

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1159 Private Property Rights
SPONSOR(S): State Affairs Committee, La Rosa and others
TIED BILLS: IDEN./SIM. **BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---------------------|---------|--|
| 1) Local, Federal & Veterans Affairs Subcommittee | 12 Y, 3 N | Rivera | Miller |
| 2) Commerce Committee | 19 Y, 4 N | Smith | Hamon |
| 3) State Affairs Committee | 19 Y, 4 N, As CS | Rivera | Williamson |

SUMMARY ANALYSIS

Counties and municipalities develop and implement land use comprehensive plans and ordinances to manage growth within their jurisdictions. Comprehensive plans must be sensitive to private property rights and not inordinately burden property owners. The “Bert Harris, Jr., Private Property Rights Protection Act” entitles property owners to relief when government action inordinately burdens their existing use of real property or any vested right to a specific use of real property.

Local government vegetation and tree maintenance regulations vary but can require property owners to obtain permits before pruning, trimming, or removing any tree. Property owners with native mangrove trees on their property are subject to additional state or, in certain instances, local regulation. Electric utilities are also subject to federal requirements when maintaining vegetation in utility rights-of-way. Where a local government has no proper vegetation maintenance plan for electric utility rights-of-way, state law requires electric utilities to take certain action including providing a local government five business days’ advance notice before performing any vegetation maintenance within a right-of-way unless the work is to restore service, avoid imminent outages, or upon request by an adjacent property owner who already has any required approval from the local government.

The bill prohibits local governments from requiring a permit, application, notice, fee, approval, or mitigation for the pruning, trimming, or removal of a dangerous tree on residential property upon documentation by a certified arborist or licensed landscape architect, and prohibits local governments from requiring a property owner to replant a tree that is maintained under the specified conditions. The bill does not affect authority delegated under the state’s mangrove protection laws. The bill also allows a property owner adjacent to an electric utility right-of-way to request an electric utility perform vegetation maintenance in the right-of-way without approval from the local government.

Finally, the bill requires county property appraisers to post a Property Owner Bill of Rights on their websites, which lists a property owner’s right to acquire, possess, and protect property; use and enjoy property; exclude others from property; dispose of property; due process; just compensation for property taken for a public purpose; and relief when a new state or local government law, rule, regulation, or ordinance unfairly affects property. The website must state the Bill of Rights is not comprehensive and does not represent all property rights under Florida law.

The bill may have a negative, insignificant fiscal impact to local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Home Rule Authority

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.¹ 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.² Likewise, municipalities have governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform municipal functions and provide services, and exercise any power for municipal purposes except when expressly prohibited by law.³

County governments have authority to prepare and enforce comprehensive plans for the development of the county and provide 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.⁴ Municipalities are afforded broad home rule powers with the exception of annexation, merger, exercise of extraterritorial power, or subjects prohibited or preempted by the Federal or State Constitutions, county charter, or statute.⁵

Protection of Private Property Rights

The “Bert Harris Jr., Private Property Rights Protection Act” (Bert Harris Act) entitles private property owners to relief when a specific action of a governmental entity inordinately burdens the owner’s existing use of real property or a vested right to a specific use of real property.⁶ The Bert Harris Act recognizes that the inordinate burden, restriction, or limitation on private property rights as applied may fall short of a taking under the State Constitution or the U.S. Constitution and establishes a separate and distinct cause of action for relief or payment of compensation when a new law, rule, or ordinance of the state, or a political entity in the state, unfairly affects real property.⁷ The Bert Harris Act applies to governmental entities, including the state and local governments, but does not apply to the U.S. government, federal agencies, or state or local government entities exercising formally delegated U.S. or federal agency powers.⁸

In addition to action that inordinately burdens a property right, an owner may seek relief when a government entity imposes a condition on the proposed use of the real property that amounts to a prohibited exaction.⁹ A prohibited exaction occurs when an imposed condition lacks an essential nexus to a legitimate public purpose and is not roughly proportionate to the impacts of the proposed use that the governmental entity seeks to avoid, minimize, or mitigate.¹⁰

¹ Art. VIII, s. 1(f), Fla. Const.

