 87-081 (1987).

BREWERIES.

The granting, or prospective granting, by the department of liquor control of a permit for the manufacture of intoxicating beverages does not prevent a local zoning authority from regulating the location of breweries. Denial of a conditional use permit was not unlawful: Tex 1, Inc. v. City of Dayton Bd. of Zoning Appeals, 143 Ohio App. 3d 636,

758 N.E.2d 768, 2001 Ohio App. LEXIS 2352 (2001).

BUILDING CODE.

Although a board of county commissioners is authorized, under RC § 303.02 by a zoning resolution to regulate setback building lines, such board may not exercise such regulation by the adoption of a "building code" under RC § 307.37: 1956 OAG No. 7442 (1956).

CHURCHES, RELIGIOUS FACILITIES.

Where use for church purposes is allowed in a zone, uses customarily incidental or accessory to churches may not be excluded or unduly restricted. Such incidental uses must be reasonably closely related, both in substance and in space, to the main church purpose: Solid Rock Ministries Int'l. v. Board of Zoning Appeals, 138 Ohio App. 3d 46, 740 N.E.2d 320, 2000 Ohio App. LEXIS 2375 (2000).

Social programs established at a religious facility are accessory uses in that they are customarily incidental to the principal use: Henley v. City of Youngstown Bd. of Zoning Appeals, 90 Ohio St. 3d 142, 735 N.E.2d 433, 2000 Ohio LEXIS 2292, 2000 Ohio 493, (2000).

Activities such as sponsoring a little league baseball program on land owned by, and adjacent to, a church are incidental to the public worship program of the church and are permitted where an ordinance authorizes church use: Cash v. Brookshire United Methodist Church, 61 Ohio App. 3d 576, 573 N.E.2d 692 (1988).

CONDITIONAL USE.

Where the zoning code clearly incorporated the conditional uses of a M-1 district into a M-2 district without removing the conditions, the conditions were applicable in both types of districts. RKT Props., LLC v. City of Northwood, 162 Ohio App. 3d 590, 834 N.E.2d 393, 2005 Ohio App. LEXIS 3798, 2005 Ohio 4178, (2005).

COUNTY CHARTER.

A charter county government organized pursuant to OConst art X, § 3, to the extent authorized by the terms of its charter, may regulate the construction of agricultural buildings not used in retail trade and may require the owners of such buildings to submit plans and to obtain building permits prior to construction; such regulation is not in conflict with any provision of RC § 3781.06: OAG No. 89-025 (1989).

DRAINAGE OF WATERS.

In accordance with RC § 303.02(A), a board of county commissioners may adopt zoning regulations for the purposes, and concerning the matters, set forth in RC § 303.02(A), and, to the extent such regulations affect the drainage of surface or subsurface waters, such regulations may not conflict with rules adopted by the Chief of the Division of Soil and Water Conservation under RC § 1511.02(E), rules adopted by the county under RC § 307.79, any constitutional limitations, or any other state or federal laws. Opinion No. 2007-013 (2007).

If a board of county commissioners properly adopts zoning regulations under RC § 303.02(A) that affect surface or subsurface drainage, such zoning regulations may serve as a basis for a regional planning commission's approval of a plat only if the regional planning commission of which the county is part adopts a rule under RC § 711.10(C) that requires that plats submitted to it under RC § 711.10 prove compliance with applicable county zoning regulations. Opinion No. 2007-013 (2007).

ECONOMIC FEASIBILITY.

The developer's testimony regarding economic feasibility did not invalidate the village's environmental concerns or prove beyond fair debate that the two-acre lot requirement had no substantial relationship to the health, safety, or welfare of the community: Jaylin Invs., Inc. v. Village of Moreland Hills, 157 Ohio App. 3d 277, 811 N.E.2d 113, 2004 Ohio App. LEXIS 2390, 2004 Ohio 2689, (2004), appeal denied by 103 Ohio St. 3d 1480, 2004 Ohio 5405, 816 N.E.2d 255, 2004 Ohio LEXIS 2371 (2004), affirmed by 107 Ohio St. 3d 339, 2006 Ohio 4, 839 N.E.2d 903, 2006 Ohio LEXIS 18 (2006).

FENCES.

A zoning provision that fences not be constructed so that an unfinished portion faces an adjacent property is not unconstitutionally vague: W. Chester Twp. Zoning v. Fromm, 145 Ohio App. 3d 172, 762 N.E.2d 400, 2001 Ohio App. LEXIS 3454 (2001).

FINANCIAL OFFICE.

A bank qualified as a "financial office" under the zoning code: Jones v. Village of Chagrin Falls, 116 Ohio App. 3d 249, 687 N.E.2d 515, 1997 Ohio App. LEXIS 2411 (1997).

GAS AND OIL.

Under the 1994 amendment to RC § 1509.39 (now repealed), a township cannot set minimum distances between oil and gas wells and any kind of building: St. Croix, Ltd. v. Bath Twp., 118 Ohio App. 3d 438, 693 N.E.2d 297, 1997 Ohio App. LEXIS 641 (1997).

State oil and gas well statutes and rules did not preempt the township from regulating the minimum distance between a residence and a well: Northampton Bldg. Co. v. Board of Zoning Appeals, 109 Ohio App. 3d 193, 671 N.E.2d 1309, 1996 Ohio App. LEXIS 372 (1996).

Counties and townships may control the drilling for gas and oil and the production of gas and oil through comprehensive zoning regulations adopted pursuant to RC Chapters 303 and 519. respectively, so long as such zoning regulations do not conflict with state statutes on the subject or with administrative rules or regulations adopted pursuant to statutory authority: 1964 OAG No. 1178 (1964).

GUIDE PLAN.

The city's uncodified "guide plan" was incorporated into the zoning code by reference and could be relied on in making decisions. The retailer did not prove that it would meet the storm water sewer requirements: K-Mart Corp. v. City of Westlake, 121 Ohio App. 3d 630, 700 N.E.2d 659, 1997 Ohio App. LEXIS 3025 (1997).

HOME OCCUPATIONS.

Plaintiff was not disqualified from conducting a lawful home occupation by the fact that she was a licensed dietitian. The few clients that she saw at her residence were in her role as a diabetes educator, and that did not require a state or local license: Lamb v. Wash. Twp. Bd. of Zoning Appeals, 172 Ohio App. 3d 751, 876 N.E.2d 1281, 2007 Ohio App. LEXIS 3718, 2007 Ohio 4101, (2007).

LANDFILLS.

A county zoning resolution may not be amended to prohibit the installation and operation of landfills that are licensed as construction and demolition debris facilities or solid waste facilities under RC § 3714.06(A) or RC § 3734.05(A), respectively, throughout the entire unincorporated territory of the county. Opinion No. 2007-038 (2007).

LOT SIZES.

A zoning provision that a lot could not be subdivided where one of the resulting lots would be smaller than the minimum size was valid: Nichols v. Hinckley Twp. Bd. of Zoning Appeals, 145 Ohio App. 3d 417, 763 N.E.2d 229, 2001 Ohio App. LEXIS 3671 (2001).

The lot shape restrictions to avoid elongated lots were not void for vagueness: William Bernard Realty Co. v. Barberton Planning Comm'n, 126 Ohio App. 3d 600, 710 N.E.2d 1197, 1998 Ohio App. LEXIS 896 (1998).

As a general rule, townships have the power, under RC § 519.02, to set minimum lot sizes. This permitted technique of regulating population density is not without limitation, however. Where the imposition of a large minimum lot size would work an extraordinary burden upon a land owner, the regulation, as applied, may be subject to constitutional attack: Zeltig Land Dev. Corp. v. Bainbridge Township Bd. of Trustees, 75 Ohio App. 3d 302, 599 N.E.2d 383, 1991 Ohio App. LEXIS 3501 (1991).

Township trustees may set minimum lot sizes in the exercise of the zoning authority conferred by RC § 519.02 (State ex rel. Bugden Development Co. v. Kiefaber :1960], 113 OApp 523, 18 OO2d 169, 179 NE2d 360; State ex rel. Grant v. Kiefaber, :1960], 114 OApp 279, 19 OO2d 207, 181 NE2d 905, affirmed :1960], 171 OS 326, 14 OO2d 3, 170 NE2d 848; and 1970 OAG No. 70-074, approved): Ketchel v. Bainbridge Township, 52 Ohio St. 3d 239, 557 N.E.2d 779, 1990 Ohio LEXIS 300 (1990).

MOBILE HOMES, MANUFACTURED HOMES.

Manufactured; mobile homes--The federal mobile home act preempts the field of mobile home construction safety, leaving the land use or zoning aspects to the state and/or local governments: Moscow v. Skeene, 65 Ohio App. 3d 785, 585 N.E.2d 493 (1989).

The enforceability of a zoning regulation, as applied to a former mobile home, must be based on the condition of the "mobile home" at the situs of the political subdivision so regulated and not upon the condition of the structure at some prior time: Sylvester v. Howland Twp. Bd. of Zoning Appeals, 34 Ohio App. 3d 270, 518 N.E.2d 36 (1986).

MOTOR VEHICLES GENERALLY.

An ordinance prohibiting keeping an unlicensed motor vehicle on the premises for more than thirty days is unconstitutional as applied in a case where the vehicle is not junk or otherwise deleterious: State v. Lanham, 107 Ohio App. 3d 533, 669 N.E.2d 80, 1995 Ohio App. LEXIS 5175 (1995).

A township zoning resolution which attempts to "zone" a motor vehicle as a "junkyard" is unconstitutional since it makes personal property, not the use of real property, a junkyard: Rootstown Twp. v. Shimp, 47 Ohio App. 3d 141, 547 N.E.2d 1007 (1988).

In a prosecution for violation of a local zoning ordinance, adopted pursuant to RC § 519.23, prohibiting "abandoned, wrecked, dismantled, or totally disabled automobiles * * * [from] remain[ing] exposed on the premises * * * for a period of not more than thirty days," the prosecution is not required to prove the existence of one or more specific disabled or dismantled vehicles as being exposed for over thirty days; it is sufficient for the prosecution to establish that disabled or dismantled vehicles were continually exposed for over thirty days: State v. Bond, 47 Ohio Misc. 2d 5, 547 N.E.2d 422 (CoC 1988).

Zoning may only be used to restrict the use of land, not vehicles: Rootstown Twp. v. Shimp, 47 Ohio App. 3d 141, 547 N.E.2d 1007 (1988).

MOTOR VEHICLE REPAIRS.

Where the zoning code permitted minor auto repairs at a "service station," even though the station had discontinued gas sales, the appellants were entitled to an occupancy permit to engage in such repairs on premises which had historically been used for similar auto services: Lesser v. City of Cleveland, 102 Ohio App. 3d 151, 656 N.E.2d 1301, 1995 Ohio App. LEXIS 962 (1995).

PARKING RESTRICTIONS.

Ordinance regulating parking of recreational vehicles, boats and boat trailers, and smaller trucks in residential areas was not unconstitutional on the basis that it did not regulate other equally large or possibly unsightly vehicles: Foster v. City of Wickliffe, 175 Ohio App. 3d 526, 888 N.E.2d 422, 2007 Ohio App. LEXIS 6241, 2007 Ohio 7132, (2007).

PERMITTED USES.

Language defining a permitted use is to be liberally construed in favor of the use proposed by an owner: Ameigh v. Baycliffs Corp., 127 Ohio App. 3d 254, 712 N.E.2d 784, 1998 Ohio App. LEXIS 1569 (1998).

Evidence that a proposed facility will generate increased traffic is insufficient, standing alone, to justify denial of an otherwise permitted use: Elbert v. Bexley Planning Comm'n, 108 Ohio App. 3d 59, 670 N.E.2d 245, 1995 Ohio App. LEXIS 4867 (1995).

In determining the permitted use of property under a zoning classification in which terms and language therein are not otherwise defined, the common and ordinary meaning of such terms and language must be considered, liberally construing the terms and language in favor of a permitted use so as not to extend the restrictions to any limitation of use not clearly prescribed therein; exemptions from such restrictive provisions are for like reasons liberally construed. Thus, a court reporting service is a permitted use within a district that permits a "service type use": Sammons v. Batavia, 53 Ohio App. 3d 87, 557 N.E.2d 1246 (1988).

POLITICAL SIGNS.

Planning and zoning code section 1135.02(d) of the codified ordinances of the city of Painesville, which precludes the posting of political signs except during the period extending seventeen days preceding any primary election, general election, or special election until forty-eight hours after the election, violates USConst amend I and is unconstitutional when applied to prohibit the owner of private property from posting on that private property a single political sign outside the durational period set by the ordinance: City of Painesville Bldg. Dep't v. Dworken & Bernstein Co., L.P.A., 89 Ohio St. 3d 564, 733 N.E.2d 1152, 2000 Ohio LEXIS 2069, 2000 Ohio 488, (2000).

Although signs are a protected form of expression under the first amendment, a city may place reasonable size restrictions on political signs in residential areas: Davis v. City of Green, 106 Ohio App. 3d 223, 665 N.E.2d 753, 1995 Ohio App. LEXIS 4160 (1995).

RESIDENTIAL ZONING GENERALLY.

In view of the nearby freeway interchange and the uses of the surrounding properties, "A" Residence zoning of the subject property was clearly unreasonable: W.O. Brisben Co. v. Montgomery, 70 Ohio App. 3d 583, 591 N.E.2d 828, 1990 Ohio App. LEXIS 5436 (1990).

RESTRICTIVE COVENANT.

The mere passage of more than thirty years did not prevent the application of collateral estoppel to an action seeking to invalidate a residential-only restrictive covenant: Lennon v. Neil, 139 Ohio App. 3d 437, 744 N.E.2d 228,

2000 Ohio App. LEXIS 4657 (2000).

SHOPPING CENTER.

A nearby shopping center had standing under RC §§ 2506.01 and 2721.03 to appeal the granting of a zoning amendment allowing expansion of a shopping mall where the expansion would adversely affect the value of the center's property: Westgate Shopping Village v. City of Toledo, 93 Ohio App. 3d 507, 639 N.E.2d 126, 1994 Ohio App. LEXIS 881 (1994).

SIGNS GENERALLY.

An anchor on a lawn was not a "sign" advertising a home business of selling cruise vacations where it did not indicate such a business to persons without prior knowledge of the business: Houghtaling v. City of Medina Bd. of Zoning Appeals, 134 Ohio App. 3d 541, 731 N.E.2d 733, 1999 Ohio App. LEXIS 3262 (1999).

SURFACE MINING.

The power of townships to enact zoning resolutions to regulate surface mining, pursuant to RC Chapter 519., has not been preempted by enactment of RC Chapter 1514.: Set Products, Inc. v. Bainbridge Twp. Bd. of Zoning Appeals, 31 Ohio St. 3d 260, 510 N.E.2d 373 (1987).

SURVIVAL GAME.

A "survival game" is a permitted use within a township's "general commercial permitted uses" zone as a "place of entertainment": Pinnacle Woods Survival Game, Inc. v. Hambden Twp. Zoning Inspector, 33 Ohio App. 3d 139, 514 N.E.2d 906 (1986).

TEMPORARY TAKINGS.

A landowner is not entitled to compensation for a temporary "taking" of its property where the zoning restrictions in effect do not deprive it of all use of the property: Shopco Group v. Springdale, 66 Ohio App. 3d 702, 586 N.E.2d 145, 1990 Ohio App. LEXIS 2225 (1990).

TRUCKS.

A zoning ordinance may lawfully prohibit overnight parking of large trucks in a residential district, even if they are parked in a garage: Shaffer v. Myers, 79 Ohio App. 3d 293, 607 N.E.2d 97, 1992 Ohio App. LEXIS 2056 (1992).

UNDERGROUND WATER.

A local zoning authority may consider the conservation of underground water resources when adopting zoning regulations: Ketchel v. Bainbridge Township, 52 Ohio St. 3d 239, 557 N.E.2d 779, 1990 Ohio LEXIS 300 (1990).

ZONING MAP ERRORS.

Where the rezoning of a parcel resulted from an administrative error in redrafting the zoning map, a court cannot grant mandamus relief to the owner of the parcel based on that error and misrepresentations by public officials: State ex rel. Sneary v. Miller, 86 Ohio App. 3d 684, 621 N.E.2d 785, 1993 Ohio App. LEXIS 5597 (1993).

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH JULY 6, 2009 ***
*** ANNOTATIONS CURRENT THROUGH APRIL 1, 2009 ***
*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JUNE 1, 2009 ***

TITLE 45. MOTOR VEHICLES -- AERONAUTICS -- WATERCRAFT
CHAPTER 4511. TRAFFIC LAWS -- OPERATION OF MOTOR VEHICLES
TRAFFIC CONTROL DEVICES, SIGNS

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ORC Ann. 4511.101 (2009)

§ 4511.101. Business logos on directional signs along interstates

(A) The director of transportation, in accordance with 23 U.S.C.A. 109(d), 131(f), and 315, as amended, shall establish a program for the placement of business logos for identification purposes on state directional signs within the rights-of-way of divided, multi-lane, limited access highways in both rural and urban areas.

(B) (1) The director shall establish, and may revise at any time, a fee for participation in the business logo sign program. All direct and indirect costs of the business logo sign program established pursuant to this section shall be fully paid by the businesses applying for participation in the program. The direct and indirect costs of the program shall include, but not be limited to, the cost of capital, directional signs, blanks, posts, logos, installation, repair, engineering, design, insurance, removal, replacement, and administration.

(2) Money generated from participating businesses in excess of the direct and indirect costs and any reasonable profit earned by a person awarded a contract under division (C) of this section shall be remitted to the department.

(3) Nothing in this chapter shall be construed to prohibit the director from establishing such a program. If the department operates such a program and does not contract with a private person to operate it, all money collected from participating businesses shall be deposited and credited as prescribed in division (B)(2) of this section.

(C) The director, in accordance with rules adopted pursuant to Chapter 119. of the Revised Code, may contract with any private person to operate, maintain, or market the business logo sign program. The contract may allow for a reasonable profit to be earned by the successful applicant. In awarding the contract, the director shall consider the skill, expertise, prior experience, and other qualifications of each applicant.

(D) As used in this section, "urban area" means an area having a population of fifty thousand or more according to the most recent federal census and designated as such on urban maps prepared by the department.

(E) In implementing this section, neither the department nor the director shall do either of the following:

(1) Limit the right of any person to erect, maintain, repair, remove, or utilize any off-premises or on-premises advertising device;

(2) Make participation in the business logo sign program conditional upon a business agreeing to limit, discontinue, withdraw, modify, alter, or change any advertising or sign.

(F) The program shall permit the business logo signs of a seller of motor vehicle fuel to include on the seller's signs a marking or symbol indicating that the seller sells one or more types of alternative fuel so long as the seller in fact sells that fuel.

As used in this division, "alternative fuel" has the same meaning as in section 125.831 [125.83.1] of the Revised Code.

HISTORY:

143 v H 356 (Eff 11-2-89); 143 v H 737 (Eff 4-11-91); 145 v H 154 (Eff 6-30-93); 146 v H 107 (Eff 6-30-95); 146 v H 353 (Eff 9-17-96); 146 v H 670 (Eff 12-2-96); 147 v H 210 (Eff 6-30-97); 147 v H 462. Eff 3-18-99; 151 v H 245, § 1, eff. 10-12-06; 152 v H 562, § 101.01, eff. 9-23-08.

NOTES:

Section Notes

The effective date is set by § 812.10 of 152 v H 562.

EFFECT OF AMENDMENTS

152 v H 562, effective September 23, 2008, rewrote (B); in (C), substituted "contract may allow" for "rules shall describe the terms of the contract, and shall"; and, in (E), added "In implementing this section" to the beginning.

151 v H 245, effective October 12, 2006, added (F).

The amendment of (B) of RC § 4311.101 by 152 v H 562 was disapproved in part by the Governor.

Related Statutes & Rules

Cross-References to Related Statutes

Eligible attraction defined, RC § 4511.10.2.

Limitation of advertising devices along interstate highways, RC § 5516.02.

Rule-making power of director of transportation re designation of scenic byways, RC § 5516.05.

OH Administrative Code

Department of transportation, division of highways--

Specific service sign program for highway interchanges; eligibility; business logo signs. OAC ch. 5501:2-6.

LexisNexis 50 State Surveys, Legislation & Regulations

Speed Detection & Traffic Control Devices

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TITLE 55. ROADS -- HIGHWAYS -- BRIDGES
CHAPTER 5516. ADVERTISING ON INTERSTATE HIGHWAYS

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ORC Ann. 5516.01 (2009)

§ 5516.01. Definitions

As used in sections 5516.01 to 5516.14 of the Revised Code:

(A) "Advertising device" includes any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or any other contrivance designed, intended, or used to advertise or to give information in the nature of advertising, or any part thereof, the advertising or informative contents of which are visible from the main traveled way of any highway on the interstate system or primary system in this state.

(B) "Visible" means capable of being seen and comprehended without visual aid by a person traveling the posted speed limit on the main traveled way of the highway.

(C) "Interstate system" means that portion of the interstate system, or the national highway system, located within this state.

(D) "Erect" means to construct or allow to be constructed, but it shall not include any activity when performed as an incident to the change of advertising message or normal maintenance of a sign or sign structure.

(E) "Maintain" means to preserve, keep in repair, continue, allow to exist, or restore.

(F) "National policy" means the provisions of 23 U.S.C.A. 131 and the national standards, criteria, and rules promulgated pursuant to such provisions.

(G) "Primary system" means the federal-aid primary system in existence on June 1, 1991, and any highway that is not on such system but that is on the national highway system.

(H) "Zoned commercial or industrial areas" means those nonagricultural areas which are reserved for business,

commerce, or trade, pursuant to local zoning laws, regulations, or state laws.

(I) "Unzoned commercial or industrial area" means an area not zoned by state or local law, regulation, or ordinance, in which there is located one or more commercial or industrial activities. Such area may also include the lands along the highway for a distance of eight hundred fifty feet immediately adjacent to such activities. This distance shall be measured from the buildings, parking lots, storage or processing areas of the activities, and along or parallel to the near edge of the main traveled way of the highway. This distance shall not include land on the opposite side of the highway from such activities, nor land predominantly used for residential purposes. An area shall be considered predominately residential if fifty per cent or more of the eight hundred fifty feet immediately adjacent to the activities contains land used as residential property. Each side of the highway will be considered separately in applying this definition.

(J) "Commercial or industrial activities" means those activities generally recognized as commercial or industrial by zoning authorities of this state. The following activities shall not be considered commercial or industrial:

(1) Activities relating to advertising structures;

(2) Agricultural, forestry, ranching, grazing, farming, and related activities, including, but not limited to, activities relating to wayside fresh produce stands;

(3) Transient or temporary activities;

(4) Activities not visible from the main traveled way;

(5) Activities located more than six hundred sixty feet from the nearest edge of the right-of-way;

(6) Activities conducted in a building principally used as a residence;

(7) Activities relating to railroad tracks and minor sidings;

(8) Activities relating to highways, roads, and streets.

(K) "Directional and official signs and notices" means those signs and notices that are required or authorized by law and conform to the rules for such signs and notices as adopted by the director in accordance with 23 C.F.R. 750.151 to 750.155.

(L) "Nonconforming advertising device" means an advertising device that was:

(1) Lawfully in existence prior to December 7, 1971;

(2) Lawfully on any highway made a part of the interstate system or primary highway system on or after December 7, 1971;

(3) Lawfully erected prior to any revision in the law effective December 7, 1971; or

(4) Lawfully erected but:

(a) No longer in compliance with the provisions of state law enacted or rules adopted at a later date; or

(b) No longer in compliance with state laws or rules due to changed conditions, including, but not limited to, zoning changes, highway relocation, highway reclassification, or changes in restrictions on sizing, lighting, spacing, or distance of advertising devices.

Illegally erected or maintained advertising devices are not nonconforming signs.

(M) "Scenic byway" means any linear transportation corridor as designated or as may hereafter be so designated by the director under the Ohio scenic byways program as having outstanding scenic qualities.

(N) "Director" means the director of the Ohio department of transportation.

(O) "Commercial or industrial zone" means those areas established by any state, county, municipal, or other local zoning authority as being most appropriate for business, commerce, industry, or trade. Any action taken by a state, county, municipal, or other local zoning authority that is not part of comprehensive zoning and is created primarily to permit outdoor advertising devices shall not be considered a commercial or industrial zone for purposes of this chapter.

(P) "Last permit holder" includes any of the following:

(1) The most recent holder of the advertising device permit;

(2) A business, cooperative, corporation, enterprise, joint venture, limited liability company, partnership, sole proprietorship or subsidiary, the viability of which is dependant on its relationship with the most recent holder of the advertising device permit;

(3) Any person or entity that is closely related to or closely connected with the most recent holder of the advertising device permit.

(Q) "Professional sports facility" means all or a portion of a stadium, arena, motorsports complex, or other facility, including all parking facilities, walkways, and other auxiliary facilities that may be used for or in connection with the sports facility or its operation, the primary purpose of which is to provide a site or venue for the presentation to the public of either of the following:

(1) Events of one or more major or minor league professional athletic or sports teams that are associated with the state or with a city or region of the state;

(2) Motorsports events.

HISTORY:

129 v 1701 (Eff 6-28-61); 134 v S 361 (Eff 12-7-71); 141 v H 428 (Eff 12-23-86); 145 v H 154 (Eff 6-30-93); 147 v H 210. Eff 6-30-97; 150 v H 230, § 1, eff. 9-16-04; 152 v H 67, § 101.01, eff. 6-30-07.

NOTES:

Section Notes

The effective date is set by § 609.10 of 152 v H 67.

Analogous in part to former RC § 5515.21 (127 v Pt.II, 14(15), § 1), repealed 129 v 1701(1703), § 2, eff 6-28-61.

The effective date is set by section 21 of HB 210.

EFFECT OF AMENDMENTS

152 v H 67, effective June 30, 2007, in (C), deleted "as designated by the director of transportation and approved by the secretary of transportation of the United States, pursuant to 23 U.S.C.A. 103(b) and (c)" from the end; rewrote (G); and, in (I), inserted "fifty".

150 v H 230, effective September 16, 2004, added (P) and (Q).

Related Statutes & Rules

Cross-References to Related Statutes

Penalty, RC § 5516.99.

Advertising device defined, RC § 163.31.

Advertising on public highway, RC § 5589.33.

Appropriations of property, RC § 5519.01.

Definitions re department of transportation, RC § 5501.01.

Designation of scenic byways, RC § 5516.05.

Director of transportation --

Actions against director, RC § 5501.22.

Assistants to prepare plans and surveys; contracts with planning commissions, RC § 5501.17.

Duties and powers of director, RC § 5501.31.

Permits granted to use or occupy portions of road or highway, RC § 5515.01.

Power to make arrests on highways, RC § 4513.39.

OH Administrative Code

Department of transportation, division of highways --

Highway and interstate advertising: definitions. OAC 5501:2-2-01.

Law Reviews & Journals

Billboard control under the highway beautification act of 1965. Roger A. Cunningham. 71 MichLRev 1296 (1973).

Ohio interstate highway advertising prohibition held unconstitutional. Note. 25 Ohio St. L.J. 99 (1964).

LexisNexis 50 State Surveys, Legislation & Regulations

Billboards and Outdoor Advertising

Case Notes & OAGs
ANALYSIS Constitutionality Applicability Construction Police power Review Transportation

CONSTITUTIONALITY.

Revised Code §§ 5516.01 to 5516.05 and 5516.99 are valid and constitutional in their general application: Ghaster Properties, Inc. v. Preston, 176 Ohio St. 425, 200 N.E.2d 328 (1964).

APPLICABILITY.

Trial court's grant of summary judgment to a billboard advertising company, two of its customers, and a city in an action by the Ohio Department of Transportation (ODOT), alleging that signs that were to be erected along two state roadways were in violation of RC ch. 5516, was proper, as the ODOT could not satisfy the statutory jurisdictional prerequisites in order to exert control over the signage along the roadways, as they were not part of the "primary system" under RC §§ 5516.01(G) and 5516.06. The roads were neither part of the state highway system nor the national highway system, based on the lack of designations on maps and the lack of a designation to the national highway system by the Director of the Ohio Department of Transportation. Proctor v. Orange Barrel Media, LLC, 2007 Ohio App. LEXIS 2848, 2007 Ohio 3218, (June 21, 2007).

A statutory prohibition against maintenance of billboards may be applied against signs in existence at the time of the enactment of such statute: Ghaster Properties, Inc. v. Preston, 176 Ohio St. 425, 200 N.E.2d 328 (1964).

CONSTRUCTION.

The determination of what constitutes the "interstate system," for purposes of the Columbus billboard regulations, must be based on the source of funding for the roadway: Whiteco Metrocom v. City of Columbus, 94 Ohio App. 3d 185, 640 N.E.2d 563, 1994 Ohio App. LEXIS 1431 (1994).

POLICE POWER.

Where a city passed an ordinance prohibiting the construction of new billboards, the decision was within the purview of its police powers conferred by Ohio Const. art. I, § 19, Ohio Rev. Code Ann. §§ 5516.01-5516.05, 5516.99, and 715.27(A)(1), and did not equate to a taking without just compensation. Lamar Corp. v. City of Cambridge, 2004 Ohio App. LEXIS 911, 2004 Ohio 1029, (2004).

REVIEW.

A statute is neither unreasonable nor arbitrary because it prohibits signs which advertise a product not sold on the property but permits signs advertising products sold on the property: Ghaster Properties, Inc. v. Preston, 176 Ohio St. 425, 200 N.E.2d 328 (1964).

The determination by the General Assembly that RC §§ 5516.01 to 5516.05 and 5516.99, bear real and substantial relationship to the public safety and general welfare is not clearly erroneous and will not be disturbed: Ghaster Properties, Inc. v. Preston, 176 Ohio St. 425, 200 N.E.2d 328 (1964).

TRANSPORTATION.

The relation between the public welfare and the prohibition of billboards adjacent to the interstate highway system is at least as real and substantial where such billboards are visible only on access roads at an interchange with an interstate highway as where they are visible at other points on the interstate highway system: Ghaster Properties, Inc. v.

Preston, 176 Ohio St. 425, 200 N.E.2d 328 (1964).

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH JULY 6, 2009 ***
*** ANNOTATIONS CURRENT THROUGH APRIL 1, 2009 ***
*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JUNE 1, 2009 ***

TITLE 55. ROADS -- HIGHWAYS -- BRIDGES
CHAPTER 5516. ADVERTISING ON INTERSTATE HIGHWAYS

Go to the Ohio Code Archive Directory

ORC Ann. 5516.02 (2009)

§ 5516.02. Limitation of advertising devices along interstate highways

No advertising device shall be erected or maintained within six hundred sixty feet of the edge of the right-of-way of a highway on the interstate system except the following:

(A) Directional and official signs and notices that conform to rules adopted by the director of transportation;

(B) Signs advertising the sale or lease of the property upon which they are located;

(C) Advertising devices indicating the name of the business or profession conducted on such property or that identify the goods produced, sold, or services rendered on such property, and that conform to rules adopted by the director;

(D) Advertising devices that are located in commercial or industrial zones traversed by segments of the interstate system within the boundaries of a municipal corporation as such boundaries existed on September 21, 1959, and that conform to rules adopted by the director;

(E) Advertising devices that are located on the premises of a professional sports facility and that conform to rules adopted by the director.

HISTORY:

129 v 1701 (Eff 6-28-61); 134 v S 361 (Eff 12-7-71); 135 v H 200 (Eff 9-28-73); 141 v H 714 (Eff 6-26-86); 143 v H 356 (Eff 11-2-89); 147 v H 210 (Eff 6-30-97); 147 v S 229. Eff 9-16-98.

NOTES:

Section Notes

Analogous in part to former RC § 5515.22 (127 v Pt.II, 14(15), § 1), repealed 129 v 1701(1703), § 2, eff 6-28-61.

Related Statutes & Rules

Cross-References to Related Statutes

Penalty, RC § 5516.99.

Business logos on directional signs along interstates, RC § 4511.10.1.

Designation of scenic byways, RC § 5516.05.

Director of transportation to regulate exceptions to prohibitions against highway advertising devices, RC §§ 5516.03, 5516.09.

Nonconforming devices, RC § 5516.07.

Permits and permit plates, RC § 5516.10.

Removal or remediation of unlawful advertising, RC § 5516.04.

Rules for administration of chapter, RC § 5516.13.

Zoning authority regulation of devices, RC § 5516.11.

Ohio Constitution

Freedom of speech, OConst art I, § 11.

OH Administrative Code

Department of transportation, division of highways --

Highway and interstate advertising. OAC ch. 5501:2-2.

Advertising devices located on premises of professional sports facility. OAC 5501:2-2-10.

Specific service sign program. OAC ch. 5501:2-6.

Tourist oriented directional signs. OAC ch. 5501:2-8.

Comparative Legislation

ADVERTISING DEVICES LIMITATIONS: 23 USCS § 131

CA--Cal Bus & Prof Code § 5200

FL--Fla. Stat. § 479.12

IL--225 ILCS § 440/1

IN--Burns Ind. Code Ann. § 8-23-20-1 et seq

KY--KRS § 177.841

MI--MCLS § 252.304

NY--NY CLS High § 88

PA--36 P.S. § 2718.101

ALR

Validity and construction of state or local regulation prohibiting off-premises advertising structures. 81 ALR3d 486.

Validity and construction of state or local regulation prohibiting the erection or maintenance of advertising structures within a specified distance of street or highway. 81 ALR3d 564.

Law Reviews & Journals

Constitutional law; Ohio billboard statutes; valid exercise of state policy power. Note. 16 WestResLRev 431 (1964).

Ohio billboard statute unconstitutional. Note. 14 WestResLRev 819 (1962).

LexisNexis 50 State Surveys, Legislation & Regulations

Billboards and Outdoor Advertising

Case Notes & OAGs
ANALYSIS Applicability Construction Easement Equal protection

APPLICABILITY.

An advertising device which promotes the consumption of beef or pork products and is located on property where such animals are bred or fattened for market, is an advertising device which identifies the goods produced or sold on such property under RC §§ 5516.02(C) and 5516.06(C). An advertising device which promotes agriculture and is located on property where agricultural goods are produced, is an advertising device which indicates the name of the

business conducted on such property under RC §§ 5516.02(C) and 5516.06(C): OAG No. 87-001 (1987).

CONSTRUCTION.

Revised Code § 5516.02(C) does not contain a restriction relating to the distance between the advertising device and the business premises. Furthermore, there is not restriction relating to narrow strips of property: Midwest Pride IV v. Wray, 92 Ohio App. 3d 613, 636 N.E.2d 424, 1994 Ohio App. LEXIS 64 (1994).

EASEMENT.

An easement may satisfy the requirements of RC § 5516.02 as to on-premises advertising: Pilot Oil Corp. v. Ohio Dep't of Transp., 102 Ohio App. 3d 278, 656 N.E.2d 1379, 1995 Ohio App. LEXIS 1297 (1995).

EQUAL PROTECTION.

Revised Code § 5516.02(D) does not violate equal protection: Hurst v. Liberty-Bel, Inc., 117 Ohio App. 3d 138, 690 N.E.2d 40, 1996 Ohio App. LEXIS 5948 (1997).

226 of 400 DOCUMENTS

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH JULY 6, 2009 ***
*** ANNOTATIONS CURRENT THROUGH APRIL 1, 2009 ***
*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JUNE 1, 2009 ***

TITLE 55. ROADS -- HIGHWAYS -- BRIDGES
CHAPTER 5516. ADVERTISING ON INTERSTATE HIGHWAYS

Go to the Ohio Code Archive Directory

ORC Ann. 5516.05 (2009)

§ 5516.05. Designation of scenic byways

The director of transportation may designate any portion of the interstate system, national highway system, or primary system as a scenic byway. The director shall exclude from designation as a scenic byway any segment of a highway in a zoned or unzoned commercial or industrial area that is determined by the director to be inconsistent with the designation of a scenic byway.

No advertising device may be erected upon a designated scenic byway, except in accordance with division (A), (B), or (C) of section 5516.02 of the Revised Code, division (A), (B), (C), (D), (E), or (G) of section 5516.06 of the Revised Code, or division (A), (B), (C), or (D) of section 5516.061 [5516.06.1] of the Revised Code. Any advertising device lawfully in existence prior to the designation of a scenic byway, upon such designation, is a nonconforming advertising device under section 5516.07 of the Revised Code.

HISTORY:

147 v S 229. Eff 9-16-98.

NOTES:

Section Notes

Analogous to former RC § 5516.05 (129 v 1701; 135 v H 200; 143 v H 49), repealed 147 v H 210, § 2, eff 6-30-97.

OH Administrative Code

Advertising devices located on scenic byways. OAC 5501:2-2-09.

LexisNexis 50 State Surveys, Legislation & Regulations

Billboards and Outdoor Advertising

Case Notes & OAGs

AUTHORITY OF BOARD.

Other than through the zoning powers conferred upon boards of county commissioners by RC Chapter 303., such boards are without authority to regulate the placement of advertising devices along roads or highways within the county that have been designated as scenic byways by the Ohio Director of Transportation pursuant to RC § 5516.05: OAG No. 2000-032 (2000).

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*** ANNOTATIONS CURRENT THROUGH APRIL 1, 2009 ***
*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JUNE 1, 2009 ***

TITLE 55. ROADS -- HIGHWAYS -- BRIDGES
CHAPTER 5516. ADVERTISING ON INTERSTATE HIGHWAYS

Go to the Ohio Code Archive Directory

ORC Ann. 5516.06 (2009)

§ 5516.06. Limitation of advertising devices along state primary highways

No advertising device shall be erected or maintained within six hundred sixty feet of the edge of the right-of-way of a highway on the primary system except the following:

(A) Directional and other official signs and notices that conform to rules adopted by the director of transportation;

(B) Signs advertising the sale or lease of the property upon which they are located;

(C) Advertising devices indicating the name of the business, activities, or profession conducted on such property or that identify the goods produced, sold, or services rendered on such property and that conform to rules adopted by the director;

(D) Precautionary signs relating to the premises;

(E) Signs, displays, or devices which locate, identify, mark, or warn of the presence of pipe lines, utility lines, or rail lines, and appurtenances thereof, including, but not limited to, markers used in the maintenance, operation, observation, and safety of said lines;

(F) Advertising devices located in zoned or unzoned industrial or commercial areas adjacent to highways on the primary system that conform to rules adopted by the director;

(G) Signs lawfully in existence on October 22, 1965, that the director, subject to the approval of the secretary of the United States department of transportation, has determined to be landmark signs, including signs on farm structures or natural surfaces, which are of historic or artistic significance;

(H) Advertising devices that are located on the premises of a professional sports facility and that conform to rules

adopted by the director.

HISTORY:

134 v S 361 (Eff 12-7-71); 135 v H 200 (Eff 9-28-73); 137 v S 259 (Eff 11-24-77); 145 v H 154 (Eff 6-30-93); 147 v H 210 (Eff 6-30-97); 147 v S 229. Eff 9-16-98.

NOTES:

Related Statutes & Rules

Cross-References to Related Statutes

Penalty, RC § 5516.99.

Designation of scenic byways, RC § 5516.05.

Grounds for disapproval, cancellation or revocation of permit; notice of required remedial action; removal, RC § 5516.12.

Nonconforming devices, RC § 5516.07.

Permits and permit plates, RC § 5516.10.

Removal or remediation of unlawful advertising, RC § 5516.04.

Rules for administration of chapter, RC § 5516.13.

Use of right-of-way, RC § 5516.09.

Zoning authority regulation of devices, RC § 5516.11.

OH Administrative Code

Advertising devices located on premises of professional sports facility. OAC 5501:2-2-10.

General provisions for the erection and control of outdoor advertising. OAC 5501:2-2-02.

ALR

Validity and construction of state or local regulation prohibiting off-premises advertising structures. 81 ALR3d 486.

Validity and construction of state or local regulation prohibiting the erection or maintenance of advertising structures within a specified distance of street or highway. 81 ALR3d 564.

Billboards and Outdoor Advertising

Case Notes & OAGs

APPLICABILITY.

An advertising device which promotes the consumption of beef or pork products and is located on property where such animals are bred or fattened for market, is an advertising device which identifies the goods produced or sold on such property under RC §§ 5516.02(C) and 5516.06(C). An advertising device which promotes agriculture and is located on property where agricultural goods are produced, is an advertising device which indicates the name of the business conducted on such property under RC §§ 5516.02(C) and 5516.06(C): OAG No. 87-001 (1987).

Trial court's grant of summary judgment to a billboard advertising company, two of its customers, and a city in an action by the Ohio Department of Transportation (ODOT), alleging that signs that were to be erected along two state roadways were in violation of RC ch. 5516, was proper, as the ODOT could not satisfy the statutory jurisdictional prerequisites in order to exert control over the signage along the roadways, as they were not part of the "primary system" under RC §§ 5516.01(G) and 5516.06. The roads were neither part of the state highway system nor the national highway system, based on the lack of designations on maps and the lack of a designation to the national highway system by the Director of the Ohio Department of Transportation. Proctor v. Orange Barrel Media, LLC, 2007 Ohio App. LEXIS 2848, 2007 Ohio 3218, (June 21, 2007).

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*** ANNOTATIONS CURRENT THROUGH APRIL 1, 2009 ***
*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JUNE 1, 2009 ***

TITLE 55. ROADS -- HIGHWAYS -- BRIDGES
CHAPTER 5516. ADVERTISING ON INTERSTATE HIGHWAYS

Go to the Ohio Code Archive Directory

ORC Ann. 5516.061 (2009)

§ 5516.061. Control of advertising devices outside of urban areas

No advertising device shall be erected outside of urban areas further than six hundred sixty feet from the right-of-way of the main traveled way of a highway on the interstate or primary system if such device would be visible from such main traveled way, except the following:

(A) Directional and official signs and notices that conform to rules adopted by the director of transportation;

(B) Signs advertising the sale or lease of the property upon which they are located;

(C) Advertising devices indicating the name of the business, activities, or profession conducted on such property or that identify the goods produced, sold, or services rendered on such property and that conform to rules adopted by the director;

(D) Signs lawfully in existence on October 22, 1965, that the director, subject to the approval of the secretary of the United States department of transportation, has determined to be landmark signs, including signs on farm structures or natural surfaces, which are of historic or artistic significance.

Any advertising device lawfully in existence prior to November 28, 1975, or lawfully on any highway made a part of the interstate or primary system on or after that date, the erection of which would be illegal under this section, is nonconforming, and may be maintained subject to the permit provisions of section 5516.10 of the Revised Code. An advertising device existing prior to the effective date of this section which would be illegal under this section shall be considered a nonconforming advertising device and may be maintained subject to the permit provisions of section 5516.10 of the Revised Code.

As used in this section, "urban area" means an urbanized area or an urban place as designated by the bureau of the

census having a population of five thousand or more, and within boundaries approved by the United States secretary of transportation.

HISTORY:

136 v S 221 (Eff 11-28-75); 137 v S 259 (Eff 11-24-77); 138 v H 1031 (Eff 8-22-80); 147 v H 210. Eff 6-30-97; 150 v H 230, § 1, eff. 9-16-04.

NOTES:

Section Notes

The effective date is set by section 21 of HB 210.

EFFECT OF AMENDMENTS

150 v H 230, effective September 16, 2004, substituted "further than six hundred sixty feet from" for "between six hundred sixty feet and three thousand feet of" in the introductory paragraph; and added the last sentence to the end of the second paragraph of (D).

Related Statutes & Rules

Cross-References to Related Statutes

Designation of scenic byways, RC § 5516.05.

Removal or remediation of unlawful advertising, RC § 5516.04.

Zoning authority regulation of devices, RC § 5516.11.

OH Administrative Code

Directional and official advertising devices. OAC 5501:2-2-04.

On-premise advertising devices. OAC 5501:2-2-03.

ALR

Validity and construction of state or local regulation prohibiting off-premises advertising structures. 81 ALR3d 486.

Validity and construction of state or local regulation prohibiting the erection or maintenance of advertising structures within a specified distance of street or highway. 81 ALR3d 564.

Validity of regulations restricting height of free standing advertising signs. 56 ALR3d 1207.

LexisNexis 50 State Surveys, Legislation & Regulations

Billboards and Outdoor Advertising

Case Notes & OAGs
ANALYSIS Appeal Hearing

APPEAL.

The determination, by letter, of the Director of Transportation, pursuant to RC Chapter 5516., to deny a permit to advertise off-premise businesses on a billboard located outside an urban area is an "adjudication" within the meaning of RC § 119.01(D), and may be appealed to the proper court of common pleas pursuant to RC § 119.12: Liberty Bell, Inc. v. Ohio Dept. of Transp., 34 Ohio App. 3d 267, 518 N.E.2d 32 (1986).

HEARING.

An agency is required by RC § 119.06 to hold a hearing prior to issuing an adjudication order, unless one of the exemptions set forth in the statute applies. This requirement is applicable to a determination by the Director of Transportation, pursuant to RC Chapter 5516., to deny a permit to advertise off-premise businesses on a billboard located outside an urban area: Liberty Bell, Inc. v. Ohio Dept. of Transp., 34 Ohio App. 3d 267, 518 N.E.2d 32 (1986).

229 of 400 DOCUMENTS

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH JULY 6, 2009 ***
*** ANNOTATIONS CURRENT THROUGH APRIL 1, 2009 ***
*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JUNE 1, 2009 ***

TITLE 55. ROADS -- HIGHWAYS -- BRIDGES
CHAPTER 5516. ADVERTISING ON INTERSTATE HIGHWAYS

Go to the Ohio Code Archive Directory

ORC Ann. 5516.07 (2009)

§ 5516.07. Nonconforming devices

All nonconforming advertising devices shall be maintained, subject to the provisions of sections 5516.10 and 5516.12 of the Revised Code.

A nonconforming advertising device found to be in violation of any of the provisions of this Chapter or the rules adopted thereunder may be subject to removal without compensation. A nonconforming advertising device may be sold, leased, or otherwise transferred without affecting its status, but its location may not be changed. The director may adopt rules regarding the repair or maintenance of, or changes to, nonconforming advertising devices, including the size, lighting, replacement, rebuilding, or re-erection of the structure, and damage or depreciation of the nonconforming advertising device.

HISTORY:

134 v S 361 (Eff 12-7-71); 135 v H 200 (Eff 9-28-73); 138 v H 1031 (Eff 8-22-80); 147 v H 210. Eff 6-30-97.

NOTES:

Section Notes

The effective date is set by section 21 of HB 210.

Related Statutes & Rules

Cross-References to Related Statutes

Penalty, RC § 5516.99.

Appropriation action against lawful nonconforming device, RC § 5516.08.

Designation of scenic byways, RC § 5516.05.

Nonconforming advertising device --

Along state highway as nuisance; removal procedures; order of abatement, RC § 5516.12.

May be maintained with permit; limitations, RC § 5516.10.

OH Administrative Code

Nonconforming advertising devices. OAC 5501:2-2-06.

ALR

Classification and maintenance of advertising structures as nonconforming use. 80 ALR3d 630.

Law Reviews & Journals

Billboard control under the highway beautification act of 1965. Roger A. Cunningham. 71 MichLRev 1295 (1972).

LexisNexis 50 State Surveys, Legislation & Regulations

Billboards and Outdoor Advertising

OKLAHOMA STATUTES, ANNOTATED BY LEXISNEXIS (R)

*** This document is current with Emergency Legislation through Chapter 2 ***
*** of the First Regular Session of the 52nd Legislature ***
*** June 24, 2008 Annotation Service ***

TITLE 69. ROADS, BRIDGES AND FERRIES
CHAPTER 1. OKLAHOMA HIGHWAY CODE OF 1968
ARTICLE 16. MEMORIAL HIGHWAYS AND BRIDGES

Go to the Oklahoma Code Archive Directory

69 Okl. St. § 1620 (2009)

§ 1620. U.S. Highway 412--Designation as scenic highway--Markers

U.S. Highway 412 from its new alignment west of the Locust Grove area east to Flint Creek shall be designated "Scenic U.S. Highway 412". The Oklahoma Department of Transportation shall cause suitable permanent markers to be placed upon the highway bearing said name.

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 366. STATE HIGHWAYS AND STATE HIGHWAY FUND
HISTORIC COLUMBIA RIVER HIGHWAY

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 366.550 (2007)

366.550. "Historic Columbia River Highway" defined.

As used in ORS 366.550 to 366.553, "Historic Columbia River Highway" means all parts of the original Columbia River Highway, constructed between 1913 and 1922, in Multnomah, Hood River and Wasco Counties, that have been designated as a "Historic and Scenic Highway" under ORS 377.100 and all properties and structures that are within the Columbia River Highway Historic District, National Register of Historic Places.

HISTORY: 1987 c.382 § 1

NOTES: 366.550 to 366.553 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 366 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.100 (2007)

377.100. Study of highway system; designation of historic and scenic highways.

The Oregon Transportation Commission shall conduct a study of the historic, scenic and cultural values of the state highway system. The study required by this subsection is subject to the following:

(1) In developing the study the commission shall appoint a volunteer citizen advisory committee to advise the commission on the study.

(2) The study shall identify and evaluate areas of the state highway system for their historic, recreational or scenic significance.

(3) The study shall designate highways, portions of highways or highway related structures as historic and scenic highways.

HISTORY: 1983 c.552 § 1; 1985 c.260 § 1

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.105 (2007)

377.105. Effect of designation as historic and scenic highway.

When a highway, portion of a highway or highway related structure is designated as an historic and scenic highway under ORS 377.100, the Oregon Transportation Commission and the Department of Transportation:

(1) Shall provide for the rehabilitation, restoration, maintenance and preservation of those features of the highway or structure that have historical, engineering, recreational, scenic or tourist related significance, whenever prudent and feasible.

(2) May consult with the State Historic Preservation Officer, state historic organizations and other appropriate groups or organizations to determine how to best rehabilitate, restore, maintain and preserve the significant features of the highway or structure.

(3) In all highway planning and funding considerations, shall provide for the continuance of the significant features of the highway or structure, whenever prudent and feasible.

(4) As the commission determines appropriate, may arrange for and provide for posting of signs, consistent with ORS 377.700 to 377.840, 810.200 and 810.210, to inform the traveling public of the location and significant features of the highway or structure.

(5) Shall not dismantle, destroy, abandon, significantly transform or sell the highway or structure or any portion thereof or take any other action that will adversely affect the preservation of the highway or structure as an historic and scenic highway when it is prudent or feasible not to take such action.

(6) May provide for bypass highways to divert damaging traffic from use of the highway or structure or provide other means of limiting or diverting use of the highway or structure by damaging traffic.

(7) Are directed to seek and may accept and use for the purposes of this section and ORS 377.100 contributions, gifts, grants and moneys from any source, public or private.

(8) May hold hearings that have been given appropriate public notification before any significant action is taken relating to a highway, portion of a highway or highway related structure that is so designated.

(9) Shall consider aesthetics and environmental effects when the only alternative to rehabilitation or restoration is to replace a portion of a highway or highway related structure so designated.

HISTORY: 1983 c.552 § 2; 1985 c.16 § 461; 1985 c.260 § 2

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.110 (2007)

377.110 [Repealed]

HISTORY: 1955 c.541 § 1; repealed by 1959 c.309 § 22

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.115 (2007)

377.115 [Repealed]

HISTORY: 1959 c.309 § 1; 1965 c.219 § 1; repealed by 1971 c.770 § 31

236 of 400 DOCUMENTS

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.120 (2007)

377.120 [Repealed]

HISTORY: 1955 c.541 § 2; repealed by 1959 c.309 § 22

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OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.125 (2007)

377.125 [Repealed]

HISTORY: 1959 c.309 § 2; 1963 c.400 § 1; 1965 c.219 § 2; repealed by 1971 c.770 § 31

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.130 (2007)

377.130 [Repealed]

HISTORY: 1955 c.541 § 3; repealed by 1959 c.309 § 22

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.135 (2007)

377.135 [Repealed]

HISTORY: 1959 c.309 § 3; 1965 c.219 § 3; repealed by 1971 c.770 § 31

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.140 (2007)

377.140 [Repealed]

HISTORY: 1955 c.377 § 14; 1959 c.94 § 1; repealed by 1959 c.309 § 22

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.145 (2007)

377.145 [Repealed]

HISTORY: 1959 c.309 § 4; 1965 c.219 § 4; repealed by 1971 c.770 § 31

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.150 (2007)

377.150 [Repealed]

HISTORY: 1955 c.541 § 4; repealed by 1959 c.309 § 22

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.155 (2007)

377.155 [Repealed]

HISTORY: 1959 c.309 § 5; 1965 c.219 § 5; repealed by 1971 c.770 § 31

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.160 (2007)

377.160 [Repealed]

HISTORY: 1955 c.541 § 5; repealed by 1959 c.309 § 22

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.165 (2007)

377.165 [Repealed]

HISTORY: 1959 c.309 § 6; repealed by 1971 c.770 § 31

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.170 (2007)

377.170 [Repealed]

HISTORY: 1955 c.541 § 15; repealed by 1959 c.309 § 22

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.175 (2007)

377.175 [Repealed]

HISTORY: 1959 c.309 § 7; 1965 c.219 § 6; repealed by 1971 c.770 § 31

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.178 (2007)

377.178 [Repealed]

HISTORY: 1965 c.219 § 13; repealed by 1971 c.770 § 31

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.180 (2007)

377.180 [Repealed]

HISTORY: 1955 c.541 § 6; repealed by 1959 c.309 § 22

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.181 (2007)

377.181 [Repealed]

HISTORY: 1961 c.615 § 13; 1965 c.219 § 7; repealed by 1971 c.770 § 31

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.185 (2007)

377.185 [Repealed]

HISTORY: 1959 c.309 § 8; 1961 c.615 § 9; 1965 c.219 § 8; repealed by 1971 c.770 § 31

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.190 (2007)

377.190 [Repealed]

HISTORY: 1955 c.541 § 7; repealed by 1959 c.309 § 22

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.195 (2007)

377.195 [Repealed]

HISTORY: 1959 c.309 § 9; 1961 c.615 § 10; 1965 c.219 § 9; repealed by 1971 c.770 § 31

254 of 400 DOCUMENTS

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.200 (2007)

377.200 [Repealed]

HISTORY: 1955 c.541 § 8; repealed by 1959 c.309 § 22

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.205 (2007)

377.205 [Repealed]

HISTORY: 1959 c.309 § 10; 1961 c.615 § 11; repealed by 1965 c.219 § 10 (377.206 enacted in lieu of 377.205)

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.206 (2007)

377.206 [Repealed]

HISTORY: 1965 c.219 § 11 (enacted in lieu of 377.205); repealed by 1971 c.770 § 31

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.210 (2007)

377.210 [Repealed]

HISTORY: 1955 c.541 § 9; repealed by 1959 c.309 § 22

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.215 (2007)

377.215 [Repealed]

HISTORY: 1959 c.309 § 11; 1963 c.400 § 2; 1965 c.219 § 14; repealed by 1971 c.770 § 31

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.220 (2007)

377.220 [Repealed]

HISTORY: 1955 c.541 § 10; repealed by 1959 c.309 § 22

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.225 (2007)

377.225 [Repealed]

HISTORY: 1959 c.309 § 12; 1963 c.400 § 3; 1965 c.219 § 15; repealed by 1971 c.770 § 31

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.230 (2007)

377.230 [Repealed]

HISTORY: 1955 c.541 § 11; repealed by 1959 c.309 § 22

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.235 (2007)

377.235 [Repealed]

HISTORY: 1959 c.309 § 13; 1963 c.400 § 4; 1965 c.219 § 16; repealed by 1971 c.770 § 31

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.240 (2007)

377.240 [Repealed]

HISTORY: 1955 c.541 § 12; repealed by 1959 c.309 § 22

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.245 (2007)

377.245 [Repealed]

HISTORY: 1959 c.309 § 14; 1963 c.400 § 5; 1965 c.219 § 17; repealed by 1971 c.770 § 31

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.250 (2007)

377.250 [Repealed]

HISTORY: 1955 c.541 § 16; repealed by 1959 c.309 § 22

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.255 (2007)

377.255 [Repealed]

HISTORY: 1959 c.309 § 15; 1961 c.615 § 14; 1963 c.400 § 6; 1965 c.219 § 18; repealed by 1971 c.770 § 31

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.260 (2007)

377.260 [Repealed]

HISTORY: 1955 c.541 § 18; repealed by 1959 c.309 § 22

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.265 (2007)

377.265 [Repealed]

HISTORY: 1959 c.309 § 16; 1963 c.400 § 7; 1965 c.219 § 19; repealed by 1971 c.770 § 31

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.270 (2007)

377.270 [Repealed]

HISTORY: 1955 c.541 § 17; repealed by 1959 c.309 § 22

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.275 (2007)

377.275 [Repealed]

HISTORY: 1959 c.309 § 17; 1963 c.400 § 8; 1965 c.219 § 20; repealed by 1971 c.770 § 31

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.280 (2007)

377.280 [Repealed]

HISTORY: 1955 c.541 § 13; 1957 c.465 § 2; repealed by 1959 c.309 § 22

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.285 (2007)

377.285 [Repealed]

HISTORY: 1959 c.309 § 18; 1961 c.615 § 15; 1963 c.400 § 9; 1965 c.219 § 21; repealed by 1971 c.770 § 31

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.295 (2007)

377.295 [Repealed]

HISTORY: 1959 c.309 § 19; 1963 c.400 § 10; 1965 c.219 § 22; repealed by 1971 c.770 § 31

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.305 (2007)

377.305 [Repealed]

HISTORY: 1959 c.309 § 20; 1963 c.400 § 11; repealed by 1971 c.770 § 31

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.310 (2007)

377.310 [Repealed]

HISTORY: Repealed by 1953 c.335 § 1

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.320 (2007)

377.320 [Repealed]

HISTORY: Repealed by 1953 c.335 § 1

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.330 (2007)

377.330 [Repealed]

HISTORY: Repealed by 1953 c.335 § 1

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.340 (2007)

377.340 [Repealed]

HISTORY: Repealed by 1971 c.770 § 31

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.350 (2007)

377.350 [Repealed]

HISTORY: Repealed by 1971 c.770 § 31

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.360 (2007)

377.360 [Repealed]

HISTORY: Amended by 1957 c.663 § 3; repealed by 1971 c.770 § 31

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.405 (2007)

377.405 [Repealed]

HISTORY: 1961 c.615 § 1; 1963 c.400 § 12; repealed by 1971 c.770 § 31

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.410 (2007)

377.410 [Repealed]

HISTORY: 1961 c.615 § 5; 1963 c.400 § 13; repealed by 1971 c.770 § 31

283 of 400 DOCUMENTS

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.415 (2007)

377.415 [Repealed]

HISTORY: 1961 c.615 :S2.7,16; repealed by 1971 c.770 § 31

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.420 (2007)

377.420 [Repealed]

HISTORY: 1961 c.615 :S2.2,4; repealed by 1971 c.770 § 31

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.425 (2007)

377.425 [Repealed]

HISTORY: 1961 c.615 § 8; 1963 c.400 § 14; repealed by 1971 c.770 § 31

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
HISTORIC AND SCENIC HIGHWAYS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.430 (2007)

377.430 [Repealed]

HISTORY: 1961 c.615 § 6; repealed by 1971 c.770 § 31

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 377. HIGHWAY BEAUTIFICATION; MOTORIST INFORMATION SIGNS
MOTORIST INFORMATION SIGNS
SIGNS, GENERALLY

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 377.767 (2007)

Legislative Alert: LEXSEE 2009 Ore. SB 689 -- See section 8.

377.767. Relocation of existing outdoor advertising sign; conditions.

A permit or a relocation credit as defined in ORS 377.766 shall be issued for the relocation of a permitted outdoor advertising sign lawfully located within a commercial or industrial zone in existence on May 30, 2007, if the site lease for the sign is terminated for any reason. The existing outdoor advertising sign may be relocated within any commercial or industrial zone if the new sign and the new site comply with ORS 377.700 to 377.840, and upon the following conditions:

(1) The outdoor advertising sign that is relocated may not have a sign size larger than that specified in the permit for the sign located on the site on which the lease was terminated. However, an outdoor advertising sign with 250 square feet or more of display surface on one side may be increased to the maximum size allowed by ORS 377.700 to 377.840 if the relocated sign is not visible from Interstate Highway 5, Interstate Highway 205, or Interstate Highway 84. A single-faced sign may be relocated as a back-to-back sign.

(2) The site for the relocated sign is not within the distances set forth below, on the same side of the highway, from a site from which an outdoor advertising sign was purchased pursuant to the provisions of ORS 377.700 to 377.840.

Distance in EitherTypes of Highway	Direction from Site
Interstate	2,000 feet
Freeway	1,000 feet
Other State Highway	500 feet

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(3)(a) If an outdoor advertising sign is relocated within a commercial or industrial zone that first came into existence after January 1, 1973, the site shall be within 750 feet of a developed commercial or industrial area, as measured parallel to the centerline of the highway.

(b) For purposes of this subsection, "developed commercial or industrial area" includes only the land occupied by a building, parking lot, storage area or processing area of a commercial or industrial use and on the same side of the highway.

(4) A permit may not be issued to relocate an outdoor advertising sign more than 100 miles from the existing site of the sign as of May 30, 2007, as measured along public streets, roads or highways between that site and the proposed new site. For relocation credits that exist as of May 30, 2007, a permit may not be issued to relocate an outdoor advertising sign more than 100 miles from the existing site of the sign as of September 1, 1977, as measured along public streets, roads or highways between that site and proposed new site.

(5) Outdoor advertising signs may not be relocated to a state highway or portion of a state highway designated as part of the scenic byway system by the Oregon Transportation Commission. If a portion of a highway is no longer designated as a scenic byway, as provided by state and federal law, an outdoor advertising sign may be relocated to that portion subject to ORS 377.700 to 377.840 and 377.992 and any other limitations provided by law.

(6) If the outdoor advertising sign being relocated is relocated as a tri-vision sign, the applicant shall obtain three equivalent permits or relocation credits and the sign must meet all requirements of this section.

