

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Commerce and Tourism Committee

BILL: CS/SB 268

INTRODUCER: Transportation Committee and Senator Wise

SUBJECT: Sponsorship of State Greenways and Trails

DATE: January 18, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Eichin</u>	<u>Buford</u>	<u>TR</u>	Fav/CS
2.	<u>Juliachs</u>	<u>Hrdlicka</u>	<u>CM</u>	Pre-meeting
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 268 creates the “John Anthony Wilson Bicycle Safety Act of 2011,” which authorizes the Department of Environmental Protection to enter into agreements with not-for-profit or private-sector entities allowing those entities to sponsor signage on state-owned greenway and trail facilities in the form of naming rights and commercial displays.

The bill contains restrictions on placement, size, term, materials, and construction. It also describes how proceeds from the agreements are to be distributed: 85 percent to the appropriate department trust fund to manage and operate state trails and greenways, and 15 percent to the State Transportation Trust Fund for use in the Florida Traffic and Bicycle Safety Education program and the Florida Safe Routes to School program.

Furthermore, the Department of Environmental Protection is authorized to adopt rules to implement the bill’s provisions.

This bill creates s. 260.014, F.S.

II. Present Situation:

Florida Greenways and Trails

The 1979 Legislature enacted ch. 79-110, L.O.F., entitled the Florida Recreational Trails Act (act) of 1979. The purpose of the act was to provide for a network of recreational and scenic trails to be used for hiking, biking, horseback riding, canoeing, and jogging, which were to be designated as the “Florida Recreational Trails System.” The Department of Environmental Protection (department) was encouraged to use areas within and connecting state parks and forests, national parks and forests, local parks, public rights-of-way, and existing trails.

In 1983, the Florida Trail was designated as the Florida National Scenic Trail. Today, it is a 1,500 mile-long trail, including both National Scenic Trail certified and non-certified miles, which stretches from the Panhandle of Florida to the Big Cypress National Preserve.¹ Portions of the trail are components of the Florida Greenways and Trails program, the successor to the Recreational Trails System.

In 1987, the Florida Rails-to-Trails program was created to provide an emphasis on the acquisition and development of abandoned railroad corridors for use as public recreational trails, as well as to contribute to the preservation of wildlife habitat. Many railroad lines run along river corridors and coastal plains, areas with the most scenic views and productive habitat. Until 1990, the program depended on annual legislative appropriations, but the creation of the Preservation 2000 (P2000) program changed that. The P2000 program was created as a 10-year, \$3 billion bond program to acquire environmentally sensitive lands for conservation, protection, restoration and preservation purposes. The Rails-to-Trails program was provided with \$3.9 million a year in funding under P2000 through 1996.

In 1996, the Florida Legislature enacted ch. 96-389, L.O.F., which renamed the Recreational Trails System Act as the “Florida Greenways and Trails Act,” and provided for a statewide system of greenways and trails for recreational and conservation purposes and uses. Greenways were defined to be “linear open spaces established along either a natural corridor, such as a riverfront, stream valley, or ridgeline, or over land along a railroad right-of-way converted to recreational use...” and trails were defined to mean “linear corridors and any adjacent support parcels on land or water providing public access for recreation or authorized alternative modes of transportation.” P2000 funding for Rails-to-Trails was extended through 2000 and was succeeded by funding from the Florida Forever program, as well as other state and federal funding programs.

In 2005, the Florida Legislature enacted ch. 2005-87, L.O.F., to recognize the Florida National Scenic Trail (trail) as Florida’s official statewide non-motorized trail from the Florida Panhandle to the Everglades and the Florida Keys. It further recognized the federal government’s major contributions and the efforts of private landowners, state government and non-profit entities in establishing the trail. Private landowners were encouraged to continue to allow the use of private property for trail purposes, through incentives and liability protection.

¹Florida Trail Association, Hike Florida on Florida’s Own National Scenic Trail, available at <http://www.floridatrail.org> (last visited January 13, 2012).

Presently, s. 260.016, F.S., sets forth general powers that the department may use in managing and overseeing the Florida Greenways and Trails System. These powers include charging user fees or rentals.