² Art. VIII, s. 1(g), Fla. Const.

³ Art VIII, s. 2(b). *See also* s. 166.021(1), F.S.

⁴ S. 125.01, F.S.

⁵ S. 166.021, F.S.

⁶ S. 70.001(2), F.S.

⁷ S. 70.001(1), F.S.

⁸ S. 70.001(3)(c), F.S.

⁹ S. 70.45(2), F.S.

¹⁰ S. 70.45(1)(c), F.S.

The “Florida Land Use and Environmental Dispute Resolution Act” (Land Use Act) allows a land owner to request relief from a government entity’s development order or enforcement action when the order or action is unreasonable or unfairly burdens the use of the owner’s real property.¹¹ Parties in pending judicial proceedings may also use the dispute resolution process outlined in the Land Use Act if all parties agree and the court approves.¹²

The Community Planning Act

State growth policies are managed under the State Comprehensive Plan.¹³ Local governments manage local growth through comprehensive plans enforced by local land use ordinances.¹⁴ A key principle guiding both state planning and local comprehensive plans is the protection of private property rights.¹⁵

The State Comprehensive Plan provides long-range policy guidance for the orderly social, economic, and physical growth of the state in a manner consistent with the protection of private property rights.¹⁶ Under “The Community Planning Act,” local governments create and adopt comprehensive plans which are sensitive to private property rights, have no undue restriction, and leave property owners free from government action that would harm their property or constitute an inordinate burden on their property rights under the Bert Harris Act.¹⁷

Local Comprehensive Plan Elements

Local comprehensive plans are required to address a number of concepts including strategies for the orderly and balanced future land development of the area and procedures for monitoring and evaluating the plan’s implementation.¹⁸ Along with optional elements,¹⁹ plans must include the following nine elements:

- Capital improvements;²⁰
- Future land use plan;
- Intergovernmental coordination;
- Conservation;
- Transportation;
- Sanitary sewer, solid waste, drainage, potable water and aquifer recharge;
- Recreation and open space;
- Housing; and
- Coastal management (for coastal local governments).²¹

All local government land development regulations must be consistent with the local comprehensive plan.²² Additionally, all public and private development, including special district projects, must be consistent with the local comprehensive plan.²³ However, plans cannot require any special district to undertake a public facility project that would impair the district’s bond covenants or agreements.²⁴

¹¹ S. 70.51(3), F.S.

¹² S. 70.51(29), F.S.

¹³ See ss. 186.002 and 187.101, F.S.

¹⁴ S. 163.3167(1)(b), F.S.

¹⁵ Ss. 163.3161(10) and 187.201(14)(a), F.S.

¹⁶ S. 187.101(1) and (3), F.S. The plan’s goals and policies must also be reasonably applied where they are economically and environmentally feasible and not contrary to the public interest.

¹⁷ S. 163.3161(10), F.S.

¹⁸ S. 163.3177(1), F.S.

¹⁹ S. 163.3177(1)(a), F.S.

²⁰ S. 163.3177(3)(a), F.S. The capital improvements element must be reviewed by the local government on an annual basis.

²¹ S. 163.3177(6)(a)-(g), F.S.

²² S. 163.3194(1)(b), F.S.

²³ See ss. 163.3161(6) and 163.3194(1)(a), F.S.

²⁴ S. 189.081(1), F.S.

Vegetation Management

Local Tree Pruning, Trimming, and Removal Regulations

Currently, Florida has 67 counties and over 400 municipalities.²⁵ Local governments may have tree ordinances that specify the species that must be used in a given area depending on the land use, require a permit prior to trimming or removing trees, or protect certain trees because they are considered an important community resource.