(7) If the outdoor advertising sign being relocated is relocated as a back-to-back tri-vision sign or V-type tri-vision sign, the applicant shall obtain six equivalent permits and the sign must meet all requirements of this section.

HISTORY: 1975 c.336 § 9; 1977 c.265 § 4; 1983 c.226 § 1; 1993 c.268 § 1; 1997 c.249 § 121; 1999 c.877 § 10; 2007 c.199 § 14

ATTY. GEN. OPINIONS:

Effect of issuance of permit, (1976) Vol 37, p 1538

LexisNexis (R) Notes:

OPINIONS OF ATTORNEY GENERAL

1. 1976 Ore. AG LEXIS 389; 37 Op. Atty Gen. Ore. 1538.

2. 1978 Ore. AG LEXIS 248; 38 Op. Atty Gen. Ore. 1871.

LexisNexis 50 State Surveys, Legislation & Regulations

Billboards and Outdoor Advertising

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 44. FORESTRY AND FOREST PRODUCTS
CHAPTER 527. INSECT AND DISEASE CONTROL; FOREST PRACTICES
OREGON FOREST PRACTICES ACT
GENERALLY

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 527.620 (2007)

527.620. Definitions for ORS 527.610 to 527.770.

As used in ORS 527.610 to 527.770, 527.990 and 527.992:

(1) "Board" means the State Board of Forestry.

(2) "Cumulative effects" means the impact on the environment which results from the incremental impact of the forest practice when added to other past, present and reasonably foreseeable future forest practices regardless of what governmental agency or person undertakes such other actions.

(3) "DBH" means the diameter at breast height which is measured as the width of a standing tree at four and one-half feet above the ground, on the uphill side.

(4) "Edge of the roadway" means:

(a) For interstate highways, the fence.

(b) For all other state highways, the outermost edge of pavement, or if unpaved, the edge of the shoulder.

(5) "Forest practice" means any operation conducted on or pertaining to forestland, including but not limited to:

(a) Reforestation of forestland;

(b) Road construction and maintenance;

(c) Harvesting of forest tree species;

(d) Application of chemicals; and

(e) Disposal of slash.

(6) "Forest tree species" means any tree species capable of producing logs, fiber or other wood materials suitable

for the production of lumber, sheeting, pulp, firewood or other commercial forest products except trees grown to be Christmas trees as defined in ORS 571.505 on land used solely for the production of Christmas trees.

(7) "Forestland" means land that is used for the growing and harvesting of forest tree species, regardless of how the land is zoned or taxed or how any state or local statutes, ordinances, rules or regulations are applied.

(8) "Harvest type 1" means an operation that requires reforestation but does not require wildlife leave trees. A harvest type 1 is an operation that leaves a combined stocking level of free to grow seedlings, saplings, poles and larger trees that is less than the stocking level established by rule of the board that represents adequate utilization of the productivity of the site.

(9) "Harvest type 2" means an operation that requires wildlife leave trees but does not require reforestation. A harvest type 2 does not require reforestation because it has an adequate combined stocking of free to grow seedlings, saplings, poles and larger trees, but leaves:(a) On Cubic Foot Site Class I, II or III, fewer than 50 11-inch DBH trees or less than an equivalent basal area in larger trees, per acre;

(b) On Cubic Foot Site Class IV or V, fewer than 30 11-inch DBH trees or less than an equivalent basal area in larger trees, per acre; or

(c) On Cubic Foot Site Class VI, fewer than 15 11-inch DBH trees or less than an equivalent basal area in larger trees, per acre.

(10) "Harvest type 3" means an operation that requires reforestation and requires wildlife leave trees. This represents a level of stocking below which the size of operations is limited under ORS 527.740 and 527.750.

(11) "Landowner" means any individual, combination of individuals, partnership, corporation or association of whatever nature that holds an ownership interest in forestland, including the state and any political subdivision thereof.

(12) "Operation" means any commercial activity relating to the establishment, management or harvest of forest tree species except as provided by the following:

(a) The establishment, management or harvest of Christmas trees, as defined in ORS 571.505, on land used solely for the production of Christmas trees.

(b) The establishment, management or harvest of hardwood timber, including but not limited to hybrid cottonwood, that is:

(A) Grown on land that has been prepared by intensive cultivation methods and that is cleared of competing vegetation for at least three years after tree planting;

(B) Of a species marketable as fiber for inclusion in the furnish for manufacturing paper products;

(C) Harvested on a rotation cycle that is 12 or fewer years after planting; and

(D) Subject to intensive agricultural practices such as fertilization, cultivation, irrigation, insect control and disease control.

(c) The establishment, management or harvest of trees actively farmed or cultured for the production of agricultural tree crops, including nuts, fruits, seeds and nursery stock.

(d) The establishment, management or harvest of ornamental, street or park trees within an urbanized area, as that term is defined in ORS 221.010.

(e) The management or harvest of juniper species conducted in a unit of less than 120 contiguous acres within a single ownership.

(f) The establishment or management of trees intended to mitigate the effects of agricultural practices on the environment or fish and wildlife resources, such as trees that are established or managed for windbreaks, riparian filters or shade strips immediately adjacent to actively farmed lands.

(g) The development of an approved land use change after timber harvest activities have been completed and land use conversion activities have commenced.

(13) "Operator" means any person, including a landowner or timber owner, who conducts an operation.(14) "Single ownership" means ownership by an individual, partnership, corporation, limited liability company, trust, holding company or other business entity, including the state or any political subdivision thereof. Single ownership includes ownership held under different names or titles where the same individual or individuals, or their heirs or assigns, are shareholders (other than those of public corporations whose stock is traded on the open market), partners, business trustees or officers, or otherwise have an interest in or are associated with each property.

(15) "State Forester" means the State Forester or the duly authorized representative of the State Forester.

(16) "Suitable hardwood seedlings" means any hardwood seedling that will eventually yield logs or fiber, or both, sufficient in size and quality for the production of lumber, plywood, pulp or other forest products.

(17) "Timber owner" means any individual, combination of individuals, partnership, corporation or association of whatever nature, other than a landowner, that holds an ownership interest in any forest tree species on forestland.

(18) "Visually sensitive corridor" means forestland extending outward 150 feet, measured on the slope, from the outermost edge of the roadway of a scenic highway referred to in ORS 527.755, along both sides for the full length of the highway.

(19) "Wildlife leave trees" means trees or snags required to be retained as described in ORS 527.676 (1).

(20) "Written plan" means a document prepared by an operator, timber owner or landowner that describes how the operation is planned to be conducted.

HISTORY: 1971 c.316 § 3; 1987 c.919 § 9; 1991 c.547 § 1; 1991 c.634 § 3; 1991 c.919 § 1; 1995 s.s. c.3 § 39; 1996 c.9 § 2; 1999 c.59 § 166; 2001 c.451 § 1; 2003 c.740 § 2

ATTY. GEN. OPINIONS:

Including compliance with Department of Environmental Quality rules in forest practice rules, (1972) Vol 35, p 1146

LexisNexis (R) Notes:

CASE NOTES

1. Logger who ignored notice of a Class I stream on his parcel and allowed clearcutting of more than 25 percent of trees

in violation of rules promulgated under Or. Rev. Stat. § 527.620 et seq., violated the Forest Practices Act. Thompson v. Dep't of Forestry, 115 Or. App. 79, 836 P.2d 753, 1992 Ore. App. LEXIS 1694 (1992).

2. Nothing in the text or context of Or. Rev. Stat. § 527.722 or former Or. Rev. Stat. § 527.726 suggests that a county is foreclosed from the option of reliance on the Forest Practices Act in meeting the county's obligations under Statewide Land Use Planning Goal 5, providing for forest land preservation. 1000 Friends of Oregon v. Land Conservation & Dev. Com., 303 Or. 430, 737 P.2d 607, 1987 Ore. LEXIS 1396 (1987), questioned by 1000 Friends of Oregon v. Land Conservation & Dev. Com., 305 Ore. 384, 752 P.2d 271, 1988 Ore. LEXIS 22 (1988).

3. Regulation promulgated under Or. Rev. Stat. § 527.990, defining one form of unlawful harvest of timber as an unlawful and criminally negligent crossing of a stream with a tractor and wheel skidder without providing a temporary crossing structure, is not unconstitutionally vague, as it informs defendant that he must build a temporary structure to cross a stream when yarding timber. State v. Johnson, 50 Or. App. 33, 621 P.2d 677, 1981 Ore. App. LEXIS 2182 (1981).

4. Landowner who failed to give notice to the State Forester before an independent contractor began harvesting timber on the landowner's property was properly convicted of violating Or. Rev. Stat. § 527.670. The statute requires that notice be given by "an operator, timber owner or landowner," but it does not require that only operators, defined in Or. Rev. Stat. § 527.620(2) as people who conduct an operation, are obligated to file the required notice; therefore, since neither the landowner nor the independent contractor gave notice, the landowner could be convicted under Or. Rev. Stat. § 527.670. State v. Alder Creek Lumber Co., 33 Or. App. 195, 575 P.2d 1020, 1978 Ore. App. LEXIS 3246 (1978).

OPINIONS OF ATTORNEY GENERAL

1. 1972 Ore. AG LEXIS 18; 35 Op. Atty Gen. Ore. 1146.

2. 1978 Ore. AG LEXIS 141; 39 Op. Atty Gen. Ore. 17.

3. 1990 Ore. AG LEXIS 13.

4. 1992 Ore. AG LEXIS 16.

5. 1992 Ore. AG LEXIS 21.

LAW REVIEWS

1. 36 Willamette L. Rev. 401, NOTE: "HEY, THAT'S MY TREE!" -- AN ANALYSIS OF THE GOOD-FAITH CONTRACT LOGGER EXEMPTION FROM THE DOUBLE AND TREBLE DAMAGE PROVISIONS OF OREGON'S TIMBER TRESPASS ACTION.

LexisNexis

OREGON REVISED STATUTES

THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY
ANNOTATIONS CURRENT THROUGH APRIL 24, 2009

TITLE 44. FORESTRY AND FOREST PRODUCTS
CHAPTER 527. INSECT AND DISEASE CONTROL; FOREST PRACTICES
OREGON FOREST PRACTICES ACT
HARVEST TYPE; WATER QUALITY REGULATION

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 527.755 (2007)

527.755. Scenic highways; visually sensitive corridors; operations restricted; exemptions.

(1) The following highways are hereby designated as scenic highways for purposes of the Oregon Forest Practices Act:

(a) Interstate Highways 5, 84, 205, 405; and

(b) State Highways 6, 7, 20, 18/22, 26, 27, 30, 31, 34, 35, 36, 38, 42, 58, 62, 66, 82, 97, 101, 126, 138, 140, 199, 230, 234 and 395.

(2) The purpose of designating scenic highways is to provide a limited mechanism that maintains roadside trees for the enjoyment of the motoring public while traveling through forestland, consistent with ORS 527.630, safety and other practical considerations.

(3) The State Board of Forestry, in consultation with the Department of Transportation, shall establish procedures and regulations as necessary to implement the requirements of subsections (4), (5) and (6) of this section, consistent with subsection (2) of this section, including provisions for alternate plans. Alternate plans that modify or waive the requirements of subsection (4), (5) or (6) of this section may be approved when, in the judgment of the State Forester, circumstances exist such as:

(a) Modification or waiver is necessary to maintain motorist safety, protect improvements such as dwellings and bridges, or protect forest health;

(b) Modification or waiver will provide additional scenic benefits to the motoring public, such as exposure of distant scenic vistas;

(c) Trees that are otherwise required to be retained will not be visible to motorists;

(d) The operation involves a change of land use that is inconsistent with maintaining a visually sensitive corridor; or

(e) The retention of timber in a visually sensitive corridor will result in severe economic hardship for the owner because all or nearly all of the owner's property is within the visually sensitive corridor.

(4)(a) For harvest operations within a visually sensitive corridor, at least 50 healthy trees of at least 11 inches DBH, or that measure at least 40 square feet in basal area, shall be temporarily left on each acre.

(b) Overstory trees initially required to be left under paragraph (a) of this subsection may be removed when the reproduction understory reaches an average height of at least 10 feet and has at least the minimum number of stems per acre of free to grow seedlings or saplings required by the board for reforestation, by rule.(c) Alternatively, when the adjacent stand, extending from 150 feet from the outermost edge of the roadway to 300 feet from the outermost edge of the roadway, has attained an average height of at least 10 feet and has at least the minimum number of stems per acre of free to grow seedlings or saplings required by the board for reforestation, by rule, or at least 40 square feet of basal area per acre, no trees are required to be left in the visually sensitive corridor, or trees initially required to be left under paragraph (a) of this subsection may be removed. When harvests within the visually sensitive corridor are carried out under this paragraph, the adjacent stand, extending from 150 feet from the outermost edge of the roadway to 300 feet from the outermost edge of the roadway, shall not be reduced below the minimum number of stems per acre of free to grow seedlings or saplings at least 10 feet tall required by the board for reforestation, by rule, or below 40 square feet of basal area per acre until the adjacent visually sensitive corridor has been reforested as required under subsection (6) of this section and the stand has attained an average height of at least 10 feet and has at least the minimum number of stems per acre.

(5) Harvest areas within a visually sensitive corridor shall be cleared of major harvest debris within 30 days of the completion of the harvest, or within 60 days of the cessation of active harvesting activity on the site, regardless of whether the harvest operation is complete.

(6) Notwithstanding the time limits established in ORS 527.745 (1)(a), when harvesting within a visually sensitive corridor results in a harvest type 1 or harvest type 3, reforestation shall be completed by the end of the first planting season after the completion of the harvest. All other provisions of ORS 527.745 shall also apply to harvest type 1 or harvest type 3 within visually sensitive corridors.

(7) Landowners and operators shall not be liable for injury or damage caused by trees left within the visually sensitive corridor for purposes of fulfilling the requirements of this section, when carried out in compliance with the provisions of the Oregon Forest Practices Act.

(8) The following are exempt from this section:

(a) Harvest on single ownerships less than five acres in size;

(b) Harvest within an urban growth boundary, as defined in ORS 195.060; and

(c) Harvest within zones designated for rural residential development pursuant to an exception adopted to the statewide land use planning goals under ORS 197.732.

HISTORY: 1991 c.919 § 17; 1993 c.306 § 1; 1995 s.s. c.3 § 39e; 1996 c.9 § 7; 1997 c.249 § 179; 2007 c.383 § 1

LexisNexis (R) Notes:

OPINIONS OF ATTORNEY GENERAL

1. 1992 Ore. AG LEXIS 21.

PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)

THIS DOCUMENT IS CURRENT THROUGH ACT 12 OF THE 2009 REGULAR SESSION
***June 10, 2009 Annotation Service ***

PENNSYLVANIA CONSOLIDATED STATUTES
TITLE 74. TRANSPORTATION
PART IV. HIGHWAYS
CHAPTER 83. SCENIC HIGHWAYS

Go to the Pennsylvania Code Archive Directory

74 Pa.C.S. § 8301 (2009)

§ 8301. Designation of certain State routes as scenic byways

(a) GENERAL RULE.-- Because of their outstanding scenic, historic, natural, recreational and archeological characteristics and qualities and because of opportunities for economic development and tourism and for conservation of the outstanding qualities, the following are designated as scenic byways:

(1) State Route 476, commonly known as the Blue Route.

(2) State Route 711 from the Conemaugh River to Jones Mills continuing along Routes 7 11/381 south to Normalville and along Route 381 to the State line of West Virginia, commonly referred to as the Laurel Highlands Scenic Byway.

(3) State Route 40 from the border of Pennsylvania and Maryland to the border of Pennsylvania and West Virginia, commonly referred to as the National Road.

(b) EFFECT OF DESIGNATION.-- No outdoor advertising device, as defined in section 3 of the act of December 15, 1971 (P.L. 596, No. 160), known as the Outdoor Advertising Control Act of 1971, may be erected:

(1) within 660 feet of the nearest edge of the right-of-way; or

(2) more than 660 feet from the nearest edge of the right-of-way, outside of urban areas, if the sign is visible from the main-traveled way of the scenic byway and the purpose of the sign is that its message be read from the main-traveled way of the scenic byway, except:

(i) the official signs and notices which are required or authorized by law and which conform to the national standards promulgated by the

Secretary of Transportation of the United States pursuant to 23 U.S.C. § 131 (relating to control of outdoor advertising);

(ii) outdoor advertising devices advertising the sale or lease of the real property upon which they are located;

(iii) outdoor advertising devices advertising activities conducted on the property on which they are located, including devices which display a message that may be changed at reasonable intervals by electronic process or remote control; and

(iv) directional signs, including, but not limited to, signs pertaining to natural wonders, scenic and historical attractions and other points of interest to the traveling public which conform to the national standards promulgated by the Secretary of Transportation of the United States pursuant to 23 U.S.C. § 131.

HISTORY: Act 1993-58 (H.B. 986), § 1, approved July 2, 1993, eff. in 60 days; Act 1996-115 (H.B. 1712), § 1, approved July 11, 1996, eff. in 60 days.

PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)

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***June 10, 2009 Annotation Service ***

PENNSYLVANIA CONSOLIDATED STATUTES
TITLE 74. TRANSPORTATION
PART IV. HIGHWAYS
CHAPTER 83. SCENIC HIGHWAYS

Go to the Pennsylvania Code Archive Directory

74 Pa.C.S. § 8302 (2009)

§ 8302. Designation of Exton Bypass as scenic byway

(a) GENERAL RULE.-- Because of its outstanding scenic, historic, recreational, cultural and archeological characteristics, the middle portion of U.S. 30 (Bypass), commonly known as the Exton Bypass, is designated as a scenic byway.

(b) EFFECT OF DESIGNATION.-- No outdoor advertising device, as defined in section 3 of the act of December 15, 1971 (P.L. 596, No. 160), known as the Outdoor Advertising Control Act of 1971, may be erected if the sign is visible from the main-traveled way of the scenic byway and the purpose of the sign is that its message be read from the main-traveled way of the scenic byway, except:

(1) the official signs and notices which are required or authorized by law and which conform to the national standards promulgated by the Secretary of Transportation of the United States pursuant to 23 U.S.C. § 131 (relating to control of outdoor advertising);

(2) outdoor advertising devices advertising the sale or lease of the real property upon which they are located;

(3) outdoor advertising devices advertising activities conducted on the property on which they are located, including devices which display a message that may be changed at reasonable intervals by electronic process or remote control; and

(4) directional signs, including, but not limited to, signs pertaining to natural wonders, scenic and historical attractions and other points of interest to the traveling public which conform to the national standards promulgated by the Secretary of Transportation of the United States pursuant to 23 U.S.C. § 131.

HISTORY: Act 1996-82 (H.B. 2336), § 1, approved July 2, 1996, See section of this act for effective date information.

PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)

THIS DOCUMENT IS CURRENT THROUGH ACT 12 OF THE 2009 REGULAR SESSION
***June 10, 2009 Annotation Service ***

PENNSYLVANIA CONSOLIDATED STATUTES
TITLE 74. TRANSPORTATION
PART IV. HIGHWAYS
CHAPTER 83. SCENIC HIGHWAYS

Go to the Pennsylvania Code Archive Directory

74 Pa.C.S. § 8303 (2009)

§ 8303. Designation of the Governor Robert P. Casey Highway as scenic byway

(a) GENERAL RULE.-- Because of its outstanding scenic, historic, recreational, cultural and archeological characteristics, the portion of U.S. Route 6, between the intersection of U.S. Route 6, with Route 81 in Dunmore Borough, Lackawanna County, and the intersection of Business Route 6 in Carbondale Township, Lackawanna County, totaling 15.53 miles, commonly known as the Governor Robert P. Casey Highway, is designated as a scenic byway.

(b) EFFECT OF DESIGNATION.-- No outdoor advertising device, as defined in section 3 of the act of December 15, 1971 (P.L. 596, No. 160), known as the Outdoor Advertising Control Act of 1971, may be erected if the sign is visible from the main-traveled way of the scenic byway and the purpose of the sign is that its message be read from the main-traveled way of the scenic byway, except:

(1) the official signs and notices which are required or authorized by law and which conform to the national standards promulgated by the Secretary of Transportation of the United States pursuant to 23 U.S.C. § 131 (relating to control of outdoor advertising);

(2) outdoor advertising devices advertising the sale or lease of the real property upon which they are located;

(3) outdoor advertising devices advertising activities conducted on the property on which they are located, including devices which display a message that may be changed at reasonable intervals by electronic process or remote control; and

(4) directional signs, including, but not limited to, signs pertaining to natural wonders, scenic and historical attractions and other points of interest to the traveling public which conform to the national standards promulgated by the Secretary of Transportation of the United

States pursuant to 23 U.S.C. § 131.

HISTORY: Act 2003-33 (H.B. 1549), § 1, approved Nov. 6, 2003, eff. in 60 days.

PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)

THIS DOCUMENT IS CURRENT THROUGH ACT 12 OF THE 2009 REGULAR SESSION
***June 10, 2009 Annotation Service ***

PENNSYLVANIA CONSOLIDATED STATUTES
TITLE 74. TRANSPORTATION
PART IV. HIGHWAYS
CHAPTER 83. SCENIC HIGHWAYS

Go to the Pennsylvania Code Archive Directory

74 Pa.C.S. § 8304 (2009)

§ 8304. Designation of State Route 120 as scenic byway

(a) GENERAL RULE.-- Because of its outstanding scenic, historic, natural, recreational and archeological characteristics and qualities and because of opportunities for economic development and tourism and for conservation of the outstanding qualities along the road, State Route 120 in Clinton County from Lock Haven to the junction of U.S. Route 219 in Elk County is designated as a scenic byway.

(b) EFFECT OF DESIGNATION.-- No outdoor advertising device, as defined in section 3 of the act of December 15, 1971 (P.L. 596, No. 160), known as the Outdoor Advertising Control Act of 1971, may be erected:

(1) within 660 feet of the nearest edge of the right-of-way; or

(2) more than 660 feet from the nearest edge of the right-of-way, outside of urban areas, if the sign is visible from the main-traveled way of the scenic byway and the purpose of the sign is that its message be read from the main-traveled way of the scenic byway, except:

(i) the official signs and notices which are required or authorized by law and which conform to the national standards promulgated by the Secretary of Transportation of the United States pursuant to 23 U.S.C. § 131 (relating to control of outdoor advertising);

(ii) outdoor advertising devices advertising the sale or lease of the real property upon which they are located;

(iii) outdoor advertising devices advertising activities conducted on the property on which they are located, including devices which display a message that may be changed at reasonable intervals by electronic process or remote control;

(iv) directional signs, including, but not limited to, signs pertaining to natural wonders, scenic and historical attractions and other points of interest to the traveling public which conform to the national standards promulgated by the Secretary of Transportation of the United States pursuant to 23 U.S.C. § 131; and

(v) signs approved by the department designating the route as a scenic byway installed in accordance with department requirements.

(c) PUBLIC USE MAPS.-- All public use maps produced by the department for travel, tourism and business interests shall give special identification of routes designated as scenic byways and briefly summarize that the General Assembly established the designation because of the outstanding scenic, historic, natural, recreational and archeological characteristics and outstanding qualities and opportunities for economic development, tourism and conservation of the sights along the route.

HISTORY: Act 2003-33 (H.B. 1549), § 1, approved Nov. 6, 2003, eff. in 60 days.

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PENNSYLVANIA CONSOLIDATED STATUTES
TITLE 74. TRANSPORTATION
PART IV. HIGHWAYS
CHAPTER 83. SCENIC HIGHWAYS

Go to the Pennsylvania Code Archive Directory

74 Pa.C.S. § 8305 (2009)

§ 8305. Designation of State Route 6 as scenic byway

(a) GENERAL RULE.-- Because designation of the three miles between the interchange with Business Route 6 on the west side of Tunkhannock Borough to the Business Route 6 interchange in Tunkhannock Township on the east side of the borough will preserve magnificent views and will educate residents and future residents of the importance of promoting the cultural and archeological area around Tunkhannock Borough, State Route 6 in Wyoming County from the interchange with Business Route 6 on the west side of Tunkhannock Borough to the Business Route 6 interchange in Tunkhannock Township on the east side of the borough is designated as a scenic byway.

(b) EFFECT OF DESIGNATION.-- No outdoor advertising device as defined in section 3 of the act of December 15, 1971 (P.L. 596, No. 160), known as the Outdoor Advertising Control Act of 1971, may be erected:

(1) within 660 feet of the nearest edge of the right-of-way; or

(2) more than 660 feet from the nearest edge of the right-of-way, outside of urban areas, if the sign is visible from the main-traveled way of the scenic byway and the purpose of the sign is that its message be read from the main-traveled way of the scenic byway, except:

(i) the official signs and notices which are required or authorized by law and which conform to the national standards promulgated by the Secretary of Transportation of the United States pursuant to 23 U.S.C. § 131 (relating to control of outdoor advertising);

(ii) outdoor advertising devices advertising the sale or lease of the real property upon which they are located;

(iii) outdoor advertising devices advertising activities conducted on the property on which they are located, including devices which

display a message that may be changed at reasonable intervals by electronic process or remote control;

(iv) directional signs, including, but not limited to, signs pertaining to natural wonders, scenic and historical attractions and other points of interest to the traveling public which conform to the national standards promulgated by the Secretary of Transportation of the United States pursuant to 23 U.S.C. § 131; and

(v) signs approved by the department designating the route as a scenic byway installed in accordance with department requirements.

HISTORY: Act 2005-35 (S.B. 721), § 1, approved July 5, 2005, eff. in 60 days.

PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)

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***June 10, 2009 Annotation Service ***

PENNSYLVANIA CONSOLIDATED STATUTES
TITLE 74. TRANSPORTATION
PART IV. HIGHWAYS
CHAPTER 83. SCENIC HIGHWAYS

Go to the Pennsylvania Code Archive Directory

74 Pa.C.S. § 8306 (2009)

§ 8306. Designation of State Route 92 in Susquehanna County as a scenic byway

(a) GENERAL RULE.-- Because of its outstanding scenic, historic, natural, recreational and archeological characteristics and qualities and because of opportunities for economic development and tourism and for conservation of the outstanding qualities along the road, State Route 92 in Susquehanna County from Lenox Township Segment No. 0130/0904 continuing to Jackson Township border Segment No. 0460/2408, and further continuing from the Susquehanna Borough Segment No. 0510/0747 and continuing to Oakland Borough Segment No. 0540/1702, is hereby designated as a scenic byway.

(b) EFFECT OF DESIGNATION.-- No outdoor advertising device as defined in section 3 of the act of December 15, 1971 (P.L. 596, No. 160), known as the Outdoor Advertising Control Act of 1971, may be erected:

(1) within 660 feet of the nearest edge of the right-of-way; or

(2) more than 660 feet from the nearest edge of the right-of-way, outside of urban areas, if the sign is visible from the main-traveled way of the scenic byway and the purpose of the sign is that its message be read from the main-traveled way of the scenic byway, except:

(i) the official signs and notices which are required or authorized by law and which conform to the national standards promulgated by the Secretary of Transportation of the United States pursuant to 23 U.S.C. § 131 (relating to control of outdoor advertising);

(ii) outdoor advertising devices advertising the sale or lease of the real property upon which they are located;

(iii) outdoor advertising devices advertising activities conducted on the property on which they are located, including devices which

display a message that may be changed at reasonable intervals by electronic process or remote control;

(iv) directional signs, including, but not limited to, signs pertaining to natural wonders, scenic and historical attractions and other points of interest to the traveling public which conform to the national standards promulgated by the Secretary of Transportation of the United States pursuant to 23 U.S.C. § 131; and

(v) signs approved by the department designating the route as a scenic byway installed in accordance with department requirements.

(c) PUBLIC USE MAPS.-- All public use maps produced by the department for travel, tourism and business interests shall give special identification of this route and briefly summarize that the General Assembly established the designation because of the outstanding scenic, historic, natural, recreational and archeological characteristics and outstanding qualities and opportunities for economic development, tourism and conservation of the sights along the route.

HISTORY: Act 2005-35 (S.B. 721), § 1, approved July 5, 2005, eff. in 60 days.

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*** Annotations current through May 29, 2009 ***

TITLE 24. HIGHWAYS
CHAPTER 15. SCENIC HIGHWAYS

Go to the Rhode Island Code Archive Directory

R.I. Gen. Laws § 24-15-1 (2009)

§ 24-15-1. Purpose

In order to create and preserve rustic and scenic highways for vehicular, bicycle, and pedestrian travel in unhurried, quiet, and leisurely enjoyment; to protect and preserve recreational driving, culture, beauty, trees, vegetation, shoreline, and wildlife by establishing protective standards of scenic highway design, speed, maintenance, and identification, which will promote a continuous system of scenic highways and scenic easements for the public health and welfare; a state system of scenic highways is created.

HISTORY: P.L. 1985, ch. 398, § 1.

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*** Current through the January 2008 Session ***
*** Annotations current through May 29, 2009 ***

TITLE 24. HIGHWAYS
CHAPTER 15. SCENIC HIGHWAYS

Go to the Rhode Island Code Archive Directory

R.I. Gen. Laws § 24-15-2 (2009)

§ 24-15-2. Definitions

As used in this chapter:

(1) "Board" means the scenic roadways board.

(2) [Deleted by P.L. 2005, ch. 228, § 1 and P.L. 2005, ch. 315, § 1].

(3) "Director" means the director of the department of transportation.

(4) "Municipality" means a city or town.

HISTORY: P.L. 1985, ch. 398, § 1; P.L. 1995, ch. 233, § 1; P.L. 1997, ch. 326, § 157; P.L. 2005, ch. 228, § 1; P.L. 2005, ch. 315, § 1.

NOTES: REENACTMENTS. The 1997 Reenactment (P.L. 1997, ch. 326, § 1) rearranged the definitions into alphabetical order, redesignated the subdivisions and substituted "in this chapter" for "herein" in subdivision (2).

COMPILER'S NOTES. P.L. 2005, ch. 228, § 1, and P.L. 2005, ch. 315, § 1, enacted identical amendments to this section.

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*** Current through the January 2008 Session ***
*** Annotations current through May 29, 2009 ***

TITLE 24. HIGHWAYS
CHAPTER 15. SCENIC HIGHWAYS

Go to the Rhode Island Code Archive Directory

R.I. Gen. Laws § 24-15-3 (2009)

§ 24-15-3. Designation as a scenic highway

The director, or the governing body of any municipality as to any highway (including a state highway) within its borders, may apply to the board for the designation of a highway as a scenic highway. A municipality making application for a state highway shall notify the director of the Rhode Island department of transportation. The director shall have thirty (30) days to comment on the application. After holding a public hearing, the board shall approve or deny the application for designation of a highway as a scenic highway submitted under this section. Provided, however, that prior to any approval or denial of any application, the applicant shall notify the owners of the properties fronting the application area that an application has been filed and the board shall provide the fronting property owners with an opportunity to attend a public hearing in the municipality subject to the application, and in the Town of Westerly no application for designation of a highway or road, or portion of a highway or road, shall be approved unless the owners of a majority of the lineal lot frontage abutting the highway or road agree to the designation by filing with the director or governing municipal body, within sixty (60) days immediately following the application, a written statement or statements agreeing to the designation.

HISTORY: P.L. 1985, ch. 398, § 1; P.L. 1997, ch. 354, § 1; P.L. 1997, ch. 369, § 1; P.L. 1998, ch. 55, § 1; P.L. 1998, ch. 363, § 1; P.L. 1999, ch. 422, § 1.

NOTES: COMPILER'S NOTES. This section was amended by two Acts (P.L. 1997, ch. 354 § 1; P.L. 1997, ch. 369, § 1) passed by the 1997 General Assembly. Since the amendments do not conflict with each other, the section as set out incorporates the amendments by both acts.

This section was amended by two Acts (P.L. 1998, ch. 363, § 1; P.L. 1998, ch. 550, § 1) passed by the 1998 General Assembly. Since the amendments do not appear to conflict with each other, the section as set out incorporates the changes made by both acts.

APPLICABILITY. P.L. 1997, ch. 354, § 3 provides that the act shall apply to all applications for designation or removal then pending.

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*** Annotations current through May 29, 2009 ***

TITLE 24. HIGHWAYS
CHAPTER 15. SCENIC HIGHWAYS

Go to the Rhode Island Code Archive Directory

R.I. Gen. Laws § 24-15-4 (2009)

§ 24-15-4. Withdrawal of highways from scenic highways system

After holding a public hearing, the director, or the governing body of any municipality as to any scenic highway (including a state highway) within its borders, may apply to the board for, and the board itself may propose, the removal of a highway from the scenic highway system. The board shall thereupon approve or deny the removal of the highway from its designation as a scenic highway. Provided, however, that no application for removal of a highway or road, or portion thereof, from the scenic highways system, shall be approved unless the owners of a majority of the lineal lot frontage abutting the highway or road agree to the removal by filing an application with the director or governing municipal body, within the sixty (60) days immediately preceding the application, a written statement or statements agreeing to the removal.

HISTORY: P.L. 1985, ch. 398, § 1; P.L. 1997, ch. 354, § 1; P.L. 1997, ch. 369, § 1.

NOTES: COMPILER'S NOTES. This section was amended by two acts (P.L. 1997, ch. 354 § 1; P.L. 1997, ch. 369, § 1) passed by the 1997 General Assembly. Since the amendments do not conflict with each other, the section as set out incorporates the amendments by both acts.

APPLICABILITY. P.L. 1997, ch. 354, § 3 provides that the act shall apply to all applications for designation or removal then pending.

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*** Current through the January 2008 Session ***
*** Annotations current through May 29, 2009 ***

TITLE 24. HIGHWAYS
CHAPTER 15. SCENIC HIGHWAYS

Go to the Rhode Island Code Archive Directory

R.I. Gen. Laws § 24-15-5 (2009)

§ 24-15-5. Joint jurisdiction of highways

Highways under the joint jurisdiction of two (2) or more municipalities may not be designated scenic highways or be withdrawn from the scenic highway system until after approval by the governing bodies of all affected municipalities and the board.

HISTORY: P.L. 1985, ch. 398, § 1.

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*** Current through the January 2008 Session ***
*** Annotations current through May 29, 2009 ***

TITLE 24. HIGHWAYS
CHAPTER 15. SCENIC HIGHWAYS

Go to the Rhode Island Code Archive Directory

R.I. Gen. Laws § 24-15-6 (2009)

§ 24-15-6. Local authority

The director and the municipalities and all other authorities shall have the same authority over scenic highways as they possess over other highways under their jurisdiction except as otherwise provided in this chapter.

HISTORY: P.L. 1985, ch. 398, § 1; P.L. 1997, ch. 326, § 157.

NOTES: REENACTMENTS. The 1997 Reenactment (P.L. 1997, ch. 326, § 1) substituted "this chapter" for "this section".

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*** Current through the January 2008 Session ***
*** Annotations current through May 29, 2009 ***

TITLE 24. HIGHWAYS
CHAPTER 15. SCENIC HIGHWAYS

Go to the Rhode Island Code Archive Directory

R.I. Gen. Laws § 24-15-7 (2009)

§ 24-15-7. Funding

State aid for scenic highways shall be determined in accordance with the local transportation funding as provided in these general laws.

HISTORY: P.L. 1985, ch. 398, § 1.

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*** Annotations current through May 29, 2009 ***

TITLE 24. HIGHWAYS
CHAPTER 15. SCENIC HIGHWAYS

Go to the Rhode Island Code Archive Directory

R.I. Gen. Laws § 24-15-8 (2009)

§ 24-15-8. Scenic highways marking signs -- State payment

The department of transportation shall pay the cost of furnishing and installing scenic highway marking signs on officially designated scenic highways.

HISTORY: P.L. 1985, ch. 398, § 1.

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*** Current through the January 2008 Session ***
*** Annotations current through May 29, 2009 ***

TITLE 24. HIGHWAYS
CHAPTER 15. SCENIC HIGHWAYS

Go to the Rhode Island Code Archive Directory

R.I. Gen. Laws § 24-15-9 (2009)

§ 24-15-9. Rules and standards

The board shall promulgate rules and establish standards for the maintenance, identification, construction, use, and preservation of the scenic highways system. The board may establish rules and standards for regulating and limiting the construction or establishment of a highway which is inconsistent with the purpose of this chapter. No rule or regulation may be adopted or promulgated which affects any provision of the general laws of the state or any federal statutory provision without the prior approval of the general assembly.

HISTORY: P.L. 1985, ch. 398, § 1; P.L. 1991, ch. 187, § 3.

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*** Current through the January 2008 Session ***
*** Annotations current through May 29, 2009 ***

TITLE 24. HIGHWAYS
CHAPTER 15. SCENIC HIGHWAYS

Go to the Rhode Island Code Archive Directory

R.I. Gen. Laws § 24-15-10 (2009)

§ 24-15-10. Creation of board

There is hereby authorized, created and established within the executive department a scenic roadways board consisting of eleven (11) members as follows: one member shall be the director of the department of transportation or his or her designee who shall be a subordinate within the department of transportation; one member shall be the director of the department of environmental management or his or her designee who shall be a subordinate within the department of environmental management; one member shall be the chair of the historic preservation commission; one member shall be appointed by the governor with the advice and consent of the senate giving due consideration to the recommendation of Grow Smart Rhode Island; one member shall be appointed by the governor with the advice and consent of the senate giving due consideration to the recommendation of the Rhode Island builders association; six (6) members shall be appointed by the governor from the general public with the advice and consent of the senate, in making these appointments, the governor shall take into consideration the impact on the local communities. The governor shall give due consideration to members of local land trusts, chamber of commerce recommendations and shall also consider the need for individuals with expertise in landscape architecture, community planning, and/or transportation engineers with experience with traffic calming and flexible design policies. The members shall be chosen as far as is reasonably practicable to represent geographical diversity and communities where designated scenic roadways exist. During the month of January, in each year the governor shall appoint a member to succeed the departing member. The newly appointed member shall serve for a term of three (3) years or until their respective successors are appointed and qualified. The members of the board shall be eligible to succeed themselves. Any vacancy of a public member which may occur in the board shall be filled by appointment by the governor for the remainder of the unexpired term in the same manner as the member's predecessor as prescribed in this section. The membership of the board shall receive no compensation for their services, and shall not be reimbursed for any expenses. Those members of the board as of the effective date of this act [July 9, 2005] who were appointed to the board by members of the general assembly shall cease to be members of the board on the effective date of this act, and the governor shall thereupon appoint the four (4) new members as prescribed in this section. Those members of the board as of the effective date of this act [July 9, 2005] who were appointed to the board by the governor shall continue to serve the balance of their current terms. Upon the expiration of the term of the member representing the Audubon Society of Rhode Island, the governor shall appoint a new member, and shall give due consideration to the recommendation of Grow Smart Rhode Island. Thereafter, the appointments shall be made by the governor as prescribed in this section. No one shall be eligible for

appointment unless he or she is a resident of this state. The director of the department of transportation shall direct staff to support the board within the constraints of available resources.

HISTORY: P.L. 1985, ch. 398, § 1; P.L. 1995, ch. 233, § 1; P.L. 2001, ch. 180, § 55; P.L. 2005, ch. 228, § 1; P.L. 2005, ch. 315, § 1.

NOTES: REENACTMENTS. The 1997 Reenactment (P.L. 1997, ch. 326, § 1) substituted "Beginning" for "Forthwith upon" at the beginning of the sixth sentence and substituted "Immediately" for "Forthwith" at the beginning of the next-to-last sentence.

COMPILER'S NOTES. P.L. 2005, ch. 228, § 1, and P.L. 2005, ch. 315, § 1, enacted identical amendments to this section.

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*** Current through the January 2008 Session ***
*** Annotations current through May 29, 2009 ***

TITLE 24. HIGHWAYS
CHAPTER 15. SCENIC HIGHWAYS

Go to the Rhode Island Code Archive Directory

R.I. Gen. Laws § 24-15-10.1 (2009)

§ 24-15-10.1. Chair, quorum and removal for cause

(a) Upon the passage of this act and the appointment and qualification of the four (4) new members prescribed in § 24-15-10, the board shall meet at the call of the director of transportation and shall elect from among the members a chair and a vice-chair. Thereafter, the board shall annually elect in February a chair and a vice-chair from among the members. The board may elect from among its members such other officers as it deems necessary.

(b) Six (6) members of the board shall constitute a quorum, and a majority vote of those present and voting shall be required for action.

(c) Members of the board shall be removable by the governor pursuant to § 36-1-7 and for cause only, and removal solely for partisan or personal reasons unrelated to capacity or fitness for the office shall be unlawful.

HISTORY: P.L. 2005, ch. 228, § 2; P.L. 2005, ch. 315, § 2.

NOTES: COMPILER'S NOTES. P.L. 2005, ch. 228, § 2, and P.L. 2005, ch. 315, § 2, enacted identical versions of this section.

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*** Current through the January 2008 Session ***
*** Annotations current through May 29, 2009 ***

TITLE 24. HIGHWAYS
CHAPTER 15. SCENIC HIGHWAYS

Go to the Rhode Island Code Archive Directory

R.I. Gen. Laws § 24-15-10.2 (2009)

§ 24-15-10.2. Powers and duties

In addition to the duties and powers conferred upon the board by this chapter, it has the following additional duties and powers:

(1) To conduct a training course for newly appointed and qualified members and new designees of ex-officio members within six (6) months of their qualification or designation. The course shall be developed by the chair of the board, approved by the board, and conducted by the chair of the board. The board may approve the use of any board or staff members or other individuals to assist with training. It shall include instruction in the following areas: the provisions of chapters 25-15, 42-46, 36-14 and 38-2; and the board's rules and regulations. The director of the department of administration shall, within ninety (90) days of the effective date of this act, prepare and disseminate training materials relating to the provisions of chapters 42-46, 36-14 and 38-2.

(2) To approve and submit, an annual report within ninety (90) days after the end of each fiscal year to the governor, the speaker of the house of representatives, the president of the senate, and the secretary of state of its activities during that fiscal year. The report shall provide: an operating statement summarizing meetings or hearings held, including meeting minutes, subjects addressed, decisions rendered, applications considered and their disposition, rules or regulations promulgated, studies conducted, policies and plans developed, approved, or modified, and programs administered or initiated; a consolidated financial statement of all funds received and expended including the source of the funds, a listing of any staff supported by these funds, and a summary of any clerical, administrative or technical support received; a summary of performance during the previous fiscal year including accomplishments, shortcomings and remedies; a synopsis of any legal matters related to the authority of the board; a summary of any training courses held pursuant to this section; a briefing on anticipated activities in the upcoming fiscal year; and findings and recommendations for improvements. The report shall be posted electronically as prescribed in § 42-20-8.2. The director of the department of administration shall be responsible for the enforcement of this provision.

HISTORY: P.L. 2005, ch. 228, § 2; P.L. 2005, ch. 315, § 2.

NOTES: COMPILER'S NOTES. P.L. 2005, ch. 228, § 2, and P.L. 2005, ch. 315, § 2, enacted identical versions of this section.

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*** Current through the January 2008 Session ***
*** Annotations current through May 29, 2009 ***

TITLE 31. MOTOR AND OTHER VEHICLES
CHAPTER 14. SPEED RESTRICTIONS

Go to the Rhode Island Code Archive Directory

R.I. Gen. Laws § 31-14-4.1 (2009)

§ 31-14-4.1. Reduction of the prima facie limits in historic districts and on scenic highways

Whenever the state traffic commission shall determine that any prima facie limit set forth in § 31-14-2 is greater than is reasonable in any historic district listed on the National Register of Historic Places or on any road duly recognized as a scenic highway by the scenic highway board in accordance with the provisions of chapter 14 of title 24, the commission shall determine and declare a reasonable and safe prima facie limit, in the manner set forth in § 31-14-4, in order to provide for the preservation of the historical character of the district or the scenic quality of the highway, provided that:

(1) The reduced prima facie limit shall be for a length of road not to exceed one mile or the distance between the boundaries of the district, whichever distance is the lesser, and

(2) The reduced prima facie limit shall not result in traffic congestion.

HISTORY: P.L. 1991, ch. 187, § 2.

NOTES: REENACTMENTS. The 2002 Reenactment added the subdivision designations.

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Speed Detection & Traffic Control Devices

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*** Current through the January 2008 Session ***
*** Annotations current through May 29, 2009 ***

TITLE 45. TOWNS AND CITIES
CHAPTER 24. ZONING ORDINANCES

Go to the Rhode Island Code Archive Directory

R.I. Gen. Laws § 45-24-33 (2009)

§ 45-24-33. Standard provisions

(a) A zoning ordinance addresses each of the purposes stated in § 45-24-30 and addresses, through reasonable objective standards and criteria, the following general provisions which are numbered for reference purposes only:

(1) Permitting, prohibiting, limiting, and restricting the development of land and structures in zoning districts, and regulating those land and structures according to their type, and the nature and extent of their use;

(2) Regulating the nature and extent of the use of land for residential, commercial, industrial, institutional, recreational, agricultural, open space, or other use or combination of uses, as the need for land for those purposes is determined by the city or town's comprehensive plan;

(3) Permitting, prohibiting, limiting, and restricting buildings, structures, land uses, and other development by performance standards, or other requirements, related to air and water and groundwater quality, noise and glare, energy consumption, soil erosion and sedimentation, and/or the availability and capacity of existing and planned public or private services;

(4) Regulating within each district and designating requirements for:

(i) The height, number of stories, and size of buildings;

(ii) The dimensions, size, lot coverage, floor area ratios, and layout of lots or development areas;

(iii) The density and intensity of use;

(iv) Access to air and light, views, and solar access;

(v) Open space, yards, courts, and buffers;

(vi) Parking areas, road design, and, where appropriate, pedestrian, bicycle, and other circulator systems;

(vii) Landscaping, fencing, and lighting;

(viii) Appropriate drainage requirements and methods to manage stormwater runoff;

(ix) Public access to waterbodies, rivers, and streams; and

(x) Other requirements in connection with any use of land or structure;

(5) Permitting, prohibiting, limiting, and restricting development in flood plains or flood hazard areas and designated significant natural areas;

(6) Promoting the conservation of energy and promoting energy-efficient patterns of development;

(7) Providing for the protection of existing and planned public drinking water supplies, their tributaries and watersheds, and the protection of Narragansett Bay, its tributaries and watershed;

(8) Providing for adequate, safe, and efficient transportation systems; and avoiding congestion by relating types and levels of development to the capacity of the circulation system, and maintaining a safe level of service of the system;

(9) Providing for the preservation and enhancement of the recreational resources of the city or town;

(10) Promoting an economic climate which increases quality job opportunities and the overall economic well-being of the city or town and the state;

(11) Providing for pedestrian access to and between public and private facilities, including, but not limited to schools, employment centers, shopping areas, recreation areas, and residences;

(12) Providing standards for and requiring the provision of adequate and properly designed physical improvements, including plantings, and the proper maintenance of property;

(13) Permitting, prohibiting, limiting, and restricting land use in areas where development is deemed to create a hazard to the public health or safety;

(14) Permitting, prohibiting, limiting, and restricting extractive industries and earth removal and requiring restoration of land after these activities;

(15) Regulating sanitary landfill, except as otherwise provided by state statute;

(16) Permitting, prohibiting, limiting, and restricting signs and billboards, and other outdoor advertising devices;

(17) Designating airport hazard areas under the provisions of chapter 3 of title 1, and enforcement of airport hazard area zoning regulations under the provisions established in that chapter;

(18) Designating areas of historic, cultural, and/or archaeological value and regulating development in those areas under the provisions of chapter 24.1 of this title;

(19) Providing standards and requirements for the regulation, review, and approval of any proposed development in connection with those uses of land, buildings, or structures specifically designated as subject to development plan review in a zoning ordinance;

(20) Designating special protection areas for water supply and limiting or prohibiting development in these areas, except as otherwise provided by state statute;

(21) Specifying requirements for safe road access to developments from existing streets, including limiting the number, design, and location of curb cuts, and provisions for internal circulation systems for new developments, and

provisions for pedestrian and bicycle ways; and

(22) Reducing unnecessary delay in approving or disapproving development applications, through provisions for preapplication conferences and other means.

(23) Providing for the application of the Rhode Island Fair Housing Practices Act, chapter 37 of title 34, the United States Fair Housing Amendments Act of 1988 (FHAA), the Rhode Island Civil Rights People with Disabilities Act, chapter 37 of title 42, and the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 et seq.

(24) Regulating drive-through windows of varied intensity of use when associated with land use activities and providing standards and requirements for the regulation, review and approval of the drive-through windows, including, but not limited to:

(i) Identifying within which zoning districts drive-through windows may be permitted, prohibited, or permitted by special use permit;

(ii) Specifying requirements for adequate traffic circulation; and

(iii) Providing for adequate pedestrian safety and access, including issues concerning safety and access for those with disabilities.

(b) A zoning ordinance may include special provisions for any or all of the following:

(1) Authorizing development incentives, known as incentive zoning, for purposes of providing increases in the permitted use or dimension as a condition for, but not limited to:

(i) Increased open space;

(ii) Increased housing choices;

(iii) Traffic and pedestrian improvements;

(iv) Public and/or private facilities; and/or

(v) Other amenities as desired by the city or town and consistent with its comprehensive plan. The provisions in the ordinance shall include maximum allowable densities of population and/or intensities of use and shall indicate the type of improvements, amenities, and/or conditions. Conditions may be made for donation in lieu of direct provisions for improvements or amenities;

(2) Establishing a system for transfer of development rights within or between zoning districts designated in the zoning ordinance; and

(3) Regulating the development adjacent to designated scenic highways, scenic waterways, major thoroughfares, public greenspaces, or other areas of special public investment or valuable natural resources.

HISTORY: P.L. 1991, ch. 307, § 1; P.L. 1996, ch. 213, § 1; P.L. 1999, ch. 83, § 128; P.L. 1999, ch. 130, § 128; P.L. 2001, ch. 179, § 3; P.L. 2001, ch. 231, § 1; P.L. 2001, ch. 378, § 1.

NOTES: COMPILER'S NOTES. P.L. 1999, ch. 83, § 128, and P.L. 1999, ch. 130, § 128, enacted identical amendments to this section.
P.L. 2001, ch. 231, § 1 and P.L. 2001, ch. 378, § 1 enacted identical amendments to this section.

FAIR HOUSING AMENDMENTS ACT OF 1988. The United States Fair Housing Amendments Act of 1988, referred

to in subdivision (A)(23), is codified primarily in Chapter 45 of 42 U.S.C. See 42 U.S.C. § 3601.

NOTES TO DECISIONS

1. JURISDICTION.

The granting of authority to municipal governments in the zoning or planning and land use statutes fails to rise to the level of an express statement that municipalities have been granted the power to regulate the tidal waters to which the state holds title. Town of Warren v. Thornton-Whitehouse, 740 A.2d 1255 (R.I. 1999).

SOUTH CAROLINA CODE OF LAWS ANNOTATED BY LEXISNEXIS(R)

*** THIS DOCUMENT IS CURRENT THROUGH THE 2008 REGULAR SESSION ***
***THE MOST CURRENT ANNOTATION IS DATED JUNE 11, 2009 ***

TITLE 57. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 3. DEPARTMENT OF TRANSPORTATION
ARTICLE 2. GENERAL PROVISIONS

GO TO SOUTH CAROLINA ARCHIVE DIRECTORY

S.C. Code Ann. § 57-3-110 (2008)

§ 57-3-110. Powers and duties of Department of Transportation.

The Department of Transportation shall have the following duties and powers:

(1) lay out, build, and maintain public highways and bridges, including the exclusive authority to establish design criteria, construction specifications, and standards required to construct and maintain highways and bridges;

(2) acquire such lands, road building materials, and rights-of-way as may be needed for roads and bridges by purchase, gift, or condemnation;

(3) cause the state highways to be marked with appropriate directions for travel and regulate the travel and traffic along such highways, subject to the laws of the State;

(4) number or renumber state highways;

(5) initiate and conduct such programs and pilot projects to further research and development efforts, and to promote training of personnel in the fields of planning, construction, maintenance, and operation of the state highway system;

(6) cooperate with the federal government in the construction of federal-aid highways in the development of improved mass transit service, facilities, equipment, techniques, and methods and in planning and research in connection therewith; and seek and receive such federal aid and assistance as may from time to time become available except for funds designated by statute to be administered by the Chief Executive Officer of the State;

(7) instruct, assist, and cooperate with the agencies, departments, and bodies politic and legally constituted agencies of the State in street, highway, traffic, and mass transit matters when requested to do so, and, if requested by such government authorities, supervise or furnish engineering supervision for the construction and improvement of roads and bridges, provided such duties do not impair the attention to be given the highways in the state highway system;

(8) promulgate such rules and regulations in accordance with the Administrative Procedures Act for the administration and enforcement of the powers delegated to the department by law, which shall have the full force and effect of law;

(9) grant churches the right to cross over, under, along, and upon any public roads or highways and rights-of-way related thereto;

(10) enter into such contracts as may be necessary for the proper discharge of its functions and duties and may sue and be sued thereon;

(11) erect such signs as requested by a local governing body, if the department deems the signs necessary for public safety and welfare, including "Deaf Child" signs and "Crime Watch Area" signs; and

(12) do all other things required or provided by law.

HISTORY: 1993 Act No. 181, § 1507.

NOTES:
LexisNexis (R) Notes:

CROSS REFERENCES.--Ashley River Road Scenic Byway designated, see S.C. Code Ann. § 57-23-230.

CASE NOTES

1. South Carolina Department of Transportation did not improperly delegate its police power to plan and to implement highways by agreeing not to build competitive transportation facilities within a specified geographical area of a turnpike until the termination of its agreements with an association that was to operate the turnpike for the Department; the Department had the power to enter into contracts and to lay out, build, and maintain public highways and bridges consistent with the needs and desires of the public, pursuant to S.C. Code Ann. § 57-3-110(1), (10) and S.C. Code Ann. § 57-1-30. Brashier v. South Carolina DOT, 327 S.C. 179, 490 S.E.2d 8, 1997 S.C. LEXIS 154 (S.C. 1997), overruled in part by I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716, 2000 S.C. LEXIS 13 (S.C. 2000).

2. South Carolina Department of Transportation did not improperly delegate its police power to plan and to implement highways by agreeing not to build competitive transportation facilities within a specified geographical area of a turnpike until the termination of its agreements with an association that was to operate the turnpike for the Department; the Department had the power to enter into contracts and to lay out, build, and maintain public highways and bridges consistent with the needs and desires of the public, pursuant to S.C. Code Ann. § 57-3-110(1), (10) and S.C. Code Ann. § 57-1-30. Brashier v. South Carolina DOT, 327 S.C. 179, 490 S.E.2d 8, 1997 S.C. LEXIS 154 (S.C. 1997), overruled in part by I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716, 2000 S.C. LEXIS 13 (S.C. 2000).

3. South Carolina Department of Transportation did not improperly delegate its police power to plan and to implement highways by agreeing not to build competitive transportation facilities within a specified geographical area of a turnpike until the termination of its agreements with an association that was to operate the turnpike for the Department; the Department had the power to enter into contracts and to lay out, build, and maintain public highways and bridges

consistent with the needs and desires of the public, pursuant to S.C. Code Ann. § 57-3-110(1), (10) and S.C. Code Ann. § 57-1-30. Brashier v. South Carolina DOT, 327 S.C. 179, 490 S.E.2d 8, 1997 S.C. LEXIS 154 (S.C. 1997), overruled in part by I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716, 2000 S.C. LEXIS 13 (S.C. 2000).

OPINIONS OF ATTORNEY GENERAL

1. RE: Informal Opinion, 1996 S.C. AG LEXIS 210.

SOUTH CAROLINA CODE OF LAWS ANNOTATED BY LEXISNEXIS(R)

*** THIS DOCUMENT IS CURRENT THROUGH THE 2008 REGULAR SESSION ***
***THE MOST CURRENT ANNOTATION IS DATED JUNE 11, 2009 ***

TITLE 57. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 23. HIGHWAY BEAUTIFICATION AND SCENIC ROUTES
ARTICLE 2. SCENIC HIGHWAYS COMMITTEE

GO TO SOUTH CAROLINA ARCHIVE DIRECTORY

S.C. Code Ann. § 57-23-50 (2008)

§ 57-23-50. Scenic Highways Committee created; membership; terms of office.

There is created a Scenic Highways Committee composed of eleven members as follows:

(1) the secretary of the Department of Transportation or the secretary's designee;

(2) the chairman of the South Carolina Department of Parks, Recreation and Tourism Commission or the chairman's designee;

(3) two representatives of the outdoor advertising industry who are active members of an organization such as the Outdoor Advertising Association of South Carolina;

(4) a representative of the South Carolina hotel and motel industry;

(5) a representative of the agricultural industry who is active in an organization such as the State Farm Bureau;

(6) a representative of the petroleum marketing industry;

(7) a representative of the tourism industry in South Carolina;

(8) a representative of highway beautification efforts, such as South Carolina Clean and Beautiful;

(9) a representative involved with parks and recreation, such as the South Carolina Recreation and Parks Association;

(10) a member of the general public.

All members of the committee shall serve for a term of two years and, with the exception of the appointments made pursuant to items (1) and (2), all appointments must be made by the Governor. Members of the committee shall serve without compensation or reimbursement.

HISTORY: 1994 Act No. 484, § 1, eff July 14, 1994; 1996 Act No. 285, § 1.

Amended by 2008 Act No. 273, § 14, eff June 4, 2008.

NOTES: Effect of Amendment

The 2008 amendment, in the undesignated paragraph at the end deleted "with the advice and consent of the Senate" from the end of the first sentence.

SOUTH CAROLINA CODE OF LAWS ANNOTATED BY LEXISNEXIS(R)

*** THIS DOCUMENT IS CURRENT THROUGH THE 2008 REGULAR SESSION ***
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TITLE 57. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 23. HIGHWAY BEAUTIFICATION AND SCENIC ROUTES
ARTICLE 2. SCENIC HIGHWAYS COMMITTEE

GO TO SOUTH CAROLINA ARCHIVE DIRECTORY

S.C. Code Ann. § 57-23-60 (2008)

§ 57-23-60. Chairman; quorum; promulgation of criteria regulations.

The committee shall select a chairman at its first meeting and meet at least twice annually. A majority of the members present constitute a quorum for purposes of conducting business. Pursuant to Chapter 23 of Title 1 of the 1976 Code, the committee shall promulgate criteria for the designation of a scenic highway. The regulation must provide that a recommendation to establish a scenic highway be forwarded to the General Assembly for approval. In developing the criteria the committee shall consider the scenic, cultural, historic, commercial, and economic significance of the road and area. The committee shall coordinate development of these criteria in conjunction with the criteria for scenic highways being developed by the federal highway administration.

HISTORY: 1994 Act No. 484, § 1.

NOTES:
LexisNexis (R) Notes:
CROSS REFERENCES.--Ashley River Road Scenic Byway designated, see S.C. Code Ann. § 57-23-230.

SOUTH CAROLINA CODE OF LAWS ANNOTATED BY LEXISNEXIS(R)

*** THIS DOCUMENT IS CURRENT THROUGH THE 2008 REGULAR SESSION ***
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TITLE 57. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 23. HIGHWAY BEAUTIFICATION AND SCENIC ROUTES
ARTICLE 2. SCENIC HIGHWAYS COMMITTEE

GO TO SOUTH CAROLINA ARCHIVE DIRECTORY

S.C. Code Ann. § 57-23-70 (2008)

§ 57-23-70. Requests for scenic highway designation; review by committee; hearing.

A written request for designating a scenic highway must be sent to the Secretary of the Department of Transportation who shall forward the request to other members of the committee. The committee shall review the request and make a recommendation based on the criteria. A majority of the members may call for a public hearing to be held at the location where the scenic highway is proposed.

HISTORY: 1994 Act No. 484, § 1.

NOTES: Code Commissioner's Note

2007 Act No. 114, § 9, directed the Code Commissioner to change "Director" to "Secretary" of the Department of Transportation.

SOUTH CAROLINA CODE OF LAWS ANNOTATED BY LEXISNEXIS(R)

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TITLE 57. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 23. HIGHWAY BEAUTIFICATION AND SCENIC ROUTES
ARTICLE 2. SCENIC HIGHWAYS COMMITTEE

GO TO SOUTH CAROLINA ARCHIVE DIRECTORY

S.C. Code Ann. § 57-23-80 (2008)

§ 57-23-80. Transmittal of committee recommendation to General Assembly.

After the committee recommends designating a road as a scenic highway, the recommendation must be transmitted to the General Assembly.

HISTORY: 1994 Act No. 484, § 1.

SOUTH CAROLINA CODE OF LAWS ANNOTATED BY LEXISNEXIS(R)

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TITLE 57. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 23. HIGHWAY BEAUTIFICATION AND SCENIC ROUTES
ARTICLE 3. CHEROKEE FOOTHILLS SCENIC HIGHWAY

GO TO SOUTH CAROLINA ARCHIVE DIRECTORY

S.C. Code Ann. § 57-23-110 (2008)

§ 57-23-110. Cherokee Foothills Scenic Highway designated.

State Highway No. 11 is hereby designated as the Cherokee Foothills Scenic Highway; provided, that the portion of State Highway No. 11 in Pickens and Oconee Counties shall continue to be known as the Andrew Pickens Scenic Parkway.

HISTORY: 1962 Code § 33-595.41; 1971 (57) 55; 1993 Act No. 181, § 1529.

316 of 400 DOCUMENTS

SOUTH CAROLINA CODE OF LAWS ANNOTATED BY LEXISNEXIS(R)

*** THIS DOCUMENT IS CURRENT THROUGH THE 2008 REGULAR SESSION ***
***THE MOST CURRENT ANNOTATION IS DATED JUNE 11, 2009 ***

TITLE 57. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 23. HIGHWAY BEAUTIFICATION AND SCENIC ROUTES
ARTICLE 3. CHEROKEE FOOTHILLS SCENIC HIGHWAY

GO TO SOUTH CAROLINA ARCHIVE DIRECTORY

S.C. Code Ann. § 57-23-120 (2008)

§ 57-23-120. Markers.

