

**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

<b>BILL #:</b>	CS/CS/HB 181 (CS/CS/CS/SB 268)	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SPONSOR(S):</b>	Appropriations Committee; Agriculture & Natural Resources Subcommittee; Slosberg and others (Environmental Preservation and Conservation; Commerce and Tourism; Transportation; Wise)	112 Y's	6 N's
<b>COMPANION BILLS:</b>	CS/CS/CS/SB 268	<b>GOVERNOR'S ACTION:</b>	Approved

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**SUMMARY ANALYSIS**

CS/CS/HB 181 passed the House on March 7, 2012 as CS/CS/CS/SB 268. This bill authorizes the DEP to enter into a concession agreement with a not-for-profit entity or private business or entity for commercial sponsorship to be displayed on state greenway and trail facilities or property. The DEP is authorized to establish the cost for entering into these concession agreements. Signage or displays are limited to one per trailhead or parking area and one per public access point. The size of any sign or display located at a trailhead or parking area cannot exceed 16 square feet, and signs or displays located at public access points cannot exceed 4 square feet. The concession agreements administered by the DEP must be for a minimum of 1 year and may be terminated for just cause with 60 days advance notice by the DEP. Before installation, each name or advertising display must be approved by the DEP. The bill specifies that the DEP must ensure that the size, color, materials, construction, and location of all signs are consistent with the management plan for the property. The bill provides that sponsored greenways and trails are authorized in seven specified trails and greenways, but authorizes the DEP to enter into sponsorship agreements for other state greenways or trails. A qualified entity that desires to enter into a commercial sponsorship agreement must apply to the DEP on forms adopted by DEP rule. All costs pertaining to the signage must be paid by the concessionaire.

Eighty-five percent of the proceeds from concession agreements must be deposited in the appropriate DEP trust fund that is the source of funding for management and operation of state greenway and trail facilities and properties. Fifteen percent of the proceeds must be deposited into the State Transportation Trust Fund for use in the Traffic and Bicycle Safety Education Program and the Safe Paths to School Program administered by the Department of Transportation. The section of law created in the bill is named the "John Anthony Wilson Bicycle Safety Act."

The bill appears to have a positive but indeterminate fiscal impact on state government revenues. However, the federal Department of Transportation has not yet stated conclusively whether the receipt of income from proposed uses under the bill would negatively impact the allocation or use of federal funds. The bill also appears to have an indeterminate but likely insignificant negative fiscal impact on the DEP, which will need to expend funds for staff time involved in developing the rule to implement this bill and to establish the program, as well as to develop and manage concessionaire agreements.

The bill was approved by the Governor on May 4, 2012, ch. 2012-198, Laws of Florida. The effective date of the bill is July 1, 2012.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### **Present Situation**

Chapter 260, F.S., was established to conserve, develop, and use Florida's natural resources for healthful and recreational purposes, as well as to provide people access, where appropriate, to environmentally sensitive lands and wildlife. Chapter 260, F.S., also creates the Florida Greenways and Trails System and identifies the general powers of the Department of Environmental Protection (DEP). The Office of Greenways and Trails (OGT), an office within the DEP's Division of Recreation and Parks (DRP), facilitates the establishment of the Florida Greenways and Trails System. Among its responsibilities, the OGT manages seven state trails, the Marjorie Harris Carr Cross Florida Greenway, and has three additional facilities currently in development.<sup>1</sup> The OGT also subleases state acquired properties to local governments for management. The OGT administers the Recreational Trails Program, a federally funded competitive grant program, which provides financial assistance for local communities to develop trails. According to the OGT, portions of the Greenways and Trails System receive certain funding from the federal Department of Transportation (USDOT), which has recently indicated that generating income from these facilities may impact the receipt of federal funds by the state. The USDOT has not yet stated conclusively whether the receipt of income from naming concessions or its proposed uses under the bill would negatively impact the allocation or use of federal funds.

