

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 Committee on Community Affairs

BILL: CS/SB 574

INTRODUCER: Community Affairs and Senator Steube

SUBJECT: Tree and Timber Trimming, Removal, and Harvesting

DATE: February 15, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cochran	Yeatman	CA	Fav/CS
2.			EP	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 574 removes an exemption for local government ordinances regarding planting, pruning, trimming or removal of specimen trees, historical trees, or trees within designated canopied protection areas in relation to an electric transmission and distribution line right-of-way. The bill provides that a local government may be liable to an electric utility if vegetation outside the right of way conflicts with electric facilities, with the burden of proof on the local government to demonstrate the damages are not attributable to the trees or that the damages are less than those claimed by the utility. The bill 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. Finally, the bill suspends local regulation for tree maintenance, pruning, or removal during a state of emergency.

II. 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

¹ 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 visited Feb. 14, 2018).

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

Home Rule

The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.⁵ Those counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by the vote of the electors.⁶ Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.⁷

The Florida Statutes enumerate the powers and duties of all county governments, unless preempted on a particular subject by general or special law.⁸ Those powers include the provision of fire protection, ambulance services, parks and recreation, libraries, museums and other cultural facilities, waste and sewage collection and disposal, and water and alternative water supplies.⁹ Article VIII, Section 2 of the State Constitution and s. 166.021, F.S., grant municipalities broad home rule powers.

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

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 FLA. CONST. art VIII, s. 1(f).

⁶ FLA. CONST. art VIII, s. 1(g).

⁷ FLA. CONST. art VIII, s. 2(b). See also s. 166.021(1), F.S.

⁸ Section 125.01, F.S.

⁹ *Id.*

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. 14, 2018).

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 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

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.¹³ Additionally, DOT may survey and locate the line or route of a transportation facility¹⁴ and establish standards for lanes on the State Highway System.¹⁵ 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.¹⁶ The penalty for violating this provision is a misdemeanor of the second degree.¹⁷

Water Management Districts (WMD): A WMD and the governing board is authorized to maintain and regulate natural and artificial waterways as deemed necessary. The works of the district shall be those adopted by the governing board of the district.¹⁸

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:

- Water management;
- Sewer and wastewater management;
- Bridges;
- District Roads;
- Investigation of environmental contamination;
- Conservation areas; and
- Other projects as required.¹⁹

¹² *Id.*

¹³ Section 335.02(1), F.S.

¹⁴ Section 335.02(2), F.S.

¹⁵ Section 335.02(3), F.S.

¹⁶ Section 337.405(1), F.S.

¹⁷ Section 337.405(2), F.S.

¹⁸ Section 373.086(2), F.S.

¹⁹ Section 190.012(1), 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 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.²⁰

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.²¹

An independent special district has the right to construct, modify, operate, or maintain public facilities authorized by a development order.²² This does not apply to water management districts, regional water supply authorities, or to Federal Government spoil disposal sites,²³ but it does apply to ports in compliance with a port master plan.²⁴ Local governments and special districts may provide public facilities or services to a particular geographic area,²⁵ and any independent district may provide housing and housing assistance for certain employed personnel.²⁶

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

²⁰ Section 298.22, F.S.

²¹ Section 189.081(1), F.S.

²² Section 189.081(2), F.S.

²³ Section 189.081(3), F.S.

²⁴ Section 189.081(4), F.S.

²⁵ Section 189.081(5), F.S.

²⁶ Section 189.081(6), F.S.

- 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.²⁷

Electric Transmission and Distribution Line Right-of-Way Maintenance

Section 163.3209, F.S., provides that after a right-of-way for an electric transmission or distribution line has been established, a local government may not require any permits or other approvals for vegetation maintenance, tree pruning, or trimming within that right-of-way. This section defines the term “vegetation maintenance and tree pruning or trimming” as the “mowing of vegetation within the right-of-way, and selective removal of tree branches that extend within the right-of-way.” This section requires a utility to provide five business days advance notice to a local government official prior to conducting vegetation maintenance activities within a right-of-way. An exception applies for service restoration, avoidance of imminent vegetation caused outage, or when performed at the request of the property owner adjacent to the right-of-way, provided the owner has approval of the local government if required.²⁸

Local governments are authorized to request a meeting with a utility provider to discuss the utility’s vegetation-maintenance plan, including the utility’s trimming specifications and maintenance practices. In addition, vegetation maintenance performed by utilities must conform to ANSI standards, and vegetation management activities must be supervised by qualified utility personnel, licensed contractors under the utility’s control, or certified arborists. A local government may not adopt an ordinance or land development regulation that requires the planting of a tree or other vegetation in an established right-or-way that achieves a height greater than 14 feet or intrudes from the side closer than the clearance distance specified in referenced standards.²⁹

