

SENATE No. 1379

By Mr. Golden, a petition (accompanied by bill, Senate, No. 1379) of William B. Golden, Frank M. Hynes, Suzanne M. Bump and William P. Nagle, Jr., for legislation to create a scenic highway program. Transportation.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety.

AN ACT CREATING A SCENIC HIGHWAYS PROGRAM.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. There is hereby created a Scenic Highways
2 Program, the purpose of which is to preserve scenic beauty of
3 lands within or adjacent to certain state and federal-aid highways,
4 to promote tourism, and to protect the natural, historic and
5 archeological resources of such lands.

1 SECTION 2. For the purposes of this act, the following words
2 and phrases shall have the following meanings, unless the context
3 requires otherwise: —

4 “Board”, Scenic Highway Review Board.

5 “Chairman”, the chairman of the Scenic Highway Review
6 Board.

7 “Commission”, Local Scenic Highway Commission.

8 “Highway”, any state or federal-aid highway or segment
9 thereof, and lands within or adjacent to such highway up to one
10 hundred yards on either side.

1 SECTION 3. There shall be created a Scenic Highway Review
2 Board chaired by the Commissioner of the Department of Public
3 Works, to include the Secretary of Executive Office of
4 Transportation and Construction, the Secretary of the Executive
5 Office of Environmental Affairs, the Commissioner of the
6 Department of Environmental Management, the Chairman of the

7 Massachusetts Historical Commission, the Director of the
8 Division of Tourism, and one official from a regional planning
9 agency appointed by the Governor. The purpose of this Board
10 shall be to review nominations and to make designations for the
11 Scenic Highway Program. The Commissioner of the Department
12 of Public Works shall, with the approval of said Board,
13 promulgate regulations outlining criteria for designation of a
14 highway as a scenic highway.

1 SECTION 4. (a) Any highway may be nominated for
2 designation as a Scenic Highway by:

3 any ten citizens of the Commonwealth:

4 the Board of Selectmen, City Council, Mayor, Planning Board,
5 or Conservation Commission of any city or town which would
6 be affected by the designation;

7 any state agency or regional planning agency;

8 the Governor or any member of the General Court.

9 (b) Nominations shall be made by letter to the Chairman of the
10 Scenic Highway Review Board and must be accompanied by a
11 specific description of the nominated highway or segment thereof,
12 and a general description of the benefits that would be achieved
13 by designation, including summary information regarding the
14 resources of land within or adjacent to such highway. Also
15 included shall be color slides or photographs of critical vistas and
16 a locus plan with such vistas indicated.

1 SECTION 5. Eligibility areas shall include, but not be limited
2 to: scenic vistas; archeological and historic sites; wildlife habitat;
3 wetland areas; land adjacent to ponds, streams, rivers, lakes and
4 oceans; rare or unique geologic features; roadways utilized heavily
5 for tourism.

1 SECTION 6. Upon receipt of the nomination the Chairman
2 shall make an initial review of the proposed Scenic Highway and
3 the reasons for its nomination. The Scenic Highway Review Board
4 may request such additional information from the nominating
5 party as said Board deems necessary. The Board shall, within
6 forty-five days of receiving the nomination or such additional
7 information as said Board may request under this section,

8 whichever is later, make a decision on the nomination and the
9 Chairman shall inform the nominating party in writing either that
10 the Board is accepting the nomination for designation and will
11 proceed with a full review, or that said Board is declining to review
12 the highway for designation. If the Board declines, a summary
13 of reasons shall be given.

1 SECTION 7. Before designating a highway, the Scenic
2 Highway Review Board shall hold one or more public hearings.
3 At least one hearing must be held within twenty-five miles of each
4 city or town through which the nominated highway runs, and each
5 hearing must be held in one such city or town. Public notice of
6 hearings shall be published by the Secretary of the Executive
7 Office of Environmental Affairs not less than thirty days before
8 such hearing in the Environmental Monitor. Notice shall also be
9 published in a newspaper of general circulation in the vicinity of
10 the nominated highway and in appropriate trade, industry,
11 informational, or professional publications. Such notice shall be
12 mailed to the appropriate Boards of Selectmen, Town Managers,
13 City Councils, or Mayors; Planning Boards; Conservation
14 Commissions; Historic Commissions assessed owners of land
15 within proposed Scenic Highway; and at the Chairman's
16 discretion, to interested citizens or organizations. Such notice
17 shall include a citation of the authority under which the
18 designation would occur, a summary of the reasons proposed for
19 such a designation, the time and place of the hearing, and the
20 method by which members of the public may make their views
21 known. A map of the highway to be designated may be included.

1 SECTION 8. The Board shall make a final decision as to
2 whether or not to designate a nominated highway within sixty
3 days of the public hearing held pursuant to section seven. The
4 Board shall designate a Scenic Highway only after finding that,
5 on the basis of the information presented by the nominating party
6 and at the public hearing and after a review of the factors
7 addressed by regulations promulgated pursuant to section three,
8 the highway is eligible and deserving of dedication as a Scenic
9 Highway.