In order to carry out the provisions of this article, the Department of Transportation shall provide for appropriate markers designating the highway as the Cherokee Foothills Scenic Highway, and the State Forestry Commission, the Department of Parks, Recreation and Tourism, and all other state agencies or governmental entities shall cooperate with the Department of Transportation.

HISTORY: 1962 Code § 33-595.42; 1971 (57) 55; 1993 Act No. 181, § 1529.

317 of 400 DOCUMENTS

SOUTH CAROLINA CODE OF LAWS ANNOTATED BY LEXISNEXIS(R)

*** THIS DOCUMENT IS CURRENT THROUGH THE 2008 REGULAR SESSION ***
***THE MOST CURRENT ANNOTATION IS DATED JUNE 11, 2009 ***

TITLE 57. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 23. HIGHWAY BEAUTIFICATION AND SCENIC ROUTES
ARTICLE 4. OLD SHELDON CHURCH ROAD SCENIC BYWAY

GO TO SOUTH CAROLINA ARCHIVE DIRECTORY

S.C. Code Ann. § 57-23-140 (2008)

§ 57-23-140. Old Sheldon Church Road Scenic Byway designated; markers; advertising signs.

(A) The portion of Old Sheldon Church Road in Beaufort County from the intersection of South Carolina Highway 21 and United States Highway 21/17 to the intersection of Le Creuset Road and South Carolina Highway 21 is hereby designated as a South Carolina Scenic Byway. Old Sheldon Church Road Scenic Byway is subject to the rules and regulations promulgated by the South Carolina Department of Transportation and the South Carolina Scenic Highways Committee.

(B) The department shall install appropriate markers or signs to implement this designation. All off-premises outdoor advertisement is prohibited on the portion of the Old Sheldon Church Road designated as a scenic byway.

HISTORY: Added by 2005 Act No. 47, § 1, eff May 3, 2005.

LexisNexis 50 State Surveys, Legislation & Regulations

Billboards and Outdoor Advertising

SOUTH CAROLINA CODE OF LAWS ANNOTATED BY LEXISNEXIS(R)

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TITLE 57. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 23. HIGHWAY BEAUTIFICATION AND SCENIC ROUTES
ARTICLE 5. BOHICKET ROAD SCENIC HIGHWAY

GO TO SOUTH CAROLINA ARCHIVE DIRECTORY

S.C. Code Ann. § 57-23-210 (2008)

§ 57-23-210. Bohicket Road designated scenic highway.

Bohicket Road on John's Island in Charleston County is hereby designated a scenic highway. The Department of Transportation, the Department of Archives and History and the Department of Parks, Recreation and Tourism shall cooperate in the installation of appropriate markers and signs to implement the designation herein provided for.

HISTORY: 1962 Code § 33-595.51; 1974 (58) 2714; 1993 Act No. 181, § 1529.

SOUTH CAROLINA CODE OF LAWS ANNOTATED BY LEXISNEXIS(R)

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TITLE 57. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 23. HIGHWAY BEAUTIFICATION AND SCENIC ROUTES
ARTICLE 5. BOHICKET ROAD SCENIC HIGHWAY

GO TO SOUTH CAROLINA ARCHIVE DIRECTORY

S.C. Code Ann. § 57-23-220 (2008)

§ 57-23-220. Application of Highway Advertising Control Act of 1971.

Bohicket Road, designated a scenic highway in this article, shall be subject to the provisions of the Highway Advertising Control Act of 1971.

HISTORY: 1962 Code § 33-595.52; 1974 (58) 2714; 1993 Act No. 181, § 1529.

SOUTH CAROLINA CODE OF LAWS ANNOTATED BY LEXISNEXIS(R)

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TITLE 57. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 23. HIGHWAY BEAUTIFICATION AND SCENIC ROUTES
ARTICLE 6. ASHLEY RIVER ROAD SCENIC BYWAY

GO TO SOUTH CAROLINA ARCHIVE DIRECTORY

S.C. Code Ann. § 57-23-230 (2008)

§ 57-23-230. Ashley River Road Scenic Byway designated.

(A) That portion of South Carolina Highway 61, beginning at Church Creek Bridge and extending for a distance of ten miles north of the bridge, is hereby designated a South Carolina Scenic Byway. Ashley River Road Scenic Byway shall be subject to the rules and regulations promulgated by the South Carolina Department of Transportation and the South Carolina Scenic Highways Committee for Scenic Byways pursuant to Sections 57-3-110 and 57-23-60.

(B) The department shall install appropriate markers and signs to implement this designation. All off-premises outdoor advertising is prohibited on that portion of South Carolina Highway 61 designated as a scenic byway.

HISTORY: 1998 Act No. 415, § 1.

SOUTH CAROLINA CODE OF LAWS ANNOTATED BY LEXISNEXIS(R)

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TITLE 57. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 23. HIGHWAY BEAUTIFICATION AND SCENIC ROUTES
ARTICLE 7. HILTON HEAD SCENIC HIGHWAY

GO TO SOUTH CAROLINA ARCHIVE DIRECTORY

S.C. Code Ann. § 57-23-300 (2008)

§ 57-23-300. Hilton Head Scenic Highway designated; installation of markers and signs.

The I-95, U.S. Route 278 connector route beginning at the intersection of I-95 and Secondary Road 88 in Jasper County and extending easterly to S.C. Route 278 in Beaufort County is designated a scenic highway to be known as the Hilton Head Scenic Highway. The Department of Transportation, the Department of Archives and History, and the Department of Parks, Recreation and Tourism shall cooperate in the installation of appropriate markers and signs to implement the above designation.

HISTORY: 1988 Act No. 580; 1993 Act No. 181, § 1529.

SOUTH CAROLINA CODE OF LAWS ANNOTATED BY LEXISNEXIS(R)

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TITLE 57. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 23. HIGHWAY BEAUTIFICATION AND SCENIC ROUTES
ARTICLE 7. HILTON HEAD SCENIC HIGHWAY

GO TO SOUTH CAROLINA ARCHIVE DIRECTORY

S.C. Code Ann. § 57-23-310 (2008)

§ 57-23-310. Certain advertising prohibited.

All off-premises outdoor advertising is prohibited on the Hilton Head Scenic Highway.

HISTORY: 1988 Act No. 580; 1993 Act No. 181, § 1529.

SOUTH CAROLINA CODE OF LAWS ANNOTATED BY LEXISNEXIS(R)

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***THE MOST CURRENT ANNOTATION IS DATED JUNE 11, 2009 ***

TITLE 57. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 23. HIGHWAY BEAUTIFICATION AND SCENIC ROUTES
ARTICLE 8. HIGHWAY 174 SCENIC HIGHWAY

GO TO SOUTH CAROLINA ARCHIVE DIRECTORY

S.C. Code Ann. § 57-23-350 (2008)

§ 57-23-350. Designation of Highway 174 as scenic highway.

South Carolina Highway 174 south of the Dawhoo Bridge in Charleston County is declared a scenic highway. The Department of Transportation shall install appropriate markers and signs to implement this designation.

HISTORY: 1988 Act No. 594; 1993 Act No. 181, § 1529.

SOUTH CAROLINA CODE OF LAWS ANNOTATED BY LEXISNEXIS(R)

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TITLE 57. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 23. HIGHWAY BEAUTIFICATION AND SCENIC ROUTES
ARTICLE 8. HIGHWAY 174 SCENIC HIGHWAY

GO TO SOUTH CAROLINA ARCHIVE DIRECTORY

S.C. Code Ann. § 57-23-360 (2008)

§ 57-23-360. Highway 174 subject to highway advertising control act.

That portion of South Carolina Highway 174 designated a scenic highway by this article is subject to the provisions of the Highway Advertising Control Act.

HISTORY: 1988 Act No. 594; 1993 Act No. 181, § 1529.

SOUTH CAROLINA CODE OF LAWS ANNOTATED BY LEXISNEXIS(R)

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TITLE 57. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 23. HIGHWAY BEAUTIFICATION AND SCENIC ROUTES
ARTICLE 9. LONG POINT ROAD SCENIC HIGHWAY

GO TO SOUTH CAROLINA ARCHIVE DIRECTORY

S.C. Code Ann. § 57-23-400 (2008)

§ 57-23-400. Long Point Road Scenic Highway designated; installation of markers and signs.

Long Point Road in Charleston County from Whipple Road to U.S. 17 North is designated a scenic highway to be known as the Long Point Road Scenic Highway. The Department of Transportation, the Department of Archives and History, and the Department of Parks, Recreation and Tourism shall cooperate in the installation of appropriate markers and signs to implement the above designation.

HISTORY: 1988 Act No. 617, § 1; 1993 Act No. 181, § 1529.

SOUTH CAROLINA CODE OF LAWS ANNOTATED BY LEXISNEXIS(R)

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TITLE 57. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 23. HIGHWAY BEAUTIFICATION AND SCENIC ROUTES
ARTICLE 9. LONG POINT ROAD SCENIC HIGHWAY

GO TO SOUTH CAROLINA ARCHIVE DIRECTORY

S.C. Code Ann. § 57-23-410 (2008)

§ 57-23-410. New off-premises outdoor advertising prohibited.

Any new off-premises outdoor advertising is prohibited on the Long Point Road Scenic Highway after the effective date of this article.

HISTORY: 1988 Act No. 617, § 1; 1993 Act No. 181, § 1529.

SOUTH CAROLINA CODE OF LAWS ANNOTATED BY LEXISNEXIS(R)

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TITLE 57. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 23. HIGHWAY BEAUTIFICATION AND SCENIC ROUTES
ARTICLE 9. LONG POINT ROAD SCENIC HIGHWAY

GO TO SOUTH CAROLINA ARCHIVE DIRECTORY

S.C. Code Ann. § 57-23-420 (2008)

§ 57-23-420. Removal of certain trees prohibited.

No trees in excess of a six-inch caliper located within the highway right-of-way of this scenic highway may be removed without the permission of the Department of Transportation upon the recommendation of the governing council of the Town of Mount Pleasant.

HISTORY: 1988 Act No. 617, § 1; 1993 Act No. 181, § 1529.

SOUTH CAROLINA CODE OF LAWS ANNOTATED BY LEXISNEXIS(R)

*** THIS DOCUMENT IS CURRENT THROUGH THE 2008 REGULAR SESSION ***
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TITLE 57. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 23. HIGHWAY BEAUTIFICATION AND SCENIC ROUTES
ARTICLE 11. MATHIS FERRY ROAD SCENIC HIGHWAY

GO TO SOUTH CAROLINA ARCHIVE DIRECTORY

S.C. Code Ann. § 57-23-500 (2008)

§ 57-23-500. Mathis Ferry Road Scenic Highway designated; installation of markers and signs.

Mathis Ferry Road in Charleston County from Whipple Road to 7th Street in the Town of Mount Pleasant is designated a scenic highway to be known as the Mathis Ferry Road Scenic Highway. The Department of Transportation, the Department of Archives and History, and the Department of Parks, Recreation and Tourism shall cooperate in the installation of appropriate markers and signs to implement the above designation.

HISTORY: 1988 Act No. 617, § 2; 1993 Act No. 181, § 1529.

SOUTH CAROLINA CODE OF LAWS ANNOTATED BY LEXISNEXIS(R)

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TITLE 57. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 23. HIGHWAY BEAUTIFICATION AND SCENIC ROUTES
ARTICLE 11. MATHIS FERRY ROAD SCENIC HIGHWAY

GO TO SOUTH CAROLINA ARCHIVE DIRECTORY

S.C. Code Ann. § 57-23-510 (2008)

§ 57-23-510. New off-premises outdoor advertising prohibited.

Any new off-premises outdoor advertising is prohibited on the Mathis Ferry Road Scenic Highway after the effective date of this article.

HISTORY: 1988 Act No. 617, § 2; 1993 Act No. 181, § 1529.

SOUTH CAROLINA CODE OF LAWS ANNOTATED BY LEXISNEXIS(R)

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TITLE 57. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 23. HIGHWAY BEAUTIFICATION AND SCENIC ROUTES
ARTICLE 11. MATHIS FERRY ROAD SCENIC HIGHWAY

GO TO SOUTH CAROLINA ARCHIVE DIRECTORY

S.C. Code Ann. § 57-23-520 (2008)

§ 57-23-520. Removal of certain trees prohibited.

No trees in excess of a six-inch caliper located within the highway right-of-way of this scenic highway may be removed without the permission of the Department of Transportation upon the recommendation of the governing council of the Town of Mount Pleasant.

HISTORY: 1988 Act No. 617, § 2; 1993 Act No. 181, § 1529.

SOUTH CAROLINA CODE OF LAWS ANNOTATED BY LEXISNEXIS(R)

*** THIS DOCUMENT IS CURRENT THROUGH THE 2008 REGULAR SESSION ***
***THE MOST CURRENT ANNOTATION IS DATED JUNE 11, 2009 ***

TITLE 57. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 23. HIGHWAY BEAUTIFICATION AND SCENIC ROUTES
ARTICLE 13. RIVERLAND DRIVE SCENIC HIGHWAY

GO TO SOUTH CAROLINA ARCHIVE DIRECTORY

S.C. Code Ann. § 57-23-600 (2008)

§ 57-23-600. Riverland Drive Scenic Highway designated; installation of markers and signs.

Riverland Drive in Charleston County is designated a scenic highway to be known as the Riverland Drive Scenic Highway. The Department of Transportation, the Department of Archives and History, and the Department of Parks, Recreation and Tourism shall cooperate in the installation of appropriate markers and signs to implement the above designation.

HISTORY: 1988 Act No. 617, § 3; 1993 Act No. 181, § 1529.

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TITLE 57. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 23. HIGHWAY BEAUTIFICATION AND SCENIC ROUTES
ARTICLE 13. RIVERLAND DRIVE SCENIC HIGHWAY

GO TO SOUTH CAROLINA ARCHIVE DIRECTORY

S.C. Code Ann. § 57-23-610 (2008)

§ 57-23-610. New off-premises outdoor advertising prohibited.

Any new off-premises outdoor advertising is prohibited on the Riverland Drive Scenic Highway after the effective date of this article.

HISTORY: 1988 Act No. 617, § 3; 1993 Act No. 181, § 1529.

SOUTH CAROLINA CODE OF LAWS ANNOTATED BY LEXISNEXIS(R)

*** THIS DOCUMENT IS CURRENT THROUGH THE 2008 REGULAR SESSION ***
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TITLE 57. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 23. HIGHWAY BEAUTIFICATION AND SCENIC ROUTES
ARTICLE 13. RIVERLAND DRIVE SCENIC HIGHWAY

GO TO SOUTH CAROLINA ARCHIVE DIRECTORY

S.C. Code Ann. § 57-23-620 (2008)

§ 57-23-620. Removal of certain trees prohibited.

No trees in excess of a six-inch caliper located within the highway right-of-way of this scenic highway may be removed without the permission of the Department of Transportation upon the recommendation of the governing council of the County of Charleston.

HISTORY: 1988 Act No. 617, § 3; 1993 Act No. 181, § 1529.

SOUTH CAROLINA CODE OF LAWS ANNOTATED BY LEXISNEXIS(R)

*** THIS DOCUMENT IS CURRENT THROUGH THE 2008 REGULAR SESSION ***
***THE MOST CURRENT ANNOTATION IS DATED JUNE 11, 2009 ***

TITLE 57. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 23. HIGHWAY BEAUTIFICATION AND SCENIC ROUTES
ARTICLE 15. FT. JOHNSON ROAD SCENIC HIGHWAY

GO TO SOUTH CAROLINA ARCHIVE DIRECTORY

S.C. Code Ann. § 57-23-700 (2008)

§ 57-23-700. Ft. Johnson Road Scenic Highway designated; installation of markers and signs.

Ft. Johnson Road in Charleston County is designated a scenic highway to be known as the Ft. Johnson Road Scenic Highway. The Department of Transportation, the Department of Archives and History, and the Department of Parks, Recreation and Tourism shall cooperate in the installation of appropriate markers and signs to implement the above designation.

HISTORY: 1988 Act No. 617, § 4; 1993 Act No. 181, § 1529.

SOUTH CAROLINA CODE OF LAWS ANNOTATED BY LEXISNEXIS(R)

*** THIS DOCUMENT IS CURRENT THROUGH THE 2008 REGULAR SESSION ***
***THE MOST CURRENT ANNOTATION IS DATED JUNE 11, 2009 ***

TITLE 57. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 23. HIGHWAY BEAUTIFICATION AND SCENIC ROUTES
ARTICLE 15. FT. JOHNSON ROAD SCENIC HIGHWAY

GO TO SOUTH CAROLINA ARCHIVE DIRECTORY

S.C. Code Ann. § 57-23-710 (2008)

§ 57-23-710. New off-premises outdoor advertising prohibited.

Any new off-premises outdoor advertising is prohibited on the Ft. Johnson Road Scenic Highway after the effective date of this article.

HISTORY: 1988 Act No. 617, § 4; 1993 Act No. 181, § 1529.

SOUTH CAROLINA CODE OF LAWS ANNOTATED BY LEXISNEXIS(R)

*** THIS DOCUMENT IS CURRENT THROUGH THE 2008 REGULAR SESSION ***
***THE MOST CURRENT ANNOTATION IS DATED JUNE 11, 2009 ***

TITLE 57. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 23. HIGHWAY BEAUTIFICATION AND SCENIC ROUTES
ARTICLE 15. FT. JOHNSON ROAD SCENIC HIGHWAY

GO TO SOUTH CAROLINA ARCHIVE DIRECTORY

S.C. Code Ann. § 57-23-720 (2008)

§ 57-23-720. Removal of certain trees prohibited.

No trees in excess of a six-inch caliper located within the highway right-of-way of this scenic highway may be removed without the permission of the Department of Transportation upon the recommendation of the governing council of the County of Charleston.

HISTORY: 1988 Act No. 617, § 4; 1993 Act No. 181, § 1529.

SOUTH CAROLINA CODE OF LAWS ANNOTATED BY LEXISNEXIS(R)

*** THIS DOCUMENT IS CURRENT THROUGH THE 2008 REGULAR SESSION ***
***THE MOST CURRENT ANNOTATION IS DATED JUNE 11, 2009 ***

TITLE 57. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 25. OUTDOOR ADVERTISING
ARTICLE 5. ANDREW PICKENS SCENIC PARKWAY

GO TO SOUTH CAROLINA ARCHIVE DIRECTORY

S.C. Code Ann. § 57-25-490 (2008)

§ 57-25-490. Agencies shall cooperate with Department of Transportation.

In order to carry out the provisions of this article and to make the highway a scenic highway, the State Forestry Commission, the Department of Parks, Recreation and Tourism, and all other state agencies or governmental entities shall cooperate with the Department of Transportation.

HISTORY: 1962 Code § 33-595.9; 1969 (56) 187; 1993 Act No. 181, § 1535.

SOUTH CAROLINA CODE OF LAWS ANNOTATED BY LEXISNEXIS(R)

*** THIS DOCUMENT IS CURRENT THROUGH THE 2008 REGULAR SESSION ***
***THE MOST CURRENT ANNOTATION IS DATED JUNE 11, 2009 ***

TITLE 57. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 25. OUTDOOR ADVERTISING
ARTICLE 7. JOHN C. CALHOUN MEMORIAL HIGHWAY

GO TO SOUTH CAROLINA ARCHIVE DIRECTORY

S.C. Code Ann. § 57-25-700 (2008)

§ 57-25-700. Markers; agencies shall cooperate with Department of Transportation.

In order to carry out the provisions of this article and to make the highway a scenic highway, the Department of Transportation shall provide for appropriate markers designating the highway as the John C. Calhoun Memorial Highway, and the State Forestry Commission, the Department of Parks, Recreation and Tourism and all other state agencies or governmental entities shall cooperate with the Department of Transportation.

HISTORY: 1962 Code § 33-595.31; 1969 (56) 362; 1993 Act No. 181, § 1540.

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*** CURRENT THROUGH THE 2008 REGULAR SESSION ***
*** ANNOTATIONS CURRENT THROUGH MARCH 19, 2009 ***

Title 12 Public Property, Printing And Contracts
Chapter 2 Administration and Disposition of State Property
Part 1 --General Provisions

Tenn. Code Ann. § 12-2-112 (2009)

12-2-112. Disposal of surplus interests in real property and energy resources.

(a) The commissioner of finance and administration, with the approval of the governor and attorney general and reporter, may sell, lease or otherwise convey any interest in surplus state real property according to the following provisions:

(1) Real property shall not be sold in fee, and any interest or rights in minerals, coal, natural gas, oil, timber and any other energy related resources shall not be conveyed if there is any feasible use for the property by any state agency, as determined by the governor, the attorney general and reporter and the commissioner of finance and administration. Should the state agency have an approved use for the property, the commissioner is authorized to transfer jurisdiction to the appropriate agency at no cost;

(2) As to sales in fee, and to any conveyance of any interest or rights in minerals, coal, natural gas, oil, timber and any other energy-related resources, such property shall be appraised by at least two (2) independent, qualified appraisers, wholly disconnected from state government or any other legal governmental entity except as may otherwise be determined by the state building commission;

(3) As to sales in fee, and to any conveyance of any interest or rights in minerals, coal, natural gas, oil, timber and any other energy-related resources, such surplus property having an average appraised value exceeding twenty-five thousand dollars ($25,000) shall be advertised not less than one (1) time in a newspaper which is local with respect to the property to be sold and once in a newspaper in either Nashville, Memphis, Chattanooga or Knoxville, whichever is nearest by air; provided, that if one (1) of these four (4) cities is the situs of the property to be sold, advertisement shall be made twice within a two-week period. Such property shall be sold by the sealed bid method with the condition that the state shall have the right to refuse any or all bids. Upon the approval of the governor, the attorney general and reporter, and the commissioner, the successful bidder will be notified of the intent to award within a period of forty-five (45) days commencing from the date of bid openings;

(4) All interests in real property other than the fee interest, including, but not limited to, leases, easements and rights-of-way, shall be disposed of in accordance with policies established by the state building commission, including advertisement and appraisal where deemed appropriate by the state building commission; provided, however, that, if the property was acquired by or for the use of the department of transportation for right-of-way, then the department of transportation may convey the interests in the property by negotiated sale or disposal to any legal governmental body

for a public use purpose, subject to reversion to the department of transportation for failure to continue public ownership and use, or to the former owner or an adjoining owner for fair market value, in accordance with procedures established in subdivision (a)(8). This subdivision (a)(4) shall not apply to the disposal or conveyance in any manner of any interest or rights in minerals, coal, natural gas, oil, timber and any other energy related resources; provided, that the commission shall have authority to promulgate rules and regulations over the disposal or conveyances pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5;

(5) The provisions of subdivisions (a)(2) and (3) may be waived to permit the negotiated sale of any such property to any legal governmental body for a public use purpose, and, further, to permit any other negotiated sale or disposal without advertisement or appraisal as the state building commission may deem in the best interest of the state. The provisions of subdivisions (a)(2) and (3) may also be waived to permit the commissioner, with the approval of the attorney general and reporter and the governor, to grant such easements and rights-of-way as are deemed necessary to provide services for the benefit of the state agency, department or institution or of the general public;

(6) The final conveyance of any property shall be effective to vest in the purchaser thereof such title as the state shall have in the premises; the state shall not be liable upon any covenant of warranty or seisin irrespective of whether or not the same is contained in such conveyance;

(7) The funds so collected from the sale and conveyance of such property not otherwise specified shall be paid into the general fund of the state; provided, that all expenses incurred during such sale shall not become a part of the general fund, but shall be held as a finance and administration departmental account in the state treasury. The funds so collected from the sale and conveyance of any property which has been deemed surplus right-of-way held for the use or benefit of the department of transportation shall be paid into the highway fund, and all expenses incurred during such sale shall be paid from the highway fund;

(8) (A) If the property was acquired by or for the use of the department of transportation for right-of-way, if its fair market value does not exceed seventy-five thousand dollars ($75,000) or such amounts in excess of seventy-five thousand dollars ($75,000) as may be approved by the state building commission, and if any adjoining property owner or the former owner of that property wishes to purchase the property, or if a legal governmental body wishes to acquire the property for a public use purpose, then this section shall not apply. Instead, the commissioner of transportation is authorized to declare the property surplus if the commissioner determines that the purpose of its acquisition has been completed and that the property is no longer needed by the department of transportation or another state agency, and may sell it to any adjoining property owner or the former owner of that property, for an amount representing not less than the fair market value, together with costs; provided, however, that the department of transportation may convey the property or any interest in the property by negotiated sale or disposal to any legal governmental body for a public use purpose, subject to reversion to the department of transportation for failure to continue public ownership and use. The commissioner of finance and administration shall concur in the fair market value amount or in the negotiated sale or disposal of the property to a legal governmental body for a public use purpose. If in the judgment of the department of transportation a survey of the property is required, the prospective purchaser shall pay the department of transportation in advance for the cost of the survey;

(B) The former property owner's right shall terminate ten (10) years after the date of acquisition by the department of transportation by conveyance or date of taking in condemnation of the subject property by the department. The former property owner's right shall not transfer to the owner's heirs. The former property owner shall have first right of refusal to purchase the right-of-way; provided, however, that the department may convey the property or any interest in the property to a legal governmental body for a public use purpose, subject to reversion to the department of transportation for failure to continue public ownership and use, without offering the former owner a first right of refusal to purchase the property. If the former property owner relinquishes the owner's right or the right has expired, the property may be conveyed to an adjoining property owner. If more than one (1) adjoining property owner is interested in purchasing the right-of-way, the interested adjoining property owners shall submit sealed bids to the department of transportation, with the minimum bid price being the fair market value determined by appraisal, and the

property may be conveyed to the adjoining property owner offering the highest responsive bid. The successful bidder shall reimburse any unsuccessful prospective purchaser for survey and appraisal costs incurred in accordance with the requirements of this subdivision (a)(8);

(C) For the purposes of this subdivision (a)(8), the fair market value of surplus right-of-way property shall be determined in accordance with the following procedures:

(i) The department of transportation shall make a preliminary planning estimate of the fair market value of the property in accordance with procedures that the department may establish;

(ii) If the department of transportation's preliminary planning estimate of the fair market value of the property is ten thousand dollars ($10,000) or less, the property shall be appraised by an appraiser on staff with the department of transportation at no cost to the prospective purchaser;

(iii) If the department of transportation's preliminary planning estimate or subsequent staff appraisal of the fair market value of the property is greater than ten thousand dollars ($10,000), the property shall be appraised by an independent appraiser whose services shall be procured by the department of transportation in accordance with state law. The independent appraiser must be licensed and certified by the Tennessee real estate appraiser commission and shall be selected from a list of prequalified appraisers approved by the department of transportation. The prospective purchaser shall pay the department of transportation in advance for the cost of the independent appraisal;

(iv) The initial appraisal shall be subject to review and approval by the department of transportation in accordance with procedures that the department of transportation may establish. The appraisal review shall be conducted, at the department of transportation's expense, by a review appraiser who is licensed and certified by the Tennessee real estate appraiser commission and who is either employed by or under contract with the department of transportation. The review appraiser shall either approve the initial appraisal or reject the initial appraisal and reappraise the property to determine the fair market value of the property, subject to the approval of the director of the right-of-way division of the department of transportation or the director's designee. If approved by the director or the director's designee, the review appraiser's determination shall be presented to a prospective purchaser as the fair market value of the property;

(v) If a prospective purchaser does not accept the appraised fair market value of the property as determined by the review appraiser, the prospective purchaser may request a final review and reconsideration by the commissioner of transportation or the commissioner's designee. The commissioner or the commissioner's designee shall obtain a final review of the appraisal by a review appraiser who is licensed and certified by the Tennessee real estate appraiser commission and who is either employed by or under contract with the department of transportation; provided, however, that the final review appraiser shall not be the same person who previously reviewed the initial appraisal. The prospective purchaser shall be given the opportunity to present information concerning the value of the property for the consideration of the final review appraiser. The final review appraiser shall consider all relevant information, including any appraisal previously performed by or for the department of transportation, and shall have the authority to reappraise or make adjustments in the appraised fair market value, in accordance with generally accepted professional standards and guidelines. The final review appraiser's determination of the fair market value of the property shall be subject to the approval of the commissioner or the commissioner's designee; and

(vi) The department's final determination of the fair market value of the property is subject to the concurrence of the commissioner of finance and administration;

(9) If property acquired by the department of transportation for a right-of-way through the exercise of eminent domain or otherwise is determined by the commissioner of transportation to be no longer needed by the department of transportation, and the excess property is not transferred to another state agency or conveyed to some other legal governmental body as provided in this section, and the excess property is not disposed of in accordance with

subdivision (a)(8), the excess property shall be disposed of by the department of finance and administration in accordance with the following procedures:

(A) The excess property shall be sold to any adjoining property owner or the former owner of that property at fair market value. All funds collected from the sale of the property shall be paid into the highway fund, as provided in subdivision (a)(7);

(B) The costs associated with the conveyance of the land, including, but not limited to, the cost of appraising and surveying the property, shall be reimbursed to the state by the purchaser of the property;

(C) Any conveyance of the property made pursuant to this subsection (a) shall be subject to approval in advance by the state building commission;

(D) If no adjoining property owner or the former owner of that property is able and willing to purchase the excess property at fair market value, then the excess property may be disposed of in accordance with existing statutes;

(E) For the purposes of this subsection (a), the fair market value of the excess property shall initially be determined by the state through procedures established by the state building commission. If such initial determination of fair market value is deemed unacceptable by the intended purchaser, the fair market value of the excess property shall then be determined by averaging the state's initial determination of fair market value with two (2) additional fair market value appraisals of the excess property. The two (2) additional appraisals shall be performed by two (2) nonassociated appraisers from the locality in which the property is located. The two (2) appraisers shall be mutually agreed upon by the parties to the conveyance; none of the appraisers involved shall have any personal or financial interest in the conveyance;

(F) The former property owner's right shall terminate ten (10) years after the date of acquisition by the department of transportation by conveyance or date of taking in condemnation of the subject property by the department. The former property owner's right shall not transfer to such owner's heirs. The former property owner shall have the first right of refusal to purchase the right-of-way. If the former property owner relinquishes such owner's right, the adjoining property owners interested in purchasing the right-of-way shall submit sealed bids with the minimum bid price being the fair market value determined by appraisal;

(10) Notwithstanding any provision to the contrary, any funds collected from the lease of surplus state real property for communications relay apparatus or antennae sites that would otherwise be paid into the general fund of the state pursuant to subdivision (a)(7) shall be specifically earmarked for maintenance of state park facilities, including furniture, fixtures and equipment. Any such funds that are unencumbered or unexpended at the end of any fiscal year shall not revert to the state general fund, but shall be carried forward until expended for the purposes stated in this section;

(11) (A) Notwithstanding subdivision (a)(9) or any other law to the contrary, when and if the state transfers to the local government in which any tract or combination of tracts of property which are contiguous to one another and exceed twenty (20) acres in size and which were acquired by the department of transportation as part of an uncompleted and cancelled interstate and defense highway right-of-way in a county with a population in excess of eight hundred thousand (800,000), according to the 1990 federal census or any subsequent federal census, is located, the transfer shall be subject to final approval by the state building commission and shall only be used for redevelopment pursuant to subdivision (a)(11)(B).

(B) Any property transferred pursuant to subdivision (a)(11)(A) shall be subject to the following restrictions:

(i) Development by the local government of a flowering-tree landscaped parkway-type roadway in accordance with the provisions of title 54, chapter 17, part 1;

(ii) Development of the remaining property, with priority given to subdivision (a)(11)(B)(ii)(*a*), for:

(a) Housing; provided, that some of the land is used for development of affordable housing with the needs of the community for affordable housing properly addressed in that use;

(b) School land;

(c) Park land;

(d) Public spaces; and

(e) Associated mixed-use neighborhood uses; and

(iii) The roadway involved herein from the end of Sam Cooper Boulevard to East Parkway and all the land involved herein shall conform to the limitations regulating scenic highways as in § 54-17-109, except for § 54-17-109(11); and

(12) Notwithstanding any provisions of this section to the contrary, if property acquired by or for the use of the department of transportation for right-of-way has not been disposed of in accordance with the provisions of subdivision (a)(8) or (a)(9) and no person or entity, including the former owner of that property, has been able and willing to purchase the property within five (5) years after the date the property has been offered for sale by the department of transportation, then the property may be sold at public auction pursuant to rules promulgated by the commissioner of transportation.

(b) The commissioner of finance and administration shall notify the house and senate member or members from the district in which the property to be sold or conveyed is located, and the notification shall be at least twenty (20) days prior to the agreement of sale or conveyance.

(c) This section and § 4-15-102 do not apply to timber which is harvested and sold pursuant to bona fide timber management practices. For the purpose of harvesting and selling of timber pursuant to bona fide timber management practices, the timber shall be treated as personal property and sold pursuant to rules and regulations of the board of standards as provided in part 4 of this chapter.

(d) This section and § 4-15-102 do not apply to leasing surplus state real property under crop lease arrangements by the Tennessee wildlife resources agency which shall be responsible for the leasing of such surplus state real property for crop leases, as well as being responsible for the administration of all crop leases; such leasing and administration shall be through procedures reviewed and approved by the state building commission.

HISTORY: [Acts 1953, ch. 258, § 1 (Williams, § 423.25a); 1974, ch. 621, §§ 1, 2; 1976, ch. 564, § 1; 1977, ch. 37, § 1; T.C.A. (orig. ed.), § 12-212; Acts 1981, ch. 184, §§ 1-7; 1981, ch. 332, § 27; 1984, ch. 790, § 1; 1984, ch. 872, § 1; 1985, ch. 291, § 1; 1986, ch. 662, §§ 1, 2; 1989, ch. 249, §§ 1-3; 1991, ch. 498, § 6; 1993, ch. 159, § 1; 1997, ch. 402, §§ 1-5; 1998, ch. 985, § 1; 1999, ch. 448, § 1; 2000, ch. 966, §§ 1, 2; 2006, ch. 649, § 1; 2007, ch. 118, §§ 1-3.]

NOTES: Compiler's Notes.

Acts 1999, ch. 448, § 2 provided that the act shall become operative only if the federal highway administrator advises the commissioner of transportation in writing that the provisions of the act shall not render Tennessee in violation of federal laws and regulations and subject to penalties prescribed therein.

For table of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

Amendments.

The 2000 amendment, in (a)(8), inserted "or the former owner of that property" twice in present (A), and added (B); and, in (a)(9), added "or the former owner of that property" in (A) and (D), and added (F).

The 2006 amendment substituted "seventy-five thousand dollars ($75,000)" for "twenty-five thousand dollars ($25,000)" twice in (a)(8)(A).

The 2007 amendment, in (a), added the proviso at the end of (a)(4), in (a)(8)(A), substituted "purchase the property, or if a legal governmental body wishes to acquire the property for a public use purpose" for "purchase the same" in the first sentence, in the second sentence, inserted "or another state agency," and added the proviso at the end, added "or in the negotiated sale or disposal of the property to a legal governmental body for a public use purpose" to the end of the third sentence, rewrote the third sentence which read: "Any conveyance executed pursuant to these provisions shall bear the fair market value of the property.", and deleted the former fifth sentence which read: "The cost of appraising and surveying the property shall be separately reimbursed to the department of transportation by the purchaser;", in (a)(8)(B), added the proviso at the end of the third sentence, rewrote the fourth sentence which read: "If the former property owner relinquishes the owner's right, the adjoining property owners interested in purchasing the right-of-way shall submit sealed bids with the minimum bid price being the fair market value determined by appraisal;" and added the fifth and sixth sentences, added (a)(8)(C), added (a)(12), and made minor stylistic changes throughout.

Effective Dates.

Acts 2000, ch. 966, § 3. June 21, 2000.

Acts 2006, ch. 649, § 2. May 12, 2006.

Acts 2007, ch. 118, § 4. July 1, 2007.

Cross-References.

Exemption from state purchases law, § 12-3-102.

General fund deposit exception for Chickasaw Basin reserve account, § 64-1-204.

Real estate appraiser commission, title 62, ch. 39, part 2.

Section to Section References.

This section is referred to in §§ 4-15-102, 11-7-107, 11-14-305, 12-2-116, 12-2-117, 49-9-1408, 64-1-204, 64-9-103, 66-29-119, 71-1-104.

Attorney General Opinions.

Perpetual highway easement not subject to surplus sale, OAG 98-046 (2/17/98).

The state can return Columbia Project lands to the original owners if the Tennessee Valley Authority transfers the lands to the state without any deed restrictions that would preclude returning the lands, and the state determines that the lands are surplus real property with an average appraised value of less than $ 25,000.00 in accordance with T.C.A. § 12-2-112(a)(3), OAG 00-173 (11/16/00).

TENNESSEE CODE ANNOTATED
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*** CURRENT THROUGH THE 2008 REGULAR SESSION ***
*** ANNOTATIONS CURRENT THROUGH MARCH 19, 2009 ***

Title 39 Criminal Offenses
Chapter 17 Offenses Against Public Health, Safety and Welfare

Tenn. Code Ann. Criminal Provisions in Other Volumes (2009)

Criminal Provisions in Other Volumes

Many sections of Tennessee Code Annotated, while perhaps not primarily concerned with criminal law, define certain conduct as criminal, or provide criminal penalties, or do both. The following table is designed to help you find criminal provisions contained in sections outside Volume 7.

This table is in two parts. The first is simply a summary or checklist of the titles analyzed in the second part. The second part is broken down by title; under each title heading criminal provisions are grouped by chapter or part and identified by section number.

This table will be updated annually in the supplement to Volume 7.

Titles Analyzed in This Table **2.** Elections.

3. Legislature.

4. State Government.

5. Counties.

6. Cities and Towns.

7. Consolidated Governments -- Governmental and Proprietary Functions.

8. Public Officers and Employees.

9. Public Finances.

10. Public Libraries, Archives and Records.

11. Natural Areas and Recreation.

12. Public Property, Printing and Contracts.

13. Public Planning and Housing.

16. Courts.

18. Clerks of Court.

20. Civil Procedure.

22. Juries and Jurors.

23. Attorneys-at-Law.

24. Evidence and Witnesses.

26. Execution.

29. Remedies and Special Proceedings.

30. Administration of Estates.

32. Wills.

33. Mentally Ill and Mentally Retarded Persons.

34. Guardianship -- Estates of Incompetents.

35. Fiduciaries and Trust Estates.

36. Domestic Relations.

37. Juveniles.

40. Criminal Procedure.

41. Correctional Institutions and Inmates.

42. Aeronautics.

43. Agriculture and Horticulture.

44. Animals and Animal Husbandry.

45. Banks and Financial Institutions.

46. Cemeteries.

47. Commercial Instruments and Transactions.

48. Corporations and Associations.

49. Education.

50. Employer and Employee.

53. Food, Drugs and Cosmetics.

54. Highways, Bridges and Ferries.

55. Motor and Other Vehicles.

56. Insurance.

57. Intoxicating Liquors.

58. Military Affairs -- Civil Defense.

59. Mines and Mining.

60. Oil and Gas.

62. Professions, Businesses and Trades.

63. Professions of the Healing Arts.

65. Public Utilities and Carriers.

66. Property.

67. Taxes and Licenses.

68. Health, Safety and Environmental Protection.

69. Waters, Waterways, Drains and Levees.

70. Wildlife Resources.

71. Welfare.

Criminal Provisions--Grouped by Title and Chapter or Part Title 2 -- Elections.
Registration, 2-2-138, 2-2-203.
Absentee Voting, 2-6-202.
Campaign Financial Disclosure, 2-10-110, 2-10-114, 2-10-118, 2-10-123 -- 2-10-127, 2-10-129.
Registry of Election Finance, 2-10-203.
Prohibited Practices, 2-19-101 -- 2-19-104, 2-19-106 -- 2-19-111, 2-19-113 -- 2-19-120, 2-19-123, 2-19-128 -- 2-19-131, 2-19-133 -- 2-19-135, 2-19-140, 2-19-142, 2-19-208.

Title 3 -- Legislature.
Committee Investigations, 3-3-111, 3-3-112, 3-3-115, 3-3-120.
Lobbying, 3-6-110.
Joint Legislative Services Committee, 3-10-109.

Title 4 -- State Government.
General Provisions, 4-1-401.
Boundaries, 4-2-104.
Department of General Services, 4-3-1114.
Department of Correction -- Administration of Institutions, 4-6-139.
State Capitol and Annexes, 4-8-104, 4-8-203.
Human Rights, 4-21-310.
Local Development Authority, 4-31-206, 4-31-406, 4-31-506, 4-31-606.

State of Tennessee Audit Committee Act of 2005, 4-35-107.
Horse Racing, 4-36-309.

Title 5 -- Counties.
County Generally, 5-1-125.
Substantive Provisions, 5-5-127.
Receipt and Management of Funds, 5-8-102, 5-8-207.
County Budgeting Law of 1957, 5-12-112.
County Fiscal Procedure Law of 1957, 5-13-109.
County Purchasing Law of 1957, 5-14-114.
Adoption of Prepared Building, Plumbing and Gas Codes by Reference, 5-20-105.
Local Option Financial Management System, 5-21-125.

Title 6 -- Cities and Towns.
Commissioners and Mayor Under City Manager-Commission Charter, 6-20-211.
City Court, 6-21-502.
City Manager -- Administration of City Affairs Under Modified Manager-Council Charter, 6-35-413.
Municipal Powers Generally, 6-54-125, 6-54-402.
Licensing and Taxing Powers, 6-55-411.
Fiscal Affairs, 6-56-111.

Title 7 -- Consolidated Governments -- Governmental and Proprietary Functions.
Metropolitan Government -- Tourist Accommodation Tax, 7-4-106.
Streets and Other Public Improvements, 7-31-106.
Regulation of Adult-Oriented Entertainment, 7-51-1119, 7-51-1404.
Cable Television, 7-59-105.
Licensing of Residential Building and Maintenance Contractors, 7-62-107.
Sanitary Districts, 7-81-403, 7-81-404.
Utility Districts, 7-82-106, 7-82-202, 7-82-401.
Emergency Communications, 7-86-316.

Title 8 -- Public Officers and Employees.
Governor, 8-1-108.
Comptroller, 8-4-114, 8-4-204, 8-4-205, 8-4-409.
Attorney General -- Legal Department, 8-6-107, 8-6-108, 8-6-405.
Sheriffs, 8-8-211, 8-8-216.
Constables, 8-10-116.
County Trustees, 8-11-105.
Surveyors, 8-12-114.
Registers, 8-13-110, 8-13-117.
Notaries Public, 8-16-301, 8-16-303 (now 8-16-115), 8-16-308.
Eligibility, Commissions, and Oaths, 8-18-102, 8-18-113.
Bonds of Officers, 8-19-110, 8-19-116, 8-19-118, 8-19-119.
Fees Charged, 8-21-103, 8-21-703.
Accounting for Fees, 8-22-106, 8-22-121.
Reimbursement of Expenses, 8-26-111.
Civil Service, 8-30-206, 8-30-219, 8-30-309.
Retirement -- Generally, 8-34-205.
Impeachment, 8-46-101.
Removal of Officers, 8-47-106.
Transfer of Records and Property of Office, 8-49-101.

Miscellaneous Provisions, 8-50-103, 8-50-505.

Title 9 -- Public Finances.
Accounting for Revenues, 9-2-106, 9-2-111, 9-2-128, 9-2-139.
Division of Claims Administration, 9-8-402.
Loans to Local Subdivisions in Emergencies, 9-13-211.

Title 10 -- Public Libraries, Archives and Records.
Public Records, 10-7-208, 10-7-210.

Title 11 -- Natural Areas and Recreation.
Department of Conservation, 11-1-109.
Geology, 11-5-108.
Archaeology, 11-6-105 -- 11-6-107, 11-6-109, 11-6-112, 11-6-118.
County Conservation Boards, 11-21-105.

Title 12 -- Public Property, Printing and Contracts.
Administration and Disposition of State Property, 12-2-208, 12-2-412, 12-2-416, 12-2-417.
Public Contracts, 12-4-101, 12-4-102, 12-4-104, 12-4-202, 12-4-604.
Distribution of Publications, 12-6-105.
Sale of Products, 12-8-102.

Title 13 -- Public Planning and Housing.
Regional Planning, 13-3-402, 13-3-410.
Municipal Planning, 13-4-306.
Zoning, 13-7-111, 13-7-117, 13-7-208, 13-7-211, 13-23-113.

Title 16 -- Courts.
Courts of General Sessions, 16-15-303, 16-15-713.
Municipal Courts, Judges, 16-18-302.

Title 18 -- Clerks of Court.
General Provisions, 18-1-305, 18-1-306.
Accounting and Bonds, 18-2-101, 18-2-102, 18-2-104, 18-2-105.

Title 20 -- Civil Procedure.
Process, 20-2-111.

Title 22 -- Juries and Jurors.
Selection and Attendance of Jurors, 22-2-102.
Compensation of Jurors, 22-4-106, 22-4-108.

Title 23 -- Attorneys-at-Law.
Unauthorized Practice and Improper Conduct, 23-3-103, 23-3-104, 23-3-107, 23-3-108.

Title 24 -- Evidence and Witnesses.
Admissibility of Evidence, 24-7-121.
Competency of Witnesses, 24-1-206.
Depositions, 24-9-136.

Title 26 -- Execution.
Issuance and Return in General, 26-1-207, 26-1-303, 26-1-304.

Title 29 -- Remedies and Special Proceedings.
Abatement of Nuisances, 29-3-111.
Contempt of Court, 29-9-103, 29-9-104, 29-9-107, 29-9-108.
Criminal Injuries Compensation, 29-13-115, 29-13-410.
Forcible Entry and Detainer, 29-18-133.
Government Tort Liability, 29-20-401.
Habeas Corpus, 29-21-108, 29-21-128, 29-21-129.
Recovery of Personal Property, 29-30-105.
Scire Facias, 29-32-105.

Title 30 -- Administration of Estates.
Management, Settlement, and Distribution, 30-2-712.

Title 32 -- Wills.
Living Wills, 32-11-109.

Title 33 -- Mentally Ill and Mentally Retarded Persons.
Facilities and Services, 33-2-405, 33-2-417, 33-2-806.
General Rules Applicable to Patients and Residents, 33-3-115, 33-3-901, 33-3-902, 33-3-904.
Rights of Residential Service Recipients, 33-4-108.
Declaration of Mental Health Treatment, 33-6-1013.

Title 35 -- Fiduciaries and Trust Estates.
Judicial or Trust Sales, 35-5-107.
Fundraising for Catastrophic Illnesses, 35-11-111.

Title 36 -- Domestic Relations.
Adoption, 36-1-104, 36-1-109, 36-1-125, 36-1-132, 36-1-139, 36-1-205.
Paternity and Legitimation, 36-2-316.
Marriage, 36-3-111, 36-3-112, 36-3-303, 36-3-305, 36-3-612, 36-3-621.
Alimony and Child Support, 36-5-501.
Employment Records, 36-5-1106.

Title 37 -- Juveniles.
Juvenile Courts and Proceedings, 37-1-131, 37-1-146, 37-1-151, 37-1-156 -- 37-1-159, 37-1-409, 37-1-412, 37-1-413, 37-1-615.
Subsidized Receiving Homes, 37-2-319.
Foster Care, 37-2-408, 37-2-414.
Runaway Houses, 37-2-507.
Department of Children's Services, 37-5-107, 37-5-206, 37-5-404, 37-5-405.
Child Care Agencies, 37-5-507, 37-5-509, 37-5-511, 37-5-513.
Missing Children Recovery Act, 37-10-209.
Parental Consent for Abortions by Minors, 37-10-303, 37-10-306.

Title 41 -- Correctional Institutions and Inmates.
County Workhouses, 41-2-148.
Municipal Correctional Houses, 41-3-106.
Jails and Jailers, 41-4-117, 41-4-140, 41-4-144.
Inmate Participation in Medical Experiments, 41-21-241, 41-21-607.
Work Programs, 41-22-106(b), 41-22-116.

Title 40 -- Criminal Procedure.

Limitation of Prosecutions, 40-2-101.
Proceedings Before General Sessions Courts, 40-4-116.
Arrest, 40-7-116 -- 40-7-118.
Rewards for Apprehension, 40-8-101.
Bail, 40-11-149, 40-11-304, 40-11-308, 40-11-312, 40-11-318.
Grand Jury Proceedings, 40-12-104, 40-12-211.
Indictments -- Generally, 40-13-112.
Indictments -- Capias, 40-13-304.
Counsel for Indigents, 40-14-202.
Pretrial Diversion, 40-15-105.
Judgment and Sentence, 40-20-114.
Execution of Judgment, 40-23-116.
Fines, 40-24-104.
Destruction of Records Upon Dismissal or Acquittal, 40-32-101, 40-32-104.
Criminal Sentencing Reform Act of 1989, title 40, ch. 35.
Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification, and Tracking, 40-39-202, 40-39-208, 40-39-211, 40-39-213, 40-39-215.

Title 42 -- Aeronautics.

General Provisions, 42-1-109 -- 42-1-111, 42-1-201, 42-1-203, 42-1-204, 42-1-303.
State Administration, 42-2-105, 42-2-106.
Airport Zoning, 42-6-110.

Title 43 -- Agriculture and Horticulture.

Pest Control, 43-6-106, 43-6-112, 43-6-410.
Pesticides, 43-8-103, 43-8-105, 43-8-107, 43-8-116, 43-8-306.
Agricultural Seeds, 43-10-116, 43-10-206.
Fertilizers and Liming Materials, 43-11-119, 43-11-305, 43-11-411.
Marketing of Pecans, 43-17-103.
Sale of Cotton, 43-18-103, 43-18-105, 43-18-108.
Tobacco Sales, 43-19-205, 43-19-206, 43-19-210, 43-19-212, 43-19-215, 43-19-305.
Soybean Promotion, 43-20-104.
Farm Bureau, 43-22-104.
Public Mills, 43-23-125.
Timber, 43-28-304, 43-28-306 -- 43-28-308.
Commodity Warehouses, Dealers and Producers, 43-32-109.
Southern Dairy Compact, 43-35-101.

Title 44 -- Animals and Animal Husbandry.

Prevention and Treatment of Diseases, 44-2-104, 44-2-407, 44-2-408.
Commercial Feed Law, 44-6-113.
Marks, Brands, Registration and Certification, 44-7-110, 44-7-209, 44-7-303.
Fences and Confinement, 44-8-112, 44-8-209, 44-8-401, 44-8-408, 44-8-412.
Dealers and Purchasers of Poultry, Livestock and Hides, 44-10-104, 44-10-107, 44-10-109, 44-10-208.
Livestock Sales, 44-11-115.
Baby Chicks, 44-16-207.
Dogs and Cats, 44-17-103, 44-17-116, 44-17-303.

Title 45 -- Banks and Financial Institutions.

Banking Institutions, 45-2-202, 45-2-1701 -- 45-2-1716, 45-2-1718.

Savings and Loan Associations, 45-3-504, 45-3-1301 -- 45-3-1311, 45-3-1313.
Credit Unions, 45-4-104, 45-4-206, 45-4-208.
Industrial Loan and Thrift Companies, 45-5-106.
Pawnbrokers, 45-6-209, 45-6-218.
Money Transmission, 45-7-225.
Small Business Investment Development, 45-8-223.
Title Pledges, 45-15-117.
Check Cashing Act, 45-18-119.

Title 46 -- Cemeteries.
General Provisions, 46-1-101, 46-1-103, 46-1-207, 46-1-302, 46-1-304, 46-1-307, 46-1-313.

Title 47 -- Commercial Instruments and Transactions.
Retail Installment Sales, 47-11-107.
Assignment for Benefit of Creditors, 47-13-106.
Interest Rates Generally, 47-14-112.
Consumer Protection, 47-18-104, 47-18-312, 47-18-614, 47-18-1508, 47-18-1526, 47-18-2110, 47-18-5203, 47-18-5204.
Duties of Mortgagee or Lender, 47-23-101.
Trade Practices, 47-25-103, 47-25-109, 47-25-111, 47-25-112, 47-25-205, 47-25-303, 47-25-304, 47-25-306, 47-25-405, 47-25-514, 47-25-623, 47-25-809, 47-25-907, 47-25-1105, 47-25-1222, 47-25-1605, 47-25-1607.
Weights and Measures, 47-26-708, 47-26-921, 47-26-1024, 47-26-1114.
Miscellaneous Provisions, 47-50-116.

Title 48 -- Corporations and Associations.
Securities, 48-2-123.
Business Corporations -- General Provisions, 48-11-310.
Nonprofit Corporations -- General Provisions, 48-51-310.
Solicitation of Charitable Funds, 48-101-515.
Professional Corporation Act, 48-101-632.
Investor Protection Act, 48-103-111.
Limited Liability Companies -- Filing Documents, 48-247-108.
Professional Limited Liability Companies, 48-248-504.
Tennessee Revised Limited Liability Company Act, 48-249-1011, 48-249-1126.

Title 49 -- Education.
Child Care Program, 49-1-1105, 49-1-1106.
Local Administration, 49-2-103, 49-2-204, 49-2-301.
Cooperative Scholarship Plans, 49-4-112.
Qualifications Generally, 49-5-105.
Teachers' Rights and Duties Generally, 49-5-202.
Employment and Assignment of Personnel, 49-5-406, 49-5-413.
Curriculum Generally, 49-6-1005.
Junior and Senior High Schools -- Curriculum, 49-6-1202.
School Property, 49-6-2008.
Transportation, 49-6-2109, 49-6-2113.
Attendance, 49-6-3008, 49-6-3009, 49-6-3015, 49-6-3051.
Census and Assignment of Students, 49-6-3114.
Postsecondary and Higher Education Generally -- Miscellaneous Provisions, 49-7-133, 49-7-136.
Postsecondary Education Authorization Act, 49-7-2017.
Athlete Agents, 49-7-2127, 49-7-2136.

College and University Security Information, 49-7-2204, 49-7-2207.
University of Tennessee, 49-9-107.
Vocational and Technical Education, 49-11-105.
Vocational Rehabilitation Law, 49-11-613.
Agricultural Extension Services, 49-50-106.

Title 50 -- Education.

Employment Relationship and Practices, 50-1-102, 50-1-103, 50-1-204, 50-1-301, 50-1-302, 50-1-303, 50-1-306, 50-1-402.
Wage Regulations, 50-2-101, 50-2-103, 50-2-104, 50-2-106, 50-2-107, 50-2-206.
Occupational Safety and Health, 50-3-501 -- 50-3-504, 50-3-914.
Administrative Inspections, 50-4-107.
Child Labor, 50-5-103, 50-5-112, 50-5-113.
Workers' Compensation, 50-6-205, 50-6-405.
Employment Security Law, 50-7-403, 50-7-701, 50-7-703, 50-7-708 -- 50-7-713.

Title 53 -- Food, Drugs and Cosmetics.

Food, Drug and Cosmetic Act, 53-1-103.
Eggs, 53-2-114.
Dairy Law, 53-3-115.
Meat Inspection and Regulations, 53-7-103, 53-7-210, 53-7-306.
Establishments Selling Food, 53-8-115, 53-8-221.
Refrigerator Locker Plants, 53-9-116.
Legend Drugs, 53-10-108, 53-10-306.
Drug Control, 53-11-401, 53-11-402.
Vending Machines and Commissaries, 53-12-105.

Title 54 -- Highways, Bridges and Ferries.

Department of Transportation, 54-1-202, 54-1-203, 54-1-206.
Tennessee Tollway Act, 54-3-108.
State Funds for Local Aid, 54-4-205.
State Highways, 54-5-301, 54-5-601, 54-5-701.
County Uniform Highway Law, 54-7-201 -- 54-7-203, 54-7-206.
County Highway Bonds, 54-9-137.
Establishment of Public Roads, 54-10-110, 54-10-112, 54-10-113.
Road Improvement Districts, 54-12-322.
Private and Local Improvements, 54-13-306, 54-13-319.
Tennessee Tollway Authority, 54-15-119, 54-15-125.
Controlled-Access Facilities, 54-16-108, 54-16-112.
Scenic Highway System, 54-17-111, 54-17-112.
Highway Planning, 54-18-218.
Junkyard Control, 54-20-124.
Automobile Graveyards, 54-20-205.
Billboard Regulation and Control, 54-21-105, 54-21-113, 54-21-118.

Title 55 -- Motor and Other Vehicles.

Division of Motor Vehicles, 55-2-110.
Certificates of Title, 55-3-102, 55-3-109, 55-3-127, 55-3-129, 55-3-202, 55-3-212.
Registration and Licensing of Motor Vehicles, 55-4-105, 55-4-108, 55-4-112, 55-4-113, 55-4-115, 55-4-129, 55-4-134, 55-4-202, 55-4-222, 55-4-411, 55-4-412.
Anti-Theft Provisions -- Violations of Title and Registration Law, 55-5-101, 55-5-102, 55-5-104, 55-5-105, 55-5-108,

55-5-109, 55-5-111 -- 55-5-116, 55-5-120 -- 55-5-123, 55-5-126, 55-5-127.
Chop Shops -- Sales of Vehicle Parts, 55-5-203.
Fees and Duties of Officers, 55-6-105.
Size, Weight and Load, 55-7-104, 55-7-105, 55-7-108, 55-7-109, 55-7-114, 55-7-117, 55-7-205, 55-7-206.
Operation of Vehicles, 55-8-103, 55-8-104, 55-8-109, 55-8-113, 55-8-114, 55-8-123, 55-8-124, 55-8-126, 55-8-127, 55-8-132, 55-8-136, 55-8-138, 55-8-139, 55-8-141, 55-8-145 -- 55-8-147, 55-8-149, 55-8-151 -- 55-8-156, 55-8-158, 55-8-160, 55-8-162, 55-8-165, 55-8-167 -- 55-8-180, 55-8-184, 55-8-185, 55-8-187 -- 55-8-189, 55-8-192, 55-8-195, 55-8-197.
Equipment, 55-9-105, 55-9-107, 55-9-201 -- 55-9-205, 55-9-207, 55-9-212, 55-9-213, 55-9-215, 55-9-306, 55-9-307, 55-9-401 -- 55-9-406, 55-9-410, 55-9-414, 55-9-415, 55-9-601 -- 55-9-603.
Accidents, Arrests, Crimes and Penalties, 55-10-101, 55-10-102, 55-10-108, 55-10-110, 55-10-111, 55-10-202, 55-10-204, 55-10-205, 55-10-301, 55-10-305, 55-10-403, 55-10-406, 55-10-412, 55-10-415, 55-10-416, 55-10-418, 55-10-502, 55-10-616, 55-10-618, 55-10-803, 55-10-804.
Financial Responsibility of Owners or Operators, 55-12-127, 55-12-130, 55-12-131, 55-12-135, 55-12-139.
Financing Sale of Motor Vehicles, 55-13-106.
Dealers in Secondhand Automobile Tires and Accessories, 55-14-103, 55-14-107.
Sale of Motor Fuel Regulated, 55-15-104.
Unclaimed or Abandoned Vehicles, 55-16-102, 55-16-112.
Motor Vehicle Sales Licenses, 55-17-109, 55-17-117.
Automobile Clubs and Associations, 55-18-107.
Commercial Driver Training Schools, 55-19-111.
Disabled Drivers and Passengers, 55-21-103, 55-21-106, 55-21-108, 55-21-151.
Automobile Race Tracks and Drag Strips, 55-22-108.
Uniform Motor Vehicle Records Disclosure Acts, 55-25-112.
Driver Licenses, 55-50-311, 55-50-331, 55-50-351, 55-50-405, 55-50-408, 55-50-412, 55-50-504, 55-50-506, 55-50-601 -- 55-50-603.
Child Safety in Operation of Off-Highway Motor Vehicles, 55-52-202.

Title 56 -- Insurance.

Department of Commerce and Insurance, 56-1-412, 56-1-503, 56-1-801, 56-1-802.
Insurance Companies, 56-2-403.
Operation of Insurance Companies, 56-3-602.
Fees and Taxes, 56-4-104.
Agents, Solicitors and Administrators, 56-6-305.
Policies and Policyholders, 56-7-124, 56-7-705 -- 56-7-709.
Rehabilitation and Liquidation of Insurance Companies, 56-9-106.
Affiliated Insurers and Insurance Holding Companies, 56-11-211.
Captive Insurance Companies, 56-13-109, 56-13-120.
Surplus Lines Insurance, 56-14-113.
Fidelity and Bonding Companies, 56-15-101.
Mutual Insurance Companies Other Than Life, 56-19-123.
State Mutual Fire Insurance Companies, 56-21-110.
State Stock Fire Insurance Companies, 56-23-102.
Fraternal Benefit Societies, 56-25-1703.
Title Insurance Law, 56-35-127.
Financing of Premiums, 56-37-113.
Life Settlements 56-50-103.
Insurance Fraud, 56-53-104.

Title 57 -- Intoxicating Liquors.

Alcoholic Beverage Commission, 57-1-109.
Local Option -- Traffic in Intoxicating Liquors, 57-3-207, 57-3-210, 57-3-304, 57-3-401, 57-3-412.
Consumption of Alcoholic Beverages on Premises, 57-4-203, 57-4-205, 57-4-304.
Beer and Alcoholic Beverages Containing Less Than Five Percent Alcohol, 57-5-103, 57-5-207, 57-5-301, 57-5-303, 57-5-402, 57-5-404, 57-5-406, 57-5-408, 57-5-414, 57-5-416.
Wholesale Taxes, 57-6-104, 57-6-110, 57-6-114.
Sales by Druggists and Physicians, 57-7-102 -- 57-7-107, 57-7-109 -- 57-7-114.
Soft Drinks Containing Alcohol, 57-8-104, 57-8-114.
Disposition, 57-9-121.

Title 58 -- Military Affairs, Emergencies and Civil Defense.
Military Forces, 58-1-229, 58-1-602 -- 58-1-604, 58-1-611 -- 58-1-630, 58-1-634.
Disasters, Emergencies and Civil Defense, 58-2-116, 58-2-120.
War Records and Memorials, 58-4-205.

