

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: April 21, 1998 Revised: _____

Subject: Greenways and Trails

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Gee</u>	<u>Voigt</u>	<u>NR</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill revises the process by which private lands may be designated for use as part of the statewide system of greenways and trails, and provides incentives for private landowners who allow their lands to be designated as part of the system. The bill provides that mapping of lands does not constitute designation, and that land use restrictions may not be placed on private lands as a result of the land's appearance on preliminary planning maps.

This bill provides that a person violating rules establishing prohibited activities or restrictions on activities may be fined up to \$500 for a non-criminal infraction. The bill delays by one fiscal year to 1999-2000 the requirement that unencumbered balances of funds in the Preservation 2000 (P-2000) allocation to several agencies be redistributed to the Conservation and Recreation Lands Trust Fund and the Water Management Lands Trust Fund. Also, the bill allows the Division of State Lands to use appraisals from a public agency or nonprofit organization.

This bill authorizes the Board of Trustees of the Internal Improvement Trust Fund (the Trustees) to convey lands identified as the New Town, located in Walton County, to the county at a price not to exceed the price paid by the Trustees for the lands plus any applicable interest, provided this conveyance does not cause any portion of the interest on P-2000 revenue bonds to lose their gross-income exclusion from federal income tax.

This bill directs the Department of Environmental Protection to erect a suitable memorial on the Cross Florida Greenways State Recreation Area to recognize Marjorie Harris Carr for her efforts to stop the Cross Florida Barge Canal and to create the Cross Florida Greenway State Recreation and Conservation Area.

This bill amends ss. 110.501, 259.041, 259.101, 260.012, 260.013, 260.014, 260.0141, 260.016, 260.018, F.S., and creates s. 260.0125 of the Florida Statutes.

II. Present Situation:

Pursuant to s. 260.016(2)(a), F.S., the Department of Environmental Protection (DEP) is directed to evaluate lands for the acquisition of greenways and trails and compile a list of suitable corridors, greenways, and trails. To do this, the DEP has contracted with the University of Florida to depict a statewide system of greenways and trails using a Geographic Information Systems modeling approach. To depict the results of this modeling 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 DEP, 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. As such, private lands were included in the greenways and trails preliminary area boundaries. Several private landowners have expressed concern over these preliminary maps depicting their lands in this manner for fear of increased land use controls and for fear that additional regulations will be placed on their lands. The DEP has already received over 70 letters from private landowners around the state asking for their lands to be removed from the preliminary planning maps. This has been done.

Although ch. 260, F.S., calls for the establishment of a statewide greenways system and allows for the designation of lands into this system, it does not clearly define the term "designation." This lack of definition, combined with the maps produced as part of the planning effort, has caused private landowners concern. They feel mapping could constitute designation under the current statutory language and increased land use controls could be placed on private property simply because it appears on a map graphically depicting planning results.

Liability protection is currently provided under s. 375.251, F.S., for private landowners who allow public recreational use of their lands without compensation. Private landowners are also protected by the existing trespass laws. However, one of the main concerns of the private landowners regarding current liability protection is that if sued, the landowner still has to pay court costs and take time to defend himself. This can be very costly, even if in the end the landowner wins the suit. The other concern is protection for the private landowners who allow a greenway or trail through their property and who may have a recreational user become injured on the private land adjacent to the greenway or trail. The landowners contend that accidents like this will result from the increased access provided by the greenway or trail, and that existing liability laws would not cover the adjacent private lands.

Pursuant to s. 110.501, F.S., a person serving as a volunteer to a state agency is not personally liable in tort and may not be named as a defendant in an action for injury or damage suffered as a result of any act, event, or omission of action in the scope of his or her activities as a volunteer,

absent bad faith or malicious purpose. Any action for damages resulting from a volunteer's act must be brought against the agency using the volunteer.

III. Effect of Proposed Changes:

Section 1. This section declares that the purpose of the act is to encourage private landowners to make their lands available to be public as part of the statewide system of designated greenways and trails by:

- Limiting the landowner's liability to persons going on such land and to third persons who may be damaged by the acts or omissions of persons going on such land; and
- Providing the landowner other positive incentives in accordance with section 260.016(3), F.S.

Section 2. Section 110.501, F.S., is amended to revise the definition of "volunteer," to include one who conveys an interest in real property to, or otherwise consents to the use of real property pursuant to ss. 260.011 - 260.018, F.S.

