

SUBJECT: Adoption of a state scenic byways program.

COMMITTEE: Culture, Recreation, and Tourism — committee substitute recommended

VOTE: 6 ayes — Hilderbran, Kuempel, Dukes, Homer, D. Howard, O'Day
0 nays
1 absent — Phillips

WITNESSES: For — Tim Anderson, Clear Channel Outdoor; Michael H. Poole, Media Outdoor Displays, Inc.; Lee Vela, Outdoor Advertisers Association of Texas and Clear Channel Outdoor; *(Registered, but did not testify:* Katy Daniel; Curtis Ford; Matt Johnston; Michael Morrill; Jody Richardson, CBS Outdoor; Brooke Sandahl; Brad Scott, Quorum Media Group; Bill Siebert, Reagan Outdoor Advertising)

Against — None

On — Suzanne Mann, Texas Department of Transportation

BACKGROUND: 23 U.S.C. sec. 162 governs the National Scenic Byways Program. The program, administered by the U.S. Department of Transportation's Federal Highway Administration, recognizes certain roads for their cultural, scenic, or recreational qualities. After official designation, the U.S. Department of Transportation provides grants for the preservation and promotion of recognized roads.

23 U.S.C. sec. 131, commonly referred to as Title I of the Highway Beautification Act of 1965, allows states to maintain outdoor advertising in rights-of-way within 660 feet of the interstate system if the land is zoned industrial or commercial, but otherwise restricts outdoor advertising to:

- signs authorized by law, including advertising for a scenic or historical attraction;
- signs for the sale or lease of the property on which it is located;

- signs for activities conducted on-site;
- signs for the purpose of protecting life or property; and
- signs erected on or before October 22, 1965, determined to be an historic or artistic landmark.

23 U.S.C. sec. 131 also provides compensation to landowners who must remove outdoor signs to conform to the Highway Beautification Act.

DIGEST:

CSHB 2239 would direct Texas Department of Transportation (TxDOT), in coordination with the Texas Historical Commission and the Department of Parks and Wildlife's Texas Trails System, to establish a program for designating highways as state scenic byways. The bill would allow TxDOT to receive proposals from political subdivisions or approved community groups and apply for grants under the federal scenic byways program.

A highway would be officially designated a state scenic highway when TxDOT applied for federal funding for a project related to the highway. In addition to federal funding, TxDOT could use money from the state highway fund and allow applicants to pay for project costs not covered by federal grants.

This bill would allow TxDOT to exclude highway segments that no longer met the criteria established for a state scenic byway because of zoning or a lack of scenic, historic, cultural, natural, recreational, or archaeological qualities. However, the bill would not require TxDOT to exclude segments based simply on the landowner's desire to allow outdoor advertising.

The bill would prohibit outdoor advertising on a state-designated scenic byway in a manner consistent with the 23 U.S.C. sec. 131.

When proposing scenic highway designations, TxDOT would have to provide at least one year of advance notice to county clerks and publish this notice in a newspaper with a general circulation in each county affected. The county clerk, within 15 days of being notified, would have to send written notice to each landowner along the affected state highway to inform them of the pending designation and the restrictions that would be imposed. Any affected landowner could opt to be excluded from the scenic byway designation by submitting an objection to TxDOT by

certified mail at least 30 days before the highway designation became official.

The bill would take effect September 1, 2007.

**SUPPORTERS
SAY:**

CSHB 2239 would allow Texas to join the National Scenic Byways Program, qualifying Texas for millions of dollars in federal highway beautification funds. Since it was created in 1992, the program has provided more than \$200 million for close to 1,500 projects in 48 states. The scenic byways program offers grants to state and local partners to recognize, preserve, and enhance notable and scenic roads throughout the nation. To date, Texas has missed out on these funds while other states have benefited. Under the program, 126 roads have been designated as National Scenic Byways or All-American Roads and received federal funding. These include the Natchez Trace in Mississippi, Route 66 in New Mexico, the Las Vegas Strip, and California's Pacific Coast Highway, among many others. Texas has numerous historic and scenic roads that would fit perfectly under this successful program, and local entities should have the option of participating.