Title 59 -- Mines and Mining.
Chief and District Mine Inspectors, 59-1-113, 59-1-114.
Certification and Duties of Mine Employees, 59-4-205, 59-4-207, 59-4-301.
Strip and Open Pit Mines, 59-8-222, 59-8-352.
Weighing of Coal and Minerals, 59-11-101, 59-11-103, 59-11-105.

Title 60 -- Oil and Gas.
Production of Oil and Gas, 60-1-104.
Mineral Test Hole Regulatory Act, 60-1-509.
Inspection of Volatile Oils, 60-3-103, 60-3-106, 60-3-108, 60-3-111, 60-3-113, 60-3-115.
Production of Fuel Alcohol, 60-4-101.

Title 62 -- Professions, Businesses and Trades.
Accountants, 62-1-114.
Architects, Engineers, Landscape Architects and Interior Designers, 62-2-105.
Barbers, 62-3-130.
Cosmetology, 62-4-129.
Funeral Directors and Embalmers, 62-5-103, 62-5-104, 62-5-415.
General Contractors, 62-6-119, 62-6-120, 62-6-303, 62-6-511, 62-6-512.
Hotels and Places of Public Accommodation, 62-7-101, 62-7-102, 62-7-107, 62-7-110, 62-7-112.
Scrap Metal Dealers, 62-9-106 -- 62-9-109.
Laundries, 62-10-108.
Real Estate Brokers, 62-13-106, 62-13-110, 62-13-312.
Magazine Salesmen, 62-16-102.
Land Surveyors, 62-18-120.
Auctioneers, 62-19-121.
Collection Services, 62-20-123.
Pest Control Operators, 62-21-120, 62-21-205.
Antique Dealers, 62-22-101.
Rental Location Agents, 62-25-103, 62-25-105.
Private Investigators, 62-26-230.
Polygraph Examiners, 62-27-106, 62-27-123.
Ginseng Dealers, 62-28-105.
Tax Return Preparers, 62-29-105, 62-29-205.
Transitory Vendors, 62-30-106.
Fire Protection, 62-32-117, 62-32-215, 62-32-320.

Private Protective Services, 62-35-134, 62-35-136.
Geologists, 62-36-122.
Tattoo Parlors and Artists, 62-38-208, 62-38-211, 62-38-302, 62-38-305, 62-38-306, 62-38-310.
Real Estate Appraisers, 62-39-319.
Salvage House Operators, 62-44-105.
Unlawful Representations, 62-51-101.

Title 63 -- Professions of the Healing Arts.

Division of Health Related Boards, 63-1-123.
Podiatrists, 63-3-123, 63-3-210.
Chiropractors, 63-4-117.
Dentists, 63-5-107, 63-5-128.
Medicine and Surgery, 63-6-202, 63-6-203, 63-6-205, 63-6-206, 63-6-217, 63-6-225, 63-6-1002.
Nursing, 63-7-120.
Optometrists, 63-8-122.
Osteopathic Physicians, 63-9-109.
Pharmacy, 63-10-208.
Psychologists, 63-11-206.
Tennessee Veterinary Practice Act, 63-12-119, 63-12-131, 63-12-135, 63-12-140, 63-12-141, 63-12-144.
Certification of Occupational Therapists and Assistants, 63-13-211.
Physical Therapists and Assistants, 63-13-315.
Dispensing Opticians, 63-14-110.
Nursing Home Administrators, 63-16-111.
Speech Pathologists and Audiologists, 63-17-121, 63-17-221.
Massage Therapists, 63-18-104, 63-18-204.
Professional Counselors and Marital and Family Therapists, 63-22-115, 63-22-117, 63-22-202.
Social Workers, 63-23-102, 63-23-104, 63-23-105.
Athletic Trainers, 63-24-108.
Electrologists, 63-26-127.
Respiratory Care Practitioners, 63-27-111.
Clinical Perfusionists, 63-28-110.
Reflexology Practitioners, 63-30-108.
Polysomnography, 63-31-110.

Title 65 -- Public Utilities and Carriers.

Regulation of Railroads, 65-3-107, 65-3-111, 65-3-206.
Regulation of Public Utilities, 65-4-122.
Regulation of Public Utilities by Commission, 65-4-305.
Highway Crossings, 65-11-104.
Operation of Railroads, 65-12-111 -- 65-12-113.
Motor Carriers, 65-15-106, 65-15-122.
Respiratory Care Practitioners, 63-27-111.
Street and Interurban Railroads, 65-16-203, 65-16-204, 65-16-206.
Jitney Service, 65-19-104.
Miscellaneous Provisions Relating to Carriers, 65-20-101, 65-20-104.
Telegraphs and Telephones, 65-21-107, 65-21-108, 65-21-110, 65-21-112.
Telephone Cooperatives, 65-29-133.
Radio Common Carriers, 65-30-112.
Underground Utility Damage Prevention, 65-31-112.

Title 66 -- Property.

Fraudulent Conveyances and Devises, 66-3-104.
Leases, 66-7-104, 66-7-106.
Mechanics' and Materialmen's Liens, 66-11-137, 66-11-138, 66-11-206.
Crop Liens, 66-12-109, 66-12-110.
Release of Liens Created by Written Instruments, 66-25-207, 66-25-208.
Time-Share Act, 66-32-107, 66-32-118, 66-32-131, 66-32-133.
Prompt Pay Act, withholding of retainage, 66-34-103.

Title 67 -- Taxes and Licenses.

General Provisions, 67-1-107, 67-1-505, 67-1-706, 67-1-1303, 67-1-1304, 67-1-1410, 67-1-1440.
Officers Charged with Delinquent Taxes, 67-1-1615, 67-1-1624, 67-1-1625.
Disclosure of Tax Returns and Tax Information, 67-1-1709.
Income Taxation, 67-2-108, 67-2-121.
Highway User Fuel Tax, 67-3-2308.
Privilege and Excise Taxes, 67-4-220, 67-4-410, 67-4-722, 67-4-729, 67-4-1007, 67-4-1011, 67-4-1012, 67-4-1024, 67-4-1107, 67-4-1408.
Coin-operated Amusement Machine Tax Act, 67-4-2206.
Property Taxes, 67-5-303, 67-5-306, 67-5-401, 67-5-705, 67-5-903, 67-5-1321, 67-5-1404, 67-5-2308.
Sales and Use Taxes, 67-6-523, 67-6-606, 67-6-607.
Severance Taxes, 67-7-108.
Transfer Taxes, 67-8-110, 67-8-217, 67-8-422.

Title 68 -- Health, Safety and Environmental Protection.

Department of Health, 68-1-203, 68-1-1009.
Local Health Services, 68-2-602, 68-2-603, 68-2-704, 68-2-1001.
Vital Records, 68-3-105.
Disposition of Dead Bodies, 68-4-101, 68-4-107.
Prevention of Diseases, 68-5-104, 68-5-106, 68-5-108, 68-5-202, 68-5-404, 68-5-506, 68-5-607.
Rabies, 68-8-104, 68-8-108, 68-8-112.
Sexually Transmitted Diseases, 68-10-111.
Health Facilities and Resources, 68-11-213, 68-11-253, 68-11-261, 68-11-311, 68-11-1406.
Hotels, Food Service Establishments and Swimming Pools, 68-14-312 -- 68-14-314, 68-14-322, 68-14-517, 68-14-603.
Miscellaneous Sanitary Regulations, 68-15-107, 68-15-201, 68-15-206, 68-15-208, 68-15-303.
Medical Laboratories, 68-29-130.
Anatomical Gifts, 68-30-401.
Family Planning, 68-34-111.
Fire Prevention and Investigation, 68-102-113, 68-102-117, 68-102-126, 68-102-138, 68-102-139, 68-102-145 -- 68-102-148, 68-102-151.
High-Voltage Lines, 68-103-107.
Fireworks, 68-104-102, 68-104-105, 68-104-108, 68-104-111, 68-104-112, 68-104-114, 68-104-210, 68-104-213.
Blasting Standards, 68-105-111.
Mass Gatherings, 68-112-113.
Tennessee Athletic Commission, 68-115-218.
Tanning Facilities, 68-117-105.
Building Regulations, 68-120-108, 68-120-112, 68-120-113, 68-120-118, 68-120-205, 68-120-305.
Elevators, Dumbwaiters, Escalators, and Aerial Tramways, 68-121-115.
Amusement Devices, 68-121-125.
Boiler Inspection, Erection and Repair, 68-122-112, 68-122-208.
Manufactured Homes and Recreational Vehicles, 68-126-212, 68-126-308, 68-126-410.

Hazardous Substances, 68-131-105, 68-131-113, 68-131-306, 68-131-405.
Liquefied Petroleum, 68-135-110.
Emergency Services, 68-140-208, 68-140-303, 68-140-515.
Air Pollution Control, 68-201-112, 68-201-202.
Atomic Energy and Nuclear Materials, 68-202-212, 68-202-309, 68-202-415, 68-202-506.
Solid Waste Disposal, 68-211-114, 68-211-918, 68-211-1016.
Hazardous Waste Management, 68-212-114, 68-212-213, 68-212-503.
Sanitary Landfill Areas Act, 68-213-104.
Petroleum Underground Storage, 68-215-106, 68-215-120.
Water and Sewage, 68-221-107, 68-221-413, 68-221-417, 68-221-713, 68-221-904.

Title 69 -- Waters, Waterways, Drains and Levees.
Watercourses, 69-1-107, 69-1-108, 69-1-117.
Landing and Loading Facilities, 69-2-103, 69-2-108.
Water Pollution Control, 69-3-115.
Drainage and Levee Districts, 69-6-724, 69-6-908.
Tennessee-Tombigbee Waterway Development Compact, 69-9-104, 69-9-210, 69-9-216, 69-9-217.
Boating Regulation, 69-10-216, 69-10-219, 69-10-225, 69-10-306, 69-10-401 -- 69-10-403, 69-10-507.
Water Wells, 69-11-110.
Dams, 69-12-123.

Title 70 -- Wildlife Resources.
General and Administrative Provisions, 70-1-103, 70-1-302.
Licenses and Permits, 70-2-101, 70-2-102, 70-2-104, 70-2-107, 70-1-203 -- 70-2-205, 70-2-208, 70-2-209, 70-2-214, 70-2-215, 70-2-221.
Hunting and Fishing, 70-4-102, 70-4-103, 70-4-105 -- 70-4-120, 70-4-122 -- 70-4-127, 70-4-130, 70-4-131, 70-4-102.
Hunter Protection Act, 70-4-302.
Wildlife Regulation and Protection, 70-4-201 -- 70-4-209, 70-4-211.
Exotic Animals, 70-4-415.
Computer-Assisted Hunting from Remote Locations, 70-4-504.
Wildlife Preserves and Restoration Projects, 70-5-101, 70-5-106 -- 70-5-108, 70-5-112.
Enforcement of Wildlife Laws, 70-6-101 -- 70-6-103, 70-6-202.
Nongame and Endangered Species, 70-8-108.
Ginseng Harvest Season, 70-8-205.
Rare Plant Protection and Conservation, 70-8-310.
Tennessee Off-Highway Vehicle Act, 70-9-107.

Title 71 -- Welfare.
Department of Human Services, 71-1-118, 71-1-131, 71-1-133.
Old Age Assistance, 71-2-213 -- 71-2-215.
Medical Care for the Aged, 71-2-306 -- 71-2-308.
Aid to Dependent Children -- General Provisions, 71-3-118 -- 71-3-120.
Custody and Care of Dependent Children, 71-3-304.
Child Care Agencies, 71-3-505, 71-3-507, 71-3-508.
Orphan Asylums, 71-3-608.
Aid to the Blind, 71-4-114 -- 71-4-116.
Vocational Rehabilitation of the Blind, 71-4-611.
Aid to Disabled Persons -- General Financial Assistance, 71-4-1113, 71-4-1114.
Medical Assistance, 71-5-118.
Food Stamps, 71-5-308, 71-5-314.

Prevention of Fraud and Abuse in TennCare, 71-5-2601.
Adult Protection, 71-6-110, 71-6-117, 71-6-118, 71-6-119, 71-6-123.

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*** CURRENT THROUGH THE 2008 REGULAR SESSION ***
*** ANNOTATIONS CURRENT THROUGH MARCH 19, 2009 ***

Title 54 Highways, Bridges And Ferries
Chapter 5 State Highways
Part 13 --Tourist Oriented Directional Signs

Tenn. Code Ann. § 54-5-1301 (2009)

54-5-1301. Establishment of program -- Contracts.

(a) (1) The department of transportation is authorized to conduct a tourist oriented directional signs program, referred to as TODS, within the right-of-way of state highways by either the entry into administrative service and construction contracts or by the administration of the program with department personnel, at the option of the department.

(2) Contracts for administrative and construction services shall be subject to §§ 12-4-109 -- 12-4-111. Contracts for administrative or construction services shall include provisions requiring appropriate corporate surety performance bond, security or cash. Contracts for the services shall be awarded based on an objective, competitive bid basis to the lowest responsible bidder.

(3) Should the commissioner determine that it is in the best interest of the state for the department to conduct the program set forth in this part through the award of an administrative service or construction contract or contracts, the scope of the services provided by the contracts shall be at the discretion of the commissioner.

(b) TODS shall be available to lawful cultural, historical, recreational, agricultural, educational, or entertaining activities, state and national parks, and commercial activities that are unique and local in nature, and the major portion of whose income or visitors are derived during its normal business season from motorists not residing in the immediate area of the activity.

HISTORY: [Acts 1993, ch. 505, § 2; 1995, ch. 518, § 2.]

NOTES: Compiler's Notes.

Acts 1996, ch. 1000, § 2 provided for the repeal of Acts 1995, ch. 518, § 6 concerning the inapplicability of that act to any scenic highway compiled in title 54, chapter 17, part 1.

Cross-References.

Specific service signs, title 54, ch. 5, part 11.

Section to Section References.

This part is referred to in § 54-17-109.

Collateral References.

Highways 153 et seq.

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*** CURRENT THROUGH THE 2008 REGULAR SESSION ***
*** ANNOTATIONS CURRENT THROUGH MARCH 19, 2009 ***

Title 54 Highways, Bridges And Ferries
Chapter 5 State Highways
Part 13 --Tourist Oriented Directional Signs

Tenn. Code Ann. § 54-5-1302 (2009)

54-5-1302. Compliance with other requirements.

In all respects, the erection of TODS shall comply with:

(1) The Manual on Uniform Traffic Control Devices;

(2) Local zoning and local zoning authorities; and

(3) All laws and regulations for scenic highways, in accordance with chapter 17, part 1 of this title, and scenic parkways, chapter 17, part 2 of this title.

HISTORY: [Acts 1993, ch. 505, § 4; T.C.A., § 54-5-1303; Acts 1995, ch. 518, § 3.]

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*** CURRENT THROUGH THE 2008 REGULAR SESSION ***
*** ANNOTATIONS CURRENT THROUGH MARCH 19, 2009 ***

Title 54 Highways, Bridges And Ferries
Chapter 5 State Highways
Part 13 --Tourist Oriented Directional Signs

Tenn. Code Ann. § 54-5-1304 (2009)

54-5-1304. Competitive bidding.

With respect to a TODS sign, the department shall not enter into a contract for the procurement of signs or other goods or for contracts for services unless the contract is objectively and competitively bid, pursuant to § 12-4-109(a)(2). The department shall not use the request for proposals (RFP) procedure in the contracting process. The signs shall be subject to the requirements of part 11 of this chapter.

HISTORY: [Acts 1995, ch. 518, § 5.]

NOTES: Compiler's Notes.

Former § 54-5-1304 (Acts 1993, ch. 505, § 5), concerning scenic highways, was repealed by Acts 1995, ch. 518, which repealed this part and reenacted it without including that section. Acts 1995, ch. 518 took effect January 1, 1996, except for the promulgation of rules and regulations, for which purposes it took effect June 12, 1995.

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*** CURRENT THROUGH THE 2008 REGULAR SESSION ***
*** ANNOTATIONS CURRENT THROUGH MARCH 19, 2009 ***

Title 54 Highways, Bridges And Ferries
Chapter 17 Scenic Roadways
Part 1 --Scenic Highway System Act of 1971

Tenn. Code Ann. § 54-17-101 (2009)

54-17-101. Short title.

This part shall be known and may be cited as the "Scenic Highway System Act of 1971."

HISTORY: [Acts 1971, ch. 431, § 1; modified; T.C.A., § 54-2501.]

NOTES: Section to Section References.

This chapter is referred to in § 55-7-201.

This part is referred to in §§ 12-2-112, 54-5-1302, 54-17-206, 67-3-903.

Attorney General Opinions.

Designation of interstates as scenic highways, OAG 97-061 (5/1/97).

Comparative Legislation.

Scenic roadways:
Ala. Code § 23-1-220 et seq.
Ark. Code § 27-67-203.
Ga. O.C.G.A. § 32-6-119.
Ky. Rev. Stat. Ann. § 177.090.
Miss. Code Ann. § 65-3-35 et seq.
Mo. Rev. Stat. § 226.750 et seq.
N.C. Gen. Stat. § 136-122 et seq.
Va. Code § 33.1-62 et seq.

Collateral References.

Highways 153 et seq.

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*** CURRENT THROUGH THE 2008 REGULAR SESSION ***
*** ANNOTATIONS CURRENT THROUGH MARCH 19, 2009 ***

Title 54 Highways, Bridges And Ferries
Chapter 17 Scenic Roadways
Part 1 --Scenic Highway System Act of 1971

Tenn. Code Ann. § 54-17-102 (2009)

54-17-102. Scenic highway system established.

(a) There is established a system of scenic highways for the state.

(b) The system shall consist of those highways or roads or sections of the highways or roads that are so designated by the general assembly from time to time according to this part.

HISTORY: [Acts 1971, ch. 431, § 2; 1976, ch. 819, § 1; modified; T.C.A., § 54-2502.]

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*** CURRENT THROUGH THE 2008 REGULAR SESSION ***
*** ANNOTATIONS CURRENT THROUGH MARCH 19, 2009 ***

Title 54 Highways, Bridges And Ferries
Chapter 17 Scenic Roadways
Part 1 --Scenic Highway System Act of 1971

Tenn. Code Ann. § 54-17-103 (2009)

54-17-103. Chapter definitions.

In this chapter, unless the context otherwise requires:

(1) "Advertisement" means the outdoor display by painting, pasting, or affixing on any surface, a picture, emblem, word, figure, numeral, or lettering for the purpose of making anything known;

(2) "Scenic highway" means any highway, road, or sections of the highway or road designated as a scenic highway from time to time by the general assembly under this part; and

(3) "Sign, structure or advertising device" means any structure, post, tree, fence, rock, rigid or semirigid, with or without advertising displayed on the device, situated upon or attached to real property outdoors, primarily for the purpose of furnishing a background or support upon which advertisement may be affixed.

HISTORY: [Acts 1971, ch. 431, § 3; 1976, ch. 819, § 2; modified; T.C.A., § 54-2503.]

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*** CURRENT THROUGH THE 2008 REGULAR SESSION ***
*** ANNOTATIONS CURRENT THROUGH MARCH 19, 2009 ***

Title 54 Highways, Bridges And Ferries
Chapter 17 Scenic Roadways
Part 1 --Scenic Highway System Act of 1971

Tenn. Code Ann. § 54-17-104 (2009)

54-17-104. Purposes, standards and objectives.

The purposes of this part and its specific objectives and standards are to:

(1) Provide for the recovery and conservation of natural scenic beauty along designated scenic highways;

(2) Provide a safe and attractive environment for tourists and travelers to enjoy the scenic beauty of the state;

(3) Maximize the potential of little used and bypassed sections of highway;

(4) Return economic viability to distressed areas through the promotion of tourism; and

(5) Provide for preservation of routes of historical significance in urban and rural areas of the state.

HISTORY: [Acts 1971, ch. 431, § 4; 1973, ch. 9, § 3; modified; T.C.A., § 54-2504.]

NOTES: Section to Section References.

This section is referred to in § 54-17-105.

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*** CURRENT THROUGH THE 2008 REGULAR SESSION ***
*** ANNOTATIONS CURRENT THROUGH MARCH 19, 2009 ***

Title 54 Highways, Bridges And Ferries
Chapter 17 Scenic Roadways
Part 1 --Scenic Highway System Act of 1971

Tenn. Code Ann. § 54-17-105 (2009)

54-17-105. Eligibility for scenic highway designation -- Requirements of designation -- Comprehensive plan.

(a) Highways or thoroughfares that are maintained through the use of state or federal funds, and that are not needed for essential commercial or defense traffic, shall be eligible for designation as scenic highways, with exceptions the general assembly may from time to time consider necessary by designation in § 54-17-114.

(b) The designation of additions to the scenic highway system shall conform to the following criteria:

(1) Highways designated as scenic highways shall be components of a comprehensive system as outlined by a statewide scenic highway plan;

(2) Scenic highways shall travel through scenic, historic, geologic and pastoral areas of the state;

(3) Highways should be designated to offer alternative travel routes to the high-speed, heavily traveled highways in the state;

(4) Designated highways shall provide the motorist with safe and relaxing routes of travel; and

(5) Scenic highways shall conform to an interconnected state scenic highway system, except in unusual situations whereby a highway is judged desirable for inclusion within the system because of unique scenic, historical, geologic or pastoral features.

(c) The commissioner of tourist development shall, in accordance with the rules, regulations, policies and procedures of the state publications committee, prepare a comprehensive statewide scenic highway plan. In the preparation of this plan, the commissioner shall consult with the departments of transportation, environment and conservation, and agriculture, the department of economic and community development, the respective development districts across the state, and the Tennessee historical commission. The comprehensive plan shall include, but not be limited to, the following elements:

(1) The major routes of travel of tourists through the state so as to maximize the use of scenic highways by visitors in the state;

(2) The desirability of connecting components of the Tennessee outdoor recreation area system, prominent

historic sites, major cities, federal recreation areas, scenic, geologic and pastoral areas, and other desirable areas by a scenic highway system;

(3) An interconnected system of scenic highways to enable the motorist to traverse the state of Tennessee on scenic roads;

(4) Certain theme scenic highways of historical significance that would be beneficial and educational for travel by the citizens of the state and its visitors;

(5) An administrative framework for marking and maintaining individual components of the Tennessee scenic highway system;

(6) A report on the fiscal impact of recommended highways, including funds necessary to initiate and maintain those highways;

(7) Recommended specific highways to be designated by the general assembly as scenic highways in compliance with § 54-17-104, and subdivisions (b)(1)-(4), unless the general assembly by act designates specific exceptions to the requirements; and

(8) A uniform program for signing, marking, and promoting the Tennessee scenic highway system.

HISTORY: [Acts 1971, ch. 431, § 5; 1973, ch. 9, § 1; 1976, ch. 819, § 3; modified; T.C.A., § 54-2505; Acts 1981, ch. 264, § 12; 1990, ch. 1024, § 30; 1992, ch. 693, § 17.]

NOTES: Code Commission Notes.

The state planning office, formerly referred to in this section, was changed to the department of economic and community development by the code commission in 2008.

Former subsection (d), concerning the comprehensive state scenic highway plan being presented to the general assembly no later than January 15, 1978, was deleted as obsolete by the code commission in 2008.

Section to Section References.

This section is referred to in §§ 4-3-508, 54-17-106.

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*** CURRENT THROUGH THE 2008 REGULAR SESSION ***
*** ANNOTATIONS CURRENT THROUGH MARCH 19, 2009 ***

Title 54 Highways, Bridges And Ferries
Chapter 17 Scenic Roadways
Part 1 --Scenic Highway System Act of 1971

Tenn. Code Ann. § 54-17-106 (2009)

54-17-106. Proposals for scenic highway additions.

(a) The commissioner of tourist development, in consultation with the commissioners of environment and conservation and of transportation, and the director of the department of economic and community development, shall study and biennially submit to the general assembly recommendations for additions to the scenic highway system.

(b) Each proposal shall specify the nature and boundary of the proposed addition, and shall include estimates of the funds necessary to initiate and maintain the highway and other information that tends to make the highway a worthy addition to the system.

(c) The intent of this section is to ensure that systematic studies are made and that all the factors concerning scenic highway designations are fully considered and that individual scenic highways conform to the statewide system and meet the criteria established in § 54-17-105.

HISTORY: [Acts 1971, ch. 431, § 6; impl. am. Acts 1972, ch. 829, § 7; Acts 1976, ch. 819, § 4; modified; T.C.A., § 54-2506.]

NOTES: Code Commission Notes.

The state planning office, formerly referred to in this section, was changed to the department of economic and community development by the code commission in 2008.

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*** CURRENT THROUGH THE 2008 REGULAR SESSION ***
*** ANNOTATIONS CURRENT THROUGH MARCH 19, 2009 ***

Title 54 Highways, Bridges And Ferries
Chapter 17 Scenic Roadways
Part 1 --Scenic Highway System Act of 1971

Tenn. Code Ann. § 54-17-107 (2009)

54-17-107. Management -- Promotion -- Speed limit.

(a) Once the general assembly designates a highway or road or a portion of the highway or road as a scenic highway, the state or local agency having jurisdiction of the highway shall erect appropriate signs marking the designation, in accordance with the rules and regulations authorized to be promulgated, from funds appropriated by the general assembly for that purpose. The signs shall conform to standards established by the comprehensive statewide scenic highway plan; furthermore, the state or local agency having jurisdiction over the particular scenic highway shall provide proper marking, maintenance, and refuse removal services in connection with the highway.

(b) The department of tourist development shall study each newly designated scenic highway with the intention of including it in state and national promotional campaigns. In no instance may scenic highways be promoted through advertisement on any sign, structure or advertising device other than signs used for marking scenic highways by the department of transportation or local agency having jurisdiction.

(c) The department of economic and community development shall act to coordinate the efforts of local planning commissions, development districts, chambers of commerce, convention and visitors bureaus, and other federal, state, local, and private organizations in continuing the promotion and development of the scenic highway system.

(d) The maximum recommended speed limit for scenic highways shall conform to appropriate standards of traffic volume and motorist safety as determined by the agency having jurisdiction, but should not exceed fifty miles per hour (50 mph).

HISTORY: [Acts 1971, ch. 431, § 7; impl. am. Acts 1972, ch. 829, § 7; Acts 1976, ch. 819, § 5; modified; T.C.A., § 54-2507.]

NOTES: Code Commission Notes.

The state planning office, formerly referred to in this section, was changed to the department of economic and community development by the code commission in 2008.

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*** CURRENT THROUGH THE 2008 REGULAR SESSION ***
*** ANNOTATIONS CURRENT THROUGH MARCH 19, 2009 ***

Title 54 Highways, Bridges And Ferries
Chapter 17 Scenic Roadways
Part 1 --Scenic Highway System Act of 1971

Tenn. Code Ann. § 54-17-108 (2009)

54-17-108. Advertising or junkyards prohibited on scenic highways -- Authority of commissioner to acquire.

(a) Whenever a road or highway has been designated part of the system, it is unlawful for any person to construct, use, operate or maintain any advertising structure or junkyard within two thousand feet (2,000') of any road or highway that is a designated part of the system and that is located either outside the corporate limits of any city or town or at any place within a tourist resort county, as defined in § 42-1-301.

(b) The commissioner is authorized to acquire the advertising structure or junkyard by purchase, gift, or condemnation, and to pay just compensation for the removal of these structures and junkyards.

HISTORY: [Acts 1971, ch. 431, § 8; 1976, ch. 819, § 6; T.C.A., § 54-2508; Acts 1981, ch. 166, § 1; 1991, ch. 301, §§ 1, 4.]

NOTES: Cross-References.

Applicability to parkway system, § 54-17-206.

Billboard regulation and control, title 54, ch. 21.

Certain advertising permitted on scenic highways, § 54-17-109.

Junkyard Control Act, title 54, ch. 20, part 1.

Removal or abatement of advertising structures and junkyards, § 54-17-110.

Section to Section References.

This section is referred to in §§ 54-17-109, 54-17-113.

Attorney General Opinions.

State billboard regulations, OAG 04-082 (4/30/04).

LexisNexis 50 State Surveys, Legislation & Regulations

Billboards and Outdoor Advertising

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*** CURRENT THROUGH THE 2008 REGULAR SESSION ***
*** ANNOTATIONS CURRENT THROUGH MARCH 19, 2009 ***

Title 54 Highways, Bridges And Ferries
Chapter 17 Scenic Roadways
Part 1 --Scenic Highway System Act of 1971

Tenn. Code Ann. § 54-17-109 (2009)

54-17-109. Advertising permitted on scenic highways.

The following advertising structures, or parts of the structures, are excepted from all provisions of § 54-17-108; however, as to advertising structures referred to in subdivisions (1)-(3) and (10), this exception shall not apply if the structures are larger than one hundred square feet (100 sq. ft.) or more frequent than one (1) sign of permissible size to every one thousand feet (1,000') per road or highway frontage, except that an owner or lessee may display at least one (1) sale or rental sign of permissible size on each piece of property for sale or rent:

(1) Those constructed by the owner or lessee of a place of business or residence on land belonging to the owner or lessee and not more than one hundred feet (100') from the place of business or residence, and relating solely to merchandise services or entertainment sold, produced, manufactured or furnished at the place of business or residence;

(2) Those constructed, erected, operated, used or maintained on any farm by the owner or lessee of the farm and relating solely to farm produce, merchandise, service or entertainment sold, produced, manufactured or furnished on the farm;

(3) Those upon real property posted or displayed by the owner or by the authority of the owner, stating that real property is for sale or rent;

(4) Official notices or advertisements posted or displayed by or under the direction of any public or court officer in the performance of the officer's official or directed duties, or by trustees under deeds of trust, deeds of assignment or other similar instruments;

(5) Danger or precautionary signs relating to the premises on which they are located, signs warning of the condition of or dangers of travel on a highway or road, erected or authorized by the department of transportation or applicable local agency or forest fire warning signs erected under authority of the department of agriculture and signs, notices or symbols erected by the United States government under the direction of the United States forest service;

(6) Signs solely to denote route to any city, town, village or historic place or shrine;

(7) Notices of any railroad, bridge, ferry or other transportation or transmission company necessary for the direction or safety of the public;

(8) Signs, notices or symbols for the information of aviators as to location, directions and landings and conditions affecting safety in aviation;

(9) Signs or notices placed at a junction of two (2) or more roads in the state highway system denoting only the distance or direction of a residence or subdivision;

(10) Signs or notices erected or maintained on property giving the name of the owner, lessee or occupant of the premises;

(11) Advertisements, advertising signs and advertising structures within the corporate limits of cities or towns;

(12) Historical markers erected by duly constituted authorized public authorities;

(13) Highway or road markers and signs erected or caused to be erected by duly authorized public authorities;

(14) Signs erected on property warning the public against hunting and fishing or trespassing;

(15) (A) Except as provided in subdivision (15)(B), tourist oriented directional signs complying with chapter 5, part 13 of this title;

(B) (i) Subdivision (15)(A) shall not apply in counties having a population, according to the 1990 federal census or any subsequent federal census, of: Click here to view image.

(ii) Subdivision (15)(A) shall only apply to a local government coming under its provisions after January 1, 1996, which by vote of its local legislative body chooses to apply subdivision (15)(A) to itself. Any tourist oriented directional signs program (TODS) authorized by the general assembly before January 1, 1996, shall continue in operation as originally authorized; and

(16) Directional signs of eight square feet (8 sq. ft.) or less for churches and nonprofit educational institutions. The signs must be located off the roadway or highway right-of-way.

HISTORY: [Acts 1971, ch. 431, § 9; impl. am. Acts 1972, ch. 829, § 7; Acts 1976, ch. 819, § 7; T.C.A., § 54-2509; Acts 1992, ch. 693, § 16; 1995, ch. 476, § 2; 1995, ch. 530, §§ 1, 3-5; 1996, ch. 1000, §§ 1, 3-7; 1997, ch. 71, § 1; 1997, ch. 156, § 2; 2000, ch. 615, § 1.]

NOTES: Compiler's Notes.

Acts 1995, ch. 530, §§ 3 and 4 enumerated populations whose counties would not be subject to (15)(A). However, in light of § 5 of that act, set out in (15)(B), §§ 3 and 4 are deemed to be of no effect and have not been set out above.

Acts 1996, ch. 1000, § 2 provided for the repeal of Acts 1995, ch. 518, § 6 concerning the inapplicability of that act to any scenic highway compiled in title 54, chapter 17, part 1.

For table of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

Cross-References.

Advertising structures or junkyards prohibited on scenic highways, authority of commissioner to acquire, § 54-17-108.

Applicability to parkway system, § 54-17-206.

Billboard regulation and control, title 54, ch. 21.

Removal or abatement of advertising structures and junkyards, § 54-17-110.

Section to Section References.

This section is referred to in §§ 4-3-508, 12-2-112, 54-17-114, 54-17-206.

Attorney General Opinions.

State billboard regulations, OAG 04-082 (4/30/04).

Collateral References.

Validity and construction of state or local regulation prohibiting off-premises advertising structures. 81 A.L.R.3d 486.

LexisNexis 50 State Surveys, Legislation & Regulations

Billboards and Outdoor Advertising

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*** CURRENT THROUGH THE 2008 REGULAR SESSION ***
*** ANNOTATIONS CURRENT THROUGH MARCH 19, 2009 ***

Title 54 Highways, Bridges And Ferries
Chapter 17 Scenic Roadways
Part 1 --Scenic Highway System Act of 1971

Tenn. Code Ann. § 54-17-110 (2009)

54-17-110. Removal or abatement of advertising structures and junkyards.

(a) Any advertising structure or junkyard that is constructed or erected in violation of this part constitutes a public nuisance subject to abatement as provided by law.

(b) If the advertising structure or junkyard is declared a nuisance, it shall immediately be removed or abated and for that purpose the district attorney general or the district attorney general's duly appointed representative or any authorized representative of the state may enter onto private property without incurring any liability.

(c) The power of eminent domain may be utilized to remove existing advertising structures or junkyards from within one thousand feet (1,000') of either side of designated Tennessee scenic highways.

(d) Should the state fail to enforce this section, any citizen or group of citizens may institute legal proceedings in a court of competent jurisdiction to require the state to enforce this section.

HISTORY: [Acts 1971, ch. 431, § 10; 1976, ch. 819, § 8; modified; T.C.A., § 54-2510.]

NOTES: Cross-References.

Advertising structures and junkyards prohibited on scenic highways, authority of commissioner to acquire, § 54-17-108.

Applicability to parkway system, § 54-17-206.

Billboard regulation and control, title 54, ch. 21.

Law Reviews.

The Tennessee Court Systems -- Prosecution, 8 Mem. St. U.L. Rev. 477.

Attorney General Opinions.

State billboard regulations, OAG 04-082 (4/30/04).

Collateral References.

Right to maintain action to enjoin public nuisance as affected by existence of pollution control agency. 60 A.L.R.3d 665.

LexisNexis 50 State Surveys, Legislation & Regulations

Billboards and Outdoor Advertising

354 of 400 DOCUMENTS

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*** CURRENT THROUGH THE 2008 REGULAR SESSION ***
*** ANNOTATIONS CURRENT THROUGH MARCH 19, 2009 ***

Title 54 Highways, Bridges And Ferries
Chapter 17 Scenic Roadways
Part 1 --Scenic Highway System Act of 1971

Tenn. Code Ann. § 54-17-111 (2009)

54-17-111. Trash dumping prohibited -- Penalties.

Dumping or disposal of trash or refuse within five hundred feet (500') of the highway right-of-way is specifically prohibited, and the usual penalties for littering state highways are doubled in the case of scenic highways.

HISTORY: [Acts 1971, ch. 431, § 11; modified; T.C.A., § 54-2511.]

NOTES: Cross-References.

Applicability to parkway system, § 54-17-206.

Criminal littering, penalties, § 39-14-502.

Litter control, title 39, ch. 14, part 5.

LexisNexis 50 State Surveys, Legislation & Regulations

Billboards and Outdoor Advertising

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*** CURRENT THROUGH THE 2008 REGULAR SESSION ***
*** ANNOTATIONS CURRENT THROUGH MARCH 19, 2009 ***

Title 54 Highways, Bridges And Ferries
Chapter 17 Scenic Roadways
Part 1 --Scenic Highway System Act of 1971

Tenn. Code Ann. § 54-17-112 (2009)

54-17-112. Criminal sanctions.

(a) Any person, firm or corporation violating any provision of this part commits a Class C misdemeanor.

(b) Each and every day during which a violation of any provision of this part continues is deemed a separate offense.

(c) The attorney general and reporter, the district attorney general for the judicial district in which the violation occurs or is threatened, any state, municipal or county official or any adjacent or neighboring property owner who would be damaged by a violation of this part, in addition to other remedies provided by law, may institute injunction, mandamus, abatement or other appropriate action, actions or proceedings to prevent, enjoin or abate or remove the violation.

HISTORY: [Acts 1971, ch. 431, § 12; modified; T.C.A., § 54-2512; Acts 1989, ch. 591, § 113.]

NOTES: Cross-References.

Penalty for Class C misdemeanor, § 40-35-111.

Remedies and special proceedings, title 29.

Law Reviews.

The Tennessee Court Systems -- Prosecution, 8 Mem. St. U.L. Rev. 477.

LexisNexis 50 State Surveys, Legislation & Regulations

Billboards and Outdoor Advertising

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*** CURRENT THROUGH THE 2008 REGULAR SESSION ***
*** ANNOTATIONS CURRENT THROUGH MARCH 19, 2009 ***

Title 54 Highways, Bridges And Ferries
Chapter 17 Scenic Roadways
Part 1 --Scenic Highway System Act of 1971

Tenn. Code Ann. § 54-17-113 (2009)

54-17-113. Statutory conflict.

Whenever a provision of this part is found to be in conflict with a provision of any private or public act or local ordinance or code, the provision that establishes the higher standard for promotion and protection of the health, safety, and welfare of the people shall prevail; provided, that §§ 54-17-108 and 54-17-115 shall prevail in all applicable instances, any other provision of law to the contrary notwithstanding.

HISTORY: [Acts 1971, ch. 431, § 13; 1976, ch. 819, § 9; T.C.A., § 54-2513.]

NOTES: Section to Section References.

This section is referred to in § 54-17-115.

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Billboards and Outdoor Advertising

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*** CURRENT THROUGH THE 2008 REGULAR SESSION ***
*** ANNOTATIONS CURRENT THROUGH MARCH 19, 2009 ***

Title 54 Highways, Bridges And Ferries
Chapter 17 Scenic Roadways
Part 1 --Scenic Highway System Act of 1971

Tenn. Code Ann. § 54-17-114 (2009)

Legislative Alert: LEXSEE 2009 Tn. HB 2375 -- See section 1.

54-17-114. Designated scenic highways -- Designated urban roads not to be impaired.

(a) For the purposes of this part, the following are initially designated scenic highways:

(1) Class I -- Urban Roads. (A) That portion of Kingston Pike bearing the designation of State Highway 1 and United States Highway 11-70 in Knox County from its intersection with Concord Street and Neyland Drive in the City of Knoxville westward to the intersection of Kingston Pike with Lyons View Drive;

(B) That portion of Lyons View Drive from its intersection with Kingston Pike, westward to its intersection with Northshore Drive;

(C) That portion of United States Highway 70 South (West End Avenue) in Nashville from one hundred feet (100') west of Elmington Avenue westward to its intersection with Ensworth Avenue;

(D) All of Cherokee Boulevard located in the city of Knoxville;

(E) Two Rivers Parkway in Davidson County;

(F) Those portions of State Highway 100 in Davidson County from its intersection with Cheekwood Terrace south to its intersection with the Harpeth River and from its intersection with McCrory Lane south to its intersection with the South Harpeth River, and all of State Highway 251 in Davidson County, and that portion of State Highway 254 (Old Hickory Boulevard) from its intersection with State Highway 100 east to its intersection with Granny White Pike;

(G) South Knoxville Boulevard between the relocated Sevier Avenue and Chapman Highway in Knoxville;

(H) That segment of United States Highway 41 (Cummings Highway) in Hamilton County, beginning at the underpass at the current entrance to the Chattem property in St. Elmo, where that route is also designated as South Broad Street, running westward around the foot of Lookout Mountain to the railroad overpass on the east side of the Tiftonia business district;

(I) That segment of State Route 169 (Middlebrook Road) in Knox County from that route's intersection with

Weisgarber Road in the city of Knoxville westward to its terminus at that route's intersection with Hardin Valley Road, but excluding any part of that segment of Route 169 that has property fronting on the route that is zoned on April 16, 1996, with the commercial designation of CA, CB or C3, or the industrial designation of I or I-3 under the Knox County or city of Knoxville zoning ordinances;

(J) That segment of State Route 385 (Nonconnah Parkway) in Shelby County from its intersection with United States Highway 72 to Interstate 240, but excluding any part of the segment of Route 385 that has property fronting on the route that is zoned on June 13, 1997, with the commercial designation of CL, CH or CP or the industrial designation of IL or IH under the Shelby County or city of Memphis zoning ordinances; and

(K) All of State Route 475, Knoxville Parkway, a proposed project connecting I-40 / I-75 southwest of Knoxville to I-75 north of Knoxville, in Knox, Anderson and Loudon counties.

(2) Class II -- Rural Roads. (A) The portion of United States Highway 41 from its intersection with Interstate Highway 24 in Hamilton County westward through the Tennessee River Gorge, Jasper and on to the junction of that highway with State Highway 27 at Kimball (Marion County) and south along State Highway 27 to Interstate 24;

(B) That portion of State Highway 66 from the French Broad River to Interstate 40, in Sevier County, except for the first two thousand one hundred fifty feet (2,150') north of state bridge number 78-66-4.95 toward Interstate 40 in the north-bound lane only;

(C) That portion of the Pellissippi Parkway (State Highway 162) in Knox County from its intersection with Interstate 40, to Melton Hill Lake;

(D) The John Sevier Highway, in Knox County, from the Alcoa Highway (United States Highway 129) to the Chapman Highway (United States Highway 411/441);

(E) That portion of Northshore Drive in Knox County from its intersection with Lyons View Drive and Westland Drive west to Loudon County; provided, that the height restrictions on buildings imposed by § 54-17-115 shall not apply to that property along Northshore Drive within Knox County that is now or, subsequent to April 22, 2005, zoned "TC-1 (Town Center)", or zoned C-6 from the east right-of-way line of Keller Bend Road at Northshore to the east right-of-way line of Pellissippi Parkway, or any similar zoning category, under the zoning ordinances of the city of Knoxville;

(F) That portion of United States Highway 70 North beginning east of Cookeville at the Falling Water Bridge and extending approximately five (5) miles toward Monterey through the Dry Valley Community and ending at the Sand Springs Community;

(G) That portion of State Highway 73 from the city of Maryville to the city of Townsend;

(H) That portion of Westland Drive in Knoxville from its intersection with Northshore Drive to its intersection with Northshore Drive at the western end;

(I) All of United States Highway 411 in Blount County and that portion of United States Highway 411 in Sevier County from the Blount County boundary to the intersection of United States Highway 411 with the Chapman Highway (United States Highway 441);

(J) That portion of new State Highway 95 in Loudon and Blount counties from the Fort Loudon Dam to its intersection with United States Highway 129 at Morganton Road;

(K) That portion of United States Highway 129 in Blount County, known as the 129 Bypass, from its intersection with State Highway 73 and Hall Road in the city of Alcoa to its intersection with United States Highway

411 in the city of Maryville;

(L) All of Lyons Bend Road in Knox County;

(M) That portion of Pittman Center Road from the intersection of Pittman Center Road with State Highway 73 East to the intersection of Pittman Center Road with United States Highway 411, east of Sevierville, but excluding those portions of Pittman Center Road that are within the boundaries, as of January 1, 1982, of incorporated municipalities;

(N) That portion of United States Highway 321 from the intersection of United States Highway 321 with Interstate 40 in Loudon County through Blount and Sevier counties to the intersection of United States Highway 321 with Interstate 40 in Cocke County, but excluding those portions of United States Highway 321 that are within the boundaries, as of January 1, 1982, of incorporated municipalities;

(O) Hardin Valley Road in Knox County;

(P) That portion of State Highway 58 in Hamilton County from the city limits of Chattanooga, as of July 1, 1987, to the Hamilton County boundary;

(Q) That portion of Pellissippi Parkway (State Highway 162) that has been or will be constructed in Blount and Knox Counties after January 1, 1987; provided, that the height restrictions on buildings imposed by § 54-17-115 and sign restrictions referred to in § 54-17-109 that are applicable to § 54-17-109(1) and (10) shall not apply to that property along the Pellissippi Parkway within Knox County that is located between Kingston Pike and Interstate 75/40, all of which shall be regulated by the zoning ordinances and regulations of the appropriate county or municipal government; and provided further, that the height restrictions on buildings imposed by § 54-17-115 shall not apply to that property along the Pellissippi Parkway within Knox County that is now or, subsequent to April 22, 2005, zoned "TC-1 (Town Center)", or any similar zoning category, under the zoning ordinances of the city of Knoxville; and provided, further, that the height restrictions on buildings imposed by § 54-17-115 shall not apply to that property along Pellissippi Parkway within the corporate limits of the city of Alcoa, that is now or hereafter zoned for planned commercial zones or any similar zoning category under the zoning ordinances of the city of Alcoa;

(R) All of the Natchez Trace Parkway, except for those portions within the boundaries of incorporated municipalities;

(S) All of the Foothills Parkway, except for those portions within the boundaries of incorporated municipalities;

(T) That portion of Alcoa Highway from the intersection of Alcoa Highway and Kingston Pike in Knox County to the intersection of Alcoa Highway and Singleton Station Road in Blount County; provided, that the height restrictions on buildings imposed by § 54-17-115 shall not apply to that property along Alcoa Highway being situated in District 9 in Knox County and Ward 24 of the City of Knoxville and being more particularly bounded and described as Tract 1, the University of Tennessee Medical Center, at the intersection of Alcoa Highway and Cherokee Trail, and regulated by the zoning ordinances and regulations of the City of Knoxville;

(U) The 9.141 mile segment of the Charles H. Coolidge Medal of Honor Highway beginning with its intersection with Signal Mountain Road to State Route 153;

(V) The 9.33 mile segment of the Bill Carter Causeway beginning with its intersection with State Route 153 to north of Soddy Lake in Soddy-Daisy;

(W) That portion of Highway 70 South from Murfreesboro to Woodbury;

(X) All of United States Highway 27/State Route 29 in Rhea County;

(Y) That portion of United States Highway 411 in Sevier County from the city limits of Sevierville to the

Jefferson County boundary;

(Z) That portion of United States Highway 411 in Sevier County from its intersection with United States Highway 441 at Newell Station west to the Blount County boundary;

(AA) That segment of state route 416 in Sevier County from its intersection with United States Highway 411 to its intersection with United States Highway 321;

(BB) That portion of State Highway 70 in Hawkins and Hancock counties from the intersection of State Highway 94 at Alumwell to the intersection of State Highway 33 at Kyles Ford, eleven and three tenths (11.3) miles; and

(CC) All of the highway known as The Trace located in Land Between the Lakes National Recreational Area in Stewart County.

(b) No state or local governmental entity, agency or department shall take any action that undermines the scenic and historical qualities of roads designated as scenic highways under subdivision (a)(1).

HISTORY: [Acts 1971, ch. 431, § 15; 1973, ch. 9, § 2; 1975, ch. 19, § 1; 1975, ch. 151, § 1; 1977, ch. 7, § 1; 1978, ch. 586, §§ 1, 2; 1979, ch. 40, § 1; 1979, ch. 98, § 1; modified; T.C.A., § 54-2514; Acts 1980, ch. 477, §§ 1, 2; 1980, ch. 679, § 1; 1980, ch. 700, § 1; 1980, ch. 902, §§ 1, 2; 1981, ch. 193, §§ 1-5; 1981, ch. 331, § 1; 1982, ch. 625, § 1; 1982, ch. 734, §§ 1-3; 1984, ch. 826, § 1; 1987, ch. 9, § 1; 1987, ch. 83, § 1; 1988, ch. 694, § 1; 1988, ch. 771, § 1; 1989, ch. 267, § 1; 1991, ch. 208, § 1; 1991, ch. 301, § 2; 1991, ch. 381, § 1; 1992, ch. 583, § 1; 1992, ch. 610, § 1; 1993, ch. 92, § 1; 1993, ch. 226, § 1; 1994, ch. 829, § 1; 1994, ch. 921, § 1; 1995, ch. 24, § 1; 1996, ch. 701, § 1; 1996, ch. 752, § 1; 1997, ch. 428, § 2; 2000, ch. 555, § 1; 2005, ch. 97, §§ 1, 2; 2006, ch. 524, § 1; 2007, ch. 431, § 1; 2008, ch. 654, § 1; 2008, ch. 671, § 1.]

NOTES: Amendment Notes.

The 2008 amendment, by ch. 654, added (a)(1)(K).

The 2008 amendment, by ch. 671, added the proviso at the end of (a)(2)(T).

Effective Dates.

Acts 2008, ch. 654, § 2. July 1, 2008.

Acts 2008, ch. 671, § 2. July 1, 2008.

Section to Section References.

This section is referred to in § 54-17-105.

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*** CURRENT THROUGH THE 2008 REGULAR SESSION ***
*** ANNOTATIONS CURRENT THROUGH MARCH 19, 2009 ***

Title 54 Highways, Bridges And Ferries
Chapter 17 Scenic Roadways
Part 1 --Scenic Highway System Act of 1971

Tenn. Code Ann. § 54-17-115 (2009)

54-17-115. Building restrictions near scenic highways.

(a) (1) The exposed portion of buildings constructed or erected on property located within one thousand feet (1,000') of a scenic highway shall not exceed a height of thirty-five feet (35') above the level of the highway on property located below the level of the highway, or a height of thirty-five feet (35') above the ground line on property located above the level of the highway.

(2) The restriction on buildings shall apply to the scenic highway, notwithstanding the route being located inside or outside a municipality and notwithstanding any law or ordinance to the contrary.

(b) It is the legislative intent of this section, in part, that possession of a building permit at the time a road or highway is designated a scenic highway shall not allow any future construction based on that permit.

(c) (1) This section shall not apply to any building in existence at the time a road or highway is designated a part of the system.

(2) Silos and buildings designed for agricultural use are exempted from the application of this section.

(3) Any geographic area designated by state law and managed by a development authority authorized to promote and regulate technology-based economic development is exempt from the application of this section.

(4) Section 54-17-113 shall not apply to this section.

HISTORY: [Acts 1972, ch. 685, § 1; 1973, ch. 9, § 4; 1976, ch. 819, § 10; modified; T.C.A., § 54-2515; Acts 1987, ch. 30, § 1; 1990, ch. 660, § 1.]

NOTES: Compiler's Notes.

Acts 1987, ch. 30, § 2 provided that the provisions of the first sentence shall apply only to counties containing Class II rural roads as specified in § 54-17-114.

Section to Section References.

This section is referred to in §§ 54-17-113, 54-17-114, 54-17-116.

Attorney General Opinions.

The building height restriction contained in the statute did not apply to a portion of West End Avenue in Nashville that was designated a Class I urban road, OAG 00-134 (8/22/00).

LexisNexis 50 State Surveys, Legislation & Regulations

Billboards and Outdoor Advertising

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*** CURRENT THROUGH THE 2008 REGULAR SESSION ***
*** ANNOTATIONS CURRENT THROUGH MARCH 19, 2009 ***

Title 54 Highways, Bridges And Ferries
Chapter 17 Scenic Roadways
Part 1 --Scenic Highway System Act of 1971

Tenn. Code Ann. § 54-17-116 (2009)

54-17-116. Effect of designation -- Existing building permits -- Construction of part.

(a) Designation of a road or highway as a scenic highway under this part shall be presumed to arise from the public necessity and to protect the public good.

(b) Section 54-17-115 shall become effective immediately upon designation of a road or highway as a scenic highway, the issuance of any building permit to the contrary notwithstanding, unless construction under the permit is so substantial as to render compliance with this part unfeasible.

(c) The designation of scenic highways by the general assembly shall not give rise to actions for damages in any court of this state. This part shall be liberally construed to effect its remedial purposes.

HISTORY: [Acts 1973, ch. 9, § 5; modified; T.C.A., § 54-2516.]

NOTES:

LexisNexis 50 State Surveys, Legislation & Regulations

Billboards and Outdoor Advertising

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*** CURRENT THROUGH THE 2008 REGULAR SESSION ***
*** ANNOTATIONS CURRENT THROUGH MARCH 19, 2009 ***

Title 54 Highways, Bridges And Ferries
Chapter 17 Scenic Roadways
Part 2 --Tennessee Parkway System Act

Tenn. Code Ann. § 54-17-206 (2009)

54-17-206. Advertising structures, junkyards, and trash dumping -- Directional signs.

(a) (1) Part 1 of this chapter regarding advertising structures, junkyards and trash dumping applies to the Tennessee parkway system. If a conflict exists between this part and part 1 of this chapter regarding advertising structures, junkyards and trash dumping, due to a road having been designated as being on both the scenic highway system pursuant to part 1 of this chapter and the parkway system pursuant to this part, then part 1 of this chapter shall prevail. It is the intent of the general assembly that nothing contained in this subdivision (a)(1) shall be construed as having any retroactive force or taking away any vested right or be applied to any contractual obligation.

(2) Subdivision (a)(1) shall not apply to those parts of the system lying within any comprehensively zoned area, unless otherwise provided by the zoning regulations and within one-half (1/2) mile of any section of the parkway system where it crosses an interstate highway system.

(3) The commissioner of transportation may authorize the construction of advertising structures described in § 54-17-109(1) no larger than five hundred square feet (500 sq. ft.) and the construction and maintenance of signs that do not exceed eight square feet (8 sq. ft.) in area for nonprofit service clubs, charitable associations or religious services in accordance with criteria contained in rules and regulations that the commissioner is authorized to promulgate.

(4) The commissioner may also authorize the construction of advertising structures of the size specified in subdivision (a)(3) for business establishments located within five (5) miles of a parkway route that provide services to persons traveling on that route. This subdivision (a)(4) shall apply only to that portion of Highway 79 located west and south of the Tennessee River that is in the Tennessee parkway system.

(b) All business establishments shall be entitled to erect and maintain two (2) directional signs of less than seventy-five square feet (75 sq. ft.) indicating the location of their business premises, with the spacing and zoning required by present laws.

HISTORY: [Acts 1982, ch. 865, § 7; 1984, ch. 613, §§ 1, 2, 4; 1990, ch. 873, § 1; 1991, ch. 233, § 1.]

NOTES: Cross-References.

Advertising, junkyards, and trash on scenic highway system, §§ 54-17-108 -- 54-17-111.

Exemption of certain advertising structures from permits and fees, § 54-21-107.

Attorney General Opinions.

State billboard regulations, OAG 04-082 (4/30/04).

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*** CURRENT THROUGH THE 2008 REGULAR SESSION ***
*** ANNOTATIONS CURRENT THROUGH MARCH 19, 2009 ***

Title 54 Highways, Bridges And Ferries
Chapter 17 Scenic Roadways
Part 2 --Tennessee Parkway System Act

Tenn. Code Ann. § 54-17-207 (2009)

54-17-207. Additions to system -- Designation powers of commissioner.

Additions to the parkway system shall be part of the system of state highways, and the commissioner of transportation shall have the same powers set forth in §§ 54-5-101 and 54-5-102 with regard to designating the parkway system as the commissioner has to designate the system of state highways.

HISTORY: [Acts 1984, ch. 613, § 3.]

NOTES: Attorney General Opinions.

Designation of interstates as scenic highways, OAG 97-061 (5/1/97).

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*** CURRENT THROUGH THE 2008 REGULAR SESSION ***
*** ANNOTATIONS CURRENT THROUGH MARCH 19, 2009 ***

Title 55 Motor and Other Vehicles
Chapter 7 Size, Weight and Load
Part 2 --Weight and Length Specifications

Tenn. Code Ann. § 55-7-201 (2009)

55-7-201. Maximum length of vehicles.

(a) For purposes of this section, "truck tractor" means the noncargo carrying power unit that operates in combination with a semitrailer or trailer, except that a truck tractor and semitrailer engaged in the transportation of automobiles may transport motor vehicles on part of the power unit.

(b) No motor vehicle as defined in § 55-1-103 consisting of a straight truck whose length, including any part of its body or load, exceeds forty feet (40') and no straight truck with trailer attached, the total length of which combination, including any part of the body or load, exceeds sixty-five feet (65') shall be operated on any highway.

(c) Motor vehicles consisting of a truck-tractor and semitrailer or trailer combination shall be permitted to operate over the federal and state highway system; provided, that the towed vehicle shall not exceed fifty feet (50') in length from the point of attachment to the tractor, except that this length may be increased to fifty-two feet (52') when the load on the vehicle consists of livestock, motor vehicle parts, automobiles and/or motor vehicles. If the towed vehicle exceeds forty-eight feet (48') in length from the point of attachment to the tractor and the load on the vehicle does not consist of livestock, motor vehicle parts, automobiles and/or motor vehicles, the distance between the kingpin and the rearmost axle or a point midway between the two (2) rear axles, if the two (2) rear axles are a tandem axle, shall not exceed forty-one feet (41').

(d) Motor vehicles consisting of a truck-tractor and twin trailer combination shall be permitted to operate on the interstate system and other federal-aid highways designated by the commissioner of transportation; provided, that neither of the towed vehicles shall exceed twenty-eight feet six inches (28' 6") in length.

(e) No twin trailer truck authorized by this chapter shall be operated on any highway designated as a scenic highway under the authority of title 54, chapter 17. The interstate system and other federal-aid highways designated by the commissioner shall not be considered scenic routes for purposes of this chapter.

(f) The limitation as to length stated in this section shall not apply to loads of poles, logs or timber in single length pieces; provided, that no motor vehicle, including any part of the body or load, transporting such material shall be in excess of seventy-five feet (75') in length unless a permit has first been obtained as authorized in § 55-7-205.

(g) The length limitations described in this section shall be exclusive of safety and energy conservation devices

designated by the commissioner except that no device excluded from the limitations of this section shall have by its design or use the capability to carry cargo.

(h) It is not a violation of the length limits set forth in this section when otherwise properly titled and registered vehicles, which are in compliance with applicable length requirements, are disabled on the highways and require a tow or other assistance in proceeding to the nearest exit or repair or terminal facility within one hundred (100) miles of the disablement, and the combined lengths of the disabled vehicle and the tow vehicle exceed the limits herein. This exemption shall only apply to vehicles disabled while operating on the highway, and only to their transport to the nearest exit or suitable repair facility.

HISTORY: [Acts 1933, ch. 35, § 3; 1945, ch. 132, § 1; mod. C. Supp. 1950, § 2715.1 (Williams, § 2715.3); Acts 1959, ch. 87, § 1; 1967, ch. 400, § 1; 1974, ch. 500, § 1; 1979, ch. 91, § 1; T.C.A. (orig. ed.), § 59-1107; Acts 1981, ch. 448, § 5; 1982, ch. 768, § 1; 1982, ch. 912, §§ 1, 4; 1982, ch. 953, § 3; 1983, ch. 319, § 4; 1987, ch. 116, § 1; 1988, ch. 483, § 1; T.C.A., § 55-11-201; Acts 2007, ch. 235, § 1.]

NOTES: Compiler's Notes.

The division of motor vehicles was transferred from the department of revenue to the department of safety by Executive Order No. 37 (June 29, 1990).

For transfer of the division of title and registration to the department of revenue, see Executive Order No. 36, effective July 1, 2006 (April 19, 2006).

Cross-References.

Penalty for violation of part, § 55-7-206.

Twin trailer trucks authorized on interstate and defense highways, § 55-7-208.

Section to Section References.

Sections 55-7-201 -- 55-7-203 are referred to in § 55-7-206.

This section is referred to in § 55-7-115, 55-7-203, 55-7-205, 55-7-208, 55-7-209.

Textbooks.

Tennessee Jurisprudence, 4 Tenn. Juris., Automobiles, § 2; 5 Tenn. Juris., Carriers, § 58.

Law Reviews.

Selected Tennessee Legislation of 1983 (N. L. Resener, J. A. Whitson, K. J. Miller), 50 Tenn. L. Rev. 785 (1983).

Cited:

Evans v. Burnley, 695 F. Supp. 365, 1988 U.S. Dist. LEXIS 13136 (M.D. Tenn. 1988).

NOTES TO DECISIONS

1. Trailers Towed by Buses.

1. Trailers Towed by Buses.

Specific provisions of § 55-7-204 fixing maximum length of buses and making no provision for trailers to be attached to buses governed over the general provisions of this section, and this section did not authorize towing trailers behind buses. Continental Tennessee Lines, Inc. v. McCanless, 209 Tenn. 324, 354 S.W.2d 57, 1962 Tenn. LEXIS 361 (1962).

Collateral References.

Liability for accident occurring in motor transportation of house or similar structure on public streets or highways. 9 A.L.R.3d 1436.

Automobiles 1 et seq.

Highways 165 et seq.

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*** CURRENT THROUGH THE 2008 REGULAR SESSION ***
*** ANNOTATIONS CURRENT THROUGH MARCH 19, 2009 ***

Title 57 Intoxicating Liquors
Chapter 4 Consumption of Alcoholic Beverages on Premises
Part 1 --General Provisions

Tenn. Code Ann. § 57-4-102 (2009)

Legislative Alert: LEXSEE 2009 Tn. HB 147 -- See sections 1 and 2.
LEXSEE 2009 Tn. SB 788 -- See sections 1 and 2.
LEXSEE 2009 Tn. HB 1413 -- See sections 1 and 2.
LEXSEE 2009 Tn. SB 1511 -- See section 1.
LEXSEE 2009 Tn. HB 2043 -- See section 1.
LEXSEE 2009 Tn. SB 2221 -- See section 1.
LEXSEE 2009 Tn. SB 874 -- See section 1.

