

STORAGE NAME: h3771.ep
DATE: March 11, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
ENVIRONMENTAL PROTECTION
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 3771

RELATING TO: Greenways and Trails

SPONSOR(S): Representative(s) Sembler; Bronson; Futch; Lynn; Smith; Arnall; and others

COMPANION BILL(S): SB 1396 by Senator Sullivan

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) ENVIRONMENTAL PROTECTION
 - (2) FINANCE AND TAXATION
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

This bill revises the definition of volunteer as used in s. 110.501, F.S., it now includes persons who consent to the use of lands as greenways or trails without compensation. It also provides a definition for "designation" as the identification and inclusion of specific lands as part of the statewide system of greenways and trails pursuant to a formal public process, including the specific written consent of the landowner. Revises the Florida Greenways and Trails Act to provide certain rights and benefits to landowners who allow lands to be designated as greenways or trails, including certain protections from liability and the posting of trespass notices by the Department of Environmental Protection. The Department of Environmental Protection is granted certain powers, including the authority to charge fees; make rules; and negotiate with private landowners, including the ability to use incentive in negotiations. Provides that identification of lands in planning materials will not be construed as designation as a greenway or trail, and therefore recognition by state agencies, regional planning councils, and local governments is not required.

This act will take effect July 1, of the enacting year.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

The Florida Rails-To-Trails Program was created by a resolution of the Governor and Cabinet within the Department of Natural Resources on March 4, 1986. It was enacted into law by the Legislature during the 1987 Legislative Session. The purpose of the program was to acquire abandoned railroad rights of way and additions to the Florida National Scenic Trail for recreational purposes. In 1996, the Legislature expanded the program to include the acquisition of greenways and renamed the program the Florida Greenways and Trails Program. The components of the original program are still included in the new program, but now the Department of Environmental Protection (department) can purchase greenways and is not restricted to purchasing only abandoned railroad rights of way and additions to the Florida National Scenic Trail. The purpose of the Florida Greenways and Trails Program, as expanded by the 1996 Legislature, is to acquire lands to facilitate the establishment of a statewide system of greenways and trails.

For a project to qualify for acquisition under the program, it must fall within at least one of the following categories:

1. A linear corridor, which includes such lands as riverfronts, stream valleys, ridgelines, or other natural or landscaped courses linking parks, nature reserves, cultural or historic sites with each other and/or populated areas;
2. An open space connector, which serves to link such lands as parks, nature reserves, cultural or historic sites with each other and/or populated areas; or,
3. A trail, which is a defined route which provides access to natural areas, green spaces and historic sites and presents outdoor recreation and/or alternative transportation opportunities. Abandoned railroad rights of way are included in this category.

It was the intent of the Legislature to provide the public with access to the use, enjoyment, and appreciation of the outdoor areas of Florida, and in order to conserve, develop, and use the natural resources of the state for healthful and recreational purposes. An established statewide system of greenways and trails would provide open space benefitting environmentally sensitive lands and wildlife, and provide the public with access to healthful outdoor activities.

Currently the Greenways and Trails program receives its funding from the P2000 program. The department's Office of Greenways and Trails has the responsibility for selecting and prioritizing the projects for acquisition. However, the Division of State Lands is required to oversee the acquisition of each project. The program receives \$3.9 million annually and does not require matching funds. Projects must have a documented willing seller, willing manager, and fit within one of the above categories. The evaluation criteria include ecological, recreational, and acquisition elements.

A statewide system of greenways and trails system requires the assistance and participation of the private landowners since a statewide system cannot be completed through fee simple acquisition alone. The University of Florida, under contract with the

Department of Environmental Protection, has undertaken a planning effort to depict a statewide system of greenways and trails using a Geographic Information System (GIS) modeling approach. To depict the results of this effort, draft preliminary planning area maps have been printed. The role of these maps is to provide a scientifically sound point of departure to inform the department, the Florida Greenways Coordinating Council and the six regional greenways task forces where greenways could be located. In the mapping process, the criteria used to plan a statewide system did not distinguish between public and private lands, including private lands in the greenways and trails preliminary area boundaries. Private landowners expressed concern over these preliminary maps depicting their lands as potential greenways and trails, fearing increased land-use controls and state regulatory oversight. The department has received over 70 letters from private landowners asking for their lands to be removed from the preliminary planning maps, a request which the department is honoring.

