

## CHAPTER 308

### MISSISSIPPI RIVER PARKWAY

Referred to in §15.108, 307.24

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#### 308.1 Planning commission.

The Mississippi parkway planning commission shall be composed of ten members appointed by the governor, five members to be appointed for two-year terms beginning July 1, 1959, and five members to be appointed for four-year terms beginning July 1, 1959. In addition to the above members there shall be seven advisory ex officio members who shall be as follows: One member from the state transportation commission, one member from the natural resource commission, one member from the state soil conservation committee, one member from the state historical society of Iowa, one member from the faculty of the landscape architectural division of the Iowa state university of science and technology, one member from the economic development authority, and one member from the environmental protection commission. Members and ex officio members shall serve without pay, but the actual and necessary expenses of members and ex officio members may be paid if the commission so orders and if the commission has funds available for that purpose.

[C62, 66, 71, 73, 75, 77, 79, 81, §308.1; 82 Acts, ch 1199, §61, 96]

2003 Acts, ch 108, §54; 2011 Acts, ch 118, §84, 89

#### 308.2 Assent to federal Act.

The general assembly of the state of Iowa hereby declares that the intent of this chapter is to assent to any Act of the United States Congress authorizing the development of any national parkway located wholly or partly within the state of Iowa, to the full extent that is necessary to secure any benefits under such Act, provided that the hunting of migratory game birds and other game and fishing shall not be prohibited or otherwise restricted by the United States government or any of its designated agencies in control of said project, and to authorize the appropriate state boards, commissions, departments and the governing bodies of counties, cities and villages and especially the state transportation commission to cooperate in the planning and development of all national parkways that may be proposed for development in Iowa, with any agency or department of the government of the United States in which is vested the necessary authority to construct or otherwise develop such national parkways. Whenever authority shall exist for the planning and development of any national parkway, of which any portion shall be located in the state of Iowa, it shall be the duty of the state transportation commission to make such investigations and studies in cooperation with the appropriate federal agency, and such state boards, commissions, and departments as shall have an interest in such parkway development, to the extent that shall be desirable and necessary in order to provide that the state shall secure all advantages that may accrue through such parkway development and that the interests of the counties, cities, and villages along the route shall be served.

[C62, 66, 71, 73, 75, 77, 79, 81, §308.2]

98 Acts, ch 1199, §1, 27; 98 Acts, ch 1223, §30

#### 308.3 Definitions.

As used in this chapter:

1. “*Conservation area*” means land in which the state department of transportation or the department of natural resources has acquired rights, other than that land necessary for a right-of-way.

2. “*Great river road*” means a scenic and recreational highway consisting of a designated system of roads and streets along the Mississippi river in this state.

3. “*National parkway*” has the same meaning as defined in Pub. L. No. 93-87, first session, Ninety-third Congress of the United States.

4. “*Right-of-way*” means land area dedicated to public use for a highway and its maintenance, and includes land acquired in fee simple or by permanent easement for highway purposes, but does not include temporary easements or rights for supplementary highway appurtenances.

5. “*A scenic and recreational highway*” means a public highway designated to allow enjoyment of aesthetic and scenic views, points of historical, archaeological and scientific interest, state parks and other recreational areas and includes both the right-of-way and conservation area.

6. “*Scenic easement*” means a servitude which is acquired by gift, purchase, exchange or condemnation and is designed to permit land to remain in private ownership for its normal agricultural, residential or other use and, at the same time, to restrict and control the future use of the land for the purpose of preserving, restoring or enhancing the natural and historic beauty of the land subject to the scenic easement.

7. “*Secretary*”, “*parkway*”, “*scenic landscape*”, “*sightly or safety easement*”, “*access*”, “*parkway road*”, “*parkway development*”, “*frontage*” and other similar terms have the same meaning as defined in any Act of the Congress of the United States related to a national parkway.

[C62, 66, 71, 73, 75, 77, 79, 81, §308.3]

86 Acts, ch 1245, §1928; 2006 Acts, ch 1010, §85; 2008 Acts, ch 1032, §44

#### **308.4 Transportation commission duties.**

1. The state transportation commission shall make such investigations, surveys, studies and plans in connection with any proposed national parkway or parkway development as it shall deem necessary or desirable to determine if the proposed development is under the terms of the Act of the United States Congress applicable to such parkway or any regulations under such Act and is advantageous to the state. Such parkway development may be any portion of the proposed parkway which is proposed to be constructed as a project under such Act.

2. The state transportation commission, with the cooperation of the department of natural resources, shall plan, designate, and establish the exact routing of the great river road, utilizing the general guidelines established in Tit. 23, United States Code.