57-4-102. Chapter definitions. --

As used in this chapter, unless the context otherwise requires:

(1) "Alcoholic beverage" or "beverage" means and includes alcohol, spirits, liquor, wine, and every liquid containing alcohol, spirits, wine and capable of being consumed by a human being, other than patented medicine or beer where the latter contains an alcoholic content of five percent (5%) by weight, or less. Notwithstanding any provision to the contrary in this title, "alcoholic beverage" or "beverage" also includes any liquid product containing distilled alcohol capable of being consumed by a human being manufactured or made with distilled alcohol irrespective of alcoholic content;

(2) "Aquarium exhibition facility" means an enclosed facility possessing each of the following characteristics:

(A) The facility is owned and operated by a bona fide charitable or nonprofit organization that also owns and operates a "public aquarium" as defined in subdivision (26);

(B) The facility contains a minimum area of ten thousand square feet (10,000 sq. ft.); and

(C) The facility is used for either or both of the following purposes:

(i) The exhibition to the public of artifacts, physical objects, pictures and movies; or

(ii) To aid in the education of the public by means of interactive displays or stations, learning laboratories, and classroom areas for instruction in the physical sciences, natural history or other educational disciplines;

(3) "Bed and breakfast establishment" has the same meaning as set forth in § 68-14-502(1)(A); provided, that such bed and breakfast establishment is located in a county having a population of not less than fifty-one thousand three hundred fifty (51,350) nor more than fifty-one thousand four hundred fifty (51,450), according to the 1990 federal census or any subsequent federal census and has eleven (11) furnished guest rooms;

(4) "Bona fide charitable or nonprofit organization" means any corporation which has been recognized as exempt from federal taxes under § 501(c) of the Internal Revenue Code (26 U.S.C. § 501(c)) or any organization having been in existence for at least two (2) consecutive years which expends at least sixty percent (60%) of its gross revenue exclusively for religious, educational or charitable purposes;

(5) "Bona fide political organization" means any political campaign committee as defined in § 2-10-102 or any political party as defined in § 2-13-101;

(6) "Caterer" means a business engaged in offering food and beverage service for a fee at various locations, which:

(A) Operates a permanent catering hall on an exclusive basis;

(B) Has a complete and adequate commercial kitchen facility; and

(C) Is licensed as a caterer by the Tennessee department of health;

(7) (A) "Club" means a nonprofit association organized and existing under the laws of the state of Tennessee, which has been in existence and operating as a nonprofit association for at least two (2) years prior to the application for a license hereunder, having at least one hundred (100) members regularly paying dues, organized and operated exclusively for pleasure, recreation and other nonprofit purposes, no part of the net earnings of which inures to the benefit of any shareholder or member; and owning, hiring or leasing a building or space therein for the reasonable use of its members with suitable kitchen and dining room space and equipment and maintaining and using a sufficient number of employees for cooking, preparing and serving meals for its members and guests; provided that no member or officer, agent or employee of the club is paid, or directly or indirectly receives, in the form of salary or other compensation, any profits from the sale of spirituous liquors, wines, champagnes or malt beverages beyond the amount of such salary as may be fixed by its members at an annual meeting or by its governing body out of the general revenue of the club. For the purpose of this section, tips which are added to the bills under club regulations shall not be considered as profits hereunder. The alcoholic beverage commission shall have specific authority through rules and regulations to define with specificity the terms used herein and to impose additional requirements upon applicants seeking a club license not inconsistent with the definition above;

(B) "Club" also means an organization composed of members of the Tennessee national guard, air national guard, or other active or reserve military units which operate facilities located on land owned or leased by the state of Tennessee and which are operated exclusively for the pleasure and recreation of such organization's members, dependents and guests and which are generally referred to as "NCO Clubs" or "Officers Clubs." Such NCO or officers clubs shall be subject to all of the requirements of subdivision (7)(A), except for those requirements relating to having a kitchen, kitchen equipment, and employees;

(C) "Club" also means a nonprofit association organized and existing under the laws of the state of Tennessee which is located in a county having a population of not less than twenty-eight thousand six hundred sixty (28,660) nor more than twenty-eight thousand six hundred ninety (28,690), according to the 1980 federal census or any subsequent federal census. Such club shall be located in a development containing no less than four hundred forty (440) acres and shall be organized and operated exclusively for the pleasure, recreation and other nonprofit purposes of its members and their guests. No part of the net earnings of the association shall inure to the benefit of any shareholder or member. The club shall provide to its members a regulation golf course, tennis courts, and a swimming pool. The club shall own, hire or lease a building or buildings for the reasonable use of its members with suitable kitchen and dining room space and

equipment. Such club shall maintain and use a sufficient number of employees for cooking, preparing and serving meals for its members and guests. No member or officer, agent or employee of the club shall be paid, or directly or indirectly receive in the form of salary or other compensation any profits from the sale of alcoholic beverage or malt beverage beyond the amount of such salary as may be fixed by its members at an annual meeting, or by its governing body out of the general revenues of the club. For the purpose of this section, tips which are added to the bills under club regulations shall not be considered as profits hereunder. The alcoholic beverage commission shall have specific authority through rules and regulations to define with specificity the terms used herein and to impose additional requirements upon applicants seeking a club license not inconsistent with this definition;

(D) (i) "Club" also means a for-profit recreational club organized and existing under the laws of the state of Tennessee and which has been in existence and operating for at least two (2) years prior to the application for a license. Such club shall have at least one hundred (100) members regularly paying dues, and shall be organized and operated exclusively for recreation, and providing to its members a regulation golf course and owning, hiring or leasing a building or buildings for the reasonable use of its members, with suitable kitchen and dining room space and equipment, and lodging facilities consisting of not less than ten (10) rooms. Such club shall maintain and use a sufficient number of employees for cooking, preparing and serving meals for its members and guests and providing lodging facilities to its members and guests. Other than the payment of dividends to the shareholders of the club from its net income derived from all of its operations, no member or officer, agent or employee of the club shall be paid, or shall directly or indirectly receive in the form of salary or other compensation, any profits from the sale of alcoholic beverages or malt beverages beyond the amount of such salary as may be fixed by the shareholders of the corporation at an annual meeting by its governing body out of the general revenues of the club. For the purpose of this section, tips which are added to the bills under club regulations shall not be considered as profits hereunder. The alcoholic beverage commission shall have specific authority through rules and regulations to define with specificity the terms used herein and to impose additional requirements upon applicants seeking a club license not inconsistent with this definition. The alcoholic beverage commission shall not issue a license to any for-profit recreational club which restricts membership based on race or religion or sex. In any proceeding concerning a license denial or revocation under this subdivision (7)(D)(i), no quota or numerical percentage shall be used to establish proof of the prohibited discrimination among the club's membership;

(ii) Notwithstanding the provisions of § 57-4-101(a)(2) to the contrary, this subdivision (7)(D) shall not apply in any municipality which has not approved the sale of alcoholic beverages for consumption on the premises pursuant to § 57-4-103;

(iii) The provisions of this subdivision (7)(D) shall only apply in counties having a population of not less than two hundred eighty-seven thousand seven hundred (287,700) nor more than two hundred eighty-seven thousand eight hundred (287,800), according to the 1980 federal census or any subsequent federal census;

(E) (i) "Club" also means a for-profit recreational club, organized and existing under the laws of the State of Tennessee, which has at least two hundred fifty (250) dues-paying members who pay dues of at least one hundred dollars ($100) a year. Such club shall have golf courses containing at least twenty-seven (27) holes, collectively, for the use of its members and guests, and have suitable kitchen and dining facilities. Such club shall serve at least one (1) meal daily, five (5) days a week. Such club may not compensate or pay any officer, director, agent or employee any profits from the sale of alcoholic or malt beverages based upon the volume of such beverages sold. Such club shall not discriminate against any patron or potential member on the basis of gender, race, religion or national origin;

(ii) The provisions of this subdivision (7)(E) only apply in counties having a population of not less than eighty thousand (80,000) nor more than eighty-three thousand (83,000), according to the 1990 federal census or any subsequent federal census;

(F) (i) "Club" also means a for-profit recreational club, organized and existing under the laws of the state of Tennessee, which has at least two hundred twenty-five (225) dues-paying members who pay dues of at least three

hundred dollars ($300) a year. Such club shall have a clubhouse with not less than five thousand square feet (5,000 sq. ft.), golf courses containing at least eighteen (18) holes, collectively, for the use of its members and guests, and have suitable kitchen and dining facilities. Such club shall serve at least one (1) meal daily, five (5) days a week. Such club may not compensate or pay any officer, director, agent or employee any profits from the sale of alcoholic or malt beverages based upon the volume of such beverages sold. Such club shall not discriminate against any patron or potential member on the basis of gender, race, religion or national origin. It is the express intention of the general assembly that the provisions of law concerning the purchase or possession of alcoholic beverages by persons under twenty-one (21) years of age be strictly enforced in such clubs;

(ii) The provisions of this subdivision (7)(F) only apply in any county having a population of: Click here to view image.

according to the 1990 federal census or any subsequent federal census;

(G) "Club" also means a clubhouse owned and operated by a for-profit corporation, which is open to the public but has at least one hundred fifty (150) private members and seats at least one hundred (100) persons, that is a planned part of a residential development consisting of no less than two hundred fifty (250) acres and at least one hundred ninety (190) residential units, and such development contains an eighteen-hole golf course under separate ownership; provided, that such club is located in a county having a population of not less than one hundred three thousand one hundred (103,100) nor more than one hundred three thousand four hundred (103,400), according to the 1990 federal census or any subsequent federal census and in a municipality which lies within two (2) contiguous counties;

(H) "Club" also means a facility owned by a for-profit corporation incorporated in Tennessee prior to September 30, 2000, as a private club which does not discriminate against members or potential members or bona fide guests of such members on the basis of gender, race, religion or national origin, and further possesses the following characteristics:

(i) Is located within three (3) miles of a municipal golf course owned and operated by a home-rule municipality located in a county having a charter form of government and having a population of not less than three hundred eighty-two thousand (382,000) nor more than three hundred eighty-two thousand one hundred (382,100), according to the 2000 federal census or any subsequent federal census;

(ii) Has, on July 3, 2002, a minimum of three hundred (300) members paying annual dues with a copy of membership applications on file on the premises, and which issues to its members a membership card which authorizes admittance of the member and bona fide guests of such member; and

(iii) Has a kitchen and dining area having a minimum seating capacity of seventy-five (75) in a building having at least eighteen hundred square feet (1800 sq. ft.);

(I) "Club" also means a for-profit recreational club organized and existing under the laws of the state of Tennessee which has been in existence and operating for at least two (2) years prior to June 11, 2003, and which is located in any county having a population of not less than three hundred seven thousand eight hundred (307,800) nor more than three hundred seven thousand nine hundred (307,900), according to the 2000 federal census or any subsequent federal census, and further possesses the following characteristics:

(i) Has at least one hundred seventy-five (175) members paying annual dues and does not discriminate against members or potential members or bona fide guests of such members on the basis of gender, race, religion or national origin;

(ii) Is organized and operated exclusively for recreation and providing a regulation eighteen-hole golf course for the use of its members and guests, and also offers for the use of its members and guests a swimming pool and tennis facility; and

(iii) Has a clubhouse with not less than three thousand square feet (3,000 sq. ft.) with suitable kitchen, dining facilities and equipment, serving at least one (1) meal daily, at least five (5) days a week;

Such club may not compensate or pay any officer, director, agent or employee any profits from the sale of alcoholic or malt beverages based upon the volume of such beverages sold;

It is the express intention of the general assembly that the provisions of law concerning the purchase or possession of alcoholic beverages by persons under twenty-one (21) years of age be strictly enforced by such club;

(J) "Club" also means a for-profit recreational club, organized and existing under the laws of the state of Tennessee, which is located in any county having a population of not less than one hundred thirty thousand (130,000) nor more than one hundred thirty-one thousand (131,000), according to the 2000 federal census or any subsequent federal census, and further possesses the following characteristics:

(i) The club shall be adjacent to a residential development consisting of at least one hundred (100) residential units, and the club property and such residential development shall consist of at least two hundred (200) acres;

(ii) The residential development shall be adjacent to a lake with an area greater than twenty (20) acres;

(iii) The club shall be organized and operated to provide to its members, their guests, and others an eighteen-hole golf course and amenities provided by other similar clubs;

(iv) The club shall serve at least one (1) meal daily, five (5) days a week;

(v) The club shall have a clubhouse with not less than three thousand square feet (3,000 sq. ft.) with suitable kitchen, dining facilities and equipment; and

(vi) The club shall not discriminate against any person on the basis of gender, race, religion or national origin;

(K) (i) "Club" also means a for-profit recreational club organized and existing under the laws of this state that has been in existence and operating for at least two (2) years prior to March 31, 2003, and that is located in any county not having a metropolitan form of government and having a population of not less than five hundred thousand (500,000), according to the 2000 federal census or any subsequent federal census, and further possesses the following characteristics:

(a) Has at least two hundred twenty-five (225) members paying monthly or annual dues, or both, and does not discriminate against members or potential members or bona fide guests of the members on the basis of gender, race, religion or national origin;

(b) Is organized and operated exclusively for recreation and provides a regulation eighteen-hole golf course for the use of its members and guests, and may or may not also provide for the use of its members and guests a swimming pool and tennis facility; and

(c) Has a clubhouse with not less than ten thousand square feet (10,000 sq. ft.) with suitable kitchen, dining facilities and equipment, serving at least one (1) meal daily, at least five (5) days a week;

(d) The club may not compensate or pay any officer, director, agent or employee any profits from the sale of alcoholic or malt beverages based on the volume of those beverages sold;

(ii) It is the express intention of the general assembly that the provisions of law concerning the purchase or possession of alcoholic beverages by persons under twenty-one (21) years of age be strictly enforced by the club;

(8) "Commercial airline" includes any airline operating in interstate commerce under a certificate of public

convenience and necessity issued by the appropriate federal or state agency, or under an exemption from the requirement of obtaining a certificate of public convenience and necessity but otherwise regulated by an appropriate federal or state agency, with adequate facilities and equipment for serving passengers, on regular schedules, or charter trips, while moving through any county of the state, but not while any such commercial airline is stopped in a county or municipality that has not legalized such sales;

(9) "Commercial airline travel club" means an organization established and operated by or for a commercial airline as defined in this section for the convenience and comfort of airline passengers;

(10) "Commercial passenger boat company" means a company that operates one (1) or more passenger vessels for hire upon navigable waterways and is licensed by the United States Coast Guard to carry not less than fifty (50) passengers on a single vessel. Such company shall operate out of any county that has a population in excess of two hundred eighty-five thousand (285,000) or not less than eighty-three thousand three hundred (83,300) nor more than eighty-three thousand four hundred (83,400), according to the 1980 federal census or any subsequent federal census. No commercial passenger boat company licensed pursuant to this chapter shall sell any type of alcoholic beverage or beer while such boat is docked within the boundaries of any local government which has not approved the sale of alcoholic beverages pursuant to § 57-4-103;

(11) "Commission" means the alcoholic beverage commission, created pursuant to chapter 1 of this title;

(12) (A) "Community theater" means a facility or theater possessing each of the following characteristics:

(i) The community theater is at least eight (8) years old;

(ii) The theater is operated by a not-for-profit corporation which is exempt from taxation under § 501(c) of the Internal Revenue Code of 1954 (26 U.S.C. § 501(c)) as amended, where no member or officer, agent or employee of any community theater shall be paid, or directly or indirectly receive, in the form of salary or other compensation any profits from the sale of alcoholic beverages beyond the amount of such salary as may be fixed by its governing body for the reasonable performance of their assigned duties. All profits from the sale of alcoholic beverages by a not-for-profit corporation shall be used for the operation and maintenance of the community theater, and in furtherance of the purposes of the organization. All profits from the sale of alcoholic beverages by a not-for-profit corporation shall be used for the operation, renovation, refurbishing, and maintenance of the theater. No alcoholic beverages or beverages of any kind shall be possessed or consumed inside the auditorium of such theater during performances in such auditorium;

(iii) The theater provides or leases facilities for theatrical programs of cultural, civic and educational interest; and

(iv) The theater is located in any county having a population of not less than seven hundred thousand (700,000), according to the 1980 federal census or any subsequent federal census;

(B) "Community theater" also includes a facility or theater possessing each of the following characteristics:

(i) The facility has a performance hall seating not less than two hundred fifty (250) persons, a resource library, rehearsal rooms, and permanent exhibition space of not less than nine thousand square feet (9,000 sq. ft.);

(ii) The facility is operated by a not-for-profit corporation which is exempt from taxation under § 501(c) of the Internal Revenue Code of 1954 (26 U.S.C. § 501(c)) as amended, where no member or officer, agent or employee of any community theater shall be paid, or directly or indirectly receive, in the form of salary or other compensation any profits from the sale of alcoholic beverages beyond the amount of such salary as may be fixed by its governing body for the reasonable performance of their assigned duties. All profits from the sale of alcoholic beverages by a not-for-profit corporation shall be used for the operation and maintenance of the facility, and in furtherance of the purposes of the organization;

(iii) The facility provides or leases facilities for concerts and programs of cultural, civic and educational interest; and

(iv) The facility is located in any county having a population of not less than two hundred eighty-five thousand (285,000) nor more than two hundred eighty-six thousand (286,000), according to the 1990 federal census or any subsequent federal census;

(C) Alcoholic beverages may be sold at a community theater only during one (1) performance or benefit program a day and only one (1) hour before, during and one (1) hour after the performance or benefit program; and

(D) "Community theater" also includes a facility or theater possessing each of the following characteristics:

(i) The facility is located in a building that is at least eighty (80) years old;

(ii) The facility has a performance hall seating approximately two hundred fifty (250) persons;

(iii) The facility is operated by a not-for-profit corporation that is exempt from taxation under § 501(c) of the Internal Revenue Code of 1954 (26 U.S.C. § 501(c)), and no member or officer, agent or employee of any community theater is paid, or directly or indirectly receives, in the form of salary or other compensation, any profits from the sale of alcoholic beverages beyond the amount of the salary as may be fixed by its governing body for the reasonable performance of the person's assigned duties. All profits from the sale of alcoholic beverages by a not-for-profit corporation shall be used for the operation, renovation, refurbishing and maintenance of the facility, and in furtherance of the purposes of the organization;

(iv) Alcoholic beverages shall only be sold before or after performances or during intermissions in the performances, and no alcoholic beverages shall be consumed inside the auditorium of the facility; and

(v) The facility is located within a municipality that has authorized the sale of alcoholic beverages for consumption on the premises, in a referendum in the manner prescribed by § 57-3-106, in any county having a population of not less than thirty-three thousand five hundred twenty-five (33,525) nor more than thirty-three thousand six hundred (33,600), according to the 2000 federal census or any subsequent federal census;

(13) (A) "Convention center" means a facility possessing each of the following characteristics:

(i) Owned by the state, municipal and/or county government, or a nonprofit, tax exempt, charitable organization that operates a symphony orchestra, and leased or operated by that government or by a nonprofit charitable corporation established to operate such facility;

(ii) Designed and used for the purposes of holding meetings, conventions, trade shows, classes, dances, banquets and various artistic, musical or other cultural events;

(a) A convention center does not include a building located within one thousand (1,000) yards of both a student museum and a zoological park; provided, that any restaurant, located within a former world's fair site or a zoological park and which meets the requirements of subdivision (27), shall be eligible for licensure under this chapter as long as the requirements of this chapter are otherwise met;

(b) A convention center also does not include a building which is more than twenty (20) years old and is located in any county having a population of not less than two hundred eighty-seven thousand seven hundred (287,700) nor more than two hundred eighty-seven thousand eight hundred (287,800), according to the 1980 federal census or any subsequent federal census;

(iii) (a) Except as provided for in (13)(A)(iii)(*b*), which state-owned facility, operated by a nonprofit charitable corporation established to operate such facility, has a designated, restricted area outside the seating area of

any theater within which area the consumption of such alcoholic beverages shall be permitted. The sale of such alcoholic beverages in such facility is limited to no more than one (1) hour and fifteen (15) minutes prior to a meeting, show, performance, reception, or other similar event, and to no later than thirty (30) minutes after such event; and

(b) In a county having a metropolitan form of government and a population in excess of five hundred thousand (500,000), according to the 1990 federal census or any subsequent federal census, which state-owned facility, operated by a nonprofit charitable corporation established to operate such facility, or facility owned by a nonprofit, tax exempt, charitable organization that operates a symphony orchestra, has designated an area within or adjacent to any theatre or meeting space, or adjacent to the facility within which area the consumption of alcoholic beverages shall be permitted. Nothing herein shall restrict the ability of a convention center, as defined herein, from adjusting the designated area within or adjacent to its theatre areas, upon adequate prior notice to the commission;

(iv) Located in a municipality having a population in excess of one hundred fifty thousand (150,000) and in a county having a population in excess of two hundred thousand (200,000), or both, according to the 1980 federal census or any subsequent federal census;

(v) A convention center licensed under this subdivision (13)(A) shall have the privilege of granting a franchise for the provision of food or beverage, including alcoholic beverages, on its premises, and the holder of the franchise shall also be considered a convention center under this subdivision (13)(A);

(B) "Convention center" also means a facility meeting the criteria of subdivision (13)(A)(i) and (ii) and located in a premiere resort city as defined by § 67-6-103(a)(3)(B)(i);

(C) "Convention center" also means a facility possessing each of the following characteristics:

(i) Owned by a county public building authority at the time of development;

(ii) Designed and used for the purposes of attracting conventions, business travelers, tourists and other visitors to promote economic development;

(iii) Located at the intersection of Interstate 24 and Highway 41 near mile marker 114;

(iv) Occupies an area of not less than approximately thirteen thousand five hundred square feet (13,500 sq. ft.); and

(v) Includes a full commercial kitchen to provide meals and catering services; and

(D) No member or officer, agent or employee of any convention center as defined by this section shall be paid, or directly or indirectly receive, in the form of salary or other compensation any profits from the sale of spirituous liquors, wines, champagnes, malt beverages or any other alcoholic beverage beyond the amount of such salary as may be fixed by its governing body out of the general revenue of the center. All profits from the sale of such alcoholic beverages shall be used for the operation and maintenance of the convention center;

(14) "Country club located on an historic property" means a country club that is located in a county having a population of not less than forty-four thousand five hundred (44,500) nor more than forty-five thousand (45,000), according to the 1990 federal census or any subsequent federal census, and has the following characteristics:

(A) Sits on real property that was formerly the home of the International Printing Pressmen Union;

(B) Has a dining facility; and

(C) Is located adjacent to an eighteen-hole golf course;

(15) "Historic inn" means a historic building that is located in a county having a population of not less than forty-four thousand five hundred (44,500) nor more than forty-five thousand (45,000), according to the 1990 federal census or any subsequent federal census, and has the following characteristics:

(A) Was built in 1824 and was formerly the oldest continuously operating inn in Tennessee;

(B) Was once visited by United States Presidents Andrew Jackson, Andrew Johnson and James K. Polk, all of whom stayed and dined there; and

(C) Has a dining facility and a total of nine (9) rooms and suites;

(16) "Historic interpretive center" means a facility possessing each of the following characteristics:

(A) The center is located in a restored theater that is at least fifty (50) years old and listed on the national register of historic places;

(B) The center is leased and operated by a for-profit corporation, or not-for-profit corporation which is exempt from taxation under § 501(c) of the Internal Revenue Code of 1954 (26 U.S.C. § 501(c)) as amended, where no member or officer, agent or employee of any historic interpretive center shall be paid, or directly or indirectly receive, in the form of salary or other compensation any profits from the sale of alcoholic beverages beyond the amount of such salary as may be fixed by its governing body for the reasonable performance of the assigned duties. All profits from the sale of alcoholic beverages by a not-for-profit corporation shall be used for the operation and maintenance of the historic interpretive center, and in furtherance of the purposes of the organization. All profits from the sale of alcoholic beverages by a profit corporation shall be used for the operation, renovation, refurbishing, and maintenance of the center. Alcoholic beverages may be consumed inside the auditorium of such center;

(C) The center provides facilities for programs of cultural, civic, and educational interest, including, but not limited to, musical concerts, films, receptions, exhibitions, seminars or meetings; and

(D) The center is located in any county having a population of not less than seven hundred thousand (700,000), according to the 1980 federal census or any subsequent federal census;

(17) "Historic mansion house site" means the buildings and grounds of a historic mansion house, located in any county having a metropolitan form of government, included in the Tennessee register of historic places, and operated by the Association for the Preservation of Tennessee Antiquities, and including Association for the Preservation of Tennessee Antiquities sites owned by the state of Tennessee. "Historic mansion house site" also means the buildings and grounds of an historic mansion house located in any county having a metropolitan form of government which has been conveyed by the state of Tennessee in trust to a board of trustees created and appointed in accordance with §§ 4-13-103 and 4-13-104, and for admission to which reasonable fees are charged as provided in § 4-13-105. This subdivision (17) shall apply only to counties having a population of four hundred fifty thousand (450,000) or greater, according to the 1980 federal census or any subsequent census;

(18) "Historic performing arts center" means a facility possessing each of the following characteristics:

(A) The center is located in a restored theater that is at least fifty (50) years old and listed on the national register of historic places;

(B) The center is operated by a for-profit corporation, or not-for-profit corporation which is exempt from taxation under Section 501(c) of the Internal Revenue Code of 1954 (26 U.S.C. § 501(c)) as amended, where no member or officer, agent or employee of any historic performing arts center shall be paid, or directly or indirectly receive, in the form of salary or other compensation any profits from the sale of alcoholic beverages beyond the amount of such salary as may be fixed by its governing body for the reasonable performance of their assigned duties. All profits

from the sale of alcoholic beverages by a not-for-profit corporation shall be used for the operation and maintenance of the historic performing arts center, and in furtherance of the purposes of the organization. All profits from the sale of alcoholic beverages by a for-profit corporation shall be used for the operation, renovation, refurbishing, and maintenance of the center. Alcoholic beverages shall only be sold before or after performances or during intermissions in such performances. No alcoholic beverages shall be consumed inside the auditorium of such center;

(C) The center provides facilities for programs of cultural, civic, and educational interest, including, but not limited to, stage plays, musical concerts, films, dance performances, receptions, exhibitions, seminars or meetings;

(D) The center is located in any county having a population of: Click here to view image.

according to the 1980 federal census or any subsequent federal census;

(19) (A) "Hotel" (Motel) means every building or other structure kept, used, maintained, advertised and held out to the public to be a place where food is actually served and consumed and sleeping accommodations are offered for adequate pay to travelers and guests, whether transient, permanent, or residential, in which fifty (50) or more rooms are used for the sleeping accommodations of such guests and having one (1) or more public dining rooms, with adequate and sanitary kitchen and a seating capacity of at least seventy-five (75) at tables, where meals are regularly served to such guests, such sleeping accommodations and dining rooms being conducted in the same building or in separate buildings or structures used in connection therewith that are on the same premises and are a part of the hotel operation. Motels meeting the qualifications set out herein for hotels shall be classified in the same category as hotels. Hotels shall have the privilege of granting franchises for the operation of a restaurant on their premises and the holder of such franchise shall be included in the definition of "hotel" hereunder; and property contiguous to a hotel, except property located in any county having a population of not less than seventy-seven thousand seven hundred fifty (77,750) nor more than seventy-seven thousand seven hundred ninety (77,790), according to the 1980 federal census or any subsequent federal census, which is owned by the same entity as the hotel and operated by the same entity as the hotel, which property either serves travelers and guests other than as a separate commercial establishment or is operated as a major entertainment complex serving in excess of one million (1,000,000) persons per year;

(B) "Hotel" also means and includes all entities previously described wherein sleeping accommodations are offered for adequate pay to travelers and guests, whether transient, permanent or residential, in which thirty (30) or more suites are used for sleeping accommodations of such guests and having eating facilities in each room for four (4) or more persons with an adequate and sanitary central kitchen from which meals are regularly prepared and served to guests in such suites. For the purpose of this section, "suite" is defined as a guest facility within a hotel where living, sleeping and dining are regularly provided for such guests within the individual units provided for guests. No such hotel or suite as defined in this subdivision (19)(B) shall be authorized to charge for, inhibit or otherwise interfere in any way with the rights of its guests or tenants to carry into rooms or suites rented by them their own bottles, packages or other containers of alcoholic beverages and/or to use or serve them to themselves, their own visitors or guests within the individual units rented or leased by them;

(C) "Hotel" also includes facilities owned and operated by an individual or event-management organization which plans and coordinates all phases of any function for retreats by groups of persons having similar backgrounds or purposes, and which offers meeting and banquet facilities, dining services, recreation and leisure activities in facilities which include a dining inn with seating capacity of three hundred (300), and a complex which includes meeting and banquet facilities with a seating capacity of two hundred (200), overnight accommodations for at least forty (40), and a fifty (50) acre tract of land with picnic accommodations for at least four thousand (4,000), and a facility with seating capacity of four hundred (400). The scope of any license authorized by this subdivision (19)(C) includes picnic service on the grounds of the complex owned and operated by the licensee;

(D) "Hotel" also includes a residence hotel located in the central business district of any municipality having a population of more than three hundred thousand (300,000), according to the 1990 federal census or any subsequent

federal census and having a common smoking room and lobby area;

(E) (i) "Hotel" also includes a bed and breakfast establishment as defined in § 68-14-502, where meals are regularly served to guests and where sleeping accommodations and dining facilities being conducted in the same buildings or structures used in connection therewith are on the same premises and are part of the hotel operation. The premises upon which such establishment is located shall be within the boundaries of a clearly defined arts district which is owned and operated by the same entity and having a common courtyard which is contiguous to all buildings and structures on the premises. The dining facilities, including beverages, may be served from an adequate and sanitary central kitchen and storage facility;

(ii) The provisions of this subdivision (19)(E) shall apply in any municipality having a population in excess of one hundred fifty thousand (150,000), according to the 1990 federal census or any subsequent federal census;

(F) (i) "Hotel" also includes a bed and breakfast establishment as defined in § 68-14-502, where meals are regularly served to guests and where sleeping accommodations and dining facilities being conducted in the same buildings or structures used in connection therewith are on the same premises and are part of the hotel operation. In such establishment there must be two (2) rooms for sleeping accommodations and a seating capacity of twenty-five (25) people at tables. The premises upon which such establishment is located shall have a business conference center;

(ii) The provisions of subdivision (19)(F)(i) apply in any county having a population of not less than eight hundred thousand (800,000) according to the 1990 federal census or any subsequent federal census;

(iii) "Hotel" also includes a facility located in a county which contains a population of not less than eighty-five thousand nine hundred (85,900) nor more than eighty-six thousand one hundred sixty (86,160) according to the 1990 federal census or any subsequent census, which facility contains the following characteristics:

(a) Contains at least forty (40) rooms for guest sleeping accommodations offered for adequate pay to travelers and guests;

(b) Contains at least three (3) separate dining rooms with adequate sanitary kitchen facilities, either common or separate, where meals are regularly served to guests;

(c) Is located on real property of at least one thousand fifty (1,050) acres;

(d) Contains a swimming pool, at least four (4) tennis courts, hiking trails, and biking trails for use by registered guests; and

(e) Provides a full service spa for use by registered guests of the facility.

A hotel under this subdivision (19)(F)(iii) must comply with all the requirements of this chapter and shall be subject to the restrictions imposed upon licenses other than § 57-4-103;

(20) (A) "Motor speedway" means a motor sports facility that possesses the following characteristics:

(i) Is located in a county having a population of not less than sixty-seven thousand six hundred (67,600) nor more than sixty-seven thousand nine hundred (67,900), according to the 1990 federal census or any subsequent federal census, and at least one (1) municipality located in such county has adopted liquor by the drink;

(ii) Contains a 1.33 mile superspeedway;

(iii) Is situated on a site of at least five hundred (500) acres; and

(iv) Has a seating capacity of fifty thousand (50,000) with the capability to expand to one hundred fifty

thousand (150,000) grandstand seats and one hundred (100) luxury skyboxes;

(B) "Motor speedway" also means a motor sports facility that possesses the following characteristics:

(i) Is located in a county having a population in excess of eight hundred thousand (800,000), according to the 2000 federal census or any subsequent federal census;

(ii) Contains a three-quarter-mile oval track with a seating capacity of sixteen thousand (16,000) seats; and

(iii) Contains a one-quarter-mile drag strip with a seating capacity of fifteen thousand (15,000) seats;

(21) (A) "Museum" means a building or institution serving as a repository of natural, scientific or literary curiosities or works of art for public display and further possesses the following characteristics:

(i) The museum is at least fifty (50) years old; and

(ii) The museum is located in a county having a population in excess of seven hundred thousand (700,000), according to the 1980 federal census or any subsequent federal census;

(B) "Museum" also means an "art museum" which is a building or institution serving as a repository of works of art for public display and further possesses the following characteristics:

(i) The art museum is owned and operated by a bona fide charitable or nonprofit organization which has been in existence for at least twenty-five (25) years;

(ii) The art museum is located in a building which contains not less than fifty thousand square feet (50,000 sq. ft.); and

(iii) The art museum is located in a former world's fair site; and

(C) "Museum" also means a building or institution serving as a repository or exhibition facility for works of art for public display and further possesses the following characteristics:

(i) The museum is owned and operated by a bona fide charitable or non-profit organization;

(ii) The museum is located in a building which contains not less than one hundred thousand square feet (100,000 sq. ft.);

(iii) The museum is located in a building that previously served as a United States postal service facility; and

(iv) The museum is located in a municipality or county having a population in excess of five hundred thousand (500,000), according to the 1990 federal census or any subsequent federal census;

(D) "Museum" also means a building or institution serving as a tribute to soul music and which houses a music academy and further possesses the following characteristics:

(i) The museum and music academy is located on the original site of a recording studio; and

(ii) The museum and music academy is located in a county having a population in excess of eight hundred thousand (800,000), according to the 2000 federal census or any subsequent federal census;

(E) "Museum" also means an "art museum" which is a building or institution serving as a repository of works of art for public display and further possesses the following characteristics:

(i) The art museum is owned and operated by a bona fide charitable or nonprofit organization;

(ii) The museum has been in existence for at least fifty (50) years;

(iii) The museum focuses on American art from the colonial period to the present day;

(iv) The museum is located in a historical mansion and a sleek contemporary building on the bluffs overlooking the Tennessee River; and

(v) The museum does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(vi) The museum is located in a county having a population of not less than three hundred seven thousand eight hundred (307,800) nor more than three hundred seven thousand nine hundred (307,900), according to the 2000 federal census or any subsequent federal census;

(22) "Paddlewheel steamboat company" means a company that operates one (1) or more paddlewheel steamboats for hire in interstate commerce upon navigable waterways and is licensed by the United States coast guard to carry not less than one hundred (100) passengers on a single vessel, with adequate facilities and equipment for serving regular meals, on regular schedules, or charter trips, while moving through or docked in any county of the state; provided, however, no paddlewheel steamboat company licensed pursuant to this chapter shall sell any type of alcoholic beverage or beer while such paddlewheel steamboat is docked within the boundaries of any local government which has not approved the sale of alcoholic beverages pursuant to § 57-4-103;

(23) "Passenger train" includes any passenger train operating in interstate commerce under a certificate of public convenience and necessity issued by the appropriate federal or state agency, with adequate facilities and equipment for serving passengers, on regular or special schedules, or charter trips, while moving through any county of the state, but not while any such passenger train is stopped in a county or municipality that has not legalized such sales;

(24) A "premier type tourist" resort means:

(A) A commercially operated recreational facility possessing each of the following characteristics:

(i) Ownership and operation by a profit type corporation having a capitalization of not less than ten million dollars ($10,000,000);

(ii) Situated in a geographical area wholly controlled by the operator of the facility and having not less than six thousand (6,000) acres of contiguous land, not less than five thousand (5,000) acres of which is to be developed and maintained in accordance with sound ecological and environmental practices, such requirement to be subject at all times to the oversight and approval of the department of environment and conservation, which shall not less often than once a year make a written report thereof to the commission. Satisfactory compliance with this requirement and certification thereof by the department to the commission shall be a condition precedent to the issuance or renewal of permit provided for in § 57-4-201;

(iii) Continuous maintenance of lodging accommodations consisting of not less than two hundred (200) hotel or motel rooms in a building or buildings designed for such purpose;

(iv) Continuous maintenance of facilities for the accommodation of conventions of not less than four hundred (400) persons;

(v) Maintenance within the recreational area of at least one (1) of the following types of sporting facilities:

(a) A golf course of at least eighteen (18) holes;

(b) A lake covering not less than one hundred (100) acres adapted for boating and fishing;

(c) A ski slope;

(vi) Maintenance, in addition to one (1) or more of the facilities enumerated in subdivision (24)(A)(v), of two (2) or more of the following types of recreational facilities:

(a) Area for camping;

(b) Tennis courts;

(c) Swimming pool;

(d) Trails for hiking and/or horseback riding;

(e) Equestrian center;

(vii) A twenty-four-hour per day security force approved as to adequacy by the commission;

(B) A hotel, motel or restaurant located within a municipality having a population of one thousand (1,000) or more persons, according to the federal census of 1970 or any subsequent federal census in which at least fifty percent (50%) of the assessed valuation (as shown by the tax assessment rolls or books of the municipality) of the real estate in the municipality consists of hotels, motels, and tourist courts accommodations, providing the voters of the municipality have heretofore by referendum pursuant to § 57-4-103, approved the sale of alcoholic beverages for consumption on the premises, and such referendum shall be authorized, notwithstanding the population requirements set forth in § 57-3-106. For purposes of implementation of this subdivision (24)(B), the sale of alcoholic beverages shall be limited to hotels, restaurants, and clubs as defined in this section. To ensure proper control and development of the tourist industry of such municipality, any applicant for a license under this subdivision (24)(B) shall first obtain approval from a majority of the legislative body of the municipality, which may adopt rules and regulations governing its procedure and setting forth limitations and restrictions including, but not limited to, the number and location of licensed establishments and requiring approval by the legislative body as to the good moral character of each applicant for a license;

(C) (i) A commercially operated recreational facility containing all of the following characteristics:

(a) Ownership and operation by a profit type corporation or partnership;

(b) Situated in a geographical area controlled by the operator of the facility, having not less than two thousand five hundred (2,500) acres of land;

(c) Continuous maintenance of lodging accommodations consisting of not less than one hundred (100) hotel or motel rooms in a building or buildings designed for such purpose;

(d) The maintenance of a ski slope with necessary lifts or tows for use during skiing season;

(e) Continuous maintenance of restaurant facilities for seating at tables of not less than two hundred (200) persons, with adequate kitchen facilities; and

(f) Located within a municipality with a population of not less than one thousand fifty (1,050) nor more than one thousand seventy-five (1,075), according to the 1980 or any subsequent census;

(ii) To ensure proper control and development of the tourist industry of such municipality, any applicant for a license under this subdivision (24)(C) shall first obtain approval from a majority of the legislative body of the municipality, which may adopt rules and regulations governing its procedure and setting forth limitations and

restrictions including, but not limited to, the number and location of licensed establishments and requiring approval by the legislative body as to the good moral character of each applicant for a license;

(D) A commercially operated recreational facility containing all of the following characteristics:

(i) Ownership and development by a for-profit corporation or partnership;

(ii) Situated in a geographical area controlled by the corporation or partnership, having not less than four hundred (400) acres of land contiguous to the Cherokee National Forest;

(iii) Continuous maintenance of lodging accommodations consisting of not less than two hundred (200) hotel or motel rooms in a building or buildings designed for such purpose;

(iv) Continuous maintenance of facilities for the accommodations of conventions of not less than four hundred (400) persons;

(v) Maintenance within the recreational area of the following types of recreational facilities:

(a) A golf course of at least eighteen (18) holes;

(b) Tennis courts;

(c) Swimming pool; and

(vi) A twenty-four-hour per day security force approved as to adequacy by the commission;

(E) A commercially operated recreational facility containing all of the following characteristics:

(i) Ownership and operation by a for-profit corporation or partnership;

(ii) Located in a geographic area managed by the operator of the facility, containing a minimum area of one hundred fifty (150) contiguous acres;

(iii) Continuous maintenance of lodging accommodations of not less than fifty (50) rooms available for guests, tourists or for business meetings located in a building or buildings designed for accommodations or business meetings;

(iv) Maintenance of lakeside marina facilities, a golf course of not less than eighteen (18) holes, and riding trails and stables on the premises;

(v) Located within a municipality with a population of not less than six thousand three hundred seventy-five (6,375) nor more than six thousand four hundred (6,400), according to the 1980 or any subsequent federal census; and

(vi) Whose manager shall have been specifically approved by a majority of the legislative body of the municipality in which such licensee is located as being an individual of good moral character;

(F) A facility, whether open to the public or limited to members and guests of the development on which it is located, owned or operated, pursuant to a license by a homeowners or residential association, which facility is kept, used and maintained as a place where meals are served and where meals are actually and regularly served, with adequate and sanitary kitchen facilities and which facility meets all of the following characteristics:

(i) The facility must be located in a county having a population of not less than forty-seven thousand (47,000) nor more than forty-seven thousand five hundred (47,500), according to the 1990 federal census or any subsequent federal census;

(ii) The facility must be located on the premises of a planned, gated residential development of at least eighty (80) acres with at least nine thousand (9,000) lineal feet of water frontage on an established and designated navigable waterway; and

(iii) The facility must be located within the limits of a development which contains a marina and tennis court facilities; and

(G) A club, either for profit or not for profit, which has been in existence for two (2) consecutive years during which time it has maintained a membership of at least three thousand (3,000) members and which maintains club facilities on or adjacent to property offering recreational services available to its members, which services shall include one (1) or more of the following:

(i) Golf course with at least eighteen (18) holes;

(ii) Tennis courts;

(iii) Marina facilities with a minimum of four hundred (400) slips.

Any such club whose club facilities are located on the premises of an area meeting the definition of a "premier type tourist resort" under this section may exercise its privileges authorized under this chapter anywhere within such area;

(H) A commercially operated recreational facility, whether open to the public or limited to members and guests of an association or of the development on which it is located, owned and operated by an association or corporation and in connection with an eighteen-hole golf course, which facility is kept, used and maintained as a place where meals are actually and regularly served, with adequate and sanitary kitchen facilities, and which facility meets all of the following characteristics:

(i) The facility must be located in a county having a population of not less than thirty-four thousand seven hundred thirty (34,730) nor more than thirty-four thousand seven hundred sixty (34,760), according to the 1990 federal census or any subsequent federal census;

(ii) The facility must be located in a development containing no less than four hundred twenty (420) acres and no more than four hundred fifty (450) acres;

(iii) The facility must be located within limits of a development which contains an eighteen-hole golf course;

(iv) The facility must have no less than five thousand (5,000) enclosed square feet (5,000 sq. ft.);

(v) The facility must be located no less than one-half (1/2) mile from the right-of-way of an interstate highway; and

(vi) The facility must be located within the limits of a development which contains a lake of not less than twenty-eight (28) acres which is entirely within the limits of the development;

(I) A commercially operated recreational facility possessing each of the following characteristics:

(i) **(a)** Ownership and development by a for profit corporation;

(b) Situated in a geographic area controlled by such entity and having not less than twenty-five (25) contiguous acres of land which is divided by a four-lane highway;

(c) Designed to contain picnic facilities, museum buildings, retail sales areas, retail food dispensing outlets,

and restaurant areas;

(d) Maintenance of a limited access area containing a former residence, a swimming pool, a handball court, and stables where no pedestrian access is allowed and all guests entering must be carried by a motor vehicle; and

(e) Location within a county having a population of not less than seven hundred seventy thousand (770,000), according to the 1990 federal census or any subsequent federal census;

(ii) "Premier type tourist resort," as defined in this subdivision (24)(I), shall be authorized to sell or serve alcoholic beverages on the premises of such resort only at special functions, wherein attendance is limited to invited guests or groups and not to the general public;

(J) An entity operating a commercial golf related recreational facility, whether open to the public or limited to members and guests of an association or owners and guests of a development upon or adjacent to which the facility is located, which entity or facility meets all of the following criteria:

(i) The facility is located in a county having a population of not less than thirty-four thousand seven hundred thirty (34,730) nor more than thirty-four thousand eight hundred (34,800), according to the 1990 federal census or any subsequent federal census;

(ii) The facility is operated in conjunction with an eighteen (18) hole golf course;

(iii) The facility is kept, used and maintained as a place where meals are actually and regularly served with such adequate and sanitary kitchen facilities as might be needed to meet the reasonable requirements of its patrons, members, or guests;

(iv) The entity does not discriminate or limit the use of the facilities solely on the basis of race, creed, sex, or national origin, and has provided to the commission a written certification of its policy;

(v) Such facility has enclosed clubhouse space of at least five thousand square feet (5,000 sq. ft.);

(vi) Such facility is located no less than seven (7) miles and no more than eight (8) miles from an interchange of an interstate highway; and

(vii) Such facility is located on a geographic area, owned or operated by the entity, which area contains not less than one hundred fifty-five (155) acres nor more than one hundred seventy (170) acres; and

(K) A commercially operated recreational facility whether open to the public or limited to members and guests of an association or of the development on which it is located, owned and operated by an association or corporation and in connection with an eighteen-hole golf course, which facility is regularly kept, used and maintained as a place where meals are actually and regularly served, with adequate and sanitary kitchen facilities, and which facility meets all the following characteristics:

(i) The facility must be located in or adjacent to a real estate development containing no less than one thousand, one hundred (1,100) acres and no more than two thousand (2,000) acres;

(ii) The facility must have no less than nine thousand (9,000) enclosed square feet;

(iii) The facility must be located within the limits of a development which is contiguous to a water reservoir operated and maintained by the United States army corps of engineers during 1998 or any subsequent years; and

(iv) Maintenance within the recreational area of the following types of recreational facilities:

(a) Golf course of at least eighteen (18) holes;

(b) Swimming pool;

(c) Tennis court; and

(d) Walking trails;

(L) A resort containing all of the following characteristics:

(i) Has a restaurant, with a current overall seating capacity of 280, including outside dining service, and which serves over 75,000 patrons per year;

(ii) Is located immediately adjacent to the Cherokee National Forest, the only national forest in Tennessee and the Cherohala Skyway, one of only twenty highways in the country designated as a national scenic byway;

(iii) Is located along the scenic Tellico River, a tributary of the Little Tennessee River;

(iv) Currently operates nine cabins, a river walk, and an open-air chapel and pavilion;

(v) After a proposed expansion will include at least thirty (30) cottages, a full-service health and wellness spa, a championship golf course, racquet club, adventure club for canoeing, kayaking, hiking, biking and other outdoor activities, an equestrian club, conference facilities, a hunt and fish club, crafts and education, and history tours; and

(vi) Is located within a county having a population of not less than 38,900 nor greater than 39,000, according to the 2000 federal census or any subsequent federal census;

(M) A commercially or privately operated recreational facility containing all of the following characteristics:

(i) The facility is located within a platted housing subdivision of not less than four hundred (400) acres nor greater than five hundred twenty-five (525) acres;

(ii) The facility is located on or adjacent to an eighteen-hole golf course located within the development;

(iii) The facility is located within a development that operates a recreational swimming pool of at least sixty thousand gallons (60,000 gals.);

(iv) The facility operates and maintains tennis courts for use by homeowners, visitors, tourists, or guests;

(v) The facility operates a clubhouse for the use of homeowners, visitors, tourists, or guests of at least five thousand total square feet (5,000 sq. ft.) and the clubhouse houses a restaurant with seating at tables for at least forty (40) people and such restaurant has adequate kitchen facilities;

(vi) The facility is located within a county with a population of not less than thirty-nine thousand fifty (39,050) nor more than thirty-nine thousand one hundred fifty (39,150), according to the 2000 federal census or any subsequent federal census; and

(vii) The facility shall have been providing some or all of the described recreational services for a continuous period of at least four (4) years at the time of licensing;

(N) A commercially operated recreational facility, located adjacent to a navigational river which contains all of the following characteristics:

(i) Such facility has direct access to a navigable waterway;

(ii) Such facility contains a minimum of two hundred (200) slips for boats;

(iii) Such facility provides boat fuel, boat rental and repair;

(iv) Such facility is located upon or adjacent to a public park or preserve, which park is at least one hundred (100) acres in size, and which park contains a swimming pool, tennis courts and at least a nine (9) hole golf course; and

(v) Such facility is located within a county with a population of at least three hundred eighty thousand (380,000), according to the 2000 federal census or any subsequent federal census;

(O) An entity granted a franchise for the operation of a restaurant or food and beverage services on the premises of the premier type tourist resort, and for such purposes a premier type tourist resort shall have the privilege of granting such franchises;

(P) A commercially operated facility which contains all of the following characteristics:

(i) Such facility is licensed as a health club;

(ii) Such facility only allows members and their invited guests;

(iii) Such facility has two (2) swimming pools with one pool having at least fifteen thousand square feet (15,000 sq. ft.) of water surface;

(iv) Such facility provides volleyball courts, a basketball court and a recreation area with food service;

(v) Such facility is located within fifteen (15) miles of an airport;

(vi) Such facility does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(vii) Such facility is located within a county having a population of not less than three hundred eighty-two thousand (382,000) nor more than three hundred eight-two thousand one hundred (382,100), according to the 2000 federal census or any subsequent federal census;

(Q) A commercially operated facility which contains all of the following characteristics:

(i) Such facility is located no more than three and one-half (3 1/2) miles from the right of way of Interstate 40 and fronting on State Highway 92 and has a minimum of eight (8) acres of lake front property with a minimum of fifty-eight hundred feet (5,800') of shore line;

(ii) Such facility has at least eighty (80) boat slips and forty-eight (48) dry slips, a boat launching ramp, a full service restaurant seating at least one hundred seventy-five (175) people inside with outside patio dining, a ships store offering boat supplies and gasoline, and an outdoor pavilion;

(iii) Such facility provides accommodations consisting of at least twenty (20) lakeside hotel/motel units in a building or buildings designed for such purposes; and

(iv) Such facility is located within a county having a population of not less than forty-four thousand (44,000) nor more than forty-four thousand nine hundred (44,900), according to the 2000 federal census or any subsequent federal census.

(R) A commercially operated facility which at a minimum contains all of the following characteristics:

(i) Such facility is located within one-half (1/2) miles of the right of way of Interstate 40 and adjacent to

Sharon Drive;

(ii) Such facility has at a minimum a one hundred (100) room motel or a restaurant seating, at a minimum, one hundred fifty (150) people, or both;

(a) If a motel is built, the motel shall have an enclosed pool and a five thousand square-foot meeting facility;

(b) If only a restaurant is built, proper accommodations will be made to provide, within four (4) miles, a five thousand square-foot meeting facility with motel accommodations; and

(iii) Such facility is located within a county having a population of not less than forty-four thousand (44,000) nor more than forty-four thousand nine hundred (44,900), according to the 2000 federal census or any subsequent federal census;

(S) A commercially operated facility which contains all of the following characteristics:

(i) Such facility is located no more than one half (1/2) mile from the right of way of Interstate 75 and accessible to State Highway 68;

(ii) Such facility has at least nine thousand square feet (9,000 sq. ft.) of conference space;

(iii) Such facility provides accommodations consisting of at least one hundred twenty-five (125) hotel or motel rooms in a building or buildings designed for such purposes;

(iv) Such facility provides recreational facilities including an indoor swimming pool;

(v) Such facility does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(vi) Such facility is located within a county having a population of not less than thirty-eight thousand nine hundred (38,900) nor more than thirty-nine thousand (39,000), according to the 2000 federal census or any subsequent federal census;

(T) A nine-hundred-sixty-acre peninsula gated community located on a lake with ten (10) miles of shoreline, and which facility contains all of the following characteristics:

(i) Has an eighteen-hole golf course and tennis courts;

(ii) Has a club house, restaurant, lounge, fitness center, and swimming pool;

(iii) Maintains a community garden, community and neighborhood docks and a boat ramp;

(iv) Has an equestrian facility with extensive riding trails;

(v) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(vi) Is located in two (2) counties one (1) county having a population of not less than thirty-eight thousand nine hundred (38,900) nor more than thirty-nine thousand (39,000) and the other county having a population of not less than thirty-nine thousand fifty (39,050), nor more than thirty-nine thousand one hundred fifty (39,150), both according to the 2000 federal census or any subsequent federal census;

(U) A facility which contains all the following characteristics:

(i) Has resort lodge condominiums, homes and vacation cottages;

(ii) Has an eighteen hole golf course and tennis courts with a pro shop;

(iii) Has a swimming pool;

(iv) Has rock climbing, hiking and biking trails;

(v) Has a full service spa;

(vi) Has banquet and dining services and a business service center;

(vii) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(viii) Is located in a county having a population of not less than thirty-nine thousand eight hundred (39,800) nor more than thirty nine thousand eight hundred seventy-five (39,875), according to the 2000 federal census or any subsequent federal census;

(V) It is lawful for any establishment located in a premier type tourist resort as defined in § 67-6-103(a)(3)(B)(iii) which is licensed to serve beer to also serve wine to be consumed on the premises, subject to the further provisions of this chapter other than § 57-4-103;

(W) It is lawful for any establishment located in a municipality which:

(i) Has an approved Tourist Development Zone as set forth in title 7, chapter 88, part 1;

(ii) Has a AA minor league baseball team; and

(iii) Is located in a county with an amusement park, a ski resort, and a national park,

which is licensed to serve beer to also serve wine to be consumed on the premises, subject to the further provisions of this chapter other than § 57-4-103;

(X) A commercially operated recreational facility, located adjacent to a navigable river, that has all of the following characteristics:

(i) Contains at least one hundred (100) boating slips available for lease, rental, or use by guests;

(ii) Has one (1) or more restaurant facilities with a combined seating capacity of at least two hundred (200);

(iii) Has a lodge with at least fifteen (15) units available for transient lodging; and

(iv) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin;

(Y) A commercially operated facility that has all of the following characteristics:

(i) Is located no more than six (6) miles from Interstate 40 at exit 427, and on both sides of a county highway known as Harrison Ferry Road. The facility contains a minimum of one hundred forty-three (143) acres, and includes a minimum of twenty-two (22) acres of land zoned commercial for future development at the corner of Back Nine Drive and Mountain View Lane;

(ii) Has an eighteen-hole golf course, two (2) practice putting greens, a practice chipping green and a practice area for golf instruction. The facility also contains a large swimming pool, a boat ramp into Douglas Lake, and two (2) tennis courts;

(iii) Has a clubhouse with a fully-equipped pro shop, a full-service restaurant seating at least one hundred fifty (150) persons inside, with an outside patio that seats at least seventy (70) persons;

(iv) Provides accommodations, consisting of at least twelve (12) hotel/motel units and at least nine (9) villa units; and

(v) Is located within an incorporated municipality having a population of less than five hundred (500), according to the 2000 federal census or any subsequent federal census, within a county having a population of not less than forty-four thousand two hundred (44,200) nor more than forty-four thousand three hundred (44,300), according to the 2000 federal census or any subsequent federal census; and

(vi) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin;

(Z) An inn that has all of the following characteristics:

(i) Contains at least twelve (12) transient guest rooms in the main house;

(ii) Has a separate meeting lodge and facility that also houses at least four (4) new French country transient suites;

(iii) Has at least two (2) kitchens on the premises and offers at least two (2) meals daily;

(iv) Has an open-air, outdoor, sylvan chapel suitable for the accommodation of wedding ceremonies;

(v) Provides entertainment in the form of cooking demonstrations, storytelling and dulcimer playing;

(vi) Is listed in Distinguished Inns of North America, 16th Edition, by Select Registry; and

(vii) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin;

(AA) A commercially operated facility that has all of the following characteristics:

(i) Is a full service colonial mansion located on an eighty-one-acre estate;

(ii) Contains no fewer than eight (8) transient rooms and seventeen (17) bathrooms;

(iii) Contains a dining room with capacity for fifty (50) persons that serves at least two (2) meals daily;

(iv) Has a heated swimming pool, a fitness center, a sauna, a tennis court and a billiard room;

(v) Has a system of hiking and walking trails;

(vi) Is listed in Distinguished Inns of North America, 16th Edition, by Select Registry; and

(vii) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin;

(BB) A facility that has nine (9) acres of shoreline development on Watts Bar Lake and that has all of the following characteristics:

(i) Has one- to three-bedroom cottages;

(ii) Has a marina with two hundred fifty (250) slips, both wet and dry;

(iii) Has a restaurant and lounge;

(iv) Has a swimming pool;

(v) Has rental boats;

(vi) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(vii) Is located in a county having a population of not less than twenty-eight thousand three hundred fifty (28,350) nor more than twenty-eight thousand four hundred fifty (28,450), according to the 2000 federal census or any subsequent federal census;

(CC) A development that has all the following characteristics:

(i) Has a well established marina with boat rentals, gasoline, guide services, etc., and a resort operating for more than fifty (50) years;

(ii) Includes more than two hundred (200) acres on Watts Bar Lake;

(iii) Has forty (40) cottages rented on a daily or weekly basis;

(iv) Has a restaurant;

(v) Has walking and nature trails;

(vi) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(vii) Is located in a county having a population of not less than twenty-eight thousand three hundred fifty (28,350) nor more than twenty-eight thousand four hundred fifty (28,450), according to the 2000 federal census or any subsequent federal census;

(DD) Any facility located in a municipality that has a civil war battlefield:

(i) Of which more than one thousand four hundred (1,400) acres have been designated in the National Register of Historic Places;

(ii) For which a management contract has been entered into between the municipality and the Tennessee historical commission;

(iii) Which has a self-guided driving tour;

(iv) For which long-range plans include walking trails, interpretive signs and a visitor's center with a museum;

(v) At which, every two (2) years, a living history and reenactment of the battle fought in December, 1862 is presented;

(vi) That is famous for the southern general's order to his troops to "Charge them both ways"; and

(vii) Is located in a county having a population of not less than twenty-five thousand four hundred fifty (25,450) nor more than twenty-five thousand five hundred fifty (25,550), according to the 2000 federal census or any subsequent federal census;

(EE) A commercially operated hotel and conference center and surrounding lands, whether public or private, not to exceed a one-half-mile radius of the geographic center of the complex, that has all of the following characteristics:

(i) Is operated by a for-profit corporation, partnership, or limited liability company;

(ii) Provides lodging accommodations, consisting of not less than fifty (50) hotel or motel rooms in a building or buildings designed for such purpose;

(iii) Is able to accommodate conferences of not fewer than two hundred (200) persons;

(iv) Is situated entirely within the boundaries of an industrial park controlled by a legislatively created economic development agency, in existence since 1982, that, since its inception, has secured at least one billion five hundred million dollars ($1,500,000,000) in private investment on eleven thousand (11,000) acres surrounding Tellico Lake. The eligible surrounding lands shall not extend outside the boundaries of the industrial park;

(v) Is located in a municipality having a population of at least one thousand (1,000), according to the 2000 federal census or any subsequent federal census;

(vi) Is managed by a manager who is found by a majority of the municipal board of aldermen to be an individual of good moral character; and

(vii) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin;

(FF) A facility that has at least fourteen (14) acres located on a lake of at least eight thousand (8,000) acres and that has the following characteristics:

(i) Contains at least three hundred and fifty (350) boat slips;

(ii) Contains a dry storage facility;

(iii) Provides boat rentals;

(iv) Contains a marine store;

(v) Contains a full service restaurant with seating for at least one hundred fifty (150) people, as well as a private banquet facility;

(vi) Has motel rooms and cabins for rent;

(vii) Contains a swimming pool;

(viii) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(ix) Is located in a county having a population of not less than fifty-six thousand seven hundred (56,700) nor more than fifty-six thousand eight hundred (56,800), according to the 2000 federal census or any subsequent federal census;

(GG) A facility that has three hundred eighty-five (385) acres of development on J. Percy Priest Lake and that has all the following characteristics:

(i) Has a water park;

(ii) Has a marina with more than three hundred twenty (320) slips;

(iii) Has a recreational vehicle (RV) campground;

(iv) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(v) Is located in a county having a population of not less than five hundred thousand (500,000), according to the 2000 federal census or any subsequent federal census;

(HH) A development that has all of the following characteristics:

(i) Has a well established marina with boat slip rentals, gasoline, etc.;

(ii) Includes three hundred eighty-five (385) acres on J. Percy Priest Lake;

(iii) Has a water park;

(iv) Has a recreational vehicle (RV) campground;

(v) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(vi) Is located in a county having a population of not less than five hundred thousand (500,000), according to the 2000 federal census or any subsequent federal census;

(II) A commercially operated facility that has all of the following characteristics:

(i) Is a fully-staffed lodge that is open twenty-four (24) hours a day, located on thirty-six (36) acres of land, that offers at least one (1) meal per day, along with hiking, biking, and horseback riding;

(ii) Has twelve (12) oversized rooms with king beds, private baths, and has high speed internet access in the main lodge;

(iii) Has seventeen (17) one- and two-bedroom cabins that have full kitchens, wood burning fireplaces, hot tubs, and high speed internet access;

(iv) Has a one thousand eight hundred square-foot meeting facility with a capacity of up to one hundred twenty-five (125) persons, and a board room with a capacity of up to twelve (12) persons, both of which have high speed internet access;

(v) Has a volleyball court, a horseshoe pit, and picnic areas throughout the property; and

(vi) Does not discriminate against any patron on the basis of age, gender, race, religion, or national origin;

(JJ) A commercially operated facility containing all of the following characteristics:

(i) The facility has a marina with approximately one hundred sixty-six (166) wet slips and approximately one hundred thirty-three (133) dry storage units;

(ii) The facility is located within a lake-resort, gated residential development of at least one thousand two hundred (1,200) acres having in excess of four hundred fifty (450) single family homes and condominium units;

(iii) The facility is located on a lake that has over eight hundred thirty-four (834) miles of shore line;

(iv) The facility will have a restaurant with a seating capacity of at least fifty (50) people, serving at least two (2) meals a day;

(v) The facility does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(vi) The facility is located within a county having a population of not less than thirty-nine thousand eight hundred (39,800) nor more than thirty-nine thousand eight hundred seventy-five (39,875), according to the 2000 federal census or any subsequent federal census;

(KK) (i) A commercially-operated facility containing all of the following characteristics:

(a) The facility has on its premises a marina that has at least two hundred fifty (250) covered or uncovered wet slips and at least seventy-five (75) dry rack slips;

(b) The facility has on its premises property leased or available for lease to a boating, yachting or water-based recreational club;