Section 260.016, F.S., sets forth general powers that the DEP is authorized to 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. The DEP is authorized to negotiate with private land owners the terms under which those lands may be accessed and used as part of the Greenways and Trails System.<sup>2</sup> The DEP and the Department of Transportation (DOT) are authorized to coordinate on the abandonment of road rights-of-way for use in the Greenways and Trail System.<sup>3</sup>

The public policy of the DRP in administering the lands under its authority is detailed by statute and includes the promotion of the state park system for the use, enjoyment, and benefit of the public, to acquire and conserve property indicative of Florida's original environment, and to administer the development, use, and maintenance of these lands.<sup>4</sup> The DRP is authorized to grant privileges, leases, concessions, and permits for the use of land for the accommodation of visitors in the various state parks, monuments, and memorials. These leases, concessions, and so on may be made without advertising or competitive bid, but may not be transferred by the lessee, concessionaire, and so on without consent from the DRP.<sup>5</sup> Within the park system, the DRP by rule prohibits the sale of any merchandise or the display of items for sale without prior authorization; the activity must not adversely affect park resources, must not impair existing contracts, must provide a needed visitor service, and must be consistent with park management practices pursuant to statute.<sup>6</sup>

Currently, there is no mechanism for the OGT to generate revenue through naming rights or advertising on any of these state-owned properties nor any process to seek the best compensation for granting such rights. When the state acquires personal property or services, a competitive public process is required to curb any improprieties in the acquisition and to ensure public funds are spent equitably and

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<sup>1</sup> Information accessed from website of OGT at <http://www.dep.state.fl.us/gwt/state/default.htm> (last accessed on 1/19/2012).

<sup>2</sup> Section 260.016(3), F.S.

<sup>3</sup> Section 260.0161, F.S.

<sup>4</sup> Section 258.037, F.S.

<sup>5</sup> Section 258.007(3), F.S.

<sup>6</sup> Rule 62D-2.014(14), F.A.C.

effectively.<sup>7</sup> Contracts for construction of public buildings are made through competitive bidding.<sup>8</sup> Competitive bidding is also required before the Board of Trustees of the Internal Improvement Trust Fund enters into agreements leasing state lands for oil and gas extraction in exchange for royalty payments to the state.<sup>9</sup> Before obtaining a permit for an oil or gas well, the applicant must post a security assuring its compliance with all safety and environmental requirements under Florida law. The security must be made payable to the State of Florida and executed by the applicant's owner or operator as principal and by a surety approved by the General Counsel for the DEP.<sup>10</sup>

No sign may be placed in the right-of-way of a road in a State Park Road System. The DOT has the power to order the removal of an improperly-placed sign, but cannot authorize the placement of any sign prohibited by a local government entity with jurisdiction.<sup>11</sup> The general regulation of outdoor advertising is placed under the DOT.<sup>12</sup> Unless exempt by statute, no sign may be erected in the State Highway System without a permit from the DOT.<sup>13</sup> It is not clear whether all the signage provided under the authority of the bill would be exempt from the present permitting requirements.<sup>14</sup>

### **Effect of Proposed Changes**

The bill creates s. 260.0144, F.S., authorizing the DEP to enter into a concession agreement with a not-for-profit entity or private business or entity for commercial sponsorship to be displayed on state greenway and trail facilities or property. The bill does not mandate that the DEP enter into such an agreement through any public process such as publication and bidding, does not specify whether DEP may enter into concession agreements with more than one vendor, and does not specify the scope and compatibility with existing uses of the proposed content for any signage.

A concession agreement must be administered by the DEP and must include the following requirements:

- The agreement must be for a minimum of 1 year, but can be for a longer period under a multi-year agreement, and may be terminated for just cause with a 60-day advanced notice by the DEP. The bill specifies that just cause for termination includes, but is not limited to, violation of the terms of the concession agreement or any provision of the bill.
- Before installation, each name or sponsorship display must be approved by the DEP.
- All costs of a display, including its development, construction, installation, operation, maintenance, and removal must be paid by the concessionaire.
- The DEP must ensure that the size, color, materials, construction, and location of all signs are consistent with the management plan for the property and the standards of the department, and do not intrude on natural and historic settings. Signs must contain only a logo selected by the sponsor and sponsorship wording constructed as follows:

“...(Name of the sponsor)...proudly sponsors the costs of maintaining the  
...(Name of the greenway or trail)...”