3. The director of transportation, with the cooperation of the department of natural resources, shall:

a. Acquire all rights in land necessary for reconstruction or relocation of any portions of the great river road where reconstruction or relocation is imperative for the safety of the traveling public, or where the condition or location of existing segments of the highway is not in keeping with the intent of this chapter. Acquisitions of such rights in land shall be by gift, purchase, exchange, or by instituting and maintaining proceedings for condemnation. Gift, purchase, exchange, and condemnation include acquisition of a scenic easement. A scenic easement acquired under this chapter constitutes an easement both at law and in equity, and all legal and equitable remedies, including prohibitory and mandatory injunctions, are available to protect and enforce the state’s interest in such scenic easements. A scenic easement acquired under this chapter is deemed to be appurtenant to the roadway to which it is adjacent or from which it is visible. The duties created by a scenic easement acquired under this chapter are binding upon and enforceable against the original owner of the land subject to the scenic easement and the original owner’s heirs, successors, and assigns in perpetuity, unless the instrument creating the scenic easement expressly provides for a lesser duration. A court shall not declare a scenic easement acquired under this chapter to have been extinguished or to have become unenforceable by virtue of changed conditions or frustration of purpose.

b. Accept and administer state, federal, and any other public or private funds made available for the acquisition of rights in land and for the planning and construction or

reconstruction of any segment of the great river road, and state and federal funds for the maintenance of that part of the great river road constituting the right-of-way.

[C62, 66, 71, 73, 75, 77, 79, 81, §308.4; 81 Acts, ch 14, §23]

83 Acts, ch 198, §17; 85 Acts, ch 108, §1; 86 Acts, ch 1245, §1929; 86 Acts, ch 1246, §28; 2008 Acts, ch 1032, §45

Referred to in §308.7

### **308.5 Jurisdiction and control.**

Jurisdiction and control of the great river road is vested as provided in section 306.4.

[C75, 77, 79, 81, §308.5]

85 Acts, ch 108, §2

### **308.6 Transferring jurisdiction.**

The director of transportation, with the concurrence of the department of natural resources, shall transfer jurisdiction of any adjacent conservation area to the department of natural resources upon completion of a new segment of the great river road.

[C75, 77, 79, 81, §308.6]

86 Acts, ch 1245, §1930

### **308.7 Duties of department of natural resources.**

The department of natural resources, with the cooperation of the director of transportation, shall:

1. Control the conservation area acquired by the director of transportation.
2. Protect all scenic easements.
3. Maintain, improve, and beautify according to plans made under section 308.4, subsection 2, all conservation areas, including the establishment of off-road-vehicle trails, equestrian trails and hiking paths.
4. Accept and administer state, federal and any other public or private funds made available for the maintenance, improvement and beautification of conservation areas.

[C75, 77, 79, 81, §308.7]

86 Acts, ch 1245, §1931

### **308.8 Agreements authorized.**

The director of transportation and the department of natural resources may enter into agreements with the United States secretary of transportation, as provided under the United States Code, Tit. 23 relating to the scenic and recreational highway system, and with any other agency and jurisdiction, and take action in the name of the state to comply with the terms of any agreement.

[C75, 77, 79, 81, §308.8]

86 Acts, ch 1245, §1932

### **308.9 Establishing locations for the highway.**

1. *a.* When, as a result of its investigations and studies, the state transportation commission, in cooperation with the department of natural resources, finds that there may be a need in the future for the development and construction or reconstruction of segments of the great river road, and when the state transportation commission determines that in order to prevent conflicting costly economic development on areas of lands to be available for the great river road when needed for future development, there is need to establish and to inform the public of the approximate location and widths of new or improved segments of the great river road to be needed, the state transportation commission may proceed to establish the location and the approximate widths in the manner provided in this section.

*b.* The state transportation commission shall give notice and hold a public hearing on the matter in a convenient place in the area to be affected by the proposed improvement of the great river road. The state transportation commission shall consider and evaluate the testimony presented at the public hearing and shall make a study and prepare a map showing the location of the proposed new or reconstructed segment of the great river road and the

approximate widths of right-of-way needed. The map shall show the existing roadway and the property lines and record owners of lands to be needed. The approval of the map shall be recorded by reference in the state transportation commission's minutes, and a notice of the action and a copy of the map showing the lands or interest in the lands needed in any county shall be filed in the office of the county recorder of that county. Notice of the action and of the filing shall be published once in a newspaper of general circulation in the county, and within sixty days following the filing, notice of the filing shall be served by registered mail on the owners of record on the date of filing. Using the same procedures for approval, notice and publications, and notice to the affected record owners, the state transportation commission may amend the map.

2. After such location is established, within the area of the great river road as shown on the map or in such proximity to it as to result in consequential damages when the rights in land for the great river road are acquired, a person shall not erect or move in any additional structure or rebuild, alter or add to any existing structure, without giving to the state transportation commission by registered mail sixty days' notice of such contemplated construction, alteration, or addition describing the same. However, this prohibition and requirement shall not apply to any normal or emergency repairs or replacements which are necessary to maintain an existing structure of a facility in approximately its previously existing functioning condition. When the rights in land for a segment of the great river road are acquired, damages shall not be allowed for any construction, alterations, or additions in violation of this subsection.

3. Without limiting any authority otherwise existing, rights in land needed for the great river road may be acquired at any time by the state, the county, or the municipality in which such segment of the great river road is located. If an owner's contiguous land is acquired to an extent which is less than the total amount shown on the map as needed, consequential damages to the land not acquired shall be allowed as found to exist.

[C62, 66, 71, 73, §308.5; C75, 77, 79, 81, §308.9]

88 Acts, ch 1158, §64; 98 Acts, ch 1075, §8; 2008 Acts, ch 1032, §46