

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 521 Tree and Vegetation Maintenance within Established Flood and Drainage Rights-of-Way

SPONSOR(S): Government Accountability Committee; 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) Government Accountability Committee	16 Y, 0 N, As CS	Renner	Williamson

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 bill provides that after a right-of-way for flood protection or drainage control has been established and constructed by a water management district (WMD), water control district, or special district authorized to exercise certain powers, a local government may not require a permit or other approval for tree and vegetation maintenance within rights-of-way established by such entities. When performing such maintenance, a WMD, water control district, or special district must give the local government minimum advance notice of five business days unless the maintenance is necessary to avoid an imminent threat to public safety.

The bill defines the term “tree and vegetation maintenance” as the mowing of vegetation within the right-of-way, the removal of trees or brush within the right-of-way, and the selective removal of tree branches that extend within the right-of-way.

The bill does not:

- Apply to the removal of trees or vegetation outside the right-of-way established by a WMD, water control district, or special district authorized to exercise powers under chapter 298, F.S., which may be authorized in accordance with applicable local ordinances;
- Limit the licensing and regulation by local governments of persons engaged in vegetation maintenance and tree pruning or trimming;
- Prohibit a WMD, water control district, or special district authorized to exercise powers under chapter 298 from entering into agreements with local governments to perform maintenance services within that entity’s rights-of-way; or
- Apply to the exercise of specifically delegated authority for mangrove protection pursuant to ss. 403.9321 through 403.9333, F.S.

The bill does not appear to have a fiscal impact on state government. The bill may have an indeterminate, insignificant negative fiscal impact on local governments that assess environmental impact fees on tree and vegetation maintenance.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Currently, in Florida there are 67 counties and 413 municipalities.¹ 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 tree² 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.³ 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.⁴ However, Broward County specifically retains the authority to enforce tree preservation regulations regarding the following:

- Properties owned or controlled by Broward County, including, but not limited to, facilities, road rights-of-way, and parks;
- Properties owned or controlled by the Broward County School Board;
- Any site designated by the Board as a Local Area of Particular Concern, Urban Wilderness Inventory Area, Natural Resource Area, or Environmentally Sensitive Lands or Historic Tree; and
- Tree abuse committed by licensed or unlicensed tree trimmers that have not otherwise been enforced by the certified municipality.⁵

Authority to Maintain Rights-of-Way

Certain governmental entities are provided with authority to maintain rights-of-way, including water management districts (WMDs), water control districts, and independent special districts.

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.⁶

¹ See ch. 7, F.S.; *The Local Government Formation Manual 2017-2018*, Appx. B, available 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).

² 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.

³ *Id.* at s. 405

⁴ *Id.* at s. 407

⁵ *Id.*

⁶ Section 373.086(2), F.S.

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 of supervisors 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.⁷

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 may 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.⁸

Some independent special districts are not created as water control districts but are authorized to exercise certain powers under chapter 298, F.S.⁹ Where such authority is provided the actions of the board of supervisors for the independent special district are similar to those of a water control district.

Mangrove Trimming

In 1996, the Florida Legislature enacted the 1996 Mangrove Trimming and Preservation Act (MTPA).¹⁰ This law regulates the trimming and alteration of mangroves statewide, with the exception of the Delegated Local Governments of Broward, Hillsborough, Miami-Dade, and Pinellas Counties, the City of Sanibel, and the Town of Jupiter Island.¹¹

The heights to which a mangrove tree may be trimmed will depend upon the provisions of the MTPA as well as the species and condition of the tree. Projects that involve alterations, and trimming projects that exceed the allowances of the exemptions and general permits, may be authorized through individual permits in s. 403.9328, F.S. Trimming may be authorized in an Environmental Resource

⁷ Section 298.22, F.S.

⁸ Section 189.081(1), F.S.

⁹ For example, the powers enumerated in the charter of the Lehigh Acres Municipal Services Improvement District include authority under ch. 298, F.S. See ch. 2015-202, s. 3, Laws of Fla.

¹⁰ Sections 403.9321-403.9333, F.S.

¹¹ Florida Department of Environmental Protection, *Mangrove Trimming Guidelines for Homeowners*, available at https://floridadep.gov/sites/default/files/Mangrove-Homeowner-Guide-sm_0.pdf (last visited Feb. 25, 2018).

Permit (ERP) along with other ERP activities for the same property. Mangrove impacts associated with and located within the footprint of an ERP authorized activity do not require a separate authorization under the MTPA.¹²

Effect of the Bill

The bill establishes Legislative findings, which provide that WMDs, water control districts, and special districts authorized to exercise powers under ch. 298, F.S., establish and manage public rights-of-way for the purpose of flood protection and drainage control and that uncontrolled growth of trees and vegetation within rights-of-way established for these purposes may compromise the function of such rights-of-way and, left unaddressed, may adversely impact public health and safety and may adversely affect other adjacent jurisdictions.

The bill provides that after a right-of-way for flood protection or drainage control has been established and constructed by a WMD, water control district, or special district authorized to exercise powers under ch. 298, F.S., a local government may not require any permits or other approvals for tree and vegetation maintenance within the established right-of-way. The bill defines the term “tree and vegetation maintenance” as the mowing of vegetation within the right-of-way, the removal of trees or brush within the right-of-way, and the selective removal of tree branches that extend within the right-of-way.

The bill provides that before conducting scheduled routine tree and vegetation maintenance services within an established right-of-way, a WMD, water control district, or special district authorized to exercise powers under ch. 298, F.S., must provide the official designated by the local government with a minimum of five business days’ advance notice. However, advance notice is not required when maintenance services are necessary to avoid imminent threat to public safety.

The bill does not:

- Apply to the removal of trees or vegetation outside the right-of-way established by a WMD, water control district, or special district authorized to exercise powers under ch. 298, F.S., which may be authorized in accordance with applicable local ordinances;
- Limit the licensing and regulation by local governments of persons engaged in tree and vegetation maintenance;
- Prohibit a WMD, water control district, or special district authorized to exercise powers under ch. 298, F.S., from entering into agreements with local governments to perform maintenance services for such WMD, water control district, or special district; or
- Apply to the exercise of specifically delegated authority for mangrove protection pursuant to ss. 403.9321 through 403.9333, F.S.

B. SECTION DIRECTORY:

Section 1 creates s. 589.37, F.S., relating to tree and vegetation maintenance within established flood and drainage rights-of-way.

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.

¹² *Id.*

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may have an indeterminate insignificant negative fiscal impact on local governments that assess fees for permits to perform tree and vegetation maintenance.

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Barring certain local governments from prohibiting, regulating, or requiring permits or approvals for tree and vegetation maintenance within rights-of-way for which certain 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.

On February 26, 2018, the Government Accountability Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Narrowed the scope to vegetation maintenance and tree trimming or pruning for flood protection or drainage control in rights-of-way established by water management districts, water control districts, or other special districts authorized to use powers under ch. 298, F.S.;
- Defined “vegetation maintenance and tree pruning or trimming” as:
 - Mowing in a right-of-way;
 - Removing trees or brush within a right-of-way; and
 - Removing tree branches that extend within the right-of-way.
- Required entities performing maintenance to give five business days’ notice to local governments unless there is an imminent threat to public safety;
- Clarified that the entities may enter into agreements with local governments to perform vegetation maintenance and tree pruning or trimming; and
- Excluded local governments exercising authority for mangrove protection.

This analysis is drafted to the committee substitute as approved by the Government Accountability Committee.