1 SECTION 9. The Secretary of Environmental Affairs shall
2 publish notice of the decision under section eight in the
3 Environmental Monitor. The written findings shall be available
4 for public inspection at the office of the Chairman. The effective
5 date of any designation shall be the date of publication of the
6 notice in the Environmental Monitor unless the Chairman shall
7 otherwise provide. Upon designation of a Scenic Highway, the
8 Board shall promulgate regulations which specify activities to be
9 allowed, prohibited, omitted or subject to the Special Permit
10 process of the appropriate Local Scenic Highway Commission
11 under section eleven, within the jurisdiction of said highway. Said
12 regulations shall be included in said notice and mailed to assessed
13 owners of land within the Scenic Highway.

14 Any person having a recorded interest in land affected by such
15 regulations, may, within ninety days after receiving notice thereof,
16 petition the superior court to determine whether such regulations
17 unreasonably restrict the use of his property as to deprive him
18 of the practical uses thereof and which constitute an unreasonable
19 exercise of police power so as to become the equivalent of a taking
20 without compensation. If the court finds the regulations to be
21 unreasonable, the court shall enter a finding that such order shall
22 not apply to the land of the petitioner; provided, however, that
23 such finding shall not affect any other land than that of the
24 petitioner. The Chairman shall cause a copy of such finding to
25 be recorded forthwith in the proper registry of deeds or, if the
26 land is registered, in the registry district of the land court. The
27 method provided in this section for determination of the issue shall
28 be exclusive, and such issue shall not be determined in any other
29 proceeding, nor shall any person have a right to petition for the
30 assessment of damages under chapter seventy-nine by reason of
31 the adoption of any such order.

32 The department of public works or any agency of the executive
33 office of environmental affairs may, after a finding has been
34 entered that such order shall not apply to certain land as provided
35 in the preceding paragraph, take the fee or any lesser interest in
36 such land in the name of the commonwealth by eminent domain
37 under the provisions of chapter seventy-nine and hold the same
38 for the purposes set forth in section one.

1 SECTION 10. Costs incurred by the Scenic Highway Review
2 Board shall be paid from funds appropriated to carry out the goals
3 of chapter eighty-one, section thirteen B of the General Laws.

1 SECTION 11. Upon designation of a Scenic Highway, there
2 shall be formed a Local Scenic Highway Commission, which shall
3 consist of a representative and an alternate from each city and
4 town through which the scenic highway runs. The Board of
5 Selectmen, City Council or Mayor of each city and town shall
6 designate the municipality's member and alternate. The term of
7 each representative shall be three years, and there shall be no limit
8 to the terms a person may serve. The terms of the initial members
9 and alternates shall be determined by lot, with one-third of the
10 initial members and alternates selected respectively for one, two
11 and three year terms. The members and alternates from each town
12 shall serve the same term.

13 The Commission shall meet regularly. A majority of the
14 designated members shall constitute a quorum. When a
15 representative is absent, the alternate may vote in his/her stead.
16 A two-thirds vote of members present and constituting a quorum
17 shall be necessary for actions by the Commission with respect to
18 a Special Permit. All other actions of the Commission shall
19 require a majority vote. It shall be the responsibility of the
20 Commission to:

21 adopt by-laws consistent with this act, which shall set forth the
22 Commission's operating procedures;

23 manage and carry out all applicable regulations issued by the
24 Board, including the authority to answer, in accordance with this
25 act, questions concerning such regulations;

26 issue a determination of whether a proposed activity is an
27 allowed, special permit, prohibited or omitted use under said
28 regulations. Any person may request such a determination by
29 submitting a written request to the Commission together with an
30 adequate plan showing the extent of the activity to be performed.
31 Within thirty days of receipt of said request, the Commission shall
32 issue a written determination in recordable form stating whether
33 or not the proposed activity is an allowed, special permit,
34 prohibited or omitted use under said regulations. Failure of the

35 Commission to issue said determination within thirty days, shall
36 be deemed a determination that the proposed activity is an allowed
37 use:

38 review applications and grant, deny or condition Special
39 Permits in accordance with regulations to be promulgated by the
40 Commissioner of the Department of Environmental Management
41 with approval of the Board of Environmental Management and
42 Scenic Highway Review Board, the By-Laws, and this act;

43 collect filing fees for applications and public notices and expend
44 such funds as may be appropriated;

45 grant certificates of compliance certifying that the activity
46 described in the Special Permit has been completed in accordance
47 with the Special Permit;

48 investigate any alleged violations of said regulations and issue
49 cease and desist orders where appropriate; and

50 present suggested zoning changes for land within the Scenic
51 Highway to appropriate governmental boards.