B. EFFECT OF PROPOSED CHANGES:

This bill amends several sections relating to greenways and trails. It amends legislative intent to include the encouragement of private land owners to protect the existing ecological, historical, and cultural values of their lands, including those values derived from working landscapes. The Legislature intends greenways and trails to be located on public and private lands, and in order to have private lands designated as a greenway or trail, the private landowner must agree in writing.

Under the provisions of this bill, private landowners will be eligible for certain rights and benefits. Persons whose lands have been designated as a greenway or trail will receive the same limitations to liability as those who make lands available for outdoor recreational purposes pursuant to s. 375.251, F.S. Any owner or lessee under this section will not:

- be presumed to extend any assurance that such park area or land is safe for any purpose;
- incur any duty of care toward a person who goes on that park area or land; and,
- become liable or responsible for an injury to persons or property caused by the act of omission of a person who goes on that park area or land.

These limitations do not apply if there is a charge to, or profit derived from, patronage of the general public. Relief does not exist for any person who deliberately, willfully, or maliciously causes injury to persons or property. The provisions will also apply to lands adjacent to and accessed by use of greenways or trails. Any landowner who consents to designation of their property as a greenway or trail without compensation is considered a volunteer and covered by state liability protection. A volunteer is further defined as any person who conveys an interest in or otherwise consents to the use of real property pursuant to the sections of this bill. Incentives granted to private landowners are not to be construed as a charge for use or profit; or as monetary or material compensation. Landowners whose private lands are designated for use in the greenways and trails system, will be held harmless for any injury or damage incurred by third parties.

Under the Greenways and Trails System, and the Greenways and Trails Program, mapping and other forms of identifying lands for inclusion into the greenways and trails system for planning purposes shall not constitute designation. Designation means the identification and inclusion of specific lands as part of the statewide system of greenways and trails pursuant to a formal public process, including the specific written consent of the landowner. When the department determines that public access is appropriate for greenways and trails, written authorization must be granted by the landowner to the department permitting public access to all or a specific part of the landowner's property. Identification of lands in maps, data, planning materials, or other information developed or used in the program does not:

- Require or empower any unit of local or regional government, or any state agency, to impose additional or more restrictive environmental, land use, or zoning regulations.
- Grant authority to adopt, enforce, or amend any environmental rule or regulation; comprehensive plan goals, policies or objectives; or zoning or land use ordinances.
- Provide the basis for permit denial; imposition of any permit condition; or application of any rule regulation, or ordinance by any subdivision of local, regional, or state government.
- Grant authority to any governmental agency to reduce or restrict the rights of owners of lands so identified.

This bill also grants certain powers to the department. The department will have the power to adopt appropriate rules to implement or interpret this act. These rules may include but are not limited to:

- Establishing a designation process;
- Negotiating and executing agreements with private landowners;
- Establishing prohibited activities or restrictions on activities;
- Charging fees for use;
- Providing public access;
- Providing for maintenance; and
- Any matter necessary to the operation and maintenance of greenways and trails.

The department will be responsible for developing and implementing a process for designation. There are several elements included for the design of the process, these include:

- The development and dissemination of criteria for designation;

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- The development and dissemination of criteria for changes in the terms or conditions of designation. This includes withdrawal and termination of the designations;
- The compilation of available information on and field verification of the characteristics of the lands as they relate to the developed criteria;
- Notice to the public during all phases of the process, including any required rule-making;
- The written authorization from the land owner in the form of a lease or other instrument for the designation and granting of public access; and
- The development of a greenways or trails use plan as part of the designation agreement.

The department is also given the power to negotiate with potentially affected private landowners, the terms to which they would consent to the public use of their land. The negotiations may include incentives for private landowners, these incentives include but are not limited to:

- Retention of specific rights, including hunting, farming, grazing, timber harvesting, or other uses consistent with use as greenways or trails.
- Agreement to exchange ownership, pursuant to the provisions of s. 259.041, F.S. which specifically relates to the acquisition of state owned lands for preservation, conservation, and recreation purposes.
- Contracting with the landowner to provide management or other services on the land.
- Execution of protection and patrol agreements.
- Providing lease fees, where appropriate, not to exceed fair market value. A portion of this can be used by the landowner to purchase liability insurance.