Section 3. Section 260.012, F.S., is amended to clarify the policy and legislative intent regarding a statewide greenways system. This section encourages the owners of private lands to protect the existing ecological, historical, and cultural values of their lands, including those values derived from working landscapes and provides legislative intent that designated greenways and trails be located on public lands and on those private lands that the landowner has agreed, in writing, to have designated as a greenway or trail. Designated greenways and trails located on public or private lands may or may not provide public access, as agreed by the DEP or the landowner respectively.

The Legislature also intends that information produced for the purpose of identifying public and private lands that are suitable for greenways and trails be used only for the purposes of:

- Establishing priorities for acquiring, planning, and managing public lands for use as greenways and trails; and
- Identifying private lands that are eligible for designation as part of the greenways and trails system and thereby eligible for incentives.

Provisions providing liability protection are deleted.

Section 4. Section 260.0125, F.S., is created to provide a limitation on liability of private landowners whose property is designated as part of the statewide system of greenways and trails.

This section provides that a private landowner whose land is designated as part of the statewide system of greenways and trails pursuant to s. 260.016(2)(d), F.S., including those holding

subservant interests, owes no duty of care to keep that land safe for entry or use by others or to give warning to persons entering going on that land of any hazardous conditions, structures, or activities thereon. Such a landowner shall not:

- Be presumed to extend any assurance that such land is safe for any purpose;
- Incur any duty of care toward a person who goes on the land; or
- Become liable or responsible for any injury to persons or property caused by the act or omission of a person who goes on the land.

The above provisions apply whether the person on the designated greenway or trail is an invitee, licensee, trespasser, or otherwise.

A private landowner who consents to designation of his or her land as part of the statewide system of greenways and trails pursuant to s. 260.016(2)(d), F.S., without compensation will be considered a volunteer, as defined in s. 110.501, F.S., and will be covered by state liability protection pursuant to s. 768.28, F.S., including s. 768.28(9), F.S.

The above provisions will not apply if there is any charge made or usually made by the landowner for entering or using the land designated as a greenway or trail, or any part of it, or if any commercial or other activity whereby profit is derived by the landowner from the patronage of the general public is conducted on the land so designated or any part of it.

Incentives granted by any unit of government to the private landowner, including tax incentives, grants, or other financial consideration specific to the development or management of designated greenways and trails, will not be construed as a charge for use or profit derived from patronage and will not be construed as monetary or material compensation.

The above provisions will also apply to adjacent land owned by a private landowner who consents to designation of a greenway or trail where the adjacent land is accessed through the land so designated.

When a private landowner agrees to make his or her land available for public use as a designated greenway or trail, the DEP or its designee must post notices along the boundary of the designated greenway or trail which inform the public that the land adjacent to the greenway or trail is private property, upon which unauthorized entry for any purpose is prohibited and constitutes trespassing.

Any such notices must comply with s. 810.011(5), F.S., and constitute a warning to unauthorized persons to remain off of the private property and not to depart from the designated greenway or trail. Any person who commits such an unauthorized entry commits a trespass as provided in s. 810.09, F.S.

The bill provides that, if agreed to by the DEP and the landowner in the designation agreement, a landowner whose land is designated as part of the statewide system of greenways and trails pursuant to s. 260.016(2)(d), F.S. will be indemnified for:

- Any injury or damage incurred by a third party arising out of the use of the designated greenway or trail; and
- Any injury or damage incurred by a third party on lands adjacent to and accessed through the designated greenway or trail; and
- Any damage to the landowner's property, including land adjacent to and accessed through the designated greenway or trail, caused by the act or omission of a third person resulting from any use of the land so designated.

However, this section does not relieve any person of liability that would otherwise exist for deliberate, willful, or malicious injury to persons or property. The provisions of this section shall not be deemed to create or increase the liability of any person.

Section 5. Section 260.013, F.S., is amended to define the term "designation" to mean 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 DEP determines that public access is appropriate for greenways and trails, written authorization permitting public access to all or a specified part of the landowner's property must be granted by the landowner to the DEP. The DEP's determination must be noticed pursuant to s. 120.525, F.S., and the DEP must also notify the landowner by certified mail at least 7 days before any public meeting regarding the intent to designate.

Section 6. Section 260.014, F.S., is amended to provide that the mapping or other forms of identifying lands as suitable for inclusion in the system of greenways and trails, the mapping of ecological characteristics for any purpose, or the developing of information for planning purposes does not constitute designation. Lands may not be designated as a part of the statewide system of greenways and trails without the specific written consent of the landowner.

