

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 521 Tree and Timber Trimming, Removal, and Harvesting  
**SPONSOR(S):** Local, Federal & Veterans Affairs Subcommittee; Edwards-Walpole and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 574

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	11 Y, 1 N, As CS	Renner	Miller
2) Agriculture & Property Rights Subcommittee			
3) Government Accountability Committee			

### SUMMARY ANALYSIS

Currently, in Florida there are 67 counties and 413 municipalities. Local governments often have tree ordinances that specify the species that must be used in a given area depending on the land use. Some local governments require a permit prior to trimming certain trees. Local governments may also afford certain trees protection because they are considered an important community resource. The terms used to describe such trees may include heritage, historic, landmark, legacy, special interest, significant, or specimen trees.

In certain instances, such as the right-of-way for any electrical transmission or distribution line, local governments are prohibited from requiring a permit or other approval for vegetation management and tree pruning or trimming.

The bill provides that the Legislature finds that uncontrolled growth of trees within rights-of-way owned or managed by the state, water management districts, water control districts, neighborhood improvement districts, independent special districts, or community development districts interferes with the operation and maintenance of flood protection and drainage infrastructure, including but not limited to canals, critical to the protection of the health, safety, and general welfare of the public.

The bill provides that when the aforementioned governmental entities have a duty to maintain any right-of-way, no municipality, county, or other political subdivision of the state may prohibit, restrict, condition, or require a permit, fee, or mitigation for the trimming or removal of trees or vegetation to protect the public.

The bill does not prohibit the licensing and regulation by municipalities, counties, or other political subdivisions of the state or persons engaged in tree or vegetation trimming or removal.

The bill does not appear to have a fiscal impact on state government. The PCS may have an indeterminate insignificant negative fiscal impact on local governments that assess environmental impact fees on the trimming or removal of trees or vegetation.

The bill provides an effective date of July 1, 2018.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

Currently, in Florida there are 67 counties and 413 municipalities.<sup>1</sup> Local governments often have tree ordinances that specify the species that must be used in a given area depending on the land use. Some local governments require a permit prior to trimming certain trees. Local governments may also afford certain trees protection because they are considered an important community resource. The terms used to describe such trees may include heritage, historic, landmark, legacy, special interest, significant, or specimen trees.

For example, in Broward County the removal of any historical tree<sup>2</sup> without first obtaining approval from the Board of County Commissioners is prohibited, as is the removal of any tree without first obtaining a tree removal license from the Environmental Protection and Growth Management Department.<sup>3</sup> Furthermore, municipalities within Broward County are authorized to adopt and enforce their own tree preservation regulations in addition to Broward County's regulation of trees.<sup>4</sup>

##### Authority to Maintain Rights-of-Way

The following governmental entities have comprehensive authority to maintain rights-of-way:

**Department of Transportation (DOT):** DOT is authorized to designate transportation facilities and rights-of-way and to establish lanes. DOT may locate and designate transportation facilities as part of the State Highway System and use DOT funds to construct and maintain the transportation facilities.<sup>5</sup> Additionally, DOT may survey and locate the line or route of a transportation facility<sup>6</sup> and establish standards for lanes on the State Highway System.<sup>7</sup> Additionally, DOT must provide written permission to remove trees or vegetation from the rights-of-ways of roads located on the State Highway System, except when tree trimming is performed within the provisions of its utility accommodations guide.<sup>8</sup> The penalty for violating this provision is a misdemeanor of the second degree.<sup>9</sup>

**Water Management Districts (WMD):** A WMD and the governing board is authorized to maintain and regulate natural and artificial waterways as deemed necessary. The board will adopt the works of the district.<sup>10</sup>

**Community Development District (CDD):** A CDD and the governing board of the CDD is authorized to finance, fund, plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain systems, facilities, and basic infrastructures for:

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<sup>1</sup> See ch. 7, F.S.; *The Local Government Formation Manual 2017-2018*, Appx. B, at <http://myfloridahouse.gov/Sections/Documents/loadoc.aspx?PublicationType=Committees&CommitteeId=2911&Session=2018&DocumentType=General Publications&FileName=2017-2018 Local Government Formation Manual Final Pub.pdf> (last accessed 1/24/2018).

<sup>2</sup> Broward County Code of Ordinances, Ch. 27, Art. XIV, s. 404 defines a "historical tree" as a particular tree or group of trees which has historical value because of its unique relationship to the history of the region, state, nation or world as designated by the Board of County Commissioners.

<sup>3</sup> *Id.* at s. 405

<sup>4</sup> *Id.* at s. 407

<sup>5</sup> Section 335.02(1), F.S.

<sup>6</sup> Section 335.02(2), F.S.

<sup>7</sup> Section 335.02(3), F.S.

<sup>8</sup> Section 337.405(1), F.S.

<sup>9</sup> Section 337.405(2), F.S.

<sup>10</sup> Section 373.086(2), F.S.