When a landowner agrees to make private land available for public use, the department or it's designate is required to post notices along the boundary of the greenway or trail to inform the public that the land adjacent is private property. These notices are to inform the public that access to those lands is prohibited by unauthorized individuals, and any person who commits an unauthorized entry can be guilty of trespassing. Any person who is guilty of trespassing can be charged with a first degree misdemeanor and imprisoned for up to 1 year, pursuant to s. 775.082, F.S.

This bill further provides that the identification of lands in planning materials, maps, data, and other information, does not require recognition pursuant to Chapter 163, F.S. Chapter 163, F.S., requires all agencies of the state, regional planning councils through their comprehensive plans, and local governments through their local comprehensive planning process, to recognize those lands and waters designated by the state as greenways and trails. Not until the land is designated will those agencies, councils and governments be required to recognize such property.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes, the Department of Environmental Protection is given the authority to make rules that are necessary for the implementation or interpretation of this bill.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes, the Department of Environmental Protection is given the responsibility of developing and implementing a process for designation of lands as part of the statewide system of greenways and trails.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes, there are many incentives that can be received if private landowners agree to have their lands designated as a greenway or trail. These incentives include: retaining specific rights in the property; agreement to exchange ownership or other rights of use of public lands for the ownership or other rights of use of privately owned property; contracting with the landowner to provide management or other services on the land; accelerated acquisition processes or higher consideration in the ranking process for acquisition by the state; execution of patrol and protection agreements; and, provision of lease fees. Any landowner who consents to designation of their property as a greenway or trail without compensation is considered a volunteer and covered by state liability protection.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Amends ss. 110.501, 260.012, 260.013, 260.014, 260.0141, 260.016, and 260.018, F.S.
Creates s. 260.0125, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1: Amends s. 110.501, F.S. Provides definition of volunteer.

Section 2: Amends s. 260.012, F.S. Provides Legislative intent.

Section 3: Creates s. 260.0125, F.S. Provides private landowners rights and benefits.

Section 4: Amends s. 260.013, F.S. Provides definition of designation.

Section 5: Amends s. 260.014, F.S. Provides that mapping or other forms of identification of lands as suitable for inclusion in the system of Greenways and Trails, or development of information for planning purposes does not constitute designation. Lands may not be designated without the specific written consent of the landowner.

Section 6: Amends s. 260.0141, F.S. Provides that identifying lands in planning materials does not:

1. Allow for the imposition of more restrictive environmental, land use, or zoning regulations.
2. Provide the authority necessary to adopt, enforce, or amend any environmental rule or regulation, comprehensive plan goals, or zoning or land use ordinances.
3. Provide the basis for permit denial, or the imposition of permit conditions.
4. Provide the authority to reduce or restrict the rights of owners or lands so identified.

Section 7: Amends s. 260.016, F.S. Provides the department with the power to adopt rules to implement or interpret this act. Provides the department the power to develop and implement a process for designation of lands as part of the statewide system of greenways and trails. Authorizes the department or designate, to negotiate with potentially affected private landowners the terms they would consent to the public use of their lands. Authorizes the department to agree to incentives for private landowners who consent to public use of their lands for conservation or recreational purposes.

Section 8: Amends s. 260.018, F.S. Provides that lands identified in planning materials, maps, data, and other information developed does not require all agencies of the state, regional planning councils, and local governments, recognize those lands in their comprehensive plans and planning processes, unless those lands have been designated.

Section 9: Provides an effective date of July 1, of the year enacted.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

There are many incentives that can be received if private landowners agree to have their lands designated as a greenway or trail. These incentives include: retaining specific rights in the property; agreement to exchange ownership or other rights of use of public lands for the ownership or other rights of use of privately owned property; contracting with the landowner to provide management or other services on the land; accelerated acquisition processes or higher consideration in the ranking process for acquisition by the state; execution of patrol and protection agreements; and, provision of lease fees. Any landowner who consents to designation of their property as a greenway or trail without compensation is considered a volunteer and covered by state liability protection.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

The Department of Environmental Protection believes the specific fiscal impact is unknown at this time. The incentives portion of the bill will require an increased expenditure of funds by the state in certain circumstances such as providing lease fees or other incentives to private landowners. However, any expenditure will result in a benefit to the state through the conservation and provision of lands for public recreation.

The department additionally believes that the increase in liability protection may require an increase in staff time and state monetary resources to defend certain landowners in liability suits, but a significant increase is not expected at this time.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditures of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the revenue-raising authority of cities or counties.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the amount of state tax shared with cities and counties.

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V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON ENVIRONMENTAL PROTECTION:

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