Section 7. Section 260.0141, F.S., is amended to emphasize that planning materials, maps, data, and other information developed or used in the program may not be considered to constitute the designation of lands as part of the statewide system of greenways and trails. The identification of lands in such information:

- Does not require or empower any unit of local government, regional government, or any state agency to impose additional or more restrictive environmental, land-use, or zoning regulations;

- May not be construed or cited as authority to adopt, enforce, or amend any environmental rule or regulation; comprehensive plan goals, policies, or objectives; or zoning or land use ordinance;
- May not be used as 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.
- May not be construed or cited as authority for any governmental agency to reduce or restrict the rights of owners of lands so identified.

Section 8. Section 260.016, F.S., is amended to authorize the DEP to adopt rules for administering and interpreting this act and portions of ch. 253, F.S., relating to greenways and trails, which may include, but are not limited to, rules establishing a designation process; rules governing the negotiation and execution of agreements with private landowners; rules establishing prohibited activities or restrictions on activities to protect the health, safety, and welfare of the public; rules charging fees for use, and providing for public access; rules providing for maintenance; and any other rules necessary for evaluation, selection, operation and maintenance of greenways and trails. The bill provides that persons who violate rules establishing prohibited activities or restrictions on activities commit a non-criminal infraction for which a fine up to \$500 may be levied.

This section also provides the process for designating lands as part of the statewide system of greenways and trails which includes:

- The development and dissemination of criteria for designation.
- The development and dissemination of criteria for changes in the terms or conditions of designation, including withdrawal or termination of designation. A landowner may have his or her property removed from designation by providing the DEP with a written request that contains an adequate description of the lands to be removed. Provisions shall be made in the designation agreement for disposition of any future improvements made to the land by the DEP.
- The compilation of available information on, and field verification of, the characteristics of the lands as they relate to the developed criteria.
- Public notice in all phases of the process.
- Actual notice to the landowner by certified mail at least 7 days before any public meeting regarding the DEP's intent to designate.
- Written authorization from the landowner in the form of a lease or other instrument for the designation and granting of public access, if appropriate, to a landowner's property.

- The development of a greenway or trail use plan as a part of the designation agreement. In any particular segment of a greenway or trail, the plan components must be compatible with connecting segments and describe, at a minimum, the types and intensities of uses of the property.

The DEP or its designee is authorized to negotiate with potentially affected private landowners as to the terms under which the landowners would consent to the public use of their lands as part of the greenways and trails system. The DEP may agree to incentives for a private landowner who consents to this public use of his or her lands for conservation or recreational purposes. Such incentives include but are not limited to, the following:

- The retention by the landowner of certain specific rights in his or her lands, including, but not limited to, the right to farm, hunt, graze, harvest timber, or use the lands for other purposes that are consistent with use as greenways or trails.
- The agreement to exchange, subject to the approval of the Board of Trustees of the Internal Improvement Trust Fund (Trustees) or other applicable unit of government, ownership or other rights of use of public lands for the ownership or other rights of use of privately owned property. Any exchange of state-owned lands title to which is vested in the Trustees for privately owned lands is subject to the requirements of s. 259.041, F.S.
- A contract with the landowner to provide management or other services on the lands.
- At the option of the landowner, acceleration of the acquisition process or higher consideration in the ranking process when the privately owned lands are under consideration for acquisition by the state or other unit of government.
- At the option of the landowner, removal of any lands owned by the landowner from consideration for acquisition by the state or other unit of government.
- The execution of patrol and protection agreements.
- Where applicable and appropriate, providing lease fees, not to exceed the fair market value of the leasehold interest.

Section 9. Section 260.018, F.S., is amended to provide that the identification of lands in planning materials, maps, data, and other information developed or used in the greenways and trails program does not make the lands subject to s. 260.018, F.S., unless they have been designated as part of the statewide system of greenways and trails under s. 260.016(2)(d).

Sections 10 and 11. The Legislature finds that Marjorie Harris Carr was the prime mobilizer and motivator in stopping the construction of and deauthorizing the Cross Florida Barge Canal, and in large part brought about the creation of the Cross Florida Greenways State Recreation and

Conservation Area, and that the Cross Florida Greenways State Recreation and Conservation Area is managed for recreational enjoyment and conservation of unique natural resources, community economic development, and as the focus for a statewide system of greenways and trails. The Legislature further finds that Marjorie Harris Carr should be forever enshrined in the memories of the people of Florida by the dedication of the Cross Florida Greenways State Recreation and Conservation Area in her name, in small part to commemorate the outstanding contributions of Marjorie Harris Carr to the State of Florida and to honor her tireless efforts to restore the Ocklawaha River. The Department of Environmental Protection shall honor Marjorie Harris Carr by the erection of a suitable memorial to her on the site of the Cross Florida Greenways State Recreation Area.