(c) The facility has on its premises a restaurant, providing food service to the public or for private events, with seating in the restaurant for at least fifty (50) persons at tables, whether or not the seating is inside or on a deck or patio adjacent to the restaurant;

(d) The facility has the capacity to serve as a home berth location for a commercial vessel for hire or for public cruises of at least seventy-five feet (75') in length;

(ii) When used in this subdivision (24)(KK), the "facility" under subdivision (24)(KK)(i) shall include any location within the property designated by the licensee;

(iii) A facility under this subdivision (24)(KK) shall also include any passenger sternwheel paddleboat, licensed by the United States coast guard, with rated passenger capacity of not less than one hundred (100) passengers and which paddleboat shall be at least seventy-five feet (75') in length, which may use the marina facilities as described in subdivision (24)(KK)(i) for its home or principal secondary port dock. The authority conferred under this subdivision (24)(KK)(iii), authorizing the sale or distribution of alcoholic beverages, including beer, on any qualified sternwheel paddleboat shall extend only so long as the paddleboat is located at the marina facility described in subdivision (24)(KK)(i) or is within one hundred (100) miles of the marina facility;

(iv) For purposes of obtaining a license under this subdivision (24)(KK), the commission shall be authorized to issue a license solely to the owner or operator of a sternwheel paddleboat, meeting the qualifications of subdivision (24)(KK)(iii), whether or not the facility described in subdivision (24)(KK)(i) receives a license under this chapter;

(LL) A commercially operated restaurant located within a county having a population of not less than thirty-nine thousand seven hundred fifty (39,750) nor more than forty thousand (40,000) and also located within the corporate limits of a municipality having a population of not less than seven thousand seven hundred fifty (7,750) nor more than eight thousand (8,000), according to the 2000 federal census or any subsequent federal census, and in addition to satisfying the requirements of subdivision (27)(A), also meets the following additional requirements:

(i) The facility is in a structure of not less than six thousand square feet (6,000 sq. ft.);

(ii) The facility has seating at tables, for at least two hundred (200) persons; and

(iii) The facility serves at least two (2) meals a day, five (5) days a week, with the exception of holidays, vacations and periods of redecorating;

(MM) A commercially operated recreational facility containing all of the following characteristics:

(i) Owning and operating one (1) or more golf courses, that include practice putting greens, chipping greens and a driving range;

(ii) Operating a clubhouse facility, of at least eight thousand square feet (8,000 sq. ft.), containing a

commercial quality kitchen and seating for at least one hundred (100) persons at tables;

(iii) Operating a private clubhouse of at least five thousand square feet (5,000 sq. ft.), with seating at tables for at least eighty (80) persons, and which private clubhouse contains a full service kitchen;

(iv) Located on a minimum of one hundred thirty-seven (137) acres; and

(v) Located within a county through which a major interstate passes, supports a Tennessee board of regents university of approximately nine thousand three hundred (9,300) students for the 2006 academic year and whose sports teams are nicknamed the golden eagles;

(NN) A facility operated either commercially or on a nonprofit basis as a club containing all of the following characteristics:

(i) A clubhouse having not less than approximately five thousand eight hundred square feet (5,800 sq. ft.);

(ii) An eighteen-hole golf course for use by its members and their guests;

(iii) A restaurant with a suitable kitchen, dining facilities and equipment serving two (2) meals daily and open six (6) days a week;

(iv) Is part of a planned unit development;

(v) Has at least one hundred (100) members regularly paying dues;

(vi) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(vii) Is located in a county having a population of not less than three hundred seven thousand eight hundred (307,800) nor more than three hundred seven thousand nine hundred (307,900), according to the 2000 federal census or any subsequent federal census; and

(OO) It is lawful for a facility providing full service dining to serve wine to be consumed on the premises, subject to the further provisions of this chapter, other than § 57-4-103, that contains the following characteristics:

(i) The facility provides seating at tables for not less than one hundred twenty-five (125) persons and is located on approximately three (3) acres;

(ii) The dining area is at least four thousand eight hundred square feet (4,800 sq. ft.);

(iii) The facility provides seating, on a deck or a patio, for at least forty (40) persons, weather permitting, which deck or patio is in close proximity to a river or waterway; and

(iv) The facility is located in a county with a population of not less than twenty-three thousand (23,000) nor more than twenty-three thousand two hundred (23,200), according to the 2000 federal census or any subsequent federal census;

(PP) A commercially operated facility containing all of the following characteristics:

(i) The facility has overnight accommodations for at least thirty-two (32) people in at least twelve (12) private guest rooms with en-suite bathrooms;

(ii) The facility has a main dining room which seats at least thirty-two (32) people;

(iii) The facility has meeting and conference space, including at least two (2) dedicated conference rooms;

(iv) The facility has a historic water-operated grist mill;

(v) The facility does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(vi) The facility is located within a county having a population of not less than seventeen thousand four hundred (17,400) nor more than seventeen thousand four hundred fifty (17,450), according to the 2000 federal census or any subsequent federal census;

(QQ) A commercially operated facility containing all of the following characteristics:

(i) The facility has a marina with at least four hundred thirty-five (435) wet slips;

(ii) The facility has a minimum of four hundred twelve (412) paved single car parking spaces and in addition at least thirty (30) car/trailer paved parking spaces;

(iii) The facility has a restaurant with inside seating for at least seventy-eight (78) persons and patio dining for at least fifty-four (54) persons;

(iv) The facility is located within one great circle mile of Tennessee highway 56;

(v) The facility is located on a lake with at least eighteen thousand (18,000) acres of water and at least three hundred forty-two (342) miles of shore line; and

(vi) The facility is located within a county having a population of not less than seventeen thousand four hundred (17,400) nor more than seventeen thousand four hundred fifty (17,450), according to the 2000 federal census or any subsequent federal census; and

(RR) A commercially operated facility containing all of the following characteristics:

(i) Owning and operating a golf course that is open to the public, that includes practice putting and chipping greens and a driving range;

(ii) Operating a clubhouse facility of approximately four thousand square feet (4,000 sq. ft.), containing a commercial quality kitchen and seating for at least eighty-three (83) persons inside at tables;

(iii) The facility is located at the intersection of State Highway 55 and Pete Sain Road;

(iv) The facility does not discriminate against any patron on the basis of gender, race, religion or national origin; and

(v) The facility is located within a county having a population of not less than forty-eight thousand (48,000) nor more than forty-eight thousand one hundred (48,100), according to the 2000 federal census or any subsequent census;

(25) "Premises," when:

(A) Referring to an establishment licensed under this chapter;

(B) Such establishment is located within an historical district which has been designated as a national historic landmark;

(C) Such a national historic landmark centers around a public street or right-of-way; and

(D) Such a public street or right-of-way is closed to motor vehicular traffic on a regular basis;

includes the area encompassed by the boundaries of the historic district; provided, that the granting of a license for a business location within such historical district shall not preclude the granting of another license to another establishment located within the boundaries of the historic district. The provisions of this subdivision (25) shall apply only to counties with a population of more than four hundred thousand (400,000) according to the 1980 census, but those counties having a metropolitan form of government shall be exempt from the provisions of this subdivision (25). In such county, only for the purposes of the hours of sale provided in § 57-4-203(d)(4), "premises" also includes any establishment located within four (4) blocks west of the western boundary of the historic district and on the same public street or right of way as the historic district; provided, that the requirement of closing the street or right-of-way to motor vehicular traffic on a regular basis shall not apply to the extension of the premises established by this sentence;

(26) "Public aquarium" means a facility which contains a collection of living aquatic animals whose sole or primary habitat is water and which facility provides for care and housing for public exhibition, and also possesses the following characteristics:

(A) The exhibits containing live aquatic animals for public viewing are housed in a building having at least one hundred thousand square feet (100,000 sq. ft.) of interior space;

(B) The exhibits containing live aquatic animals for public viewing contain a minimum total of five hundred thousand gallons (500,000 gals.) of water as the living environment of the animals; and

(C) The public aquarium is located in a county having a population in excess of two hundred fifty thousand (250,000), according to the 1990 federal census or any subsequent federal census;

(27) (A) "Restaurant" means any public place kept, used, maintained, advertised and held out to the public as a place where meals are served and where meals are actually and regularly served, without sleeping accommodations, such place being provided with adequate and sanitary kitchen and dining room equipment and seating capacity of at least seventy-five (75) people at tables, having employed therein a sufficient number and kind of employees to prepare, cook and serve suitable food for its guests. At least one (1) meal per day shall be served at least five (5) days a week, with the exception of holidays, vacations and periods of redecorating, and the serving of such meals shall be the principal business conducted. A restaurant shall also be eligible for licensure under this subdivision (27)(A), if the restaurant serves at least one (1) meal a day at least four (4) days a week with the exception of holidays, vacations and periods of redecorating, and if the serving of such meals is the principal business conducted, and if such restaurant is only open for four (4) days a week;

(B) "Restaurant" also means any bowling center that was licensed as of January 1, 1983, to sell alcoholic beverages for consumption on the premises;

(C) (i) Within a national historical landmark district or urban park center, as defined by this section, restaurant licensees shall not be required to meet any requirements of this section which make food service, maintenance of a kitchen, or a dining room a prerequisite to the issuance of a restaurant permit to serve liquor by the drink. The provisions of this subdivision (27)(C) shall apply only to counties with a population of more than four hundred thousand (400,000) according to the 1980 census, but those counties having a metropolitan form of government shall be exempt from the provisions of this subdivision (27)(C);

(ii) Within a sports authority facility as defined in this section, restaurant licensees shall not be required to meet any of the requirements of subdivision (27)(A) which make food service, maintenance of a kitchen, or a dining room a prerequisite for the issuance of a permit to serve liquor by the drink;

(D) Notwithstanding the minimum seating capacity established in subdivision (27)(A), for the purpose of a permit to serve wine, "restaurant" means any lodge or resort with sleeping accommodations where meals are served that

is located on land which is owned by the United States department of the interior, is operated by the national park service or its agents or contractors and is located in a county with a population of not less than forty-one thousand four hundred (41,400) nor more than forty-one thousand five hundred (41,500), according to the 1980 federal census or any subsequent federal census;

(E) Notwithstanding the minimum seating capacity established in subdivision (27)(A), a restaurant with a seating capacity of at least forty (40) people at tables may be licensed as a gourmet restaurant under this chapter. To be licensed as a gourmet restaurant, the establishment must obtain:

(i) Not less than two thirds (2/3) of its annual gross sales from the sale of food; and

(ii) Not less than two thirds (2/3) of its annual alcoholic beverage sales from the sale of wine;

(F) "Restaurant" also means a facility located in any municipality having a population in excess of one hundred thousand (100,000), according to the 1990 federal census, or any subsequent federal census, in which coffees, teas, pastries, and other foodstuffs are offered for sale for consumption on the premises, which facility has a seating capacity of at least thirty (30) seats and which facility obtains at least fifty percent (50%) of its annual gross sales from the sale of coffees, teas and pastries. Any restaurant licensed under this subdivision (27)(F) shall be authorized to sell alcoholic beverages for consumption on the premises only when such beverages are mixed with coffees, teas and other beverages. A restaurant licensed under this subdivision (27)(F) need not meet the requirement of subdivision (27)(A);

(G) "Restaurant" also means a facility:

(i) Located within one-half (1/2) mile of the railroad tracks in the unincorporated area of any county having a population of not less than thirty thousand two hundred (30,200) nor more than thirty thousand four hundred seventy-five (30,475), according to the 1990 federal census or any subsequent federal census;

(ii) Whose primary source of income is from serving meals to its patrons, both indoors and out-of-doors, and has a total seating capacity of at least seventy-five (75) people at tables;

(iii) Located in a building having a total square footage of at least two thousand five hundred square feet (2,500 sq. ft.) which was constructed prior to 1925; and

(iv) Which is located on a site used during the Civil War or within two (2) miles of two (2) or more Civil War sites, or is within one and one-half (1 1/2) miles of a home that was built in 1884, and which is preserved as the area's best example of the Queen Anne and Eastlake architectural styles;

(H) "Restaurant" also means a facility:

(i) Located off U.S. Highway 421 in any county having a population of not less than seventeen thousand four hundred seventy-five (17,475) nor more than seventeen thousand five hundred seventy-five (17,575), according to the 2000 federal census or any subsequent federal census;

(ii) Whose primary source of income is from serving meals to its patrons and has a total seating capacity of at least one hundred fifty (150) people; and

(iii) Which is located next to an eighteen-hole golf course; and

(I) "Restaurant" also means a facility:

(i) Located on Highway 243 in a county having a population of not less than sixty-nine thousand four hundred (69,400) nor more than sixty-nine thousand five hundred (69,500), according to the 2000 federal census or any subsequent federal census;

(ii) That has seating for not more than one hundred forty (140) people;

(iii) That has a music and entertainment orientation;

(iv) Whose primary source of income is derived from serving meals to its patrons;

(v) That has a historic working original malt and soda fountain;

(vi) That is located in a historical structure formerly used as a town hall as well as a practice venue for Grand Ole Opry hopefuls; and

(vii) That does not discriminate against any patron on the basis of age, gender, race, religion or origin; and

(J) (i) Restaurant also means a facility that:

(a) Is owned, operated or leased by a for-profit organization organized under the laws of this state;

(b) Does not discriminate against any patron on the basis of gender, race, religion or national origin;

(c) Provides food service to the public or for private events and catering with seating capacity for at least two hundred fifty (250) persons at tables, whether or not the seating is inside or on a deck or patio;

(d) Is open at least five (5) days a week serving two (2) meals daily with the exception of holidays, vacations, seasonal conditions and periods of redecorating, with suitable kitchen, dining facilities and equipment;

(e) Is in the center of a full service marina and resort located on the Tennessee River at mile marker 477.5; which full service marina has at least six hundred (600) dry storage slips and wet slips up to eighty feet (80') that offers two (2) cabins completely furnished and an inn with twelve (12) rooms that overlooks the Tennessee River; and

(f) Is located in any county having a population of not less than three hundred seven thousand eight hundred (307,800) nor more than three hundred seven thousand nine hundred (307,900), according to the 2000 federal census or any subsequent federal census;

(ii) A restaurant under this subdivision (27)(J) must comply with all the requirements of this chapter and shall be subject to the restrictions imposed upon licenses other than § 57-4-103;

(28) "Retirement Center" means a facility that contains each of the following characteristics:

(A) The center is located in a county having a population of not less than one hundred twenty-six thousand six hundred (126,600) nor more than one hundred twenty-six thousand seven hundred (126,700), according to the 2000 federal census or any subsequent federal census;

(B) The center is located on a single parcel of land not less than forty eight (48) acres and not more than forty-nine (49) acres in area;

(C) The center will consist of individual living unit apartments, individual living unit villas, an assisted living facility, a nursing home facility, a club house and common areas;

(D) The center will have a club house that houses a health club, game room, lounge and a dining facility;

(E) The center's lounge in the club house will offer to the center's residents and their guests only food, non-alcoholic beverages, mixed alcoholic drinks, wine and beer, as well as make available in the dining facility and other areas within the center's property, for the center's residents and guests only, mixed alcoholic drinks, wine and beer; and

(F) The center does not discriminate against any patron on the basis of gender, race, religion or national origin;

(29) "Special historic district" means any area with specific boundaries that possesses the following characteristics:

(A) Was organized pursuant to a municipal urban planning and development board;

(B) Contains within such special historic district an historic district listed on the national register of historic places;

(C) Is located on a trolley line; and

(D) Is located in any county having a population of eight hundred thousand (800,000) or more, according to the 2000 federal census or any subsequent federal census;

(30) (A) "Special occasion license" means a license which the commission may issue to a bona fide charitable, nonprofit or political organization. Such license shall be issued for no longer than one (1) twenty-four-hour period, subject to the limitations of hours of sale which may be imposed by law or regulation, and such license may be issued in advance of its effective date;

(B) If a bona fide charitable or nonprofit organization owns and maintains a permanently staffed facility which:

(i) Is used for the periodic showing or exhibition of animals;

(ii) Has a seating capacity of not less than twenty-five thousand (25,000) persons; and

(iii) Has a separate permanently constructed clubhouse or meeting room located on the grounds,

then a special occasion license may be issued for use at the clubhouse or meeting room for the duration of the particular show or exhibit for which application is made, and such organization shall not be subject to the numeric limitation contained in the last sentence of this subdivision (30). This license shall only be available upon the payment of the fee as required by law for each separate day of the show;

(C) Such license shall not be issued unless and until there shall have been paid to the commission for each such license a license fee of one hundred dollars ($100), and there shall have been submitted an application which designates the premises upon which alcoholic beverages shall be served. No such charitable, nonprofit or political organization shall be eligible to receive more than twelve (12) special occasion licenses in any calendar year;

(D) A special occasion license under this section may also be issued to a nonprofit historical society for the purpose of serving complimentary samples of homemade wine manufactured in the Swiss tradition by a society member or members, the complimentary samples not to exceed one ounce (1 oz.) per wine type per person to be served at an annual festival conducted by a society celebrating the Swiss heritage at a farm museum in any county having a population of not less than fourteen thousand three hundred (14,300) nor more than fourteen thousand four hundred (14,400), according to the 2000 federal census or any subsequent federal census;

(E) Any entity holding a special occasion license issued under this subdivision (30) or members of the licensee may transport wine and other alcoholic beverages to the location for which the special occasion license is issued;

(F) "Special occasion license" also means a license, issued by the commission, to a bona-fide charitable organization, recognized as exempt from taxation by the internal revenue service pursuant to § 501(c)(3) of the Internal Revenue Code, codified in 26 U.S.C. § 501(c)(3), which organization has been in continuous operation as a tax-exempt entity for at least twenty (20) years, and which organization has an annual budget of at least one million dollars ($1,000,000). A special occasion license issued pursuant to this subdivision (30)(F) shall be authorized to sell wine in

closed containers for consumption on or off the premises notwithstanding the restrictions of § 57-4-203. Any licensee holding a license issued pursuant to § 57-3-202, § 57-3-203, § 57-3-204, § 57-3-207, § 57-3-605 or § 57-4-101 may donate wine to an organization holding a special occasion license issued pursuant to this subdivision (30)(F) for an event conducted by the special occasion licensee. Any resident of Tennessee may donate wine, which brand of wine has been registered pursuant to § 57-3-301, to an organization holding a special occasion license issued pursuant to this subdivision (30)(F) for sale or consumption at an event conducted by the special occasion licensee;

(31) "Sports authority facility" means a facility possessing the following characteristics:

(A) The facility is owned or operated by a sports authority established under title 7, chapter 67, a public building authority or a governmental entity;

(B) The facility is designed and used for presentation of professional sporting events and other activities, such as amateur sporting events, recreational activities and entertainment events and activities, and includes retail sales areas and retail food dispensing outlets, including, but not limited to, restaurant areas to accommodate liquor by the drink as well as food patronage;

(C) A major league professional baseball (American or National League), football (National Football League), basketball (National Basketball Association) or hockey (National Hockey League) franchise has entered into a long-term agreement to play its home games in the facility; and

(D) The facility is located in a municipality or county having a population in excess of five hundred thousand (500,000), according to the 1990 federal census or any subsequent federal census;

(32) "Suite" means any room or group of rooms, leased by the operator of a sports authority facility or a convention center, physically located within such facility or center, where access to such room or rooms is restricted to the lessee or such lessee's guests;

(33) "Tennessee River resort district" means a club, hotel, motel or restaurant located within a jurisdiction that has elected Tennessee River resort district status pursuant to the provisions of § 67-6-103(a)(3)(F); provided, that for the purposes of this chapter, such district shall only extend inland for three (3) miles from the nearest bank of the Tennessee River. No entity licensed to sell alcoholic beverages within the boundaries of any such resort district shall discriminate against any patron on the basis of age, gender, race, religion, or national origin;

(34) "Terminal building of a commercial air carrier airport" means a building, including any concourses thereof, used by commercial airlines and their customers for sale of airline tickets, enplaning and deplaning of airline passengers, loading and unloading of baggage and cargo, and for providing other related services for the convenience of airline passengers and others, located in any airport which is served by one (1) or more commercial airlines, and:

(A) Is operated by a board of commissioners whose membership is appointed by the legislative bodies of five (5) or more local governments or whose membership is appointed pursuant to § 42-4-105; or

(B) Is located in a municipality where the provisions of this chapter have become effective in that municipality;

(35) "Theater" means any establishment in which motion pictures are exhibited to the public regularly for a charge. Such theater shall have an area that is enclosed by glass and which is accessed through a set of double doors by patrons who must be twenty-one (21) years of age or older to enter. Such theater shall be part of a retail and entertainment complex located one (1) block from a historical district that has been designated as a national historic landmark that centers around a public street or right-of-way. Such theater shall be located in a county having a population of eight hundred thousand (800,000) or more, according to the 1990 federal census or any subsequent federal census;

(36) (A) "Urban park center" means a facility possessing the following characteristics:

(i) The center is owned, operated, or leased by a municipal or county government, or any agency or commission thereof;

(ii) The center is designed to contain outdoor recreational facilities, public museum buildings, exhibition buildings, retail sales areas, retail food dispensing outlets including, but not limited to, sale of package alcoholic and malt beverages, and restaurant areas to accommodate liquor-by-the-drink as well as food patronage; and

(iii) The center is located in a municipality or county having a population in excess of six hundred thousand (600,000), according to the 1970 federal census or any subsequent census;

(B) (i) "Urban park center" also means an outdoor fixed structure amphitheater utilized as a performance venue, containing fixed seating for at least five thousand one hundred (5,100) persons. Such facility shall be secured by adequate perimeter fencing.

(ii) The provisions of this subdivision (36)(B) apply in any county with a metropolitan form of government with a population of not less than five hundred thousand (500,000), according to the 1990 federal census or any subsequent federal census.

(C) "Urban park center" also means a facility that possesses the following characteristics:

(i) Consists of at least two (2) theater spaces in which live theater, concerts, and films are presented;

(ii) Contains at least ten thousand square feet (10,000 sq. ft.);

(iii) Contains permanent fixed seating for at least three hundred forty-nine (349) persons;

(iv) Contains one (1) performance space constructed prior to 1930 that contains a stage with a fly tower for stage rigging with a height of at least thirty feet (30');

(v) Is operated by a not-for-profit corporation that qualifies as tax exempt under the Internal Revenue Code, § 501(c)(3), (26 U.S.C. § 501(c)(3)), and such facility is not a religious organization or a secondary or elementary school;

(vi) A major street is located not more than one hundred feet (100') from the nearest exterior wall of such facility; and

(vii) Is located within the jurisdictional limits of a county with a metropolitan form of government having a population of not less than five hundred thousand (500,000), according to the 1990 federal census or any subsequent federal census;

(37) "Wine" means the product of the normal alcoholic fermentation of the juice of fresh, sound, ripe grapes, with the usual cellar treatment and necessary additions to correct defects due to climatic, saccharine and seasonal conditions, including champagne, sparkling and fortified wine of an alcoholic content not to exceed twenty-one percent (21%) by volume. No other product shall be called "wine" unless designated by appropriate prefixes descriptive of the fruit or other product from which the same was predominantly produced, or an artificial or imitation wine; and

(38) (A) "Zoological institution" means a facility which contains a zoological garden or collection of living animals and provides for their care and housing for public exhibition and further possesses the following characteristics:

(i) The zoo is owned, operated, or leased by a municipal or county government;

(ii) The zoo is at least fifty (50) years old; and

(iii) The zoo is located in a county having a population in excess of seven hundred thousand (700,000), according to the 1980 federal census or any subsequent federal census.

(B) "Zoological institution" means a facility that contains a zoological garden or collection of living animals and provides for their care and housing for public exhibition and further possesses the following characteristics:

(i) The zoo is operated on property leased by a county having a metropolitan form of government and has been opened to the public on that property at least since 1997;

(ii) The zoo has been accredited by and maintains the accreditation of the Association of Zoos and Aquariums (AZA); and

(iii) The zoo is located in a county having a metropolitan form of government and a population in excess of five hundred thousand (500,000), according to the 2000 federal census or any subsequent federal census;

(C) "Zoological institution" means a facility that contains a zoological garden or collection of living animals and provides for their care and housing for public exhibition and further possesses the following characteristics:

(i) The zoo is operated on property owned by a city and has been opened to the public on that property at least since 1937;

(ii) The zoo has been accredited by and maintains the accreditation of the Association of Zoos and Aquariums (AZA); and

(iii) The zoo is located in a county having a population of not less than three hundred seven thousand eight hundred (307,800) nor more than three hundred seven thousand nine hundred (307,900), according to the 2000 federal census or any subsequent federal census;

(D) "Zoological institution" means a facility that contains a zoological garden or collection of living animals and provides for their care and housing for public exhibition and further possesses the following characteristics:

(i) The zoo is operated on property owned by a city and has been opened to the public on that property at least since 1948;

(ii) The zoo has been accredited by and maintains the accreditation of the Association of Zoos and Aquariums (AZA); and

(iii) The zoo is located in a county having a population of not less than three hundred eighty two thousand (382,000) nor more than three hundred eighty two thousand one hundred (382,100), according to the 2000 federal census or any subsequent federal census.

HISTORY: [Acts 1967, ch. 211, § 1; 1972, ch. 682, § 2; 1972, ch. 756, § 3; 1975, ch. 111, § 3; 1975, ch. 347, § 1; 1979, ch. 401, § 2; T.C.A., § 57-153; Acts 1980, ch. 895, § 1; 1980, ch. 898, § 2; 1981, ch. 404, § 2; 1981, ch. 467, §§ 1-4; 1981, ch. 475, § 2; 1982, ch. 691, § 1; 1982, ch. 931, §§ 1-4; 1983, ch. 52, § 2; 1983, ch. 300, §§ 3, 6; 1983, ch. 305, § 1; 1983, ch. 306, § 1; 1983, ch. 391, § 1; 1983, ch. 454, § 4; 1983, ch. 461, §§ 1-4; 1983, ch. 469, § 2; 1983, ch. 481, § 1; 1984, ch. 522, § 1; 1984, ch. 569, § 2; 1984, ch. 599, § 1; 1984, ch. 858, §§ 1-4; 1984, ch. 871, § 1; 1984, ch. 975, § 2; 1985, ch. 41, § 1; 1985, ch. 47, § 1; 1985, ch. 117, § 1; 1985, ch. 190, § 2; 1986, ch. 516, § 1; 1986, ch. 899, § 3; 1987, ch. 73, § 1; 1987, ch. 218, § 1; 1987, ch. 444, §§ 3, 4; 1987, ch. 456, § 1; 1988, ch. 792, § 1; 1988, ch. 942, §§ 1, 2; 1989, ch. 50, § 1; 1989, ch. 361, § 1; 1989, ch. 459, § 1; 1990, ch. 718, § 1; 1990, ch. 730, §§ 1, 2; 1990, ch. 853, § 1; 1990, ch. 949, § 1; 1991, ch. 462, § 1; 1992, ch. 674, § 2; 1992, ch. 675, § 2; 1993, ch. 308, §§ 1, 2; 1994, ch. 657, § 1; 1994, ch. 822, § 1; 1994, ch. 837, § 1; 1994, ch. 933, § 1; 1995, ch. 18, § 1; 1995, ch. 306, § 2; 1996, ch. 688, § 1; 1996, ch. 730, § 1; 1996, ch. 749, § 2; 1996, ch. 1017, § 1; 1997, ch. 146, § 1; 1997, ch. 281, §§ 1-7; 1998, ch. 722, § 1;

1998, ch. 786, § 1; 1998, ch. 795, § 6; 1998, ch. 798, § 1; 1998, ch. 939, §§ 2, 3; 1998, ch. 966, §§ 1, 2; 1999, ch. 211, § 1; 1999, ch. 314, §§ 1, 2, 4; 1999, ch. 525, § 2; 2000, ch. 657, § 2; 2000, ch. 727, § 1; 2001, ch. 64, § 2; 2001, ch. 74, § 1; 2001, ch. 84, § 1; 2001, ch. 112, §§ 1-3; 2001, ch. 371, § 2; 2001, ch. 383, §§ 2, 3; 2002, ch. 647, § 1; 2002, ch. 661, § 1; 2002, ch. 676, § 1; 2002, ch. 679, §§ 1, 2; 2002, ch. 705, §§ 1, 2; 2002, ch. 832, §§ 1, 3, 4; 2003, ch. 132, § 1; 2003, ch. 309, §§ 1, 2; 2003, ch. 314, § 1; 2004, ch. 544, § 1; 2004, ch. 671, §§ 1, 2; 2004, ch. 676, § 1; 2004, ch. 710, § 1; 2004, ch. 857, § 1; 2004, ch. 876, § 6; 2005, ch. 212, § 5; 2005, ch. 253, § 2; 2005, ch. 422, §§ 1-10; 2006, ch. 612, §§ 1-3; 2006, ch. 733, §§ 1-6, 8; 2006, ch. 865, § 1; 2007, ch. 150, §§ 1-3; 2007, ch. 203, § 1; 2007, ch. 258, § 1; 2007, ch. 342, § 1; 2007, ch. 492, § 1; 2008, ch. 634, § 2; 2008, ch. 649, § 1; 2008, ch. 653, § 1; 2008, ch. 713, § 1; 2008, ch. 784, § 1.]

NOTES: Code Commission Notes.

Acts 1994, ch. 550, § 2 purported to add the following language after the second sentence in (18): "Provided, further, when the public street within the Beale Street National Historic Landmark District is closed to motor vehicular traffic."

Compiler's Notes.

For tables of population of Tennessee municipalities, and for U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

Acts 2005, ch. 212, § 7 provided that the addition of (33) by that act shall take effect January 1, 2006. The text set out above reflects the 2005 amendment by that act. Prior to January 1, 2006, there is no (33).

Acts 2005, ch. 212, § 6 provided that:
"(a) The commissioner of revenue shall promulgate rules and regulations to effectuate the provisions of this act.
"(b) The commissioner of economic and community development shall promulgate rules and regulations to effectuate the provisions of this act.
"(c) The executive director of the alcoholic beverage commission shall promulgate rules and regulations to effectuate the provisions of this act.
"(d) All such rules and regulation shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5."

Amendments.

The 2002 amendment by ch. 647 added (20)(B).

The 2002 amendment by ch. 661 added present (13)(C) and redesignated former (13)(C) as present (13)(D).

The 2002 amendment by ch. 676 added (24)(L).

The 2002 amendment by ch. 679 added (24)(M) and (24)(N).

The 2002 amendment by ch. 705, in (20), deleted ", with future construction plans for a 5/8 mile paved short track, .4 mile oval dirt track, 3/4 mile drag strip and 1.8 mile road course" at the end of (A)(ii); and substituted "site of at least five hundred (500) acres" for "three thousand one hundred (3,100) acre site" in (A)(iii).

The 2002 amendment by ch. 832 added (7)(H); added ", a public building authority or a governmental entity;" in (29)(A); and added present (30) and redesignated former (30) through (34) as present (31) through (35), respectively.

The 2003 amendment by ch. 132, in (24), added present (N), and redesignated former (N) as present (O).

The 2003 amendments by ch. 309 added (7)(I) and (7)(J).

The 2003 amendment by ch. 314 added (21)(D).

The 2004 amendment by ch. 544 inserted present (28) and redesignated former (28) through (35) as present (29) through (36), respectively.

The 2004 amendment by ch. 671 added the provisions designated herein as (24)(P)-(24)(R).

The 2004 amendment by ch. 676 added the provisions designated herein as (21)(E).

The 2004 amendment by ch. 710 added the provisions designated herein as (24)(S).

The 2004 amendment by ch. 857 added the provisions designated herein as (24)(T)-(W).

The 2004 amendment by ch. 876 substituted "one hundred dollars ($100)" for "fifty dollars ($50)" in the first sentence of present (29)(C).

The 2005 amendment by ch. 212, effective January 1, 2006, added (33). See the Compiler's Notes.

The 2005 amendment by ch. 253 added (28).

The 2005 amendment by ch. 422 added (24)(X) through (24)(II).

The 2006 amendment by ch. 612 inserted ", or a nonprofit, tax exempt, charitable organization that operates a symphony orchestra," in (13)(A)(i), inserted ", or facility owned by a nonprofit, tax exempt, charitable organization that operates a symphony orchestra," in (13)(A)(iii)(b), and added (13)(A)(v).

The 2006 amendment by ch. 733 deleted "sexual orientation" following "gender," in (24)(P)(vi), (24)(S)(v), and (28)(F) and following "religion," in (33); and added (24)(JJ)-(OO).

The 2006 amendment by ch. 865 added (12)(D).

The 2007 amendment by ch. 150 added (B), (C) and (D) in the definition for "Zoological institution".

The 2007 amendment by ch. 203 added (30)(D) and (30)(E).

The 2007 amendment by ch. 258 added (24)(PP) and (24)(QQ).

The 2007 amendment by ch. 342 added (30)(F).

The 2007 amendment by ch. 492 added (7)(K).

The 2008 amendment by ch. 634 added (27)(I).

The 2008 amendment by ch. 649 substituted "one hundred (100) persons" for "one hundred fifty (150) persons" in (24)(MM)(ii); and substituted "eighty (80) persons" for "one hundred ninety (190) persons" in (24)(MM)(iii).

The 2008 amendment by ch. 653 added (27)(J).

The 2008 amendment by ch. 713 added (24)(RR).

The 2008 amendment by ch. 784 deleted "and providing overnight accommodations to its passengers" following "serving regular meals" in (22).

Effective Dates.

Acts 2002, ch. 647, § 3. April 24, 2002.

Acts 2002, ch. 661, § 2. April 24, 2002.

Acts 2002, ch. 676, § 2. April 24, 2002.

Acts 2002, ch. 679, § 3. April 24, 2002.

Acts 2002, ch. 705, § 3. May 1, 2002.

Acts 2002, ch. 832, § 5. July 3, 2002.

Acts 2003, ch. 132, § 2. May 19, 2003.

Acts 2003, ch. 309, § 3. June 11, 2003.

Acts 2003, ch. 314, § 2. June 11, 2003.

Acts 2004, ch. 544, § 4. April 22, 2004.

Acts 2004, ch. 671, § 3. May 17, 2004.

Acts 2004, ch. 676, § 2. May 18, 2004.

Acts 2004, ch. 710, § 2. May 18, 2004.

Acts 2004, ch. 857, § 4. June 8, 2004.

Acts 2004, ch. 876, § 11. July 1, 2004.

Acts 2005, ch. 212, § 7. January 1, 2006; provided, that, for the promulgation of rules and regulations, the act shall take effect May 26, 2005.

Acts 2005, ch. 253, § 4. July 1, 2005.

Acts 2005, ch. 422, § 11. August 1, 2005.

Acts 2006, ch. 612, § 4. May 4, 2006.

Acts 2006, ch. 733, § 9. May 23, 2006.

Acts 2006, ch. 865, § 2. June 5, 2006.

Acts 2007, ch. 150, § 4. May 14, 2007.

Acts 2007, ch. 203, § 3. May 22, 2007.

Acts 2007, ch. 258, § 2. May 24, 2007.

Acts 2007, ch. 342, § 2. June 5, 2007.

Acts 2007, ch. 492, § 2. June 21, 2007.

Acts 2008, ch. 634, § 3. March 18, 2008.

Acts 2008, ch. 649, § 2. July 1, 2008.

Acts 2008, ch. 653, § 2. March 27, 2008.

Acts 2008, ch. 713, § 2. April 7, 2008.

Acts 2008, ch. 784, § 2. April 21, 2008.

Cross-References.

Certain 1987 amendments to section inapplicable to certain counties, § 57-4-104.

Limitation on selling or giving away alcoholic or malt beverages during certain hours, § 57-4-203.

Section to Section References.

Sections 57-4-101 -- 57-4-203 are referred to in § 57-3-404.

This section is referred to in §§ 57-3-207, 57-4-101, 57-4-104, 57-4-201, 57-4-203, 57-5-105, 57-5-301.

Law Reviews.

Selected Tennessee Legislation of 1983 (N. L. Resener, J. A. Whitson, K. J. Miller), 50 Tenn. L. Rev. 785 (1983).

Attorney General Opinions.

Discrimination, OAG 89-73 (5/3/89).

Premiere type tourist resorts, licenses, OAG 94-81 (7/22/94).

Nashville and Davidson County arena within definition of "convention center," OAG 95-016 (3/16/95).

Implementation of Tennessee River Resort District Act, OAG 05-161 (10/18/05).

NOTES TO DECISIONS

1. Clubs.

1. Clubs.

A club which has a license for on-premises consumption of alcoholic beverages and beer from the alcoholic beverage commission under §§ T.C.A. 57-4-101(b) [now § 57-4-101(a)(2)] and 57-4-102 does not have an absolute right to a beer permit from a city beer board. State ex rel. Amvets Post 27 v. Beer Bd. of Jellico, 717 S.W.2d 878, 1986 Tenn. LEXIS 794 (Tenn. 1986).

Collateral References.

Social host's liability for death or injuries incurred by person to whom alcohol was served. 54 A.L.R.5th 313.

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*** CURRENT THROUGH THE 2008 REGULAR SESSION ***
*** ANNOTATIONS CURRENT THROUGH MARCH 19, 2009 ***

Title 67 Taxes And Licenses
Chapter 3 Petroleum Products and Alternative Fuels Tax Law
Part 9 --General Administrative Provisions

Tenn. Code Ann. § 67-3-903 (2009)

67-3-903. Specific highway projects benefited by 1986 gasoline tax increases.

(a) During the 1986-1987 fiscal year, the funds generated under the provisions of Acts 1986, ch. 931, shall be used only for the projects specified in the March 25, 1986, Proposed Fiscal Year 1986-1987 Transportation Improvement Plan and Additional Construction Projects, and those additional projects listed in Acts 1986, ch. 931. No projects shall be deleted from this plan without the approval of the speaker of the house of representatives and the speaker of the senate. Additional projects shall include the following:

(1) There shall be included in the Cannon County SR-1 (US-70S) SR-64 to Woodbury bridge construction project described therein the widening of SR-1 to four (4) lanes from Woodbury to the Rutherford County line, and in the Smith County SR-25 Carthage bypass right-of-way project described therein necessary bridge design;

(2) There shall be included a highway from Columbia, in Maury County, to the intersection of Law Road and Interstate 40 at Exit 140 in Henderson County, this highway to provide access through the counties of Maury, Lewis, Perry, Decatur, and Henderson, among others, and to the cities of Hohenwald, Linden, Parsons, and Lexington, among others; and

(3) There shall be included the reconstruction of Old Hickory Boulevard (State Highway 251) to four (4) lanes from U.S. Highway 70S to U.S. Highway 70N near Interstate Route 40.

(b) (1) (A) The projects listed in the memorandum dated April 1, 1986, from Commissioner Dale Kelley to Senator Henry, Senator Darnell, Representative Bragg and Representative Robinson shall constitute and comprise the projects to be completed no later than the end of the 1998-1999 fiscal year, and the provisions of such memorandum are hereby incorporated herein by reference. No project shall be deleted or changed from such memorandum without the approval of the speaker of the house of representatives and the speaker of the senate.

(B) The reference in such memorandum on page 2 of 2, headed BICENTENNIAL PARKWAY SPECIFIC DESCRIPTIONS, shall include after the language "Interstate 155 Extension" the following: on a route to be determined by the commissioner of transportation after public hearings and feasibility studies through either Dyer, Gibson and Madison counties or through Dyer, Crockett and Madison counties.

(2) Additional projects shall include:

(A) The reconstruction of Highway 61 to four (4) lanes from Clinton to Oak Ridge;

(B) Preplanning of the reconstruction of Highway 46 from Highway 149 to Dickson;

(C) Improvement of the Austin Peay Highway in Shelby County north from I-240 North at an estimated cost of four million three hundred thousand dollars ($4,300,000); and

(D) The widening to four (4) lanes of Highway 12 from Ashland City to Clarksville Highway in Davidson County.

(c) Nothing in this section shall be interpreted or construed to place any roadway which is the subject of Acts 1986, ch. 931, under the "Scenic Highway Act of 1971" or the "Tennessee Parkway System Act" as set forth in title 54, chapter 17, parts 1 and 2.

(d) In addition to the projects listed in the "Accelerated Primary Highway Plan" in the memorandum dated April 1, 1986, from Commissioner Dale Kelley to Senator Henry, Senator Darnell, Representative Bragg and Representative Robinson, there is added a project in Memphis described as: The reconstruction of U.S. Route 61, South Third Street, from Shelby Drive to Mitchell Road to provide six (6) traffic lanes.

(e) The commissioner of transportation may consider a northern route to complement the Bicentennial Parkway project known as Interstate 840. Counties which may be considered by the commissioner for the northern route are Wilson, Montgomery, Robertson, Cheatham, Dickson and Sumner. During the 1993-1994 fiscal year, location and environmental studies shall be undertaken. The commissioner may consider funding sources from all revenues allocated to the department of transportation for highway purposes.

HISTORY: [Acts 1997, ch. 316, § 1; T.C.A., § 67-3-2003.]

NOTES:

Cited:

Southwest Williamson County Community Ass'n v. Slater, 243 F.3d 270, 2001 FED App. 70P, 2001 U.S. App. LEXIS 3846 (6th Cir. 2001).

Collateral References.

Gasoline and motor fuel taxes 371.1293-1297.

365 of 400 DOCUMENTS

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TRANSPORTATION CODE
TITLE 6. ROADWAYS
SUBTITLE B. STATE HIGHWAY SYSTEM
CHAPTER 225. STATE HIGHWAY NAMES
SUBCHAPTER B. SPECIFIC STATE HIGHWAY NAMES

GO TO TEXAS CODE ARCHIVE DIRECTORY

Tex. Transp. Code § 225.026 (2009)

§ 225.026. Farm-to-Market Road 390; Scenic Highway

(a) Farm-to-Market Road 390 in Washington County is a scenic highway.

(b) The department shall design and construct markers indicating the highway number, the designation as a scenic highway, and any other appropriate information.

(c) The department shall erect a marker at each end of the scenic highway and at intermediate sites along the highway that the department determines are appropriate.

HISTORY: Acts 1995, 74th Leg., ch. 165, effective September 1, 1995.

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TRANSPORTATION CODE
TITLE 6. ROADWAYS
SUBTITLE H. HIGHWAY BEAUTIFICATION
CHAPTER 391. HIGHWAY BEAUTIFICATION ON INTERSTATE AND PRIMARY SYSTEMS AND CERTAIN ROADS
SUBCHAPTER I. PROHIBITION OF SIGNS ON CERTAIN HIGHWAYS

GO TO TEXAS CODE ARCHIVE DIRECTORY

Tex. Transp. Code § 391.256 (2009)

§ 391.256. Scenic Byways Program [Expired]

Expired pursuant to Acts 2001, 77th Leg., ch. 1264 (S.B. 1128), § 3, effective January 2, 2003.

HISTORY: Acts 2001, 77th Leg., ch. 1264, effective September 1, 2001.

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*** STATUTES CURRENT THROUGH THE 2009 FIRST SPECIAL SESSION. ***
*** ANNOTATIONS CURRENT THROUGH 2009 UT 21 (04/16/2009); 2009 UT App 101 (04/16/2009) AND APRIL 15, 2009 (FEDERAL CASES). ***

TITLE 72. TRANSPORTATION CODE
CHAPTER 4. DESIGNATION OF STATE HIGHWAYS
PART 2. SPECIAL DESIGNATIONS

Go to the Utah Code Archive Directory

Utah Code Ann. § 72-4-204 (2009)

§ 72-4-204. Dinosaur Diamond Prehistoric Highway

(1) There is established the Dinosaur Diamond Prehistoric Highway comprising the existing highways beginning on Route 191 in Blanding north to the frontage road of Route 70 at Crescent Junction, then west on the frontage road of Route 70 to Green River, then northerly on Route 191 and Route 6 to Route 10 near Price, then:

(a) south on Route 10 to Castle Dale, then North on Route 10 to Route 155, then south on Route 155 to the Cleveland Lloyd Dinosaur Quarry via its access road; and

(b) northerly on Route 191 and Route 6 to Helper and the State of Utah Indian Canyon Scenic Byway, then northeasterly on Route 191 to Route 40 in Duchesne, then east on Route 40 and Route 191 to Vernal, and then east on Route 40 to Route 149, then northeasterly on Route 149 to the Dinosaur National Monument, then southwesterly on Route 149 to Route 40, then east on Route 40 to the Utah and Colorado state boundary line.

(2) In addition to other official designations, the Department of Transportation shall designate and highlight the portions of the highways identified in Subsection (1) as the Dinosaur Diamond Prehistoric Highway on all future state highway maps.

HISTORY: C. 1953, 27-12-163, enacted by L. 1998, ch. 214, §§ 1, 2; recompiled as § 72-4-204.

NOTES: COMPILER'S NOTES. --This section was originally enacted as § 27-12-163, but was renumbered as this section by the Office of Legislative Research and General Counsel under the authority of the coordination clause of Laws 1998, ch. 214, § 2.

EFFECTIVE DATES. --Laws 1998, ch. 214 became effective on May 4, 1998, pursuant to Utah Const., Art. VI, Sec. 25.

USER NOTE: For more generally applicable notes, see notes under the first section of this article, part, chapter, subtitle, or title.

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*** STATUTES CURRENT THROUGH THE 2009 FIRST SPECIAL SESSION. ***
*** ANNOTATIONS CURRENT THROUGH 2009 UT 21 (04/16/2009); 2009 UT App 101 (04/16/2009) AND APRIL 15, 2009 (FEDERAL CASES). ***

TITLE 72. TRANSPORTATION CODE
CHAPTER 4. DESIGNATION OF STATE HIGHWAYS
PART 3. UTAH STATE SCENIC BYWAY PROGRAM

Go to the Utah Code Archive Directory

Utah Code Ann. § 72-4-301 (2009)

§ 72-4-301. Definitions

As used in this part:

(1) "Committee" means the Utah State Scenic Byway Committee created in Section 72-4-302.

(2) "Non-scenic area" means:

(a) any property that is unzoned or zoned for commercial or industrial use adjoining a highway that does not contain at least one of the intrinsic qualities described in Subsection 72-4-303(1)(b) immediately upon the property; or

(b) any property that is unzoned or zoned for commercial or industrial use that contains an intrinsic quality described in Subsection 72-4-303(1)(b) immediately upon the property but the intrinsic quality does not represent the primary use of the property.

(3) "Segmentation" means:

(a) removing the scenic byway designation from a portion of an existing scenic byway that adjoins a non-scenic area; or

(b) excluding a portion of a highway from a scenic byway designation where the highway adjoins a non-scenic area.

HISTORY: C. 1953, 72-4-301, enacted by L. 2004, ch. 172, § 1; 2009, ch. 393, § 1.

NOTES: AMENDMENT NOTES. --The 2009 amendment, effective May 12, 2009, added the (1) designation; added (2) and (3); and made related and stylistic changes.

EFFECTIVE DATES. --Laws 2004, ch. 172 became effective on May 3, 2004, pursuant to Utah Const., Art. VI, Sec. 25.

LexisNexis 50 State Surveys, Legislation & Regulations

Billboards and Outdoor Advertising

NOTES APPLICABLE TO ENTIRE TITLE

REPEALS. --Laws 1965, ch. 154, § 10-102 repealed former Title 72, "Warehouses and Warehouse Receipts," Chapters 1 to 3, Utah Code Annotated 1953, relating to warehouse receipts, obligations of warehousemen, and warehouseman's liens. For present provisions, see Title 70A, Chapter 7.

COMPILER'S NOTES. --This Title 72 was created in 1998 by the enactment of several sections and the renumbering of many other sections from Titles 2, 27, and 63. See the table at the end of this title for the 1998 disposition of those sections.

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*** STATUTES CURRENT THROUGH THE 2009 FIRST SPECIAL SESSION. ***
*** ANNOTATIONS CURRENT THROUGH 2009 UT 21 (04/16/2009); 2009 UT App 101 (04/16/2009) AND APRIL 15, 2009 (FEDERAL CASES). ***

TITLE 72. TRANSPORTATION CODE
CHAPTER 4. DESIGNATION OF STATE HIGHWAYS
PART 3. UTAH STATE SCENIC BYWAY PROGRAM

Go to the Utah Code Archive Directory

Utah Code Ann. § 72-4-301.5 (2009)

§ 72-4-301.5. Designation of highways as a National Scenic Byway or All-American Road

Except as provided in Section 72-4-304, a highway or state scenic byway may not be nominated for designation as a National Scenic Byway or All-American Road unless the nomination is approved by the Legislature.

HISTORY: C. 1953, 72-4-301.5, enacted by L. 2009, ch. 393, § 2.

NOTES: EFFECTIVE DATES. --Laws 2009, ch. 393 became effective on May 12, 2009, pursuant to Utah Const., Art. VI, Sec. 25.

USER NOTE: For more generally applicable notes, see notes under the first section of this article, part, chapter, subtitle, or title.

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*** ANNOTATIONS CURRENT THROUGH 2009 UT 21 (04/16/2009); 2009 UT App 101 (04/16/2009) AND APRIL 15, 2009 (FEDERAL CASES). ***

TITLE 72. TRANSPORTATION CODE
CHAPTER 4. DESIGNATION OF STATE HIGHWAYS
PART 3. UTAH STATE SCENIC BYWAY PROGRAM

Go to the Utah Code Archive Directory

Utah Code Ann. § 72-4-302 (2009)

§ 72-4-302. Utah State Scenic Byway Committee -- Creation -- Membership -- Meetings -- Expenses

(1) There is created the Utah State Scenic Byway Committee.

(2) (a) The committee shall consist of the following 15 members:

(i) a representative from each of the following entities appointed by the governor:

(A) the Governor's Office of Economic Development;

(B) the Utah Department of Transportation;

(C) the Department of Community and Culture;

(D) the Division of State Parks and Recreation;

(E) the Federal Highway Administration;

(F) the National Park Service;

(G) the National Forest Service; and

(H) the Bureau of Land Management;

(ii) one local government tourism representative appointed by the governor;

(iii) a representative from the private business sector appointed by the governor;

(iv) three local elected officials from a county, city, or town within the state appointed by the governor;

(v) a member from the House of Representatives appointed by the speaker of the House of Representatives; and

(vi) a member from the Senate appointed by the president of the Senate.

(b) Except as provided in Subsection (2)(c), the members appointed in this Subsection (2) shall be appointed for a four-year term of office.

(c) The governor shall, at the time of appointment or reappointment for appointments made under Subsection (2)(a)(i), (ii), (iii), or (iv) adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.

(d) (i) The appointments made under Subsection (2)(a)(v) and (2)(a)(vi) by the speaker of the House and the president of the Senate may not be from the same political party.

(ii) The speaker of the House and the president of the Senate shall alternate the appointments made under Subsections (2)(a)(v) and (2)(a)(vi) as follows:

(A) if the speaker appoints a member under Subsection (2)(a)(v), the next appointment made by the speaker following the expiration of the existing member's four-year term of office shall be from a different political party; and

(B) if the president appoints a member under Subsection (2)(a)(vi), the next appointment made by the president following the expiration of the existing member's four-year term of office shall be from a different political party.

(3) (a) The representative from the Governor's Office of Economic Development shall chair the committee.

(b) The members appointed under Subsections (2)(a)(i)(E) through (H) serve as nonvoting, ex officio members of the committee.

(4) The Governor's Office of Economic Development and the department shall provide staff support to the committee.

(5) (a) The chair may call a meeting of the committee only with the concurrence of the department.

(b) A majority of the voting members of the committee constitute a quorum.

(c) Action by a majority vote of a quorum of the committee constitutes action by the committee.

(6) (a) (i) Members who are not state government employees shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Members may decline to receive per diem and expenses for their service.

(b) (i) State government officer and employee members who do not receive salary, per diem, or expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) State government officer and employee members may decline to receive per diem and expenses for their service.

(c) (i) Local government members who do not receive salary, per diem, or expenses from the entity that they represent for their service may receive per diem and expenses incurred in the performance of their official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Local government members may decline to receive per diem and expenses for their service.

(d) Legislators on the committee receive compensation and expenses as provided by law and legislative rule.

HISTORY: C. 1953, 72-4-302, enacted by L. 2004, ch. 172, § 2; 2005, ch. 148, § 164; 2009, ch. 393, § 3.

NOTES: AMENDMENT NOTES. --The 2005 amendment, effective July 1, 2005, substituted "Governor's Office of Economic Development" for "Division of Travel Development" throughout the section and made stylistic changes.

The 2009 amendment, effective May 12, 2009, added the (2)(a) designation; substituted "15 members" for "members" in the introductory language of (2)(a); substituted "the governor" for "each respective entity" in the introductory language of (2)(a)(i); deleted former (2)(a)(iii), which read: "the Utah Association of Governments"; added (2)(a)(i)(C), (2)(a)(iv) through (2)(a)(vi), (2)(a)(ii), (2)(c), (2)(d), and (6)(d); deleted former (2)(a)(ix), which read: "the Utah Travel Regions Association"; rewrote (2)(b), which formerly read: "two local government tourism representatives selected by the state entities identified in Subsection (2)(a)"; substituted "Subsections (2)(a)(i)(E) through (H)" for "Subsections (2)(a)(v), (vi), (vii), and (viii)" in (3)(b); and made related and stylistic changes.

FEDERAL LAW. --For regulations relating to the administration of federal aid for highways and the Federal Highway Administration, listed in Subsection (2)(a)(i)(E), see 23 C.F.R. Chapter 1, § 1.1 et seq.

EFFECTIVE DATES. --Laws 2004, ch. 172 became effective on May 3, 2004, pursuant to Utah Const., Art. VI, Sec. 25.

CROSS-REFERENCES. --Governor's Office of Economic Development, Title 63M, Chapter 1.

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*** STATUTES CURRENT THROUGH THE 2009 FIRST SPECIAL SESSION. ***
*** ANNOTATIONS CURRENT THROUGH 2009 UT 21 (04/16/2009); 2009 UT App 101 (04/16/2009) AND APRIL 15, 2009 (FEDERAL CASES). ***

TITLE 72. TRANSPORTATION CODE
CHAPTER 4. DESIGNATION OF STATE HIGHWAYS
PART 3. UTAH STATE SCENIC BYWAY PROGRAM

Go to the Utah Code Archive Directory

Utah Code Ann. § 72-4-303 (2009)

§ 72-4-303. Powers and duties of the Utah State Scenic Byway Committee -- Requirements for designation -- Segmentation -- Rulemaking authority -- Designation on state maps -- Outdoor advertising

(1) The committee shall have the responsibility to:

(a) administer a coordinated scenic byway program within the state that:

(i) preserves and protects the intrinsic qualities described in Subsection (1)(b) unique to scenic byways;

(ii) enhances recreation; and

(iii) promotes economic development through tourism and education;

(b) ensure that a highway nominated for a scenic byway designation possesses at least one of the following six intrinsic qualities:

(i) scenic quality;

(ii) natural quality;

(iii) historic quality;

(iv) cultural quality;

(v) archaeological quality; or

(vi) recreational quality;

(c) designate highways as state scenic byways from nominated highways within the state if the committee determines that the highway possesses the criteria for a state scenic byway; and

(d) remove the designation of a highway as a scenic byway if the committee determines that the highway no longer meets the criteria under which it was designated.

(2) (a) A highway located within a county, city, or town within this state may not be included as part of a designation or nomination as a state scenic byway, National Scenic Byway, or All-American Road unless the nomination or designation is sanctioned in writing by an official action of the legislative body of each county, city, or town through which the proposed state scenic byway, National Scenic Byway, or All-American Road passes.

(b) If a county, city, or town does not give approval as required under Subsection (2)(a), then the portion of the highway located within the boundaries of the county, city, or town may not be included as part of any state scenic byway designation or nomination as a National Scenic Byway or All-American Road.

(3) (a) A state scenic byway, National Scenic Byway, or All-American Road may be segmented by the legislative body of the county, city, or town where the segmentation is to occur if:

(i) a person or another entity, with the consent of any landowners affected by the segmentation, has requested the segmentation of a portion of a road or highway; and

(ii) the legislative body of the county, city, or town reviews the segmentation proposed under Subsection (3)(a)(i).

(b) The legislative body of a county, city, or town shall render a decision on a segmentation request under Subsection (3)(a) within 60 days and may grant segmentation to the person or entity if the property is a non-scenic area.

(c) (i) If the legislative body of a county, city, or town denies the request to segment the state scenic byway, National Scenic Byway, or All-American Road under Subsection (3)(a) upon the request of a person or another entity, with the consent of any landowners affected by the segmentation, that person or entity may appeal the denial of the request to the committee.

(ii) The committee shall hear and answer an appeal of the denial of a segmentation request within 60 days of a request submitted in accordance with Subsection (3)(c)(i).

(iii) If the committee does not render a decision on an appeal in accordance with Subsection (3)(c)(ii), the segmentation request shall be granted if the property is a non-scenic area.

(4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules in consultation with the committee:

(a) for the administration of a scenic byway program;

(b) establishing the criteria that a highway shall possess to be designated as a scenic byway, including the criteria described in Subsection (1)(b);

(c) establishing the process for nominating a highway to be designated as a state scenic byway;

(d) specifying the process for hearings to be conducted in the area of proposed designation prior to the highway being designated as a scenic byway;

(e) identifying the highways within the state designated as scenic byways; and

(f) establishing the process and criteria for removing the designation of a highway as a scenic byway.

(5) The department shall designate scenic byway routes on future state highway maps.

(6) A highway within the state designated as a scenic byway is subject to federal outdoor advertising regulations in accordance with 23 U.S.C. Sec. 131.

HISTORY: C. 1953, 72-4-303, enacted by L. 2004, ch. 172, § 3; 2008, ch. 382, § 2096; 2009, ch. 393, § 4.

NOTES: AMENDMENT NOTES. --The 2008 amendment, effective May 5, 2008, updated references to conform to the recodification of Title 63.
The 2009 amendment, effective May 12, 2009, added (2) and (3) and redesignated former (2) through (4) as (4) through (6).

EFFECTIVE DATES. --Laws 2004, ch. 172 became effective on May 3, 2004, pursuant to Utah Const., Art. VI, Sec. 25.

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*** STATUTES CURRENT THROUGH THE 2009 FIRST SPECIAL SESSION. ***
*** ANNOTATIONS CURRENT THROUGH 2009 UT 21 (04/16/2009); 2009 UT App 101 (04/16/2009) AND APRIL 15, 2009 (FEDERAL CASES). ***

TITLE 72. TRANSPORTATION CODE
CHAPTER 4. DESIGNATION OF STATE HIGHWAYS
PART 3. UTAH STATE SCENIC BYWAY PROGRAM

Go to the Utah Code Archive Directory

Utah Code Ann. § 72-4-304 (2009)

§ 72-4-304. Exceptions to approval and segmentation requirements

(1) Legacy Parkway, from the junction of I-215 in Davis County northerly to the junction with US 89 and I-15:

(a) is exempt from the legislative approval requirement in Section 72-4-301.5; and

(b) may not be segmented.

(2) A highway nominated for National Scenic Byway or All-American Road designation prior to January 1, 2009 is exempt from the legislative approval requirement in Section 72-4-301.5.

HISTORY: C. 1953, 72-4-304, enacted by L. 2009, ch. 393, § 5.

NOTES: EFFECTIVE DATES. --Laws 2009, ch. 393 became effective on May 12, 2009, pursuant to Utah Const., Art. VI, Sec. 25.

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*** STATUTES CURRENT THROUGH THE 2007 ADJOURNED SESSION (2008) ***
*** *** ANNOTATIONS CURRENT THROUGH OCTOBER 10, 2008 AND THE APPROPRIATE FEDERAL COURTS THROUGH NOVEMBER 21, 2008 *** ***

TITLE TEN. CONSERVATION AND DEVELOPMENT
PART 1. DEVELOPMENT OF RESOURCES
CHAPTER 19. SCENERY PRESERVATION COUNCIL

Go to the Vermont Code Archive Directory

10 V.S.A. § 421 (2009)

§ 421. Purposes

This chapter is designed to preserve and to enhance Vermont's scenic values.

HISTORY: 1966, No. 67 (Sp. Sess.), § 2, eff. March 14, 1966.

NOTES APPLICABLE TO ENTIRE CHAPTER

HISTORY

SEVERABILITY. Sections 421-425 of this chapter are subject to a severability clause pursuant to 1966, No. 67, § 7.

LEGISLATIVE FINDINGS AND PURPOSE. 1966, No. 67, § 1, provided:
"(1) That the State of Vermont possesses unique scenic resources which the State seeks to safeguard.
"(2) That it is the policy of the State of Vermont to protect its scenic resources because of their intangible contribution to the welfare of its citizens and visitors and for their tangible contributions to the economic well-being of the State.
"(3) That immediate action is needed to protect Vermont's scenic country-side against the detrimental effects of the decrease in active farming, of the metropolitan development surrounding the State, and of encroachments along its highways."
1977, No. 58, § 1, provided: "It is the policy of the state of Vermont to preserve through planning the scenic quality of its rural landscape, and enable municipalities to designate town scenic highways which may be improved in accordance with standards combining aesthetic and functional criteria."

CROSS REFERENCES
Bicycle routes, see § 2301 et seq. of Title 19.
Register of scenic roads, see § 2503 of Title 19.
Tourist information services, see § 481 et seq. of this title.

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*** STATUTES CURRENT THROUGH THE 2007 ADJOURNED SESSION (2008) ***
*** *** ANNOTATIONS CURRENT THROUGH OCTOBER 10, 2008 AND THE APPROPRIATE FEDERAL COURTS THROUGH NOVEMBER 21, 2008 *** ***

TITLE TEN. CONSERVATION AND DEVELOPMENT
PART 1. DEVELOPMENT OF RESOURCES
CHAPTER 21. TOURIST INFORMATION SERVICES

Go to the Vermont Code Archive Directory

10 V.S.A. § 494 (2009)

Legislative Alert: LEXSEE 2009 Vt. ALS 51 -- See section 4.

§ 494. Exempt signs

The following signs are exempt from the requirements of this chapter except as indicated in section 495 of this title:

(1) Signs located on or in the rolling stock of common carriers.

