

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 Transportation Committee

BILL: CS/SB 268

INTRODUCER: Transportation Committee and Senator Wise

SUBJECT: Sale of Advertising

DATE: December 7, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Eichin	Buford	TR	Fav/CS
2.			CM	
3.			EP	
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:

SB 268 creates the “John Anthony Wilson Bicycle Safety Act of 2011,” which authorizes the Department of Environmental Protection (DEP) 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 or approval on placement, size, term, content, materials, and construction. It also describes how proceeds from the agreements are to be distributed: 85 percent to the appropriate DEP 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.

DEP is authorized to adopt rules to implement the bill’s provisions.

SB 268 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 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 trails were to be designated as the "Florida Recreational Trails System." DEP (formerly the Department of Natural Resources) was encouraged to use areas within or 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, and 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 at the department was created to provide an emphasis on the acquisition and development of abandoned railroad corridors for use as public recreational trails, and 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 March 25, 2011.

The Office of Greenways & Trails (OGT)

An office within DEP, OGT provides statewide coordination to establish, expand, and promote Florida's Statewide System of Greenways and Trails. OGT 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. OGT 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

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

Sections 337.407 and 479.11(8), F.S., prohibit advertising 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.

Section 260.016, F.S., sets forth general powers that DEP may use in managing and overseeing the Florida Greenways and Trails System. These powers include charging user fees or rentals but do not specifically authorize DEP to sell naming rights or allow commercial displays.

III. Effect of Proposed Changes:

SB 268 creates s. 260.0144, F.S., authorizing DEP to enter into concession agreements that allow not-for-profit or private-sector businesses or entities the right to advertise on state-owned property.

²Greenways and Trails, Florida Department of Environmental Protection, available at <http://www.dep.state.fl.us/gwt>. Last visited April 7, 2011.

³ See <http://www.dep.state.fl.us/gwt/PDF/OfficeOverview.pdf>. Site last visited April 7, 2011.

⁴Florida Trail Association, Hike Florida on Florida's Own National Scenic Trail, available at <http://www.floridatrail.org>. Last visited April 7, 2011.

Section 1: Names this legislation 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 DEP to enter into concession agreements for naming rights or the display of commercial sponsorship on certain state-owned greenway and trail facilities or property, subject to the following restrictions:

- Placement of signage or displays shall conform to the provisions of s. 337.407, F.S., and ch. 479, F.S., and shall be only at 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.
- Any concession agreement must be for a minimum 1-year term unless extended by a multiyear agreement.
- No concession agreement is to be construed to grant a proprietary or compensable interest in any sign or display site or location.
- The name or display must be approved by DEP before installation.
- Materials and construction for signage must meet standards which are to be established by DEP.
- All costs associated with the signage must be borne by the concessionaire.

Any agreement under this section may be terminated by DEP for just cause with 60 days notice to the concessionaire.

Additionally, SB 268 specifies that 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.

Proceeds from the concession agreements are to be distributed as follows:

- 85 percent to the appropriate DEP 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.

SB 268 authorizes DEP 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>. Sites last visited April 7, 2011.

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:

SB 268 requires DEP approval prior to the installation of naming signage or an advertising display. It is not clear whether the intent of this language is to provide authority to regulate the content of a message communicated by a display or simply whether the signage meets material and construction standards. Regardless, the provision may give rise to claims based on alleged interference with constitutionally protected free speech. Further, the language could be argued to vest absolute discretion in DEP to decide appropriate content, the exercise of which can be expected to result in litigation challenging the constitutionality of the law either on the face of the law or as it is applied by DEP.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has not considered this bill yet and, accordingly, the amount of revenue that might be realized due to this bill is not known at this time.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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.