- Water management;
- Sewer and wastewater management;
- Bridges;
- District Roads;
- Investigation of environmental contamination;
- Conservation areas; and
- Other projects as required.<sup>11</sup>

**Water Control Districts:** the board of supervisors of the district has power and authority to construct, complete, operate, maintain, repair, and replace works and improvements necessary to execute the water control plan. In doing so, the board may:

- Employ persons and purchase machinery;
- Make changes to any canal, ditch, drain, river, watercourse, or natural stream in or adjacent to the district;
- Build any improvements deemed necessary to preserve and maintain the works in or out of said district;
- Purchase pumping stations, electric lines and power;
- Construct bridges;
- Hold, control, and acquire any land easement to be used in maintaining said works for the district water control plan;
- Condemn or acquire land for the use of the district;
- Adopt resolutions and policies;
- Assess and collect reasonable fees for the connection of the district;
- Implement and authorize the comprehensive water control activities;
- Control the spread of agricultural pests and diseases; and
- Construct recreational facilities.<sup>12</sup>

**Independent Special Districts:** any construction, expansion, or alteration of a public facility, which affects the public facility's level of service, must be consistent with the local government comprehensive plan. However, the local government comprehensive plan must not:

- Require an independent special district to construct, expand, or perform a major alteration of any public facility; or
- Require a special district to construct, expand, or perform a major alteration of any public facility resulting in an impairment of covenants and agreements relating to bonds validated or issued by the special district.<sup>13</sup>

An independent special district has the right to construct, modify, operate, or maintain public facilities authorized by a development order.<sup>14</sup> This does not apply to water management districts, regional water supply authorities, or to Federal Government spoil disposal sites,<sup>15</sup> but it does apply to ports in compliance with a port master plan.<sup>16</sup> Local governments and special districts may provide public facilities or services to a particular geographic area,<sup>17</sup> and any independent district may provide housing and housing assistance for certain employed personnel.<sup>18</sup>

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<sup>11</sup> Section 190.012(1), F.S.

<sup>12</sup> Section 298.22, F.S.

<sup>13</sup> Section 189.081(1), F.S.

<sup>14</sup> Section 189.081(2), F.S.

<sup>15</sup> Section 189.081(3), F.S.

<sup>16</sup> Section 189.081(4), F.S.

<sup>17</sup> Section 189.081(5), F.S.

<sup>18</sup> Section 189.081(6), F.S.

**Neighborhood Improvement Districts:** The board of a Neighborhood Improvement District is empowered to:

- Acquire, own, convey, or otherwise dispose of, lease as lessor or lessee, construct, maintain, improve, enlarge, raze, relocate, operate, and manage property and facilities of whatever type to which it holds title and grant and acquire licenses, easements, and options with respect thereto; and
- Improve street lighting, parks, streets, drainage, utilities, swales, and open areas, and provide safe access to mass transportation facilities in the district.<sup>19</sup>

**Community Planning Act:** Pursuant to the Community Planning Act, once a utility and local government establish a right-of-way for an electric transmission or distribution line, the utility no longer needs to apply for a permit related to vegetation maintenance and tree pruning within the established right-of-way. However, this policy does not apply for the removal of trees outside the right-of-way. Prior to conducting scheduled routine vegetation maintenance and tree pruning activities within an established right-of-way, the utility must provide the designated local government official with a minimum of 5 business days' advance notice. Such advance notice is not required for vegetation maintenance and tree pruning to restore electric service or to avoid an imminent vegetation-caused outage.<sup>20</sup>

### **Effect of the Bill**

The bill provides that the Legislature finds that uncontrolled growth of trees within rights-of-way owned or managed by the state, water management districts, water control districts, neighborhood improvement districts, independent special districts, or community development districts interferes with the operation and maintenance of flood protection and drainage infrastructure, including but not limited to canals, critical to the protection of the health, safety, and general welfare of the public.

The bill provides that when an aforementioned governmental entity has a duty to maintain any right-of-way, no municipality, county, or other political subdivision of the state may prohibit, restrict, condition, or require a permit, fee, or mitigation for the trimming or removal of trees or vegetation to protect the public.

The bill does not prohibit the licensing and regulation by municipalities or counties of persons engaged in tree or vegetation trimming or removal.

### **B. SECTION DIRECTORY:**

Section 1. creates s. 589.37, F.S., providing legislative findings; prohibiting the regulation of the tree, timber, and vegetation trimming and removal performed by certain governmental entities; providing applicability.

Section 2 provides an effective date of July 1, 2018.

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

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

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

The bill does not appear to have a fiscal impact on state government revenues.

#### **2. Expenditures:**

The bill does not appear to have an impact on state government expenditures.

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<sup>19</sup> Section 163.514, F.S.

<sup>20</sup> Section 163.3209, F.S.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The bill may have an indeterminate insignificant negative fiscal impact on local governments that assess environmental impact fees.

2. Expenditures:

The bill does not appear to have a fiscal impact on local government expenditures.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Prohibiting certain local governments from prohibiting, regulating, or requiring permits or fees for the trimming or removal of trees, timber, and vegetation within rights-of-way for which water management districts or other governmental entities are responsible may simplify the regulatory process and thereby reduce the cost of compliance for private firms.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill neither authorizes nor requires administrative rulemaking by executive branch agencies.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 29, 2018, the Local, Federal & Veterans Affairs Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differs from the bill as originally filed in that the original bill preempts to the state the regulation of the trimming, removal, or harvesting of trees and timber on private property and prohibits certain local governmental actions relating to the trimming or removal of trees or timber. The PCS provides that the Legislature finds that uncontrolled growth of trees and vegetation in rights-of-way maintained by state or certain governmental agencies interferes with infrastructure that protects the public from flooding. Furthermore, the PCS prohibits local governments from requiring a permit, attempting to regulate, or interfering with certain governmental entities from trimming or removing trees or vegetation where that entity has a duty to maintain any right-of-way.

This analysis is drafted to the committee substitute as approved by the Local, Federal & Veterans Affairs Subcommittee.