The section explicitly notes that it does not supersede or nullify the terms of specific franchise agreements between an electric utility and a local government and must not be construed to limit a local government's franchising authority. In addition, this section does not supersede local government ordinances or regulations governing planting, pruning, trimming, or removal of specimen trees or historical trees, as defined in a local government’s ordinances or regulations, or trees within designated canopied protection areas. This section does not apply if a local government develops, with input from the utility, and the local government adopts, a written plan specifically for vegetation maintenance, tree pruning, tree removal and tree trimming by the utility within the local government’s established rights-of-way and the plan is not inconsistent with the minimum requirements of the National Electrical Safety Code as adopted by the Public Service Commission. Provided, however, the plan does not require the planting of a tree or other vegetation that will achieve a height greater than 14 feet in an established electric right-of-way. Vegetation maintenance costs are considered recoverable costs.³⁰

²⁷ Section 163.514, F.S.

²⁸ Section 163.3209, F.S.

²⁹ *Id.*

³⁰ *Id.*

The Florida House of Representatives Select Committee on Hurricane Response and Preparedness recommended repealing the statutory exception to statewide standards for vegetation management within power line rights-of-way for local governments that adopt plans that differ from the statutory standards.³¹

III. Effect of Proposed Changes:

Section 1 amends s. 163.3209, F.S., providing a legislative finding 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. The bill removes an exemption for local government ordinances regarding planting, pruning, trimming or removal of specimen trees, historical trees, or trees within a designated canopied protection area in relation to an electric transmission and distribution line right-of-way. The bill removes the requirement for an electric utility to meet with a local government to discuss and submit the utility's vegetation maintenance plan upon the request of the local government. The bill also provides that a local government may be liable to an electric utility if vegetation outside the right of way conflicts with electric facilities, with the burden of proof on the local government to demonstrate the damages are not attributable to the trees or that the damages are less than those claimed by the utility.

Section 2 creates s. 589.37, F.S., providing that the Legislature finds that water management districts, water control districts, special districts authorized to exercise powers under chapter 298 establish and manage public rights-of-way for the purpose of flood protection and drainage control. The 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 jurisdiction.

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 also provides that a water management district, water control district, or special district authorized to exercise powers under chapter 298 is required to provide notice to the local government before conducting routine vegetation and tree maintenance activities, except in situations when maintenance is necessary to avoid imminent threat to public safety.

The bill does not prohibit the licensing and regulation by municipalities or counties of persons engaged in tree or vegetation trimming or removal. Additionally, the bill does not prohibit a water management district, water control district or special district authorized to exercise powers under chapter 298 from entering into agreements with local governments to perform maintenance services for the water management district, water control district, or special district authorized to exercise powers under chapter 298. The bill also does not prohibit a local government with

³¹ Select Committee on Hurricane Response and Preparedness, The Florida House of Representatives, *Select Committee on Hurricane Response and Preparedness Final Report* at 45 (January 16, 2018). Available at <http://www.myfloridahouse.gov/Sections/Documents/loadoc.aspx?PublicationType=Committees&CommitteeId=2978&Session=2018&DocumentType=General Publications&FileName=SCHRP - Final Report online.pdf> (last visited Feb. 14, 2018).

delegated authority from the Department of Environmental Protection from implementing a mangrove regulatory program pursuant to s. 409.9324, F.S.

The bill also suspends local regulation for tree maintenance, pruning, or removal during a state of emergency.

Section 3 provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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.

C. Government Sector Impact:

There could be negative fiscal impacts on local governments where an electric utility is holding the local government liable for restoration costs because of damages caused by trees or vegetation.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 163.3209 of the Florida Statutes.

This bill creates section 589.37 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on February 13, 2018:

- Removes an exemption for local government ordinances regarding planting, pruning, trimming or removal of specimen trees, historical trees, or trees within a designated canopied protection area in relation to an electric transmission and distribution line right-of-way.
- Provides that a local government may be liable to an electric utility if vegetation outside the right of way conflicts with electric facilities.
- 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.
- Suspends local regulation for tree maintenance, pruning, or removal during a state of emergency.
- Differs from the original bill in that it no longer preempts to the state the regulation of trimming, removal, or harvesting of trees and timber on private property. Additionally, the bill no longer prohibits municipalities, counties and other political subdivisions of the state from prohibiting or restricting a landowner from trimming, removing or harvesting trees located on the landowner's property, requiring mitigation for the removal of trees, or prohibiting the burial of trees and vegetative debris on properties larger than 2.5 acres.

B. Amendments:

None.