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<sup>7</sup> Section 287.001, F.S.

<sup>8</sup> Section 255.0525, F.S.

<sup>9</sup> Sections 253.47, 253.53, F.S.

<sup>10</sup> Rule 62C-26.002

<sup>11</sup> Section 337.407, F.S.

<sup>12</sup> Section 479.402, F.S.

<sup>13</sup> Section 479.07, F.S.

<sup>14</sup> Section 479.16, F.S. For example, currently signs not in excess of 8 square feet owned by and relating to the facilities and activities of units or agencies of government are exempt from DOT permitting, which may conflict with the bill's provision for signs or displays up to 16 square feet at trailheads or parking areas if such a location also intersects the State Park Road System. Section 479.16(12), F.S.

- Signage or displays must be in compliance with s. 337.407 and s. 479.11(8), F.S.<sup>15</sup>, and must be limited as follows:
  - One large sign or display, not to exceed 16 square feet in area, may be located at each trailhead or parking area.
  - One small sign or display, not to exceed 4 square feet in area, may be located at each designated trail public access point.

The bill specifies that sponsored greenways and trails are authorized at the following:

- Florida Keys Overseas Heritage Trail.
- Blackwater Heritage Trail.
- Tallahassee-St. Marks Historic Railroad State Trail.
- Nature Coast State Trail.
- Withlacoochee State Trail.
- General James A. Van Fleet State Trail.
- Palatka-Lake Butler State Trail.

The DEP may enter into commercial sponsorship agreements for other state greenways or trails as authorized in the bill. A qualified entity that desires to enter into a commercial sponsorship agreement must apply to the DEP on forms adopted by DEP rule.

Commercial sponsorship pursuant to a concession agreement are for public relations or advertising purposes of the not-for-profit entity or private sector business or entity, and are not to be construed by such as having a relationship to any other actions of the DEP.

The above provisions do not create a proprietary or compensable interest in any sign or display site or location.

Proceeds from concession agreements must be distributed as follows:

- Eighty-five percent must be deposited into the appropriate DEP trust fund that is the source of funding for management and operation of state greenway and trail facilities and properties.
- Fifteen percent must be deposited into the State Transportation Trust Fund for the use in the Traffic and Bicycle Safety Education Program and the Safe Paths to School Program administered by the Department of Transportation.

The bill grants the DEP with the authority to adopt rules to administer this program.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The authority to enter into concession agreements for commercial sponsorship on state greenway and trail facilities and property will result in an increase to certain DEP trust funds. The bill also provides that 15 percent of the proceeds from concession agreements shall be deposited into the State Transportation Trust Fund for use in the Traffic and Bicycle Safety Education Program and the Safe Paths to School Program administered by the Department of Transportation. However, the amount of revenue that might be realized is not known at this time.

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<sup>15</sup> 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.

In addition, portions of the Greenways and Trails System receive certain funding from the USDOT, which has recently indicated that generating income from these facilities may impact the receipt of federal funds by the state. The USDOT has not yet stated conclusively whether the receipt of income from proposed uses under the bill would negatively impact the allocation or use of federal funds.

The bill does not provide specific guidance on calculating the “proceeds” the DEP is to receive under any concession agreement. The use of a bidding process would assist to establish the amount to be paid in a public and competitive manner.

2. Expenditures:

According to the DEP, the department will need to expend funds for staff time involved in developing the rule to implement this bill and establish the program, as well as to develop and manage concessionaire agreements. The specific fiscal impact associated with that time is unknown, but likely insignificant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Sponsorship of brand names and services provided by non-profits and private sector businesses could have a potential positive fiscal impact.

D. FISCAL COMMENTS:

None.