(2) Signs on registered and inspected motor vehicles except those which are determined by the travel information council to be circumventing the intent of this chapter.

(3) Signs, with an area of not more than 260 square inches, identifying stops or fare zone limits of common carriers by motor bus.

(4) Signs erected and maintained by a town outside the highway right-of-way, each of which does not exceed 64 square feet in area, excluding panel and frame, which may show the place and time of services or meetings of churches and civic organizations in the town, and which may include a panel which identifies the name of the town, the charter date, the date the town was founded, or any other significant date in the history of the town, and which the town wishes to identify. The panel may bear the wording "welcome to" the particular town. Not more than two such signs may be erected and maintained readable by traffic proceeding in any one direction on any one highway. The signs shall meet the criteria of the transportation agency and the travel information council.

(5) Residential directional signs, each of which does not exceed 4 square feet in area, along highways other than limited-access facilities (but not within the highway right of way), except that a license is required if the person maintains a professional, commercial or business activity at this residence and wishes to indicate its existence.

(6) Official traffic control signs, including signs on limited access highways consistent with the manual on uniform traffic control devices, adopted under 23 V.S.A. § 1025, directing people to other towns, international airports, postsecondary educational institutions; cultural and recreational destination areas; nonprofit diploma granting

educational institutions for people with disabilities; and official traffic control signs, including signs on limited access highways, consistent with the manual on uniform traffic control devices, adopted under 23 V.S.A. § 1025, directing people to official state visitor information centers. After having considered the six priority categories in this subdivision, the travel information council may approve installation of a sign for any of the following:

(A) Nonprofit museums;

(B) Cultural and recreational attractions owned by the state or federal government;

(C) Officially designated scenic byways;

(D) Park and ride or multimodal centers; and

(E) Fairgrounds or exposition sites; provided the designations in subdivisions (A) through (E) are open a minimum of 120 days each year and are located within 15 miles of an interstate highway exit. Signs erected under this subdivision (6) of this section shall not exceed a maximum allowable size of 80 square feet.

(7) Signs of a duly constituted governmental body including traffic and similar regulatory devices, legal notices or warnings at railroad crossings.

(8) Small signs displayed for the direction, instruction or convenience of the public, including signs which identify rest rooms, freight entrances, posted areas or the like, with a total surface area not exceeding four square feet.

(9) Signs to be maintained for not more than two weeks announcing an auction, or a campaign, drive or event of a civic, philanthropic or religious organization.

(10) Memorial signs or tablets.

(11) Signs erected by county fairs and expositions for a period not to exceed six weeks.

(12) Directional signs, subject to regulations adopted by the Federal Highway Administration with a total surface area not to exceed four square feet providing directions to places of business offering for sale agricultural products harvested or produced on the premises where the sale is taking place.

(13) Murals that relate exclusively to a downtown designated under 24 V.S.A. chapter 76A, whether located within or outside the designated downtown itself, provided that all of the following apply: the mural is hand-painted; it is painted directly on the outside surface of a structure that has been in existence on the site for at least the preceding 25 years; it is located no more than three miles from the designated downtown; its placement has been authorized by the legislative body of the municipality in which it is located; and any words used pertain only to the direction or distance to, and the name of, the designated downtown. A mural exempted under this subdivision that is visible from the off-ramp of a limited access facility and not otherwise visible from such a facility shall also be exempt from compliance with subsection 495(b) of this title.

(14) Up to two directional signs with a surface area not to exceed one square foot per sign, erected by a town on any existing highway signpost on highways over which the town has jurisdiction, except class 1 town highways. The colors of the directional signs shall be in contrast to the colors used on highway signs. Directional signs on the same highway signpost shall be for different purposes. The erection of signs shall be under guidelines adopted by the town. Towns may charge a reasonable fee for the installation of approved signs.

(15) Municipal informational and guidance signs. A municipality may provide alternative signs of a guidance or informational nature and creative design to assist persons in reaching destinations that are transportation centers, geographic districts, historic monuments and significant or unique educational, recreational or cultural landmarks, provided that such destinations are not private, for-profit enterprises. A proposal to provide alternative signs shall

contain color, shape and sign placement requirements that shall be of a uniform nature within the municipality. The surface area of alternative signs shall not exceed 12 square feet, and the height of such signs shall not exceed 12 feet in height. The proposal shall be approved by the municipal planning commission for submission to and adoption by the local legislative body. Alternative signs shall be responsive to the particular needs of the municipality and to the values expressed in this chapter. These proposals shall be subject to and consistent with any plan duly adopted pursuant to chapter 117 of Title 24, shall be enforced under the provisions of 24 V.S.A. §§ 4444 and 4445 and may emphasize each municipality's special characteristics. No fees shall be assessed against a municipality that provides signs under this section and, upon issuance of permits under section 1111 of Title 19, such signs may be placed in any public right-of-way other than interstates. This section shall take effect upon the travel information council securing permission for alternative municipal signs in accordance with section 1029 of Title 23.

(16) [Repealed.]

(17) Within a downtown district designated under the provisions of 24 V.S.A. chapter 76A, municipal information and guidance signs. A municipality may erect alternative signs to provide guidance or information to assist persons in reaching destinations that are transportation centers, geographic districts, and significant or unique educational, recreational, historic or cultural landmarks. A proposal to provide alternative signs shall contain color, shape and sign placement requirements that shall be uniform within the municipality. The surface area of alternative signs shall not exceed 12 square feet, and the highest point of such signs shall not exceed 12 feet above the ground, road surface or sidewalk. The proposal shall be approved by the municipal planning commission for submission to and adoption by the local legislative body. The sign proposal then shall be submitted to the travel information council for final approval. Denial may be based only on safety considerations. Reasons for denial shall be stated in writing. Alternative signs shall be responsive to the particular needs of the municipality and to the values expressed in this chapter. These proposals shall be subject to and consistent with any municipal plan duly adopted pursuant to chapter 117 of Title 24, shall be enforced under the provisions of 24 V.S.A. §§ 4444 and 4445 and may emphasize each municipality's special characteristics. No fees shall be assessed against a municipality that provides signs under this section and upon issuance of permits under section 1111 of Title 19, such signs may be placed in any public right-of-way other than an interstate highway. Notwithstanding subdivision 495(a)(7) or any other provision of this title or of section 1029 of Title 23, alternative signs permitted under this subsection shall not be required to comply with any nationally recognized standard.

HISTORY: 1967, No. 333 (Adj. Sess.), § 14, eff. March 23, 1968; amended 1971, No. 115, § 3, eff. April 26, 1971; 1979, No. 135 (Adj. Sess.), § 2; 1983, No. 167 (Adj. Sess.), § 9; 1991, No. 197 (Adj. Sess.), § 1; No. 207 (Adj. Sess.), §§ 1, 2; No. 220 (Adj. Sess.), § 1; 1993, No. 121 (Adj. Sess.), § 8a; 1995, No. 190 (Adj. Sess.), § 12b; 1997, No. 120 (Adj. Sess.), § 8; No. 150 (Adj. Sess.), § 6; 1999, No. 18, §§ 41e, 41g(c), eff. May 13, 1999; 1999, No. 156 (Adj. Sess.), § 33, eff. May 29, 2000; 2003, No. 160 (Adj. Sess.), § 59, eff. June 9, 2004; 2007, No. 164 (Adj. Sess.), § 55.

NOTES: HISTORY

REVISION NOTE. Redesignated subdiv. (13) as added by 1991, No. 220 (Adj. Sess.), § 1, as subdiv. (14) to avoid a conflict with existing subdiv. (13), as added by 1991, No. 207 (Adj. Sess.), § 2, and redesignated subdiv. (13), as added by 1991, No. 197 (Adj. Sess.), § 1, as subdiv. (15), in view of its content.

AMENDMENTS--2007 (ADJ. SESS.). Added subdiv. (13) which had been repealed.

--2003 (ADJ. SESS.). Subdivision (6): Deleted "green" preceding "traffic" in the first clause of the first sentence, and preceding "sign" in the second sentence, and "blue" preceding "traffic control" in the first sentence.

Subdivision (12): Substituted "Federal Highway Administration" for "bureau of public roads" and "four square" for "4 square".

--1999 (ADJ. SESS.). Subivision (6): Amended generally.

--1999. Subdivision (6): Inserted "official state visitor information centers" preceding "nonprofit museums" and substituted "people with disabilities and postsecondary educational institutions" for "the language delayed" in the introductory paragraph and "15 miles" for "fifteen miles" in subdiv. (B).
Subdivision (13): Repealed.

--1997 (ADJ. SESS.). Subdivision (6): Act No. 150 added "fairgrounds or exposition sites" in the introductory paragraph.
Subdivision (17): Added by Act No. 120.

--1995 (ADJ. SESS.). Subdivision (16): 1995, No. 190 (Adj. Sess.), § 12b, added the subsection, authorizing tourist information and travel advisory signs to alert the traveling public to tune to a low-power radio station for tourist information and travel advisories for an area within ten miles of the sign. Section 12c(c) of the act repealed subdiv. (16), effective July 1, 1998.

--1993 (ADJ. SESS.). Subdivision (6): Inserted "or nonprofit diploma granting educational institutions for the language delayed, subject to rules adopted by the travel information council" following "museums" in the introductory paragraph.

--1991 (ADJ. SESS.). Subdivision (6): Amended generally by Act No. 207.
Subdivision (13): Added by Act No. 197, Act No. 207 and Act No. 220.

--1983 (ADJ. SESS.). Subdivision (4): Inserted "outside the highway right-of-way, each of which does not exceed 64 square feet in area, excluding panel and frame" preceding "which may show" in the first sentence and substituted "two" for "one" preceding "such" and "signs" for "sign" thereafter in the third sentence.

--1979 (ADJ. SESS.). Subdivision (4): In the first sentence, deleted "outside the highway right of way" following "maintained by a town", substituted "which may show" for "showing" thereafter, and added "and which may include a panel which identifies the name of the town, the charter date, the date the town was founded, or any other significant date in the history of the town, and which the town wishes to identify" at the end of the sentence; in the third sentence substituted "one" for "two" preceding "such sign"; added the second and fourth sentences.

--1971. Subdivision (2): Added "except those which are determined by the travel information council to be circumventing the intent of this chapter" at the end of the sentence.

1995 (ADJ. SESS.) AMENDMENT. 1995, No. 190 (Adj. Sess.), § 12c(a), provided in part that section 12b of the act, which added former subdiv. (16) of this section, was limited to the approval of signs in the municipalities of Cambridge and Stowe.

REMOVAL OF SIGNS ERECTED PURSUANT TO SUBDIVISION (13). 1999, No. 18, § 41f, eff. May 13, 1999, provided: "All signs erected pursuant to 10 V.S.A. § 494(13) and in place before passage of this act [May 13, 1999] shall be removed no later than November 30, 2001."

USER NOTE: For more generally applicable notes, see notes under the first section of this heading: division, article, chapter, part or title.

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*** STATUTES CURRENT THROUGH THE 2007 ADJOURNED SESSION (2008) ***
*** *** ANNOTATIONS CURRENT THROUGH OCTOBER 10, 2008 AND THE APPROPRIATE FEDERAL COURTS THROUGH NOVEMBER 21, 2008 *** ***

TITLE TEN. CONSERVATION AND DEVELOPMENT
PART 5. LAND USE AND DEVELOPMENT
CHAPTER 151. STATE LAND USE AND DEVELOPMENT PLANS
SUBCHAPTER 3. USE AND DEVELOPMENT PLANS

Go to the Vermont Code Archive Directory

10 V.S.A. § 6042 (2009)

§ 6042. Capability and development plan

The board shall adopt a capability and development plan consistent with the interim land capability plan which shall be made with the general purpose of guiding and accomplishing a coordinated, efficient and economic development of the state, which will, in accordance with present and future needs and resources, best promote the health, safety, order, convenience, prosperity and welfare of the inhabitants, as well as efficiency and economy in the process of development, including but not limited to, such distribution of population and of the uses of the land for urbanization, trade, industry habitation, recreation, agriculture, forestry and other uses as will tend to create conditions favorable to transportation, health, safety, civic activities and educational and cultural opportunities, reduce the wastes of financial and human resources which result from either excessive congestion or excessive scattering of population and tend toward an efficient and economic utilization of drainage, sanitary and other facilities and resources and the conservation and production of the supply of food, water and minerals. In addition, the plan may accomplish the purposes set forth in section 4302 of Title 24.

HISTORY: 1969, No. 250 (Adj. Sess.), § 19, eff. April 4, 1970.

NOTES: HISTORY

1973 CAPABILITY AND DEVELOPMENT PLAN; STATEMENT OF INTENT AND FINDINGS. 1973, No. 85, §§ 6, 7, provided:

"(a) This act [which amended former § 805 of Title 3, former § 6043 and §§ 6025, 6027, 6046, 6001, 6085, 6086, and 6089 of this title and § 3481 of Title 32] constitutes the capability and development plan provided for in section 6042 of Title 10, and is adopted by the general assembly for the purposes set forth in that section and in section 4302 of Title 24.

"(b) This act is not intended and shall not be construed to limit in any way the freedom of any person to sell or otherwise dispose of his land unless by so doing he will create a subdivision as defined by section 6001(18) [So in original. Probably should be (19).] of Title 10.

"Sec. 7. Legislative findings

"(a) In order to provide general and uniform policies on land use and development to municipal, regional, and state governmental agencies, for their guidance and consideration, and to provide the basis for the Vermont land use plan to be adopted under [former] section 6043 of Title 10, the general assembly hereby finds and declares as follows:

"PLANNING FOR LAND USE AND ECONOMIC DEVELOPMENT

"(1) THE CAPABILITY OF THE LAND

"The capability of land to support development or subdivision provides a foundation for judgment of whether a proposal of development or subdivision is consistent with policies designed to make reasonable use of the state's resources and to minimize waste or destruction of irreplaceable values. Accordingly, such information regarding the physical characteristics of land as is found in the interim land capability and development plan adopted under [former] section 6041 of Title 10, and as may hereafter be adopted as a rule of the environmental board, shall be considered a part of this capability and development plan.

"(2) UTILIZATION OF NATURAL RESOURCES

"Products of the land and the stone and minerals under the land, as well as the beauty of our landscape are principal natural resources of the state. Preservation of the agricultural and forest productivity of the land, and the economic viability of agricultural units, conservation of the recreational opportunity afforded by the state's hills, forests, streams and lakes, wise use of the state's non-renewable earth and mineral reserves, and protection of the beauty of the landscape are matters of public good. Uses which threaten or significantly inhibit these resources should be permitted only when the public interest is clearly benefited thereby.

"(3) PUBLIC AND PRIVATE CAPITAL INVESTMENT

"(A) A balance of public and private capital investment determines the economic well-being of a town or region. An area of industrial, recreational, or residential growth requires highways, schools, utilities, and services the cost of which is borne in large part by others. A settled area, with a full complement of public services, needs continuing private capital investment to create a tax base to pay for the services. Increased demands for and costs of public services, such as schools, road maintenance, and fire and police protection must be considered in relation to available tax revenues and reasonable public and private capital investment. The location and rate of development must be considered, so that the revenue and capital resources of the town, region or state are not diverted from necessary and reasonably anticipated increased governmental services. Accordingly, conditions may be imposed upon the rate and location of development in order to control its impact upon the community.

"(B) Consideration must be given to the consequences of growth and development for the region and the state as well as for the community in which it takes place. An activity or project that imposes burdens or deprivations on other communities or the state as a whole cannot be justified on the basis of local benefit alone.

"(4) PLANNING FOR GROWTH

"(A) Strip development along highways and scattered residential development not related to community centers cause increased cost of government, congestion of highways, the loss of prime agricultural lands, overtaxing of town roads and services and economic or social decline in the traditional community center.

"(B) Provision should be made for the renovation of village and town centers for commercial and industrial development, where feasible, and location of residential and other development off the main highways near the village center on land which is other than primary agricultural soil.

"(C) Planning at all levels should provide for the development and allocation of lands and resources of existing cities, towns, and villages generally in proportion to their existing sizes as related to distribution state-wide and a projection of the reasonably expected population increase and economic growth, unless a community, through duly adopted plans, makes the determination that it desires and has the ability to accommodate more rapid growth.

"(D) Consistent with all other policies and criteria set forth in this act, development as defined in section 6001 of this chapter in areas which are not natural resources as referred to in paragraph (9) of this section should be permitted at reasonable population densities and reasonable rates of growth, with emphasis on cluster planning and new community planning designed to economize on the costs of roads, utilities and land usage.

"(5) SEASONAL HOME DEVELOPMENT

"Seasonal homes not only are convertible to permanent homes but are often so converted and may require increased municipal and public services. There should, therefore, be imposed such conditions upon a seasonal home development or subdivision as should be imposed upon a permanent residential development or subdivision.

"(6) GENERAL POLICIES FOR ECONOMIC DEVELOPMENT

"(A) In order to achieve a strong economy that provides satisfying and rewarding job and investment opportunities and sufficient income to meet the needs and aspirations of the citizens of Vermont, economic development should be pursued selectively so as to provide maximum economic benefit with minimal environmental impact.

"(B) Any effort which directly or indirectly accelerates economic growth should be consistent with local, regional and state objectives.

"(C) One of the long-range benefits to the community of commercial and industrial development should be to provide stable employment opportunities at all economic levels, particularly for Vermont's unemployed and underemployed.

"(7) SPECIFIC AREAS FOR RESOURCE DEVELOPMENT

"The flow of cash into Vermont to pay for goods manufactured in the state, grown in the state, or mined and quarried in the state, and to pay for services offered in the state to out-of-staters is of primary importance to the state's economy. Enterprises adding the greatest value by conversion of native raw materials or the products of the land are particularly beneficial to the public interest.

"(8) PLANNING FOR HOUSING

"(A) Opportunity for decent housing is a basic need of all Vermont's citizens. A decent home in a suitable living environment is a necessary element for protecting the health, safety, and general welfare of the public. The housing requirement for Vermont's expanding resident population, particularly for those citizens of low or moderate income, must be met by the construction of new housing units and the rehabilitation of existing substandard dwellings. It is in the public interest that new or rehabilitated housing should be: safe and sanitary; available in adequate supply to meet the requirements of all Vermont's residents; located conveniently to employment and commercial centers; and, coordinated with the provision of necessary public facilities and utilities and consistent with municipal and regional plans.

"(B) Sites for multi-family and manufactured housing should be readily available in locations not inferior to those generally used for single-family conventional dwellings.

"(C) There should be a reasonable diversity of housing types and choice between rental and ownership for all citizens in a variety of locations suitable for residential development and convenient to employment and commercial centers.

"RESOURCE USE AND CONSERVATION

"(9) NATURAL RESOURCES SPECIFICALLY PROVIDED FOR

"Those natural resources referred to in section 6086(a)(1)(A) "Headwaters", (B) "Waste disposal", (C) "Water conservation", (D) "Floodplains" [Floodways], (E) "Watercourses" [Streams], and (F) "Shorelines", and section 6086(a)(8)(A) "Wildlife habitat and endangered species", and section 6086(a)(9)(B) "Primary agricultural soils", (C) "Forests and secondary agricultural soils", (D) "Earth resources", (E) "Extraction of earth resources", and (K) "Development affecting public investments" should be planned for development and use under the principles of environmental conservation set forth in those sections.

"(10) RECREATIONAL RESOURCES

"(A) the use and development of land and waters should occur in such a way as not to significantly diminish the value and availability of outdoor recreational activities to the people of Vermont, including hunting, fishing, hiking, canoeing and boating, skiing, horseback riding, snowmobiling, and other outdoor recreational activities.

"(B) the effects of development and subdivision on availability of and access to lands which provide opportunities for outdoor recreation should be considered, and such availability or access should be provided for where feasible.

"(11) SPECIAL AREAS

"Lands that include or are adjacent to sites or areas of historical, educational, cultural, scientific, architectural or

archeological value, including those designated by the rules of the environmental board, should only be developed in a manner that will not significantly reduce that value of the site or area. Sites or areas which are in danger of destruction should be placed in whatever form of public or private ownership that would best maintain and utilize their value to the public.

"(12) SCENIC RESOURCES

"The use and development of lands and waters should not significantly detract from recognized scenic resources including river corridors, scenic highways and roads, and scenic views. Accordingly conditions may be imposed on development in order to control unreasonable or unnecessary adverse effects upon scenic resources.

"(13) CONSERVATION OF ENERGY

"Energy conversion and utilization depletes a limited resource, and produces wastes harmful to the environment, while facilitating our economy and satisfying human needs essential to life. Energy conservation should be actively encouraged and wasteful practices discouraged.

"(14) TAXATION OF LAND

"Land should be appraised and assessed for tax purposes on the use of the land consistent with this act and any other state or local law or regulation affecting current of prospective use of land.

"GOVERNMENT FACILITIES AND PUBLIC UTILITIES

"(15) PLANNING FOR GROWTH

"The development and provision of governmental and public utility facilities and services should be based upon a projection of reasonably expected population increase and economic growth, and should recognize the limits of the state's human, financial, and natural resources.

"(16) PUBLIC FACILITIES OR SERVICES ADJOINING AGRICULTURAL OR FORESTRY LANDS

"The construction, expansion or provision of public facilities and services should not significantly reduce the resource value of adjoining agricultural or forestry lands unless there is no feasible and prudent alternative, and the facility or service has been planned to minimize its effect on the adjoining lands.

"(17) PLANNING FOR TRANSPORTATION AND UTILITY CORRIDORS

"The development and expansion of governmental and public utility facilities and services should occur within highway or public utility rights-of-way corridors in order to reduce adverse physical and visual impact on the landscape and achieve greater efficiency in the expenditure of public funds.

"(18) TRANSPORTATION SYSTEMS

"Safe, convenient and economical transportation is essential to the people and economy of Vermont and should be planned so as to conform to and further the purposes of this act. Highway, air, rail and other means of transportation should be mutually supported, balanced and integrated. The transportation system should provide convenience and service which are commensurate with need and should respect the integrity of the natural environment. New construction or major reconstruction of roads and highways should provide paths, tracks or areas solely for use by pedestrian or other non-motorized means of transportation when economically feasible and in the public interest.

"(19) PLANNING FOR WASTE DISPOSAL

"Development which is responsible for unique or large amounts of waste should be permitted only if it can be demonstrated that available methods will allow the environment to satisfactorily assimilate the waste and that the public can finance the disposal method without assuming an unreasonable economic burden."

ANNOTATIONS

1. GROWTH.

The legislature intended the word "growth," as used in 10 V.S.A. § 6086(a)(9)(A), to apply to economic, as well as population, growth. In re Wal*Mart Stores, Inc. (1997) 167 Vt. 75, 702 A.2d 397.

CITED. Cited in Southview Assocs. v. Bongartz (2d Cir. 1992) 980 F.2d 84, cert. denied, 507 U.S. 987, 113 S. Ct. 1586, 123 L. Ed. 2d 153 (1993).

USER NOTE: For more generally applicable notes, see notes under the first section of this heading: division, article, chapter, part or title.

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*** STATUTES CURRENT THROUGH THE 2007 ADJOURNED SESSION (2008) ***
*** *** ANNOTATIONS CURRENT THROUGH OCTOBER 10, 2008 AND THE APPROPRIATE FEDERAL COURTS THROUGH NOVEMBER 21, 2008 *** ***

TITLE NINETEEN. HIGHWAYS
CHAPTER 3. TOWN HIGHWAYS

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19 V.S.A. § 305 (2009)

Legislative Alert: LEXSEE 2009 Vt. ALS 50 -- See sections 69 and 70.

§ 305. Measurement and inspection

(a) After reasonable notice to the selectboard, a representative of the agency may measure and inspect the class 1, 2, and 3 town highways in each town to verify the accuracy of the records on file with the agency. Upon request, the selectboard or their designee shall be permitted to accompany the representative of the agency during the measurement and inspection. The agency shall notify the town when any highway, or portion of a highway, does not meet the standards for its assigned class. If the town fails, within one year, to restore the highway or portion of the highway to the accepted standard, or to reclassify, or to discontinue, or develop an acceptable schedule for restoring to the accepted standards, the agency for purposes of apportionment under section 306 of this title shall deduct the affected mileage from that assigned to the town for the particular class of the road in question.

(b) Annually, on or before February 10, the selectboard shall file with the town clerk a sworn statement of the description and measurements of all class 1, 2, 3, and 4 town highways and trails then in existence, including any special designation such as a throughway or scenic highway. When class 1, 2, 3, or 4 town highways, trails, or unidentified corridors are accepted, discontinued, or reclassified, a copy of the proceedings shall be filed in the town clerk's office and a copy shall be forwarded to the agency.

(c) All class 1, 2, 3, and 4 town highways and trails shall appear on the town highway maps by July 1, 2015.

(d) At least 45 days prior to first including a town highway or trail that is not clearly observable by physical evidence of its use as a highway or trail and that is legally established prior to February 10, 2006 in the sworn statement required under subsection (b) of this section, the legislative body of the municipality shall provide written notice and an opportunity to be heard at a duly warned meeting of the legislative body to persons owning lands through which a highway or trail passes or abuts.

(e) The agency shall not accept any change in mileage until the records required to be filed in the town clerk's office by this section are received by the agency. A request by a municipality to the agency for a change in mileage shall include a description of the affected highway or trail, a copy of any surveys of the affected highway or trail, minutes of meetings at which the legislative body took action with respect to the changes, and a current town highway map with the requested deletions and additions sketched on it. A survey shall not be required for class 4 town highways that are

legally established prior to February 10, 2006. All records filed with the agency are subject to verification in accordance with subsection (a) of this section.

(f) The selectboard of any town who are aggrieved by a finding of the agency concerning the measurement, description or classification of a town highway may appeal to the transportation board by filing a notice of appeal with the executive secretary of the transportation board.

(g) The agency shall provide each town with a map of all of the highways in that town together with the mileage of each class 1, 2, and 3 highway and such other information as the agency deems appropriate.

(h) Notwithstanding the provisions of subchapter 7 of chapter 7 of this title, on or before July 1, 2010, a municipality's legislative body may vote to discontinue all town highways that are not otherwise clearly observable by physical evidence of their use as a highway or trail and that are not included as such on the sworn certificate of the description and measurement of town highways filed with the town clerk on February 10 of that year pursuant to subsection (b) of this section. For the purposes of this section, a town highway shall be deemed to be included on the sworn certificate of the description and measurement of town highways if:

(1) a petition has been filed with the legislative body by persons who are either voters or landowners, and whose number is at least five percent of the voters in a municipality desiring to include that town highway on the sworn certificate of the description and measurement of town highways, prior to the vote taken under this subsection; or

(2) the legislative body has voted at an annual or special meeting duly warned for the purpose to include that town highway on the sworn certificate of the description and measurement of town highways, prior to the vote taken under this subsection.

(i) (1) Prior to a vote to discontinue town highways provided in subsection (h) of this section, the legislative body shall hold a public informational hearing on the question by posting warnings at least 30 days prior to the hearing in at least two public places within the municipality and in the town clerk's office. The notice shall include the most recently available map of all town highways prepared by the agency of transportation pursuant to subsection (g) of this section. At least 30 days prior to the hearing, the legislative body shall also deliver the warning and map together with proof of receipt or mail by certified mail, return receipt requested, to each of the following:

(A) The chair of any municipal planning commission in the municipality;

(B) The chair of a conservation commission, established under chapter 118 of Title 24, in the municipality;

(C) The chair of the legislative body of each abutting municipality;

(D) The executive director of the regional planning commission of the area in which the municipality is located; and

(E) The commissioner of forests, parks and recreation.

(2) The hearing shall be held within the 10 days preceding the meeting at which the legislative body will vote whether to discontinue all town highways as provided in subsection (h) of this section.

(j) The legislative body may designate a specific highway or portion thereof proposed to be discontinued as a trail, in which case the right-of-way shall be continued at the width provided for in section 702 of this title. A designation of a highway or portion thereof as a trail under the provisions of this section shall be in writing, setting forth a complete description of the highway or portion thereof so designated. For all highways not designated as a trail and discontinued pursuant to this section, title to the rights-of-way shall belong to the owners of the abutting lands. If the right-of-way is located between the lands of two different owners, it shall be returned to the lots to which it originally belonged, if they

can be determined; if not, it shall be equally divided between the owners of the lands on each side. The legislative body shall return a report of its actions to the town clerk's office and the agency of transportation.

(k) A vote pursuant to subsection (h) of this section may be disapproved by a vote of a majority of the qualified voters of the municipality voting on the question at an annual or special meeting duly warned for the purpose pursuant to a petition that is:

(1) signed by not less than five percent of the qualified voters of the municipality; and

(2) presented to the legislative body or the clerk of the municipality within 44 days following the vote taken pursuant to subsection (h) of this section.

(l) When a petition is submitted in accordance with subsection (k) of this section, the legislative body shall call a special meeting within 60 days from the date of receipt of the petition or include an article in the warning for the next annual meeting of the municipality if the annual meeting falls within the 60-day period to determine whether the voters will disapprove the discontinuance of town highways as provided in subsection (h) of this section.

(m) No fewer than two copies of a notice that the legislative body has voted to discontinue all town highways as provided in subsection (h) of this section shall be posted at each polling place during the hours of voting, and copies thereof shall be made available to voters at the polls upon request.

(n) If a petition for an annual or a special meeting is duly submitted in accordance with this section to determine whether the vote of the legislative body to discontinue all town highways as provided in subsection (h) of this section shall be disapproved by the voters of the municipality, the discontinuance shall take effect on the conclusion of the meeting or at such later date as is specified in the discontinuance unless a majority of the qualified voters voting on the question at the meeting vote to disapprove the discontinuance, in which event it shall not take effect.

HISTORY: Added 1985, No. 269 (Adj. Sess.), § 1; amended 1995, No. 60, § 21a, eff. April 25, 1995; 2005, No. 178 (Adj. Sess.), § 2; 2007, No. 158 (Adj. Sess.), § 3.

NOTES: HISTORY

AMENDMENTS--2007 (ADJ. SESS.). Subsection (h): substituted "2010" for "2009" and inserted "that are not otherwise observable by physical evidence of their use as a highway or trail and" in the first sentence of the introductory paragraph.

--2005 (ADJ. SESS.). Amended section generally.

--1995. Subsection (a): Rewrote the first sentence and added the second sentence.
Subsection (b): Substituted "selectboard shall" for "selectmen shall, after review by a representative of the agency" preceding "file" in the first sentence.
Subsection (c): Added the second sentence.
Subsection (d): Substituted "selectboard" for "selectmen" at the beginning of the subsection.

PRIOR LAW. 19 V.S.A. § 15.

CROSS REFERENCES
Classifications generally, see § 302 of this title.
Laying out, reclassification and discontinuance of highways generally, see § 701 et seq. of this title.
Maintenance and repair of highways generally, see § 901 et seq. of this title.
Survey of existing highways, see § 33 of this title.

ANNOTATIONS UNDER FORMER § 15

1. GENERALLY.
The measurement included the road mileage in the town or incorporated village, including highways taken over by the state as state highways, but excluding pent roads. 1930-32 Op. Atty. Gen. 248.

USER NOTE: For more generally applicable notes, see notes under the first section of this heading: division, article, chapter, part or title.

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*** STATUTES CURRENT THROUGH THE 2007 ADJOURNED SESSION (2008) ***
*** *** ANNOTATIONS CURRENT THROUGH OCTOBER 10, 2008 AND THE APPROPRIATE FEDERAL COURTS THROUGH NOVEMBER 21, 2008 *** ***

TITLE NINETEEN. HIGHWAYS
CHAPTER 25. SCENIC ROADS

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19 V.S.A. § 2501 (2009)

§ 2501. State scenic roads; designation and discontinuance

(a) On the recommendation of the scenery preservation council, the transportation board may designate or discontinue any state highway, or portion of a state highway, as a state scenic road. The board shall hold a hearing on the recommendation and shall submit a copy of its decision together with its findings to the scenery preservation council within 60 days after receipt of the recommendation. The hearing shall be held in the vicinity of the proposed scenic highway.

(b) Annually, the council shall provide information to the agency of commerce and community development on designated scenic roads for inclusion on state maps.

(c) A state scenic road shall not be reconstructed or improved unless the reconstruction or improvement conforms to the standards established by the agency of transportation pursuant to 10 V.S.A. § 425.

HISTORY: Added 1985, No. 269 (Adj. Sess.), § 1; amended 1989, No. 246 (Adj. Sess.), § 24; 1995, No. 190 (Adj. Sess.), § 1(a).

NOTES: HISTORY

AMENDMENTS--1995 (ADJ. SESS.). Subsection (b): Substituted "agency of commerce and community development" for "agency of development and community affairs".

--1989 (ADJ. SESS.). Subsection (c): Inserted "agency of" preceding "transportation" and deleted "board" thereafter.

PRIOR LAW. 19 V.S.A. § 1018.

NOTES APPLICABLE TO ENTIRE TITLE

HISTORY

RECODIFICATION OF TITLE. 1985, No. 269 (Adj. Sess.), § 1, provided for the repeal of present chapters 1-25 of Title 19 and for the enactment of new chapters 1-25 of Title 19.

Chapter 1, consisting of §§ 1-50, related to the state highway law, and was derived from 1983, No. 139 (Adj. Sess.), §§ 2, 3. 1983, No. 155 (Adj. Sess.). 1983, No. 86, § 11. 1981, No. 110 (Adj. Sess.). 1981, No. 172 (Adj. Sess.), § 11. 1981, No. 248 (Adj. Sess.), § 318. 1981, No. 87, §§ 1-3. 1979, No. 146 (Adj. Sess.), §§ 1-3. 1979, No. 69, § 1. 1979, No. 74, § 344. 1977, No. 179 (Adj. Sess.) 1977, No. 211 (Adj. Sess.), § 4. 1977, No. 58, §§ 3, 4. 1977, No. 74. 1977, No. 87, § 14. 1977, No. 113, § 355. 1975, No. 145 (Adj. Sess.), § 1. 1975, No. 151 (Adj. Sess.), § 1. 1975, No. 181 (Adj. Sess.). 1975, No. 232 (Adj. Sess.), §§ 1-6. 1975, No. 235 (Adj. Sess.), § 4. 1973, No. 63, §§ 1-6, 22. 1971, No. 139 (Adj. Sess.). 1971, No. 171 (Adj. Sess.), §§ 1, 2. 1971, No. 215 (Adj. Sess.), § 1. 1971, No. 228 (Adj. Sess.), § 2. 1971, No. 258 (Adj. Sess.), § 20. 1971, No. 88, § 1. 1971, No. 109, §§ 5, 6. 1969, No. 16, § 5. 1969, No. 79. 1969, No. 114. 1968, No. 210, § 15. 1967, No. 260 (Adj. Sess.), § 1. 1967, No. 355 (Adj. Sess.), §§ 1-3. 1967, No. 380 (Adj. Sess.), § 3. 1967, No. 379 (Adj. Sess.), § 8. 1967, No. 113. 1967, No. 124, §§ 1, 2. 1966, No. 36 (Sp. Sess.), § 1. 1965, No. 80, §§ 1, 2. 1963, No. 70, § 1. 1963, No. 155, §§ 1, 2. 1963, No. 193, § 8. 1963, No. 203, §§ 1-3. 1961, No. 19. 1961, No. 28. 1961, No. 128, §§ 2, 3. 1961, No. 141. 1961, No. 202, § 2. 1959, No. 328 (Adj. Sess.), § 8(b). 1959, No. 329 (Adj. Sess.), §§ 22, 31. 1959, No. 50;. 1959, No. 53. 1959, No. 101, §§ 1, 2. 1957, No. 250, §§ 2-47. V.S. 1947, § 4904. 1943, No. 8, § 1. 1943, No. 72, § 1. P.L. § 4644. 1933, No. 157, § 4364. 1923, No. 7, § 2, Par. 4. 1923, No. 76, § 1.

Chapter 3, consisting of §§ 101-104, 131-134, 171, 172 related to road commissioners, and was derived from 1973, No. 63, §§ 7-13. 1953, No. 100. V.S. 1947, §§ 5152-5159, 5215, 5223. P.L. §§ 4881-4888, 4944, 4952. 1933, No. 157, §§n 4602, 4603, 1919, No. 111, § 1. G.L. §§ 4538-4540, 4542-4545, 4603, 4611. 1917, No. 117. 1917, No. 254, § 4451. 1915, No. 133. 1912, No. 140. 1910, No. 126. P.S. §§ 3958-3960, 3962-3965, 4016, 4025. R. 1906, § 3843. 1902, No. 55, §§ 2-4. 1902, No. 61. § 1. V.S. §§ 3446, 3450, 3451, 3454, 3477, 3486, 1892, No. 56, §§ 2, 14, 15, 18. 1890, No. 17, §§ 3, 4. 1884, No. 12, §§ 2, 4, 5, 9. R.L. §§ 3051, 3084, 3100, 3106. 1880, No. 62, §§ 1, 7. G.S. 25 §§ 5, 35-37, 40. 1860, No. 28, § 1. 1850, No. 26, §§ 1, 3. R.S. 21, § 4. 1831, No. 4 1830, No. 12, § 12. R. 1797, p. 350, § 6. 1792, p. 48. R. 1787, p. 80.

Chapter 5, consisting of §§ 221-236, related to the condemnation, and was derived from 1983, No. 139 (Adj. Sess.), § 1. 1973, No. 105, §§ 1, 2. 1971, No. 185 (Adj. Sess.), §§ 188-191, 237. 1971, No. 218 (Adj. Sess.). 1969, No. 48. 1967, No. 313 (Adj. Sess.), §§ 1-3. 1967, No. 355 (Adj. Sess.), §§ 5-8. 1965, No. 13. 1963, No. 135. 1963, No. 142. 1963, No. 143. 1961, No. 176, § 12. 1961, No. 233, §§ 1, 2. 1961, No. 276. 1959, No. 206, §§ 1-5. 1957, No. 242, §§ 1-14. V.S. 1947, § 4971. P.L. § 4706. 1931, No. 61, § 10.

Chapter 7, consisting of §§ 291-302, 321-326, 341-354, 381-389, 421-424, 461-471, 501, 502, 531-538, 571-574, 631-651, 681, 682, 721, 722, 761, 791-793, 831-833, related to laying out and discontinuing highways by local authorities, and was derived from 1979, No. 143 (Adj. Sess.), §§ 1, 2. 1975, No. 145 (Adj. Sess.), §§ 2, 3. 1975, No. 232 (Adj. Sess.), § 7. 1973, No. 249 (Adj. Sess.), § 71. 1967, No. 237 (Adj. Sess.), §§ 1, 2. 1967, No. 30, § 2. 1967, No. 81, §§ 1-4. 1965, No. 194, § 10. 1959, No. 9, § 1. 1959, No. 152. 1957, No. 263, §§ 1-3. 1955, No. 220. 1953, No. 238, §§ 1, 2. V.S. 1947, §§ 5011-5077, 5088-5106, 5111-5116, 5135-5139. 1947, No. 202, § 4963, 4979. 1945, No. 29, §§ 44-53. 1939, No. 108, § 1. 1935, No. 111 P.L. §§ 4740-4806, 4817-4835, 4840-4845, 4864-4868. 1935, No. 17. 1932, No. 8. 1931, No. 63, § 1. 1921, No. 121, §§ 1, 2, 4. G.L. §§ 4387-4390, 4392-4449, 4451-4454, 4473-4491, 4496-4500, 4502, 4527-4531. 1917, No. 117, § 1. 1917, No. 254, §§ 4353, 4354. 1915, No. 32, §§ 8, 9. 1915, No. 127. 1908, No. 62. P.S. §§ 3807-3810, 3812-3852, 3869, 3871-3874, 3894-3912, 3916-3921, 3923, 3947-3951. R. 1906, §§ 3683, 3685, 3709. 1906, No. 107, § 1. 1906, No. 108, § 1. 1904, No. 82, §§ 1, 2. 1902, No. 59, § 1. 1902, No. 160, § 1. 1900, No. 49, §§ 1, 2. 1896, No. 68, § 1. 1896, No. 69, § 1. V.S. §§ 2988, 3287-3290, 3292-3348, 3351-3353, 3373-3375, 3377-3389, 3391, 3396-3400, 3402, 3426-3430. 1890, No. 18. 1886, No. 15. 1884, No. 16. 1884, No. 18, §§ 1, 5. 1882, No. 14, §§ 1, 2. R.L. §§ 2913-2916, 2918-2963, 2965-2970, 2978, 2980-2987, 2989-3003, 3008-3013, 3015, 3036-3039, 3041. 1880, No. 65, §§ 1, 3. 1874, No. 52, §§ 1-5. 1870, No. 53. 1868, No. 9, §§ 1-4. G.S. 24, §§ 1, 2, 8-23, 26, 27, 29-39, 41-49, 52, 54, 56, 57, 59-62, 64, 65, 68, 78, 82, 83, 91, 93. G.S. 25, §§ 47, 48, 50-52. 1868, No. 10. 1867, No. 30. 1866, No. 26. 1862, No. 13, § 1. 1857, No. 26. 1857, No. 27. 1856, No. 32, §§ 1-4. 1856, No. 35 §§ 1-5. 1851, No. 26. 1850, No. 32. 1850, No. 33. 1849, No. 39. 1847, No. 27. 1845, No. 21. 1845, No. 22. 1845, No. 24, § 1. 1842, No. 10. R.S. 20, §§ 1, 2, 4, 5, 7-53. R.S. 21, §§ 28, 29. 1835, No. 18, § 12. 1834, No. 11. 1834, No. 16. 1832, No. 9. 1831, No. 4. 1830, No. 12, §§ 9, 10, 23. 1827, No. 17, §§ 1, 2, 4, 7, 9. 1826, No. 21. 1825, No. 11, §§ 1-5. 1824, p. 29, 30. 1822, p. 18. 1821, p. 82. 1820, p. 20-22. 1818, p. 100. 1816, p. 84. 1813, p. 165. 1806, p. 85-88. 1800, p. 15. R. 1797, p. 347, § 1. R. 1797, p. 348, § 2. R. 1797, p. 355, § 14. R. 1787, p. 78, 79.

Chapter 9, consisting of §§ 931-933, 951-953, 971-973, 1001-1019, 1051-1057, 1091-1099, 1121, 1122, 1161, 1171-1174, 1191-1198, 1211-1213, 1231, 1232, 1251, 1252, 1271-1273, 1291-1296, 1331-1340, 1371-1375, 1391-1396, related to repairs, maintenance and improvements, and was derived from 1977, No. 58, §§ 5, 6. 1975, No. 145 (Adj. Sess.), § 4. 1975, No. 232 (Adj. Sess.), § 8. 1973, No. 63, §§ 14, 15, 20. 1959, No. 202, § 105. 1955, No. 4. 1955, No. 21. 1955, No. 123. 1955, No. 235, § 104. 1949, No. 117. 1949, No. 118. V.S. 1947, §§ 3776-3778, 4958, 4996-5000, 5078-5085, 5117-5134, 5141-5143, 5145-5151, 5160-5168, 5170-5177, 5178-5183, 5201, 5216-5222, 5224-5236, 10,222. 1947, No. 202, §§ 4941, 5176, 5178, 5387. 1945, No. 29, § 54. 1937, No. 108, § 2. 1937, No. 109, § 1. P.L. §§ 3681-3683, 4728-4732, 4807-4814, 4846-4863, 4870-4872, 4874-4880, 4889-4897, 4899, 4900-4912, 4930, 4945-4951, 4953-4965, 5112. 1933, No. 79. 1933, No. 80, 1933, No. 81, §§ 1, 2. 1933, No. 82, § 1. 1933, No. 87, § 2. 1933, No. 157, § 3456, 3457, 4446, 4447, 4586, 4588, 4590-4593, 4595, 4661, 4810. 1931, No. 62, § 1. 1931, No. 71, §§ 1-3. 1931, No. 70. 1927, No. 68. 1925, No. 66. 1925, No. 70, § 81. 1921, No. 128, § 1. 1919, No. 120, § 5. G.L. §§ 3975, 4044-4049, 4141-4143, 4456-4463, 4503-4512, 4519-4525, 4533-4538, 4546, 4547, 4551-4557, 4559-4561, 4564-4573, 4604-4610, 4612-4624, 4647. 1917, No. 137, §§ 2, 3. 1917, No. 254, §§ 4458, 4472, 4480. 1915, No. 114, §§ 2, 3. 1915, No. 128. 1915, No. 130, §§ 1-3. 1912, No. 42, §§ 1-3. 1912, No. 138. 1912, No. 139. 1912, No. 141. 1910, No. 125, §§ 1-3. 1908, No. 62. 1908, No. 96. P.S. §§ 3473, 3539-3544, 3877-3884, 3924-3933, 3939-3946, 3953-3957, 3971, 3972, 3974-3992, 4017-4020, 4022-4024, 4026-4038, 4060. R. 1906, §§ 3820, 3870. 1906, No. 35, § 4. 1906, No. 110, §§ 1-4. 1904, No. 1, § 1. 1904, No. 7, § 1. 1902, No. 60, §§ 1, 2. V.S. §§ 3023, 3087-3092, 3356-3363, 3365-3368, 3403-3412, 3418-3425, 3432, 3433, 3443, 3444, 3447, 3461-3464, 3469-3475, 3478-3481, 3483-3485, 3487-3499, 3518. 1896, No. 71, § 1. 1896, No. 73, §§ 1, 2. 1894, No. 79, §§ 6, 7. 1894, No. 83, §§ 1, 2. 1894, No. 84. 1892, No. 56, §§ 4, 12. 1890, No. 17, § 1. 1890, No. 19, §§ 1, 2. 1888, No. 29, §§ 1-5. 1888, No. 125. 1886, No. 10. 1884, No. 4, § 1. 1884, No. 12, §§ 1, 3, 7, 8. 1884, No. 12, §§ 1, 3, 7, 8. 1884, No. 13, §§ 1-6. 1884, No. 14, § 2. 1884, No. 15, §§ 1-5. 1884, No. 17. 1884, No. 21. 1882, No. 10. 1882, No. 13, §§ 1, 2, 4. 1882, No. 17. 1882, No. 18. R.L. §§ 2698, 2709, 2749, 2972, 2974, 3017-3026, 3032, 3033, 3043, 3044, 3061, 3067, 3096-3098, 3101, 3102, 3104, 3108-3117, 3137, 3902-3905. 1880, No. 62, §§ 2, 3, 5, 9-11, 13. 1880, No. 64, § 1. 1880, No. 68, §§ 1, 2. 1880, No. 130. 1878, No. 66. 1878, No. 67. 1876, No. 79, §§ 1-4. 1874, No. 54. 1872, No. 36, § 3. 1870, No. 52, §§ 1, 2. 1869, No. 19. 1868, No. 11, §§ 1, 2. 1867, No. 28, § 1. 1867, No. 29. 1866, No. 25, §§ 1-3. 1864, No. 74, § 1. G.S. 15, §§ 56, 93, 94. G.S. 24, §§ 24, 25, 66, 84-89, 90. G.S. 25, §§ 1, 2, 25, 41-43, 53, 60-64. 1862, No. 12, §§ 1-7. 1861, No. 40. 1858, No. 29. 1855, No. 15. 1851, No. 24, § 1. 1850, No. 31, §§ 1, 2. 1848, No. 32, § 1. 1846, No. 30, § 1. 1841, No. 19. 1840, No. 11. R.S. 13, §§ 74, 75. R.S. 21, §§ 1, 2, 22, 26, 27, 30-34. 1838, No. 33. 1834. No. 11. 1831, No. 4. 1830, No. 12, §§ 11, 15, 19, 20. 1826, No. 22. 1824, p. 29. 1818, p. 99. 1810, p. 130. 1806, p. 88. 1805, p. 8. 1803, p. 127. R. 1797, p. 35, § 19. R. 1797, p. 297, § 27. R. 1797, p. 350, § 5. R. 1797, p. 355, §§ 13, 14, R. 1797, p. 357, § 15. 1792, p. 48, 56. R. 1787, p. 80.

Chapter 11, consisting of §§ 1451-1454, 1481-1483, 1501-1505, 1521-1534, 1551-1553, 1561-1570, 1581-1587, related to protection of highways and was derived from 1979, No. 135 (Adj. Sess.). § 1. 1977, No. 114 (Adj. Sess.) § 1. 1973, No. 63, § 16. 1973, No. 249 (Adj. Sess.), § 72. 1971, No. 86, § 1. 1971, No. 228 (Adj. Sess.), § 3. 1969, No. 24, §§ 1-3. 1969, No. 98, § 2. 1969, No. 115, § 1. 1967, No. 286 (Sp. Sess.), §§ 1-7. 1966, No. 70 (Sp. Sess.), §§ 3-10, 12, 13. 1965, No. 156. 1965, No. 194, § 10. 1961, No. 113. 1951, No. 220. V.S. 1947, §§ 5107-5110, 5184, 5189-5200, 5202, 5209-5211, 8415, 10,320-10,322. 1947, No. 202, §§ 5137, 5142. P.L. §§ 4836, 4838, 4839, 4913, 4918-4929, 4931, 4936, 4937, 4939-4943, 5182-5184, 8550. 1933, No. 157, §§ 4956, 8198. 1931, No. 61, § 5. 1931, No. 83, § 1. 1925, No. 70, §§ 80, 103, 112, 113. 1921, No. 121, § 3. 1919, No. 117, §§ 1, 2. 1919, No. 120, § 1. G.L. §§ 4492, 4493, 4495, 4631, 4636, 4637, 4639-4646, 4648, 4649-4666, 6966. P.S. §§ 3913, 3914, 3916, 4045, 4050, 4051, 4053-4059, 4061, 4068-4074. 1917, No. 129 § 1, 2. 1917, No. 254, § 4540, 4549. 1912, No. 42, § 40. 1912, No. 144. 1910, No. 128. 1908, No. 62. 1908, No. 169. R. 1906, §§ 3912, 3913, 3915, 3932. 1904, No. 38. §§ 1, 5. 1904, No. 83, §§ 1, 2. 1898, No. 66, § 1. 1896, No. 74, § 1. 1896, No. 75, § 1. V.S. §§ 3392, 3393, 3395, 3506, 3512-3517, 3519, 3527-3533, 4792, 4793. 1894, No. 82. 1886, No. 17. 1882, No. 52, §§ 1, 2. R.L. §§ 3004, 3005, 3007, 3125, 3131-3136, 3138-3144. 1876, No. 78. 1872, No. 36, §§ 1, 2. 1870, No. 54. 1870, No. 55, §§ 1, 2. 1866, No. 24, §§ 1, 2. 1865, No. 26. G.S. 24, §§ 3-5, 7. G.S. 25, §§ 65, 69, 70-76. 1858, No. 27. 1854, No. 39. 1851, No. 25. R.S. 20, § 3. R.S. 21, §§ 37-44. 1831, No. 4. 1830, No. 12, §§ 9, 14. 1830, No. 13. 1829, No. 13, §§ 1-3. 1813, p. 165. R. 1797, p. 358, § 17. R. 1797, p. 359, § 18. 1792, p. 55.

Chapter 13, consisting of §§ 1601-1604, 1621-1625, 1711-1718, 1741, 1742, related to bridges and turnpikes, and was

derived from 1959, No. 329 (Adj. Sess.), §§ 8(a), (b), 24. 1959, No. 141. 1955, No. 197, § 1. V.S. 1947, §§ 4957, 4986-4991, 5144, 5237-5244. 1947, No. 202, §§ 4932, 5186. 1945, No. 92, §§ 1, 2. 1941, No. 89, §§ 1, 2. 1937, No. 108, § 1. P.L. § 4721-4723, 4873, 4966-4973. 1933, No. 157, § 4438-4440, 4589. 1929, No. 156, § 1. 1925, No. 68. 1923, No. 7, §§ 4, 32 (Par. 3). 1921, No. 143, § 1. G.L. §§ 3976, 4518, 4584, 4731-4735, 4737, 4738, 4763. 1917, No. 58. 1917, No. 121, § 1. 1915, No. 1, § 227. 1915, No. 139. 1915, No. 254, §§ 1-3. 1915, No. 255, § 1. 1912, No. 262, §§ 1-5. 1912, No. 263. 1910, No. 142, 1910, No. 272. 1906, No. 253, § 3. P.S. § 4133. V.S. § 3566. R.L. § 3177. 1880, No. 63.

Chapter 15, consisting of §§ 1801-1811, related to federal aid, and was derived from 1981, No. 183 (Adj. Sess.), § 4. 1977, No. 267 (Adj. Sess.), § 10. 1977, No. 84, § 1. 1955, No. 55, §§ 1, 2. 1955, No. 289, § 2. V.S. 1947, §§ 5004-5010. 1947, No. 202, §§ 4949, 4950. 1943, No. 74. P.L. § 4733-4739. 1927, No. 67, § 1. 1923, No. 77, § 1. 1919, No. 115, §§ 1-3. 1919, No. 116, § 1. G.L. §§ 4599-4602. 1917, No. 123, §§ 1-5.

Chapter 17, consisting of §§ 1861-1882, related to limited access facilities, and was derived 1971, No. 86, § 2. 1967, No. 161, §§ 1-3. 1965, No. 203. 1961, No. 167. §§ 1-5. 1957, No. 167, §§ 1, 2. 1957, No. 279, §§ 1-3. 1955, No. 270, §§ 1-12.

Chapter 19, consisting of §§ 1951-1955, related to highways relocated in connection with federal projects, and was derived from 1973, No. 193 (Adj. Sess.), § 3. 1971, No. 185 (Adj. Sess.), § 192. 1961, No. 130, §§ 1-5.

Chapter 21, consisting of §§ 2001-2006, related to relocation of persons displaced by highway construction, and was derived from 1969, No. 185 (Adj. Sess.). 1963, No. 80, §§ 1-5.

Chapter 23, consisting of §§ 2051-2060, related to bicycle routes, and was derived from 1985, No. 76, § 6. 1975, No. 208 (Adj. Sess.). 1975, No. 99, §§ 1-6. 1973, No. 220 (Adj. Sess.), § 3.

Chapter 25, consisting of §§ 2087-2089, related to register of scenic roads, and was derived from 1977, No. 58, § 7.

SUPPLEMENTAL PAVING PROGRAM. 2007, No. 164 (Adj. Sess.), § 22 provides: "(a) The general assembly hereby authorizes a special program consisting of $3,000,000 of transportation funds and, to the extent the transportation funds can be used to match available federal funds, such associated federal funds, to improve the condition of selected state and class 1 highways that have incurred some of the worst damage caused by the severe winter weather of 2007-2008.

"(b) The agency of transportation through its maintenance districts shall identify state highways and class 1 town highways to which simple, cost-effective repairs designed to last more than one year can be made to repair road damages."

CROSS REFERENCES

Regulation of motor vehicles and traffic, see § 1 et seq. of Title 23.

Regulation of surface transportation companies, see § 1601 et seq. of Title 5.

NOTES APPLICABLE TO ENTIRE CHAPTER

CROSS REFERENCES

Laying out, alteration, reclassification and discontinuance of highways generally, see § 701 et seq. of this title.

State highway system generally, see §§ 14 and 15 of this title.

Town highways generally, see § 301 et seq. of this title.

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*** STATUTES CURRENT THROUGH THE 2007 ADJOURNED SESSION (2008) ***
*** *** ANNOTATIONS CURRENT THROUGH OCTOBER 10, 2008 AND THE APPROPRIATE FEDERAL COURTS THROUGH NOVEMBER 21, 2008 *** ***

TITLE NINETEEN. HIGHWAYS
CHAPTER 25. SCENIC ROADS

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19 V.S.A. § 2502 (2009)

§ 2502. Town scenic roads; designation and discontinuance

(a) On recommendation of the planning commission of a municipality, or on the initiative of the legislative body of a municipality, a legislative body may, after one public hearing warned for the purpose, designate or discontinue any town highway or portion of a town highway as a town scenic highway. Such action by the legislative body may be petitioned by the registered voters of the municipality pursuant to the provisions of 24 V.S.A. § 1973.

(b) A town scenic road may be reconstructed or improved in a manner consistent with the standards established by the transportation board, pursuant to 10 V.S.A. § 425. A class 1, 2 or 3 scenic highway shall still be eligible to receive aid pursuant to the provisions of this title.

(c) The legislative body of a municipality may appeal for a variance from standards promulgated by the transportation board. In these appeals, the board's decision shall be final.

HISTORY: Added 1985, No. 269 (Adj. Sess.), § 1.

NOTES: HISTORY

PRIOR LAW. 19 V.S.A. § 1019.

USER NOTE: For more generally applicable notes, see notes under the first section of this heading: division, article, chapter, part or title.

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*** CURRENT THROUGH THE 2009 REGULAR SESSION, Acts 2009, cc. 1 to 879 ***
*** ANNOTATIONS CURRENT THROUGH APRIL 1, 2009 ***

TITLE 10.1. CONSERVATION
SUBTITLE I. ACTIVITIES ADMINISTERED BY THE DEPARTMENT OF CONSERVATION AND RECREATION
CHAPTER 1. GENERAL PROVISIONS
ARTICLE 2. BOARD OF CONSERVATION AND RECREATION

GO TO CODE OF VIRGINIA ARCHIVE DIRECTORY

Va. Code Ann. § 10.1-107 (2009)

§ 10.1-107. General powers and duties of the Board

A. The Board shall advise the Governor and the Director on activities of the Department. Upon the request of the Governor, or the Director, the Board shall institute investigations and make recommendations.

The Board shall formulate recommendations to the Director concerning:

1. Requests for grants or loans pertaining to outdoor recreation.

2. Designation of recreational sites eligible for recreational access road funds.

3. Designations proposed for scenic rivers, scenic highways, and Virginia byways.

4. Acquisition of real property by fee simple or other interests in property for the Department including, but not limited to, state parks, state recreational areas, state trails, greenways, natural areas and natural area preserves, and other lands of biological, environmental, historical, recreational or scientific interest.

5. Acquisition of bequests, devises and gifts of real and personal property, and the interest and income derived therefrom.

6. Stage one and stage two plans, master plans, and substantial acquisition or improvement amendments to master plans as provided in § 10.1-200.1.

B. The Board shall have the authority to promulgate regulations necessary for the execution of the Public Beach Conservation and Development Act, Article 2 (§ 10.1-705 et seq.) of Chapter 7 of this title.

C. The Board shall assist the Department in the duties and responsibilities described in Subtitle I (§ 10.1-100 et seq.) of Title 10.1.

D. The Board is authorized to conduct fund-raising activities as deemed appropriate and will deposit such revenue into the State Parks Projects Fund pursuant to subsection C of § 10.1-202.

HISTORY: Code 1950, § 10-12; 1958, c. 427; 1962, c. 355; 1984, c. 750; 1988, c. 891; 1991, c. 84; 1998, c. 780; 2003, cc. 79, 89; 2005, cc. 25, 102; 2009, c. 856.

NOTES: EDITOR'S NOTE. --Acts 2003, cc. 79 and 89, cl. 3, provide: "That all rules and regulations adopted by the Board on Conservation and Development of Public Beaches that are in effect as of the effective date of this act shall remain in full force and effect until amended or rescinded by the Board of Conservation and Recreation. The Board of Conservation and Recreation shall promulgate as soon as practicable any necessary changes to the regulations to complete the consolidation of the Boards."

Acts 2003, cc. 79 and 89, cl. 4, provide: "That of the members currently serving on the Board of Conservation and Recreation, the Virginia State Parks Foundation, and the Board on Conservation and Development of Public Beaches, a minimum of two members of each shall be appointed by the Governor to new first-term appointments to the reconstituted Board of Conservation and Recreation."

Acts 2005, c. 102, cl. 2, provides: "That the Governor shall make new appointments for each of the three at-large members of the Board in accordance with the provisions of this act on July 1, 2005. The new appointments of the at-large members of the Board shall go into effect upon the expiration of the current members' terms in January 2006, and the terms shall be staggered as follows: one member for a term of two years; one member for a term of three years; and one member for a term of four years. The Governor shall designate the term to be served by each appointee at the time of appointment and may reappoint the existing at-large members of the Board."

Acts 2005, c. 102, cl. 3, provides: "That the Director of the Department of Conservation and Recreation shall amend the Stormwater Management Regulations by removing the out-of-date Best Management Practices (BMP) nutrient removal efficiency information and adding it into the Virginia Stormwater Management Handbook guidance document where it shall be more effectively updated for public use."

THE 1998 AMENDMENT added subdivision A 6.

THE 2003 AMENDMENTS. --The 2003 amendments by cc. 79 and 89 are identical, and inserted "and for the execution of the Public Beach Conservation and Development Act, Article 2 (§ 10.1-705 et seq.) of Chapter 7 of this title" at the end of subsection B; and added subsections C and D.

THE 2005 AMENDMENTS. --The 2005 amendment by c. 25 deleted "and historical" following "recreational" in subdivision A 2.

The 2005 amendment by c. 102 deleted "Virginia Stormwater Management Act, Article 1.1 § 10.1-603.1 et seq.) of Chapter 6 of this title and for the execution of the" preceding "Public Beach" in B.

THE 2009 AMENDMENTS. --The 2009 amendment by c. 856 substituted "subsection C" for "subsection D" near the end in subsection D.

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*** CURRENT THROUGH THE 2009 REGULAR SESSION, Acts 2009, cc. 1 to 879 ***
*** ANNOTATIONS CURRENT THROUGH APRIL 1, 2009 ***

TITLE 10.1. CONSERVATION
SUBTITLE II. ACTIVITIES ADMINISTERED BY OTHER ENTITIES
CHAPTER 11. FOREST RESOURCES AND THE DEPARTMENT OF FORESTRY
ARTICLE 4. FOREST PROTECTION FOR CITIES AND COUNTIES

GO TO CODE OF VIRGINIA ARCHIVE DIRECTORY

Va. Code Ann. § 10.1-1126.1 (2009)

§ 10.1-1126.1. Silvicultural practices; local government authority limited

A. Forestry, when practiced in accordance with accepted silvicultural best management practices as determined by the State Forester pursuant to § 10.1-1105, constitutes a beneficial and desirable use of the Commonwealth's forest resources.