Section 12. Section 259.041, F.S., is amended to allow the Division of State Lands to use, as its own, appraisals obtained by a public agency or nonprofit organization, provided the appraiser is selected from the division's list of appraisers and the appraisal is reviewed and approved by the division. For the purposes of this chapter, "nonprofit organization," means an organization whose purposes include the preservation of natural resources, and which is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code.

Section 13. Section 259.101; F.S., is amended to delay by one fiscal year to 1999-2000 the requirement that unencumbered balances of funds in the P-2000 allocation to the Florida Game and Fresh Water Fish Commission, Division of Forestry, Department of Community Affairs for the Community Trust, Department of Environmental Protection for inholdings and additions to state parks, and for the Greenways and Trails Program, be redistributed to the Conservation and Recreation Lands Trust Fund and the Water Management Lands Trust Fund.

Section 14. (1) Notwithstanding ch. 253 and 259, F.S., the Board of Trustees of the Internal Improvement Trust Fund may under ch. 93-184 and 95-275, Laws of Florida, convey the lands located in Walton County specifically identified as the New Town, consistent with the Walton County Comprehensive Plan, to Walton County at a price not to exceed the price paid by the board for the lands plus any applicable interest, if the disposition of the land would not have the effect of causing all or any portion of the interest on any revenue bonds issued to fund the Florida Preservation 2000 Trust Act to lose their exclusion from gross income for purposes of federal income taxation. Any revenue derived from the disposal of the lands may not be used for any purpose except for deposit into the Florida Preservation 2000 Trust Fund for recredit to the share held under s. 259.101(3), F.S., in which the disposed of land is described.

(2) The New Town Center shall be developed consistent with the October 31, 1996, South Walton New Town Master Plan of Development, incorporated in its entirety into the Walton County Comprehensive Plan and Land Development Code.

(3) If any lands acquired by Walton County pursuant to subsection (1) are resold to private interests, they must be sold at fair market value and the proceeds from such resale must be used exclusively for development of the New Town Center, including its infrastructure and related school facilities.

Section 15. This act shall take effect July 1, 1998.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Incentives such as lease fees or land exchanges could benefit some landowners. By providing that no maps or other materials identifying lands suitable for greenways may be used to impose land-use restrictions, the bill may benefit persons whose lands could otherwise have been subject to restrictions. Liability protection could benefit persons permitting their lands to be used for greenways and trails.

Because this bill authorizes the Trustees to convey a parcel of land to Walton County at a price not exceeding the price the Trustees paid for the lands, Walton County could receive the land at a bargain price of less than \$250 per acre. The sale of any New Town Center acreage for commercial development, as envisioned in the Walton County Comprehensive Plan, may allow a developer to realize financial benefits from the sale and there could be a large profit margin for Walton County.

C. Government Sector Impact:

The provision of incentives could 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 of land and provision of additional lands for public recreation. Additionally, 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.

The requirement that DEP or its designee must post notices along the boundary of greenways and trails could involve significant expenses. The requirement to produce a greenway or trail use plan as part of the designation agreement and give actual notice to landowners will likely involve significant expenses.

Because this bill authorizes the Trustees to convey lands designated as New Town to Walton County at a price not exceeding the price the Trustees paid for the lands, the P-2000 Trust Fund will not receive appraised value for the lands as required under s. 253.111, F.S. Therefore, funds available for future purchases will be decreased, as revenues from the sales of P-2000 lands are required to be used for acquisition.

VI. Technical Deficiencies:

If the bill is intended to permit the disposition of the land without the Trustees making a determination that the land no longer needs to be preserved in furtherance of the intent of the P-2000 Act, it does not do so; although the disposition could be made “notwithstanding s. 259.101(6), (7), and (8), F.S.,” it would be made “under chapters 93-184, 95-334, and 95-275, L.O.F.” Chapter 95-334, L.O.F., creates the provisions in s. 259.101(6), (7), and (8), F.S.

The bill authorizes the sale of the lands at the price paid plus any applicable interest. If the intent is to recapture the interest the funds used to purchase the lands would have earned had they been on deposit, the bill does not clearly state this intent. As drafted, this provision appears too vague to be given effect.

VII. Related Issues:

The sale of lands at the price paid for them by the state, rather than at appraised value as required under s. 253.111, F.S., would be a significant departure from the state’s current practice. With the tremendous influx of new residents, Florida’s land values can be expected to continue to rise. Land acquired by the state’s past conservation programs may have been acquired at a fraction of its value in today’s market. Enactment of this bill could establish a precedent which will be sought to be used by many local governments having needs most easily met by the use of state lands.

VIII. Amendments:

None.