The Office of Greenways & Trails (OGT)

OGT provides statewide coordination to establish, expand, and promote Florida's Statewide System of Greenways and Trails. The office manages trails and other lands as key components of the Florida greenways and trails system, and partners with nearly 30 communities that manage state acquired greenways and trails through sublease agreements. It also manages a multi-million dollar capital budget consisting of federal Transportation Enhancement grants and fixed capital funds for the development of trails and facilities on state managed properties.²

Additionally, OGT coordinates with, and provides assistance to, local governments, developers, state and federal agencies, private landowners, and other interested citizens or advocates regarding the acquisition, designation, establishment, and management of greenways and trails projects. OGT works to expand the statewide network through a 1.5-percent annual allocation of Florida Forever funding, about \$4.5 million annually, for acquisition of trails. OGT administers the Recreational Trails Program (RTP), a federally funded competitive grant program providing financial assistance to local communities for the development of trails. Since inception, RTP has assisted communities in 42 Florida counties to establish and expand trails.

Florida's state trails and the Cross Florida Greenway had the highest annual visitation ever in 2009 with more than 4 million visitors, generating an estimated economic impact of \$95 million.³

Florida Trail Association

The Florida Trail Association is a private, non-profit volunteer organization founded in 1966, whose mission is to develop, maintain, promote, and protect a continuous hiking trail that runs the length of the state, as well as the loop and side trails throughout the state.⁴

Outdoor Advertising

With respect to outdoor advertising, ss. 337.407 and 479.11(8), F.S., prohibit advertisement signs from being placed in the right-of-way of any road on the interstate highway system, the federal-aid primary highway system, the State Highway System, or the State Park Road System. Based on these provisions, it appears that greenways and trails are excluded from such regulations, unless otherwise provided.

²Greenways and Trails, Florida Department of Environmental Protection, available at <http://www.dep.state.fl.us/gwt> (last visited January 13, 2012).

³ See <http://www.dep.state.fl.us/gwt/PDF/OfficeOverview.pdf> (last visited January 13, 2012).

⁴Florida Trail Association, Hike Florida on Florida's Own National Scenic Trail, available at <http://www.floridatrail.org> (last visited January 13, 2012).

III. Effect of Proposed Changes:

Section 1 names this legislation as the “John Anthony Wilson Bicycle Safety Act.” Mr. Wilson⁵ was a veteran firefighter for the city of Boca Raton and a cycling enthusiast who was struck and killed by a motor vehicle in February of 2011 while riding his bike.

Section 2 creates s. 260.0144, F.S., to authorize the department to enter into concession agreements⁶ for naming rights or the display of commercial sponsorship on certain state-owned greenway and trail facilities or property. Specifically, the bill provides the following:

- Placement of signage or displays shall conform to the provisions of s. 337.407, F.S., and ch. 479, F.S., and shall be limited to only trailheads, trail intersections, directional or distance markers, interpretive exhibits, and parking areas.
- The size of the signage or display is limited to 16 square feet at trailheads and parking areas and 4 square feet at all other areas.
- The naming rights and commercial displays contemplated by the concession agreements are for public relations or advertising purposes for the concessionaires, and as such, are not to be construed as having any relationship with the department other than as set forth in the terms of the concession agreements.
- A concession agreement must be for a minimum 1-year term unless extended by a multiyear agreement and may be terminated by the department for just cause with 60 days notice to the concessionaire.
- Any name or display must be approved by the department as appropriate before installation.
- Materials and construction for signage must meet specified standards, which are to be established by the department.
- All costs associated with the signage, including its development, construction, installation, operation, maintenance, and removal, must be borne by the concessionaire.
- A concession agreement is not to be construed to grant a proprietary or compensable interest in any sign or display site or location.
- All proceeds from the concession agreements are to be distributed as follows:
 - 85 percent to the appropriate department trust fund used for the management and operation of state greenway or trail facilities and properties; and
 - 15 percent to the State Transportation Trust Fund for use in the Florida Traffic and Bicycle Safety Education program and the Florida Safe Routes to School program.
- The department is authorized to adopt rules to administer the act.

Section 3 provides an effective date of July 1, 2012.

⁵ More information about the life of Mr. Wilson is available at <http://www.ci.boca-raton.fl.us/fire/pdf/PressReleases/2011/wilson.pdf> and at <http://www.palmbeachpost.com/news/hundreds-from-across-florida-gather-to-mourn-boca-1247122.html> (last visited January 13, 2012).