B. Notwithstanding any other provision of law, silvicultural activity, as defined in § 10.1-1181.1, that (i) is conducted in accordance with the silvicultural best management practices developed and enforced by the State Forester pursuant to § 10.1-1105 and (ii) is located on property defined as real estate devoted to forest use under § 58.1-3230 or in a district established pursuant to Chapter 43 (§ 15.2-4300 et seq.) or Chapter 44 (§ 15.2-4400 et seq.) of Title 15.2, shall not be prohibited or unreasonably limited by a local government's use of its police, planning and zoning powers. Local ordinances and regulations shall not require a permit or impose a fee for such silvicultural activity. Local ordinances and regulations pertaining to such silvicultural activity shall be reasonable and necessary to protect the health, safety and welfare of citizens residing in the locality, and shall not be in conflict with the purposes of promoting the growth, continuation and beneficial use of the Commonwealth's privately owned forest resources. Prior to the adoption of any ordinance or regulation pertaining to silvicultural activity, a locality may consult with, and request a determination from, the State Forester as to whether the ordinance or regulation conflicts with the purposes of this section. Nothing in this section shall preclude a locality from requiring a review by the zoning administrator, which shall not exceed ten working days, to determine whether a proposed silvicultural activity complies with applicable local zoning requirements.

C. The provisions of this section shall apply to the harvesting of timber, provided that the area on which such harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 or is converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163.

The provisions of this section shall not apply to land that has been rezoned or converted at the request of the owner or previous owner from an agricultural or rural to a residential, commercial or industrial zone or use.

Nothing in this section shall affect any requirement imposed pursuant to the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.) or imposed by a locality pursuant to the designation of a scenic highway or Virginia byway in accordance with Article 5 (§ 33.1-62 et seq.) of Chapter 1 of Title 33.1.

HISTORY: 1997, c. 7.

APPROVAL BY ZONING ADMINISTRATOR MAY BE REQUIRED. --This section authorizes a county zoning administrator to review proposed silvicultural activity to determine whether it complies with applicable local zoning requirements and this statutory review process includes a component of evaluation and decision regarding compliance; accordingly, describing the decision a local zoning administrator must make as an "approval" in an ordinance is consistent with authorizing the zoning administrator to make such a determination regarding compliance and does not create a prohibited permit requirement. Dail v. York County, 259 Va. 577, 528 S.E.2d 447, 2000 Va. LEXIS 66 (2000).

LOCAL ORDINANCES AFFECTING SILVICULTURAL ACTIVITY NOT PROHIBITED. --This section authorizes a county zoning administrator to review proposed silvicultural activity to determine whether it complies with applicable local zoning requirements but there is nothing in this section that suggests that such a compliance review is limited to determining whether the forestry plan complies with zoning ordinances relating to non-silvicultural activities, such as noise abatement ordinances, nor does anything in the statute suggest that a county cannot enact ordinances affecting silvicultural activity. Dail v. York County, 259 Va. 577, 528 S.E.2d 447, 2000 Va. LEXIS 66 (2000).

LOCAL ORDINANCE RESTRICTING CLEAR CUTTING NOT PROHIBITED. --A local ordinance providing that clear cutting of trees was not permitted but that the zoning administrator could permit selected thinning based upon best management practices and in accordance with an approved plan was not an absolute prohibition on clear cutting of timber in areas subject to the ordinance but a limitation on clear cutting, which could be altered by the zoning administrator and, therefore, this ordinance did not contravene, and was not preempted by, this section. Dail v. York County, 259 Va. 577, 528 S.E.2d 447, 2000 Va. LEXIS 66 (2000).

BURDEN NOT SHIFTED TO LOCALITY TO PROVE VALIDITY OF ORDINANCES. --The limitations placed on a locality's general police powers and zoning authority by this section did change the status quo and impose the burden upon localities if they enact requirements that exceed the best management practices promulgated by the state forester to show that the state regulations were inadequate to protect the health, safety and welfare of their citizens and that local regulation was necessary to meet identified shortcomings in the state program. Dail v. York County, 259 Va. 577, 528 S.E.2d 447, 2000 Va. LEXIS 66 (2000).

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*** ANNOTATIONS CURRENT THROUGH APRIL 1, 2009 ***

TITLE 33.1. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 1. COMMONWEALTH TRANSPORTATION BOARD AND HIGHWAYS GENERALLY
ARTICLE 5. SCENIC HIGHWAYS AND VIRGINIA BYWAYS

GO TO CODE OF VIRGINIA ARCHIVE DIRECTORY

Va. Code Ann. § 33.1-62 (2009)

§ 33.1-62. Designation

The Commonwealth Transportation Board is hereby authorized to designate any highway as a scenic highway or as a Virginia byway. This designation shall be made in cooperation with the Director of the Department of Conservation and Recreation. Prior to designation, the local governing body and local planning commission, if any, in each county or city wherein the proposed scenic highway or Virginia byway is located shall be given notice and, upon request by any of the local governing bodies, the Commonwealth Transportation Board shall hold a hearing in one of the counties or cities wherein the proposed scenic highway or Virginia byway is located.

HISTORY: Code 1950, § 33-43.1; 1966, c. 11; 1970, c. 322; 1974, c. 319; 1984, c. 739; 1989, c. 656.

NOTES: EDITOR'S NOTE. --Acts 1990, c. 166, cl. 1 provides: "1. Notwithstanding § 33.1-62 of the Code of Virginia, for the purposes of Article 5 (§ 33.1-62 et seq.) of Title 33.1 of the Code of Virginia, that portion of Old Reston Avenue located within the community of Reston and running between Old Temporary Road and the Washington and Old Dominion Regional Park shall be considered a Virginia byway."

Acts 1992, c. 97 provides: "§ 1. Notwithstanding § 33.1-62 of the Code of Virginia, for the purposes of Article 5 (§ 33.1-62 et seq.) of Chapter 1 of Title 33.1 of the Code of Virginia, the following portions of highways in Northumberland county shall be considered a Virginia byway: Virginia Route 636, from its intersection with U.S. Route 360, east to its intersection with Virginia Route 694, from that point south to its intersection with Virginia Route 604; Virginia Route 604, from that point generally eastward to its intersection with Virginia Route 640; Virginia Route 640, from that point south to its intersection with Virginia Route 646; Virginia Route 646, from that point east to its intersection with Virginia Route 645; Virginia Route 645, from that point generally northeastward to its intersection with Virginia Route 644; Virginia Route 644, from that point to its intersection with Virginia Route 643; Virginia Route 643 from that point to its terminus, then returning to Virginia Route 644 and continuing east to its intersection with Virginia Route 649; Virginia Route 649 from that point to its terminus, then returning to Virginia Route 644 and continuing generally southeastward, crossing the Little Wincomico River by means of the Sunnybank Ferry, and continuing along Virginia Route 644 to its intersection with Virginia Route 652; Virginia Route 652, from that point east to its intersection with Virginia Route 644; Virginia Route 644, from that point south to its intersection with

Virginia Route 657; Virginia Route 657, from that point south to its terminus at Fleeton, then returning north along Virginia Route 657, past its intersection with Virginia Route 644, to its intersection with U.S. Route 360; and U.S. Route 360, from that point south to its terminus in Reedville."

Acts 1994, c. 908, cl. 1, provides that notwithstanding this section, that portion of Virginia Route 645 between Virginia Route 620 (Braddock Road) and Virginia Route 123 (Ox Road) including the Town of Clifton shall be considered a scenic highway and Virginia byway.

Acts 2000, cc. 45 and 62, cl. 1 provide: "Notwithstanding § 33.1-62 of the Code of Virginia, Colvin Run Road in Fairfax County is hereby designated a scenic highway and Virginia byway."

Acts 2001, c. 177, cl. 1 provides: "Notwithstanding § 33.1-62 of the Code of Virginia, Henderson Road in Fairfax County is hereby designated a Virginia byway."

Acts 2002, c. 113, cl. 1, provides: "Notwithstanding § 33.1-62 of the Code of Virginia, the entire length in Virginia of the Blue Ridge Parkway, Skyline Drive, George Washington Memorial Parkway, and the Colonial Parkway are hereby declared to be scenic highways and Virginia byways."

Acts 2002, c. 210, cl. 1, provides: "Notwithstanding § 33.1-62 of the Code of Virginia, the entire length of Hunter Mill Road in Fairfax County is hereby designated a Virginia byway."

Acts 2003, c. 276, cl. 1, provides: "§ 1. Notwithstanding § 33.1-62 of the Code of Virginia, Old Colchester Road in Fairfax County between U.S. Route 1 and the old town of Colchester on the Occoquan River is hereby designated a Virginia byway."

Acts 2004, c. 628, cl. 1, provides: "Notwithstanding § 33.1-62 of the Code of Virginia, the entire length of Fairfax Station Road in Fairfax County is hereby declared to be a Virginia byway."

Acts 2004, c. 629, cl. 1, effective July 1, 2005, provides: "Notwithstanding § 33.1-62 of the Code of Virginia, Virginia Route 609 (Pleasant Valley Road) between U.S. Route 29 (Lee Highway) and Blue Spring Drive in Fairfax County is hereby declared to be a Virginia byway."

Acts 2008, c. 442, cl. 1, provides: "Notwithstanding § 33.1-62 of the Code of Virginia, the entire length of Newman Road in Fairfax County is hereby designated a Virginia byway."

Acts 2009, c. 113, provides: "§ 1. Notwithstanding §33.1-62 of the Code of Virginia, the entire length of Popes Head Road in Fairfax County is hereby designated a Virginia byway."

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*** ANNOTATIONS CURRENT THROUGH APRIL 1, 2009 ***

TITLE 33.1. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 1. COMMONWEALTH TRANSPORTATION BOARD AND HIGHWAYS GENERALLY
ARTICLE 5. SCENIC HIGHWAYS AND VIRGINIA BYWAYS

GO TO CODE OF VIRGINIA ARCHIVE DIRECTORY

Va. Code Ann. § 33.1-63 (2009)

§ 33.1-63. "Virginia byway" defined; preference in selecting

For the purposes of this article, a *"Virginia byway"* is defined as a road, designated as such by the Commonwealth Transportation Board, having relatively high aesthetic or cultural value, leading to or within areas of historical, natural or recreational significance. In selecting a Virginia byway, the Commonwealth Transportation Board and the Director of the Department of Conservation and Recreation shall give preference to corridors controlled by zoning or otherwise, so as to reasonably protect the aesthetic or cultural value of the highway.

HISTORY: Code 1950, § 33-43.2; 1966, c. 11; 1970, c. 322; 1984, c. 739; 1989, c. 656.

NOTES: EDITOR'S NOTE. --Acts 1993, c. 84, as amended by Acts 1995, c. 147, provides: "§ 1. Notwithstanding § 33.1-62 of the Code of Virginia, for the purposes of Article 5 (§ 33.1-62 et seq.) of Chapter 1 of Title 33.1 of the Code of Virginia, Route 19 from Bluefield to Route 19 Business northeast of Tazewell; thence via Route 19 Business to Route 19 west of Tazewell; thence via Route 19 to Claypool Hill and Rosedale to Route 71 in Lebanon; thence via Route 71 to Route 58 Alternate at Dickensonville; thence via Route 58 Alternate to Coeburn, Norton, Appalachia, Big Stone Gap, and Pennington Gap to Route 58 in Jonesville; thence via Route 58 to Route 70 in Jonesville; thence via Route 70 to the Tennessee/Virginia boundary; also Route 23 from Norton to Route 23 Business south of Wise; thence via Route 23 Business to Route 23 north of Wise; thence via Route 23 to Route 23 Business south of Pound; thence via Route 23 Business to Route 23 in Pound; thence via Route 23 to the Kentucky/Virginia boundary; also Route 160 from Appalachia to the Kentucky/Virginia boundary, designated by Chapter 343 of the Acts of Assembly of 1930 as the Trail of the Lonesome Pine, and Route 23-58 from the Tennessee/Virginia boundary south of Weber City to its junction with Route 23-58 south of Duffield; thence via Route 58 to the Kentucky/Virginia boundary at Cumberland Gap, designated by Chapter 83 of the Acts of Assembly of 1988 as the Daniel Boone Heritage Trail, shall be considered Virginia byways.

"§ 2. Notwithstanding § 1 of this act, those portions of highway that comprise the Trail of the Lonesome Pine and the Daniel Boone Heritage Trail as designated in § 1 of this act, that traverse or are adjacent to real property zoned commercial or industrial under authority of state law or traverse or are adjacent to real property defined by the Commonwealth Transportation Board to be unzoned commercial areas or unzoned industrial areas as determined from

actual land use, shall not be Virginia byways. Property owners may use and develop their real property within such commercial and industrial areas for the same commercial and industrial uses as prior to the designation as parts of the trails unless the local governmental authority has changed the zoning as to such uses, or does not control land use by zoning and the land use is discontinued which created the unzoned commercial and industrial areas as defined by the Commonwealth Transportation Board. Local governmental bodies shall encourage the use of such commercial and industrial areas in the manner that will help to stimulate and encourage tourism in the region and will promote the economic well-being of the region."

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*** ANNOTATIONS CURRENT THROUGH APRIL 1, 2009 ***

TITLE 33.1. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 1. COMMONWEALTH TRANSPORTATION BOARD AND HIGHWAYS GENERALLY
ARTICLE 5. SCENIC HIGHWAYS AND VIRGINIA BYWAYS

GO TO CODE OF VIRGINIA ARCHIVE DIRECTORY

Va. Code Ann. § 33.1-64 (2009)

§ 33.1-64. "Scenic highway" defined

For the purpose of this article, a *"scenic highway"* is defined as a road designated as such by the Commonwealth Transportation Board, within a protected scenic corridor located, designed and constructed so as to preserve and enhance the natural beauty and cultural value of the countryside.

HISTORY: Code 1950, § 33-43.3; 1966, c. 11; 1970, c. 322.

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*** ANNOTATIONS CURRENT THROUGH APRIL 1, 2009 ***

TITLE 33.1. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 1. COMMONWEALTH TRANSPORTATION BOARD AND HIGHWAYS GENERALLY
ARTICLE 5. SCENIC HIGHWAYS AND VIRGINIA BYWAYS

GO TO CODE OF VIRGINIA ARCHIVE DIRECTORY

Va. Code Ann. § 33.1-65 (2009)

§ 33.1-65. Signs

When the Commonwealth Transportation Board designates a highway as a scenic highway or as a Virginia byway, it shall be appropriately signed as such.

HISTORY: Code 1950, § 33-43.4; 1966, c. 11; 1970, c. 322.

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*** ANNOTATIONS CURRENT THROUGH APRIL 1, 2009 ***

TITLE 33.1. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 1. COMMONWEALTH TRANSPORTATION BOARD AND HIGHWAYS GENERALLY
ARTICLE 5. SCENIC HIGHWAYS AND VIRGINIA BYWAYS

GO TO CODE OF VIRGINIA ARCHIVE DIRECTORY

Va. Code Ann. § 33.1-66 (2009)

§ 33.1-66. Acquisition of adjacent land

When the Commonwealth Transportation Board has designated a highway as a Virginia byway or as a scenic highway, the Commonwealth Transportation Commissioner may acquire by gift or purchase such land, or interests therein, of primary importance for the preservation of natural beauty adjacent to scenic highways.

HISTORY: Code 1950, § 33-43.5; 1966, c. 11; 1970, c. 322.

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*** ANNOTATIONS CURRENT THROUGH APRIL 1, 2009 ***

TITLE 33.1. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 1. COMMONWEALTH TRANSPORTATION BOARD AND HIGHWAYS GENERALLY
ARTICLE 15. MISCELLANEOUS PROVISIONS

GO TO CODE OF VIRGINIA ARCHIVE DIRECTORY

Va. Code Ann. § 33.1-223 (2009)

§ 33.1-223. Fund for access roads and bikeways to public recreational areas and historical sites; construction, maintenance, etc., of such facilities

A. The General Assembly finds and declares that there is an increasing demand by the public for more public recreational areas throughout the Commonwealth, therefore creating a need for more access to these areas. There are also many sites of historical significance to which access is needed.

The General Assembly hereby declares it to be in the public interest that access roads and bikeways to public recreational areas and historical sites be provided by using funds obtained from motor fuel tax collections on motor fuel used for propelling boats and ships and funds contained in the highway portion of the Transportation Trust Fund.

B. The Commonwealth Transportation Board shall, from funds allocated to the primary system, secondary system, or urban system of state highways, set aside the sum of $ 3 million initially. This fund shall be expended by the Board for the construction, reconstruction, maintenance or improvement of access roads and bikeways within counties, cities and towns. At the close of each succeeding fiscal year the Board shall replenish this fund to the extent it deems necessary to carry out the purpose intended, provided the balance in the fund plus the replenishment does not exceed the aforesaid $ 3 million.

C. Upon the setting aside of the funds as herein provided, the Commonwealth Transportation Board shall construct, reconstruct, maintain or improve access roads and bikeways to public recreational areas and historical sites upon the following conditions:

1. When the Director of the Department of Conservation and Recreation has designated a public recreational area as such or when the Director of the Department of Historic Resources has determined a site or area to be historic and recommends to the Commonwealth Transportation Board that an access road or bikeway be provided or maintained to that area;

2. When the Commonwealth Transportation Board pursuant to the recommendation from the Director of the Department of Conservation and Recreation declares by resolution that the access road or bikeway be provided or

maintained;

3. When the governing body of the county, city or town in which the access road or bikeway is to be provided or maintained passes a resolution requesting the road; and

4. When the governing body of the county, city or town in which the bikeway is to be provided or maintained adopts an ordinance pursuant to Article 7 (§ 15.2-2280 et seq.) of Chapter 22 of Title 15.2.

No access road or bikeway shall be constructed, reconstructed, maintained or improved on privately owned property.

D. Any access road constructed, reconstructed, maintained or improved pursuant to the provisions of this section shall become part of the primary system of state highways, the secondary system of state highways or the road system of the locality in which it is located in the manner provided by law, and shall thereafter be constructed, reconstructed, maintained and improved as other roads in such systems. Any bikeway path constructed, reconstructed, maintained, or improved pursuant to the provisions of this section which is not situated within the right-of-way limits of an access road which has become, or which is to become, part of the primary system of state highways, the secondary system of state highways, or the road system of the locality, shall, upon completion, become part of and be regulated and maintained by the authority or agency maintaining the public recreational area or historical site. It shall be the responsibility of the authority, agency, or locality requesting that a bicycle path be provided for a public recreational or historical site to provide the right-of-way needed for the construction, reconstruction, maintenance, or improvement of the bicycle path if such is to be situated outside the right-of-way limits of an access road.

To maximize the impact of the Fund, not more than $ 400,000 of recreational access funds may be allocated for each individual access road project to or within any public recreational area or historical site operated by a state agency and not more than $ 250,000 for each individual access road project to or within a public recreational area or historical site operated by a locality or an authority with an additional $ 100,000 if supplemented on a dollar-for-dollar basis by the locality or authority from other than highway sources. Not more than $ 75,000 of recreational access funds may be allocated for each individual bikeway project to a public recreational area or historical site operated by a state agency and not more than $ 60,000 for each individual bikeway project to a public recreational area or historical site operated by a locality or an authority with an additional $ 15,000 if supplemented on a dollar-for-dollar basis by a locality or authority from other than highway sources.

The Commonwealth Transportation Board, with the concurrence of the Director of the Department of Conservation and Recreation, is hereby authorized to make regulations to carry out the provisions of this section.

HISTORY: Code 1950, § 33-136.3; 1966, c. 484; 1968, c. 221; 1970, c. 322; 1975, c. 362; 1982, c. 643; 1984, c. 739; 1989, cc. 305, 656; 1990, c. 689; 1992, c. 108; 1996, cc. 101, 131; 2005, cc. 25, 453.

NOTES: THE 1996 AMENDMENTS. --The 1996 amendments by cc. 101 and 131 are identical, and deleted "and shall be designated as a scenic highway or byway as provided for in Article 5 (§ 33.1-62 et seq.) of Chapter 1 of this title" following "in the manner provided by law" in the first sentence of subsection D.

THE 2005 AMENDMENTS. --The 2005 amendment by c. 25 substituted "or when the Director of the Department of Historic Resources has determined a site or area to be historic" for "or an historic area as such" in subdivision C 1.

The 2005 amendment by c. 453, in subsection D, rewrote the first sentence and in the second sentence, substituted "for each individual bikeway project to a public recreational area or historical site" for "any specific bikeway" and "$60,000 for each individual bikeway project to a public recreational area or historical site" for "$60,00 to a"; and made minor stylistic changes.

LexisNexis 50 State Surveys, Legislation & Regulations

Archaeological and Historic Sites

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TITLE 33.1. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 7. OUTDOOR ADVERTISING IN SIGHT OF PUBLIC HIGHWAYS
ARTICLE 1. GENERAL REGULATIONS

GO TO CODE OF VIRGINIA ARCHIVE DIRECTORY

Va. Code Ann. § 33.1-351 (2009)

§ 33.1-351. Policy; definitions

In order to promote the safety, convenience, and enjoyment of travel on and protection of the public investment in highways within this Commonwealth, to attract tourists and promote the prosperity, economic well-being, and general welfare of the Commonwealth, and to preserve and enhance the natural scenic beauty or aesthetic features of the highways and adjacent areas, the General Assembly declares it to be the policy of the Commonwealth that the erection and maintenance of outdoor advertising in areas adjacent to the rights-of-way of the highways within the Commonwealth shall be regulated in accordance with the terms of this article and regulations promulgated by the Commonwealth Transportation Board pursuant thereto.

The following terms, wherever used or referred to in this article, shall have the following meanings unless a different meaning clearly appears from the context:

"Advertisement" means any writing, printing, picture, painting, display, emblem, drawing, sign, or similar device which is posted or displayed outdoors on real property and is intended to invite or to draw the attention or to solicit the patronage or support of the public to any goods, merchandise, real or personal property, business, services, entertainment, or amusement manufactured, produced, bought, sold, conducted, furnished, or dealt in by any person; the term shall also include any part of an advertisement recognizable as such.

"Advertising structure" means any rigid or semirigid material, with or without any advertisement displayed thereon, situated upon or attached to real property outdoors, primarily or principally for the purpose of furnishing a background or base or support upon which an advertisement may be posted or displayed.

"Business of outdoor advertising" means the erection, use or maintenance of advertising structures or the posting or display of outdoor advertisements by any person who receives profit gained from rentals or any other compensation from any other person for the use or maintenance of such advertising structures or the posting or display of such advertisements, except reasonable compensation for materials and labor used or furnished in the actual erection of advertising structures or the actual posting of advertisements. The business of outdoor advertising shall not include the leasing or rental of advertising structures or advertisements used to advertise products, services, or entertainment sold or

provided on the premises where the advertising structures or advertisement is located.

"Centerline of the highway" means a line equidistant from the edges of the median separating the main traveled ways of a divided highway, or the centerline of the main traveled way of a nondivided highway.

"Certification Acceptance Program" means a program which will allow any person, firm, or corporation owning five or more signs, advertisements, or outdoor advertising structures within a municipality to inspect their own signs, advertisements, or outdoor advertising structures two times during each calendar year, with inspections at least four to six months apart, and certify to the Commonwealth Transportation Commissioner that the inspections have been performed and that their outdoor advertising structures meet all applicable laws, rules, and regulations in lieu of paying an annual permit fee as required in §§ 33.1-360, 33.1-361, and 33.1-362. The Commonwealth Transportation Commissioner may, after a hearing, decertify any person, firm, or corporation that fails to perform the required inspections annually or whose sign, advertisement, or outdoor advertising structures are found in violation of any federal, state or local law, rule, or regulation and shall collect all permit fees for the year the decertification occurs and all subsequent years if the Commissioner finds that the violation has been committed.

"Distance from edge of a right-of-way" shall be the horizontal distance measured along a line normal or perpendicular to the centerline of the highway.

"Federal-aid primary highway" means any highway within that portion of the State Highway System as established and maintained under Article 2 (§ 33.1-25 et seq.) of Chapter 1 of Title 33.1, including extensions of such system within municipalities, which has been approved by the Secretary of Transportation pursuant to subsection (b) of § 103 of Title 23, United States Code, as that system existed on June 1, 1991.

"Highway" means every way or place of whatever nature open to the use of the public for purposes of vehicular travel in this Commonwealth.

"Historic place, museum or shrine" includes only places that are maintained wholly at public expense or by a nonprofit organization.

"Information center" means an area or site established and maintained at rest areas for the purpose of informing the public of places of interest within the Commonwealth and providing such other information as the Commonwealth may consider desirable.

"Interchange" means a grade separated intersection with one or more turning roadways for travel between intersection legs, or an intersection at grade, where two or more highways join or cross.

"Lawfully erected" means any sign that was erected pursuant to the issuance of a permit from the Commonwealth Transportation Commissioner under § 33.1-360 unless the local governing body has evidence of noncompliance with ordinances in effect at the time the sign was erected.

"Legible" means capable of being read without visual aid by a person of normal visual acuity.

"Main traveled way" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

"Maintain" means to allow to exist.

"Municipalities" means cities and incorporated towns.

"National highway system" means the federal-aid highway system described in subsection (b) of § 103 of Title 23, United States Code, and regulations adopted pursuant thereto. For the purpose of this article, outdoor advertising

controls on the national highway system shall be implemented as those highways are designated and approved by congressional action and such designation and approval shall be kept on file in the central office of the Department of Transportation and placed in the minutes of the Commonwealth Transportation Board by the Commonwealth Transportation Commissioner. Prior to congressional approval, highways classified as National System of Interstate and Defense Highways, Dwight D. Eisenhower National System of Interstate and Defense Highways, Interstate System, or federal-aid primary as defined herein shall be considered as the national highway system.

"National System of Interstate and Defense Highways," "Dwight D. Eisenhower National System of Interstate and Defense Highways," and *"Interstate System"* means the system presently defined in subsection (e) of § 103 of Title 23, United States Code.

A *"nonconforming sign," "nonconforming advertisement,"* or *"nonconforming advertising structure"* is one which was lawfully erected adjacent to any highway in the Commonwealth, but which does not comply with the provisions of state law, state regulations, or ordinances adopted by local governing bodies passed at a later date or which later fails to comply with state law, state regulations, or ordinances adopted by local governing bodies due to changed conditions.

"Person" includes an individual, partnership, association or corporation.

"Post" means post, display, print, paint, burn, nail, paste or otherwise attach.

"Real property" includes any property physically attached or annexed to real property in any manner whatsoever.

"Rest area" means an area or site established and maintained within or adjacent to the right-of-way or under public supervision or control, for the convenience of the traveling public.

"Scenic area" means any public park, area of particular scenic beauty or historical significance designated as a scenic area by the Commonwealth Transportation Board.

"Sign" means any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended, or used to advertise or inform, any part of the advertising or informative contents of which is visible from any highway.

"Town" means an incorporated town.

"Trade name" shall include brand name, trademark, distinctive symbol, or other similar device or thing used to identify particular products or services.

"Traveled way" means the portion of a roadway for the movement of vehicles, exclusive of shoulders.

"Turning roadway" means a connecting roadway for traffic turning between two intersection legs of an interchange.

"Urban area" means an urbanized area or, in the case of an urbanized area encompassing more than one state, that part of the "urbanized area" within the Commonwealth, or an urban place.

"Urban place" means an area so designated by the United States Bureau of the Census having a population of 5,000 or more and not within any urbanized area, within boundaries fixed by the Commonwealth Transportation Commissioner, in his discretion, in cooperation with the governing bodies of the several counties, towns or cities affected and the appropriate federal authority. Such boundaries shall, as a minimum, encompass the entire urban place designated by the United States Bureau of the Census.

"Urbanized area" means an area so designated by the United States Bureau of the Census, within boundaries fixed by the Commonwealth Transportation Commissioner, in his discretion, in cooperation with the governing bodies of the

several counties, towns or cities affected and the appropriate federal authority. Such boundaries shall, as a minimum, encompass the entire urbanized area within a state as designated by the United States Bureau of the Census.

"Virginia byway" and *"scenic highway"* mean those highways designated by the Commonwealth Transportation Board pursuant to Article 5 (§ 33.1-62 et seq.) of Chapter 1 of this title. For the purposes of the article, a Virginia byway shall mean a scenic byway as referenced in Title 23, United States Code, § 131 (s).

"Visible" means capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity.

HISTORY: Code 1950, § 33-298; 1954, c. 588; 1960, c. 406; 1962, c. 176; 1966, c. 663; 1970, c. 322; 1976, c. 14; 1980, c. 275; 1984, c. 750; 1993, c. 538; 1996, c. 777; 2000, cc. 432, 449; 2002, c. 672.

NOTES: THE 1996 AMENDMENT added the last sentence in the paragraph defining "Business of outdoor advertising."

THE 2000 AMENDMENTS. --The 2000 amendments by cc. 432 and 449 are identical, and substituted "Commonwealth" for "interstate, national highway system, or federal-aid primary system as that system existed on June 1, 1991" in the paragraph concerning "nonconforming sign."

THE 2002 AMENDMENTS. --The 2002 amendment by c. 672 added the definition of "lawfully erected."

LAW REVIEW. --For article surveying developments in real estate and land use law in Virginia from June 1, 2001 through June 1, 2002, see 37 U. Rich. L. Rev. 271 (2002).

LexisNexis 50 State Surveys, Legislation & Regulations

Billboards and Outdoor Advertising

"ADJACENT." --Billboard located 123.31 feet from nearest edge of an interstate highway, but separated from the highway by city street, was "adjacent to" highway within the meaning of § 33.1-370, since to give "adjacent" its secondary meaning, i.e., contiguous, would fail to construe the outdoor advertising statute liberally with a view to the effective accomplishment of the purposes and intent of the General Assembly as stated in subsection (a) of this section. State Hwy. & Transp. Comm'r v. Creative Displays of Norfolk, Ltd., 236 Va. 352, 374 S.E.2d 30 (1988).

POLITICAL SIGNS WITHIN THE PUBLIC RIGHTS-OF-WAY. --Following the 1993 amendment to this section, signs, posters, and similar media of political parties or candidates for nomination or office no longer constitute "advertisements" within the meaning of the Outdoor Advertising in Sight of Public Highways Act. See opinion of Attorney General to David P. Bobzien, Esq., Fairfax County Attorney, 08-013 (7/28/08).

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*** ANNOTATIONS CURRENT THROUGH APRIL 1, 2009 ***

TITLE 33.1. HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 7. OUTDOOR ADVERTISING IN SIGHT OF PUBLIC HIGHWAYS
ARTICLE 1. GENERAL REGULATIONS

GO TO CODE OF VIRGINIA ARCHIVE DIRECTORY

Va. Code Ann. § 33.1-369 (2009)

§ 33.1-369. Certain advertisements or structures prohibited

No advertisement or advertising structure shall be erected, maintained or operated:

(1) Within 660 feet of the nearest edge of the right-of-way of the Blue Ridge Parkway, the Colonial National Parkway, the Mount Vernon Boulevard, or any other parkway within this Commonwealth or within 660 feet of any public cemetery, public park reservation, public playground, national forest or state forest, outside the limits of any municipality; however, any advertisement or advertising structure which is lawfully in place on April 6, 1966, and which does not conform to the 660-foot distance requirement may be maintained for the life of such advertisement or advertising structure;

(2) Which involves motion or rotation of any part of the structure, moving reflective disks, running animation, or displays an intermittent light or lights visible from any highway. The prohibition of this subsection shall not apply to: (a) an advertisement or advertisement structure with messages that change no more than once every four seconds and is consistent with agreements entered into between the Commonwealth Transportation Commissioner and the United States Department of Transportation or (b) an on-premises advertisement or advertising structure with messages displayed as scrolling words and/or numbers;

(3) Which uses the words "stop" or "danger" prominently displayed or presents or implies the need or requirement of stopping or the existence of danger on any highway, or which is a copy or imitation of official highway signs;

(4) [Reserved.]

(5) Which, within visible distance of any highway, advertises any county, city, town, village, historic place or shrine without the consent, in writing of such county, city, town or village or of the owner of such historic place or shrine;

(6) Which is mobile and is designed to and effectively does distract the attention of passing motorists on any

highway by flashing lights, loud and blatant noises or movable objects;

(7) Which involve red, green or amber lights or reflectorized material and which resemble traffic signal lights or traffic control signs and are within visible distance of any highway;

(8) Within fifteen feet of the nearest edge of the pavement of any highway; however, the Commonwealth Transportation Commissioner may waive this restriction whenever the advertisement or advertising structure is actually anchored outside of the right-of-way, and, within his discretion, does not constitute a safety hazard or conflict with any other restriction contained in this section;

(9) At any public road intersection in such manner as would obstruct the clear vision in either direction between a point on the center line of the side road 20 feet from the nearest edge of the pavement of the main road and points on the main road 400 feet distant, measured along the nearest edge of the pavement of the main road;

(10) At any grade intersection of a public road and a railroad in such manner as would obstruct the clear vision in either direction within triangular areas formed by (a) a point at the center of the railroad-public road intersection, (b) a point on the public road 400 feet from the center of the railroad-public road intersection as measured along the center of the public road, and (c) a point on the railroad 500 feet from the center of the railroad-public road intersection as measured along the center of the railroad;

(11) At or near any curve in a road in such a manner as to obstruct the clear vision of traffic from any one point on such curve to any other point not more than 400 feet apart, as measured between each point from the nearest edge of the pavement;

(12) Which advertises activities which are illegal under state or federal laws or regulations in effect at the location of such sign or advertisement or at the location of such activities;

(13) Which is obsolete or inconsistent with this article or regulations adopted by the Commonwealth Transportation Board pursuant to this article; or

(14) After December 18, 1991, adjacent to any interstate, federal-aid primary, or national highway system highway in the Commonwealth which has been designated as a Virginia byway or scenic highway, except directional and official signs and notices defined in this article and regulations adopted under this article, on-premises signs, and signs advertising the sale or lease of property upon which they are located.

HISTORY: Code 1950, § 33-317; 1954, c. 588; 1956, c. 676; 1958, c. 369; 1960, c. 406; 1966, c. 663; 1968, c. 230; 1970, c. 322; 1976, c. 14; 1977, c. 219; 1993, c. 538; 1999, c. 290; 2000, c. 140; 2001, c. 285.

NOTES: THE 1999 AMENDMENT in subdivision (1), deleted "provided" following "any municipality," deleted "that" preceding "any advertisement," in subdivision (2), inserted "running animation," substituted "every four seconds" for "while visible to a given motorist traveling at the maximum or minimum posted speed," substituted "every four seconds" for "while visible to a given motorist traveling at the maximum or minimum posted speed," and deleted, from the end of subdivision (2), "or (c) when moving or rotating parts of structure or the display of intermittent lights or messages changed by electronic means or remote control convey solely public service information: date, time, temperature, weather, and other similar information, and shall specifically exclude any advertisement as defined in § 33.1-351," in subdivision (8), deleted "provided" following "highway," deleted "that" preceding "the Commonwealth," and in subdivision (10) substituted "intersection" for "intersections."

THE 2000 AMENDMENTS. --The 2000 amendment by c. 140 deleted "or" at the end of clause (2)(a); inserted "or" at the end of clause (2)(b); and added clause (2)(c).

THE 2001 AMENDMENTS. --The 2001 amendment by c. 285, in subdivision (2), substituted "(a) an advertisement or

advertisement structure with messages that" for "(a) an on-premises advertisement or advertising structure with the message changed by electronic means or remote control, programmed or sequenced to change no more than once every four seconds; (b) an off-premises advertisement or off-premises advertisement structure visible only from a highway that is not a part of the interstate, federal-aid primary, or national highway system with messages changed by electronic means or remote control, programmed or sequenced to," inserted "and is consistent with agreements entered into between the Commonwealth Transportation Commissioner and the United States Department of Transportation," and substituted "or (b)" for "or (c)."

LexisNexis 50 State Surveys, Legislation & Regulations

Billboards and Outdoor Advertising

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*** CURRENT THROUGH THE 2009 REGULAR SESSION, Acts 2009, cc. 1 to 879 ***
*** ANNOTATIONS CURRENT THROUGH APRIL 1, 2009 ***

TITLE 58.1. TAXATION
SUBTITLE III. LOCAL TAXES
CHAPTER 32. REAL PROPERTY TAX
ARTICLE 4. SPECIAL ASSESSMENT FOR LAND PRESERVATION

GO TO CODE OF VIRGINIA ARCHIVE DIRECTORY

Va. Code Ann. § 58.1-3233 (2009)

§ 58.1-3233. Determinations to be made by local officers before assessment of real estate under ordinance

Prior to the assessment of any parcel of real estate under any ordinance adopted pursuant to this article, the local assessing officer shall:

1. Determine that the real estate meets the criteria set forth in § 58.1-3230 and the standards prescribed thereunder to qualify for one of the classifications set forth therein, and he may request an opinion from the Director of the Department of Conservation and Recreation, the State Forester or the Commissioner of Agriculture and Consumer Services;

2. Determine further that real estate devoted solely to (i) agricultural or horticultural use consists of a minimum of five acres; except that for real estate used for purposes of engaging in aquaculture as defined in § 3.2-2600 or for the purposes of raising specialty crops as defined by local ordinance, the governing body may by ordinance prescribe that these uses consist of a minimum acreage of less than five acres, (ii) forest use consists of a minimum of 20 acres and (iii) open-space use consists of a minimum of five acres or such greater minimum acreage as may be prescribed by local ordinance; except that for real estate adjacent to a scenic river, a scenic highway, a Virginia Byway or public property in the Virginia Outdoors Plan or for any real estate in any city, county or town having a density of population greater than 5,000 per square mile, for any real estate in any county operating under the urban county executive form of government, or the unincorporated Town of Yorktown chartered in 1691, the governing body may by ordinance prescribe that land devoted to open-space uses consist of a minimum of one quarter of an acre.

The minimum acreage requirements for special classifications of real estate shall be determined by adding together the total area of contiguous real estate excluding recorded subdivision lots recorded after July 1, 1983, titled in the same ownership. For purposes of this section, properties separated only by a public right-of-way are considered contiguous; and

3. Determine further that real estate devoted to open-space use is (i) within an agricultural, a forestal, or an agricultural and forestal district entered into pursuant to Chapter 43 (§ 15.2-4300 et seq.) of Title 15.2, or (ii) subject to

a recorded perpetual easement that is held by a public body, and promotes the open-space use classification, as defined in § 58.1-3230, or (iii) subject to a recorded commitment entered into by the landowners with the local governing body, or its authorized designee, not to change the use to a nonqualifying use for a time period stated in the commitment of not less than four years nor more than 10 years. Such commitment shall be subject to uniform standards prescribed by the Director of the Department of Conservation and Recreation pursuant to the authority set out in § 58.1-3240. Such commitment shall run with the land for the applicable period, and may be terminated in the manner provided in § 15.2-4314 for withdrawal of land from an agricultural, a forestal or an agricultural and forestal district.

HISTORY: Code 1950, § 58-769.7; 1971, Ex. Sess., c. 172; 1973, c. 209; 1980, c. 75; 1984, cc. 675, 739, 750; 1987, c. 550; 1988, cc. 462, 695; 1989, c. 656; 1990, c. 695; 1991, cc. 69, 490; 2002, c. 475; 2003, c. 356.

NOTES: EDITOR'S NOTE. --At the direction of the Virginia Code Commission, Title 3.2 references were substituted for Title 3.1 references to conform to the title revision by Acts 2008, c. 860, effective October 1, 2008.

THE 2002 AMENDMENTS. --The 2002 amendment by c. 475 substituted "one quarter of an acre" for "two acres" at the end of subdivision 2.

THE 2003 AMENDMENTS. --The 2003 amendment by c. 356, in subdivision 2, inserted "except that for real ... five acres" and substituted "20" for "twenty," and in subdivision 3, substituted "10" for "ten."

LAW REVIEW. --For 1991 survey on property law, see 25 U. Rich. L. Rev. 859 (1991).

LexisNexis 50 State Surveys, Legislation & Regulations

Real Property Tax - Assessment & Valuation

INCREASE OF MINIMUM ACREAGE FOR PURPOSE OF SPECIAL LAND USE TAXATION. --Subdivision 2 of this section authorizes a local governing body to increase the minimum acreage for land classified for open-space use for the purpose of special land use taxation, however, such an increase for land classified for agricultural, horticultural or forest use is not authorized. See opinion of Attorney General to The Honorable Charles L. Campbell, Commissioner of the Revenue for Page County, 02-085 (10/30/02). .

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*** Annotations current through May 5, 2009 ***

TITLE 27. LIBRARIES, MUSEUMS, AND HISTORICAL ACTIVITIES
CHAPTER 27.34. STATE HISTORICAL SOCIETIES -- HISTORIC PRESERVATION

GO TO REVISED CODE OF WASHINGTON ARCHIVE DIRECTORY

Rev. Code Wash. (ARCW) § 27.34.400 (2009)

§ 27.34.400. Heritage barn preservation program

(1) The Washington state heritage barn preservation program is created in the department.

(2) The director, in consultation with the heritage barn preservation advisory board, shall conduct a thematic study of Washington state's barns. The study shall include a determination of types, an assessment of the most unique and significant barns in the state, and a condition and needs assessment of historic barns in the state.

(3) (a) The department, in consultation with the heritage barn preservation advisory board, shall establish a heritage barn recognition program. To apply for recognition as a heritage barn, the barn owner shall supply to the department photos of the barn, photos of the farm and surrounding landscape, a brief history of the farm, and a construction date for the barn.

(b) Three times a year, the governor's advisory council on historic places shall review the list of barns submitted by the department for formal recognition as a heritage barn.

(4) Eligible applicants for heritage barn preservation fund awards include property owners, nonprofit organizations, and local governments.

(5) To apply for support from the heritage barn preservation fund, an applicant must submit an application to the department in a form prescribed by the department. Applicants must provide at least fifty percent of the cost of the project through in-kind labor, the applicant's own moneys, or other funding sources.

(6) The following types of projects are eligible for funding:

(a) Stabilization of endangered heritage barns and related agricultural buildings, including but not limited to repairs to foundations, sills, windows, walls, structural framework, and the repair and replacement of roofs; and

(b) Work that preserves the historic character, features, and materials of a historic barn.

(7) In making awards, the advisory board shall consider the following criteria:

(a) Relative historical and cultural significance of the barn;

(b) Urgency of the threat and need for repair;

(c) Extent to which the project preserves historic character and extends the useful life of the barn or associated agricultural building;

(d) Visibility of the barn from a state designated scenic byway or other publicly traveled way;

(e) Extent to which the project leverages other sources of financial assistance;

(f) Provision for long-term preservation;

(g) Readiness of the applicant to initiate and complete the project; and

(h) Extent to which the project contributes to the equitable geographic distribution of heritage barn preservation fund awards across the state.

(8) In awarding funds, special consideration shall be given to barns that are:

(a) Still in agricultural use;

(b) Listed on the national register of historic places; or

(c) Outstanding examples of their type or era.

(9) The conditions in this subsection must be met by recipients of funding in order to satisfy the public benefit requirements of the heritage barn preservation program.

(a) Recipients must execute a contract with the department before commencing work. The contract must include a historic preservation easement for between five to fifteen years depending on the amount of the award. The contract must specify public benefit and minimum maintenance requirements.

(b) Recipients must proactively maintain their historic barn for a minimum of ten years.

(c) Public access to the exterior of properties that are not visible from a public right-of-way must be provided under reasonable terms and circumstances, including the requirement that visits by nonprofit organizations or school groups must be offered at least one day per year.

(10) All work must comply with the United States secretary of the interior's standards for the rehabilitation of historic properties; however, exceptions may be made for the retention or installation of metal roofs on a case-by-case basis.

(11) The heritage barn preservation fund shall be acknowledged on any materials produced and in publicity for the project. A sign acknowledging the fund shall be posted at the worksite for the duration of the preservation agreement.

(12) Projects must be initiated within one year of funding approval and completed within two years, unless an extension is provided by the department in writing.

(13) If a recipient of a heritage barn preservation fund award, or subsequent owner of a property that was assisted by the fund, takes any action within ten years of the funding award with respect to the assisted property such as dismantlement, removal, or substantial alteration, which causes it to be no longer eligible for listing in the Washington heritage register, the fund shall be repaid in full within one year.

HISTORY: 2007 c 333 § 2.

NOTES: FINDING -- PURPOSE -- 2007 C 333: "The legislature finds that historic barns are essential symbols of Washington's heritage representing a pioneering spirit of industriousness. Important for their association with broad patterns of agricultural history and community development and as examples of distinct architectural styles and methods of construction, historic barns serve as highly visible icons for local residents and visitors alike. The legislature acknowledges that factors such as changes in the agricultural economy and farming technologies, prohibitive rehabilitation costs, development pressures, and regulations restricting new uses, collectively work to endanger historic barns statewide and contribute to their falling into decay or being demolished altogether.

As historic barns represent irreplaceable resources, and recognizing that barn preservation will work to retain these structures as functional and economically viable elements of working lands, the purpose of this act is to create a system acknowledging heritage barns statewide that provides emergency assistance to heritage barn owners through matching grants, assesses the need for long-term barn preservation, and considers additional incentives and regulatory revisions that work toward the preservation of heritage barns as integral components of Washington's historic landscapes." [2007 c 333 § 1.]

EDITOR'S NOTES.

Pursuant to Wa. Const., Art. II, § 41, this section took effect July 22, 2007.

LexisNexis 50 State Surveys, Legislation & Regulations

Archaeological and Historic Sites

USER NOTE: For more generally applicable notes, see notes under the first section of this heading, part, article, chapter or title.

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*** Annotations current through May 5, 2009 ***

TITLE 47. PUBLIC HIGHWAYS AND TRANSPORTATION
CHAPTER 47.39. SCENIC AND RECREATIONAL HIGHWAY ACT OF 1967

GO TO REVISED CODE OF WASHINGTON ARCHIVE DIRECTORY

Rev. Code Wash. (ARCW) § 47.39.010 (2009)

§ 47.39.010. System created -- Standards

There is hereby created a scenic and recreational highway system. Highways in this system shall be developed and maintained in accordance with general standards for state highways of comparable classification and usage.

Recognizing that the Transportation Equity Act for the 21st Century establishes a national "scenic byway" program that could benefit state and local roadways, the Washington state scenic byway designation program is revised to address state and local transportation routes. Byways in this program must be designated and maintained in accordance with the criteria developed by the department under this chapter. However, a highway so designated under RCW 47.39.069 does not become part of the scenic and recreational highway system unless approved by the legislature.

HISTORY: 1999 c 218 § 1; 1967 ex.s. c 85 § 1.

NOTES: EFFECTIVE DATE -- 1999 C 218: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 1999]." [1999 c 218 § 9.]

NOTES APPLICABLE TO ENTIRE TITLE

CROSS REFERENCES.
Abandoned highways, transfer to counties, cities: RCW 36.75.090.
Accidents and reports: Chapter 46.52 RCW.
Annual report of street operations to secretary of transportation: RCW 35.21.260.
Arterial highways, designation: RCW 46.61.195.
Bicycles, operation: Chapter 46.61 RCW.
Buses, unlawful conduct: RCW 9.91.025.
City streets, sidewalks, etc.: Chapters 35.68 through 35.79 RCW.

Columbia Basin project road systems: RCW 36.81.140.
Contractor's bond: Chapter 39.08 RCW.
Contractors on highway projects prequalified under RCW 47.28.070 exempted from contractor's registration requirement: RCW 18.27.090.
County highways in cities and towns: Chapter 36.89 RCW.
County road improvement districts: Chapter 36.88 RCW.
County roads and bridges: Chapters 36.75 through 36.88 RCW.
Dangerous substances or devices, placing on highway: RCW 9.66.050, 70.93.060.
Design standards committee
-- arterial streets: Chapter 35.78 RCW.
-- generally: Chapter 43.32 RCW.
Driving while intoxicated when engaged in discharge of business duties: RCW 9.91.020.
Electrical installations, applicability of statutes or rules: RCW 19.28.141.
Fences: Chapter 16.60 RCW.
Fireworks, transportation, etc.: Chapter 70.77 RCW.
Flaggers -- Safety standards: RCW 49.17.350.
Glass, tacks, rubbish, etc., throwing in highway: RCW 9.66.050, 46.61.645.
Highway construction or improvement, validity of agreement to indemnify against liability for negligence relative to: RCW 4.24.115.
Highway funds, constitutional limitations: State Constitution Art. 2 § 40 (Amendment 18).
Hospitalization and medical aid for public employees and dependents
-- Premiums, governmental contributions authorized: RCW 41.04.180, 41.04.190.
Jurisdiction over operation of motor vehicles by Indians: Chapter 37.12 RCW.
Liens for labor, materials on public works: Chapter 60.28 RCW.
Littering on public highway: RCW 70.93.060.
Obstructing highway is public nuisance: RCW 9.66.010.
Off-street parking
-- cities: Chapter 35.86 RCW.
-- towns: RCW 35.27.550 through 35.27.590.
Platted streets as public highways: RCW 58.08.035, 58.08.050.
Port districts, toll facilities: Chapter 53.34 RCW.
Public lands, withdrawal of abutting: RCW 79A.05.105.
Range areas, road signs: RCW 16.24.060.
Real property conveyances by public bodies
-- Recording: RCW 65.08.095.
Rules of the road: Chapter 46.61 RCW.
Size, weight, load of vehicles: Chapter 46.44 RCW.
Speed limits: RCW 46.61.400 through 46.61.470.
State patrol: Chapter 43.43 RCW.
Traffic safety commission and program: Chapter 43.59 RCW.
Viaducts, bridges, elevated roadways, tunnels, etc., authority of cities to construct: Chapter 35.85 RCW.
Waterways: Title 91 RCW.

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*** Annotations current through May 5, 2009 ***

TITLE 47. PUBLIC HIGHWAYS AND TRANSPORTATION
CHAPTER 47.39. SCENIC AND RECREATIONAL HIGHWAY ACT OF 1967

GO TO REVISED CODE OF WASHINGTON ARCHIVE DIRECTORY

Rev. Code Wash. (ARCW) § 47.39.030 (2009)

§ 47.39.030. Development and maintenance of system by department of transportation and parks and recreation commission -- Allocation of costs

(1) The department shall pay from motor vehicle funds appropriated for construction of state highways, the following costs of developing and constructing scenic and recreational highways: (a) Acquisition of the right-of-way necessary for state highway purposes; (b) construction of the portion of the highway designed primarily for motor vehicle travel; (c) exit and entrance roadways providing access to scenic observation points; (d) safety rest areas; (e) roadside landscaping within the portion of the highway right-of-way acquired by the department for state highway purposes; (f) the uniform signs and markers designating the various features and facilities of the scenic and recreational highways; and (g) any additional costs of constructing and developing the scenic and recreational highways, including property acquisition adjacent to highways as authorized by RCW 47.12.250, for which the department shall receive reimbursement from the federal government or any other source.

(2) The parks and recreation commission shall pay the costs of developing and constructing the scenic and recreational highways not provided for in subsection (1) of this section from any funds appropriated for such purposes.

(3) The costs of maintaining the scenic and recreational highway system shall be allocated between the department and the parks and recreation commission in the same manner that costs of developing and constructing such highways are allocated in subsections (1) and (2) of this section.

(4) The city, town, county, regional transportation planning organization, federal agency, federally recognized tribe, or any other such party that nominates a roadway not located on a state-owned right-of-way for designation as a scenic byway shall bear all costs relating to the nomination and designation of the byway, such as costs for developing, maintaining, planning, designing, and constructing the scenic byway.

HISTORY: 1999 c 218 § 2; 1984 c 7 § 207; 1967 ex.s. c 85 § 3.

NOTES: EFFECTIVE DATE -- 1999 C 218: See note following RCW 47.39.010.

SEVERABILITY -- 1984 C 7: See note following RCW 47.01.141.

CROSS REFERENCES.
Safety rest areas: Chapter 47.38 RCW.

USER NOTE: For more generally applicable notes, see notes under the first section of this heading, part, article, chapter or title.

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*** Annotations current through May 5, 2009 ***

TITLE 47. PUBLIC HIGHWAYS AND TRANSPORTATION
CHAPTER 47.39. SCENIC AND RECREATIONAL HIGHWAY ACT OF 1967

GO TO REVISED CODE OF WASHINGTON ARCHIVE DIRECTORY

Rev. Code Wash. (ARCW) § 47.39.069 (2009)

§ 47.39.069. Designation and removal criteria

(1) The department, in consultation with the department of community, trade, and economic development, the department of natural resources, the parks and recreation commission, affected cities, towns, and counties, federally recognized tribes, regional transportation planning organizations, Washington-based automobile clubs, statewide bicycling organizations, and other interested parties, shall develop by December 31, 1999, criteria for assessing scenic byways and heritage tour routes and an appropriate method of nomination and application for the designation and removal of the designation of the byways. Factors the department may take into consideration, but is not limited by, are: (a) Scenic quality of the byway; (b) natural aspects, such as geological formations, water bodies, vegetation, and wildlife; (c) historic elements; (d) cultural features such as the arts, crafts, music, customs, or traditions of a distinct group of people; (e) archaeological features; (f) recreational activities; (g) roadway safety including accommodations for bicycle and pedestrian travel, tour buses, and automobiles; (h) scenic byway and local and regional byway management plans; and (i) local public involvement and support for the byway.

(2) The criteria developed in subsection (1) of this section must not impose nor require regulation of privately owned lands or property rights.

(3) Any person may nominate a roadway, path, or trail for inclusion in the scenic byway program. The department shall assess nominations in accordance with the criteria developed under subsection (1) of this section. The department shall submit its recommendations for scenic byway and heritage tour route designations to the commission for its approval and official designation of the roadway, path, or trail as a scenic byway or a heritage tour route. All decisions made by the commission relating to scenic byway and heritage tour route designations are final.

(4) The department shall apply the criteria in subsection (1) of this section to state highways that are currently not a part of the designated scenic and recreational highway system. The department shall respond to local requests for route evaluation as defined in subsection (3) of this section.

(5) Once the commission has designated a roadway as a scenic byway, the department may submit an individual nomination to the Federal Highway Administration for its consideration of whether the roadway qualifies to be designated as a national scenic byway or an All-American Roadway.

HISTORY: 1999 c 218 § 4.

NOTES: EFFECTIVE DATE -- 1999 C 218: See note following RCW 47.39.010.

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394 of 400 DOCUMENTS

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** Statutes current through the 2009 legislation effective through 7/1/2009 **
*** Annotations current through May 5, 2009 ***

TITLE 47. PUBLIC HIGHWAYS AND TRANSPORTATION
CHAPTER 47.39. SCENIC AND RECREATIONAL HIGHWAY ACT OF 1967

GO TO REVISED CODE OF WASHINGTON ARCHIVE DIRECTORY

Rev. Code Wash. (ARCW) § 47.39.075 (2009)

§ 47.39.075. Corridor management plan

The department shall participate with local communities to develop a corridor management plan for a state highway nominated to be part of the scenic byway program. Local, regional, or other governmental bodies shall develop a corridor management plan for nominated routes that are under their jurisdiction.

HISTORY: 1999 c 218 § 5.

NOTES: EFFECTIVE DATE -- 1999 C 218: See note following RCW 47.39.010.

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*** Annotations current through May 5, 2009 ***

TITLE 47. PUBLIC HIGHWAYS AND TRANSPORTATION
CHAPTER 47.39. SCENIC AND RECREATIONAL HIGHWAY ACT OF 1967

GO TO REVISED CODE OF WASHINGTON ARCHIVE DIRECTORY

Rev. Code Wash. (ARCW) § 47.39.080 (2009)

§ 47.39.080. Funding priorities -- Signage

Recognizing that the Transportation Equity Act for the 21st Century establishes a national "Scenic Byways" grant program and a new apportionment program called "Transportation Enhancement Activities," the department of transportation shall place high priority on obtaining funds from those sources for further development of a scenic and recreational highways program, including enhancement projects on the designated scenic and recreational highway system. The department shall consider the use of the designated system by bicyclists and pedestrians in connection with nonmotorized routes in the state trail plan, and the state bicycle plan which are also eligible for TEA-21 funding. Appropriate signage may be used at intersections of nonmotorized and motorized systems to demonstrate the access, location, and the interconnectivity of various modes of travel for transportation and recreation. For the purposes of leveraging national scenic byway planning grant funds, the commission may designate eligible state highways as scenic byways on an interim basis.

HISTORY: 1999 c 218 § 6; 1993 c 430 § 8.

NOTES: EFFECTIVE DATE -- 1999 C 218: See note following RCW 47.39.010.

USER NOTE: For more generally applicable notes, see notes under the first section of this heading, part, article, chapter or title.

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*** Annotations current through May 5, 2009 ***

TITLE 47. PUBLIC HIGHWAYS AND TRANSPORTATION
CHAPTER 47.39. SCENIC AND RECREATIONAL HIGHWAY ACT OF 1967

GO TO REVISED CODE OF WASHINGTON ARCHIVE DIRECTORY

Rev. Code Wash. (ARCW) § 47.39.100 (2009)

§ 47.39.100. Removal of designation

(1) The commission may remove the designation of a route if it no longer possesses the intrinsic qualities or fails to meet the criteria that supported its designation.

(2) The department shall determine whether a roadway designated as a national scenic byway or an All-American Roadway is being properly maintained in accordance with the roadway's byway management plan, including preserving the intrinsic qualities that originally supported the designation. When the department determines that the intrinsic qualities of a national scenic byway or All-American Roadway have not been maintained sufficiently to retain its designation, the department shall notify the party responsible for maintaining the designation of the finding and allow the party an opportunity, under federal regulations, for corrective action before formal removal of the designation of the roadway.

(3) Local, regional, or other governmental bodies may notify the commission of the removal of a designated route if they determine it no longer meets the designation criteria, or community support for the designation no longer exists, or it no longer possesses the intrinsic qualities that supported its original designation.

(4) State or local removal of a designated route will result in discontinued state support of the designated route and can include, but is not limited to, state matching assistance for grant applications, the removal of signs directly related to the byway, free promotional information in the state-owned safety rest areas, and inclusion in maps, brochures, and electronic media.

HISTORY: 1999 c 218 § 7.

NOTES: EFFECTIVE DATE -- 1999 C 218: See note following RCW 47.39.010.

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Chapter 29. Miscellaneous Boards and Officers.
Article 28. Coal Heritage Highway Authority.

GO TO WEST VIRGINIA STATUTES ARCHIVE DIRECTORY

W. Va. Code § 29-28-1 (2009)

§ 29-28-1. Legislative findings.

The Legislature finds that the creation and empowering of a statutory corporation to work with landowners, county and municipal officials and community leaders, state and federal government agencies, recreational user groups, persons interested in historic preservation and other interested parties to enable and facilitate acquisition, development, preservation and enhancement of facilities and resources proximate to or associated with the coal heritage trail, a national scenic byway in West Virginia, will greatly assist in the economic development of the state through increased tourism.

HISTORY: 2002, c. 60.

HIERARCHY NOTES:
Ch. 29 Note
Ch. 29, Art. 28 Note

Michie's West Virginia Code Annotated
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GO TO WEST VIRGINIA STATUTES ARCHIVE DIRECTORY

W. Va. Code § 29-28-2 (2009)

§ 29-28-2. Definitions.

Unless the context clearly requires a different meaning, the terms used in this section have the following meanings:

(1) "Authority" means the Coal Heritage Highway Authority.

(2) "Board" means the Board of the Coal Heritage Highway Authority.

(3) "Coal heritage trail" means that part of West Virginia route 16 connecting Beckley and Welch, and United States route 52, connecting Bluefield and Welch, all designated as a national scenic byway, and existing within the counties of Mercer, McDowell, Raleigh and Wyoming, and those routes that comprise the National Coal Heritage Trail Scenic Byway, as designated by the United States department of transportation, traversing the counties of Fayette, Mercer, McDowell, Raleigh and Wyoming.

HISTORY: 2002, c. 60.

HIERARCHY NOTES:
Ch. 29 Note
Ch. 29, Art. 28 Note

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GO TO WEST VIRGINIA STATUTES ARCHIVE DIRECTORY

W. Va. Code § 29-28-3 (2009)

§ 29-28-3. Authority created.

(a) There is hereby created the "Coal Heritage Highway Authority" which is a public corporation and a government instrumentality to promote economic development and tourism in areas along the national scenic byway, designated the coal heritage trail, and aid in the development, preservation, restoration or enhancement of roads, trails, lands and structures, including areas or structures associated with surface transportation, which have unique and significant historic, architectural or cultural importance associated with the area's heritage of coal production and which are located in one or more of the counties of Fayette, Mercer, McDowell, Raleigh and Wyoming.

(b) The authority shall cooperate with counties, municipalities, state and federal agencies, public nonprofit corporations, private corporations, associations, partnerships and individuals for the purpose of planning, assisting and establishing recreational, tourism, industrial, economic and community development of the coal heritage trail for the benefit of West Virginia.

HISTORY: 2002, c. 60.

HIERARCHY NOTES:
Ch. 29 Note
Ch. 29, Art. 28 Note

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*** THIS DOCUMENT IS CURRENT THROUGH ALL 2007-2008 LEGISLATION ***
*** THE MOST CURRENT ANNOTATION IS DATED MAY 5, 2009 ***

HIGHWAYS AND BRIDGES, DRAINS AND FENCES
CHAPTER 84. STATE TRUNK HIGHWAYS; FEDERAL AID

Go to the Wisconsin Code Archive Directory

Wis. Stat. § 84.106 (2008)

84.106. Scenic byways program.

(1) DESIGNATION.

The department shall develop, implement and administer a program to designate highways, as defined in s. 340.01 (22), or portions of highways in this state that have outstanding scenic, historic, cultural, natural, recreational or archeological qualities as scenic byways. The department may seek designation by the federal government of a highway designated as a scenic byway under this section as a national scenic byway or as an All-American Road.

(2) RULES.

The department shall promulgate rules under this section consistent with 23 USC 162 and regulations established under that section.

HISTORY: History: 1999 a. 9.Cross Reference: See also s. Trans 201.23 and ch. Trans 202, Wis. adm. code.