The bill would aid development of scenic byways, which could be an important economic development strategy with particular significance for rural areas. With the combined efforts of TxDOT, the Texas Historical Commission, and the Department of Parks and Wildlife's Texas Trails System, approved projects could include safety improvements, construction of pedestrian and bicycle paths, development of visitor facilities, publication of promotional materials, and natural resource conservation projects. A report by the New Mexico tourism department found that, in a nine-month period in 2001-02, more than 4.7 million visitors traveled that state's scenic byways, generating more than \$267 million in tourism spending and employing close to 4,000 individuals. Texas is missing out on this important opportunity to draw down federal dollars that could be used to protect and promote its natural treasures and to support projects that would boost local economies and generate civic pride.

CSHB 2239 would produce a byways program that was a product of grassroots support by local communities and was respectful of private landowners. To that end, the bill would include an accommodating public notice process for landowners and localities because the program is voluntary and partnerships at the local level are key to making the

program work. The primary goal of the scenic byways program is recognition and development of the country's cultural byway heritage, and projects are designed for this purpose, not increased governmental regulation. In addition, this bill would allow communities to work with state agencies, rather than work countless bills through the legislature each biennium, to designate scenic roadways. While this bill would allow landowners to opt out of a scenic byway designation, this process would mirror the federal program and would not require TxDOT to approve an exemption simply because a landowner wanted to put up a billboard.

OPPONENTS
SAY:

This program would be rendered ineffective if any landowner could opt out of a scenic byway designation. While outdoor advertising companies currently support this bill because it creates certainty about where billboards may be placed across the state, their industry would benefit by keeping billboards on all Texas roadways. These companies might solicit landowners to persuade them to opt out of the byway program, with the end result being a scenic byway program that included only roads in remote rural areas, rather than one that included historic roadways in more populated areas that would likely attract additional tourist traffic and dollars. Landowners should not receive special treatment simply because they derive income along protected roadways. Further, this bill would be an unfunded mandate for county clerks, who would have to notify every affected landowner about the pending designation.

This bill would create a program that relied on the stewardship of privately owned resources but rewarded state and local entities with more money to expand government bureaucracy. The state should work with landowners to encourage land stewardship, but should not profit through the independent hard work of landowners. Participation in the program would come with strings attached. On recognized roads, the state would have to ban or relocate many kinds of outdoor advertising. Many of these advertisements are useful for travelers, and outdoor advertising represents an affordable and effective marketing strategy, especially for small businesses. The state should stay away from the additional regulations of outdoor advertising included in this bill.

OTHER
OPPONENTS
SAY:

This bill should not require local governments to pay for projects that are not entirely covered by the federal government. The federal budget process is unpredictable, and cutbacks could leave local governments forced to pick up the bill for under-funded projects. Instead, local

governmental entities should have the option of whether or not to pay for approved projects.

NOTES:

The committee substitute differs from the original by including the coordination of the Texas Historical Commission and the Department of Parks and Wildlife's Texas Trails System; making 23 U.S.C. sec. 131 the standard for outdoor advertising rules; and adding the state scenic byways programs to Transportation Code, ch. 201 instead of Transportation Code, ch. 391. The committee substitute also requires TxDOT to provide notice of pending designations and allows landowners to opt out of the program.

In 2005, the 79th Legislature considered HB 2051 by Krusee, a similar bill, which passed the House, but died in the Senate after passing on second reading when the motion to suspend the three-day rule failed on the final day to consider bills.

SB 1346 by Seliger, which would provide policy direction for TxDOT in creating rules associated with a state scenic byways programs, including grant development, program promotions, and off-premise signs, has been referred to the Senate Transportation and Homeland Security Committee.