⁶ A concession agreement grants a specific privilege by the government to the other party in the agreement. *See* Black’s Law Dictionary (9th ed. 2009).

IV. Constitutional Issues:

a. Municipality/County Mandates Restrictions:

None.

b. Public Records/Open Meetings Issues:

None.

c. Trust Funds Restrictions:

None.

d. Other Constitutional Issues:

A strict separation of powers doctrine is found in Article II, Section 3 of the Florida Constitution. Accordingly, two tenets encompassing separation of powers are that no branch of government may encroach on another branch's power and that no branch may delegate its constitutionally assigned powers to another branch.⁷ For these reasons, the doctrine of separation of powers is inextricably linked to agency operations and may potentially raise constitutional issues when dealing with statutes that authorize agency action.

Therefore, "the Legislature may not delegate the power to enact a law or the right to exercise unrestricted discretion in applying the law, but is required to delineate "some minimal standards and guidelines" when authorizing agency actions.⁸ The rationale for this limitation is guided by the belief that "fundamental and primary policy decisions ... [should] be made by members of the Legislature who are elected to perform those tasks ..."⁹ An example of statutory language that the Florida Supreme Court has construed to be unconstitutional as offering insufficient guidance for the exercise of authority by an executive branch agency is as follow: "all bank or trust company applications, investigations reports, examination reports, and related information . . . shall be confidential communications . . . and shall not be made public *unless with the consent of the department.*"¹⁰

Accordingly, provisions found in CS/SB 268 that allow the department to terminate a concession agreement for "*just cause*" and approve a display "*as appropriate*" may be susceptible to challenge under Article II, Section 3, as an unconstitutional delegation of legislative authority. Specifically, the absence of any language qualifying what is

⁷ *Fla. Dept. of State v. Martin*, 916 So. 2d 763, 770 (Fla. 2005).

⁸ *Sloban v. Fla. Bd. of Pharmacy*, 982 So. 2d 26, 29 (Fla. 1st DCA 2008) (quoting *Chiles v. Children A, B, C, D, E, & F*, 589 So. 2d 260, 264 (Fla. 1991).

⁹ *Martin*, 916 So. 2d at 770.

¹⁰ *Lewis v. Bank of Pasco County*, 346 So. 2d 53, 55 (Fla. 1976) (holding that the absence of restrictions, limitations, or guidelines in the statute to limit or regulate the action of the department in granting or withholding consent constituted an unconstitutional delegation of legislative authority).

considered to be “*just cause*” or “*appropriate*” may be declared by the court as empowering the department with excessive discretion.

V. Fiscal Impact Statement:

a. Tax/Fee Issues:

At this time, the Revenue Estimating Conference has not considered this bill. As such, the amount of revenue that might be realized due to this bill cannot be determined.

b. Private Sector Impact:

Indeterminate.

c. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

The organization of CS/SB 268 does not read easily as currently drafted. Considering that the bill regulates several subjects, provisions in the statute could be reordered to group more efficiently with other similar provisions.

VII. Related Issues:

Subparagraph 6 of this bill enumerates the manner that proceeds gathered from concession agreements are to be distributed. However, the bill does not expressly authorize the department to establish a cost or fee in connection with entering into a concession agreement.

VIII. Additional Information:

a. Committee Substitute – Statement of Substantial Changes: (Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Transportation on December 7, 2011 – The CS:

- Changed the word “advertising” to the word “sponsorship” throughout the bill.
- Added mandated compliance with s. 337.407, F.S, and Ch. 479, F.S.
- Added a sixty day notice period should the department choose to end a concession agreement for just cause.
- Added paragraph (5) which clarifies that concession agreements under this section do not create proprietary or compensable interests in any sign or display site or location.
- Changed the allocation of revenue from this section from 90 percent to 85 percent allocated to the appropriate department trust fund; and from 10 percent allocated to district school boards which must be used to enhance funds for the school district’s bicycle education program or Safe Route to Schools Program, prorated by population,

to 15 percent allocated to the State Transportation Trust Fund for use in Florida Traffic and Bicycle Safety Education program and the Florida Safe Routes to School program.

b. Amendments:

None.