For example, in Broward County the removal of any historical tree²⁶ 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.²⁷ Furthermore, municipalities within Broward County may adopt and enforce their own tree preservation regulations in addition to Broward County's tree regulations.²⁸ County tree regulations may be suspended during emergency conditions caused by hurricanes or other natural disasters by the county administrator.²⁹

Orange County requires a permit or authorization to remove a protected tree³⁰ unless an exemption or exception applies. The law does not restrict tree trimming or maintenance but encourages property owners to practice proper trimming habits that avoid the need for "severe" trimming of any tree.³¹ Permits are not required for trees located on single-family residential lots equal to or less than two acres with an occupied residential dwelling.³² Permitting requirements are waived during county-declared emergencies.³³

Mangrove Trimming and Preservation Act

Florida has three native species of mangrove trees growing along its coastline, which can be harmed or killed if not trimmed properly.³⁴ The "1996 Mangrove Trimming and Preservation Act" (Act)³⁵ requires the Department of Environment Protection (DEP) to regulate the trimming and alteration of mangroves statewide, except where DEP has delegated its authority to local governments that meet certain requirements and request such delegation.³⁶ The Act prohibits mangrove trimming or alteration without

²⁵ See ch. 7, F.S.; *The Local Government Formation Manual 2018-2020*, Appendices B and E, available at <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3025&Session=2019&DocumentType=General Publications&FileName=2018-2020 Local Government Formation Manual Final.pdf> (last visited Mar. 8, 2019).

²⁶ Ch. 27, art. XIV, s. 404, Broward County Code of Ordinances, 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.

²⁷ *Id.* at s. 405. Nuisance trees are exempt from the prohibitions in the tree preservation ordinances. *Id.* at 406. A "nuisance tree" is defined to be one of 10 identified trees including the *Schinus terebinthifolius* (Brazilian pepper tree/Florida holly). *Id.* at 404.

²⁸ *Id.* at s. 407. Municipalities may regulate exclusively within their jurisdictions upon certification by Broward County with some exceptions.

²⁹ *Id.* at 406.

³⁰ Protected trees are native trees in certain zones and include Red maple, Red buckeye, and Pignut hickory trees. See Ch. 15, Art. VIII, ss. 283 and 301(e), Orange County Code of Ordinances.

³¹ Ch. 15, Art. VIII, s. 278, Orange County Code of Ordinances.

³² Ch. 15, Art. VIII, s. 279(a), Orange County Code of Ordinances.

³³ Ch. 15, Art. VIII, s. 279(b), Orange County Code of Ordinances.

³⁴ See Florida Department of Environmental Protection, *Mangrove Trimming Guidelines for Homeowners*, "Introduction," 4, available at https://floridadep.gov/sites/default/files/Mangrove-Homeowner-Guide-sm_0.pdf (last visited Apr. 18, 2019).

³⁵ Ch. 95-299, s. 1, Laws of Fla. See also ss. 403.9321-403.9333, F.S.

³⁶ See s. 403.9324, F.S. Currently, authority has been delegated to the local governments of Broward, Hillsborough, Miami-Dade, and Pinellas Counties; the City of Sanibel; and the Town of Jupiter Island. See Florida Department of Environmental Protection, *Mangrove Trimming - Delegated Local Governments*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/mangrove-trimming-delegated-local> (last visited Apr. 18, 2019).

a permit issued by DEP or a delegated local government,³⁷ unless the trimming or alteration falls within certain exceptions.³⁸

Electric Transmission and Distribution Line Right-of-Way Maintenance

Tree contact with transmission lines is a leading cause of electric power outages and a common cause of blackouts.³⁹ Vegetation maintenance plans are important to electric utility providers in order to avoid tree-related outages and are regulated at the local, state, and federal level. The Federal Energy and Regulatory Commission (FERC) requires utilities to follow approved reliability standards for proper vegetation management around power lines.⁴⁰ Florida requires electric utility vegetation maintenance plans to follow ANSI A300 Part 1,⁴¹ which provides generally accepted pruning standards for tree, shrub, and other woody plant maintenance and ANSI Z133.1-2000,⁴² which provides comprehensive safety guidance for arborists for vegetation maintenance within an electric utility right-of-way.⁴³ Florida also requires maintenance activities to be supervised by qualified utility personnel, licensed contractors under the utility's control, or certified arborists.⁴⁴

Absent a local vegetation maintenance plan, 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. However, local governments are restricted in adopting any ordinances or regulations that regulate plant height and width requirements and may not require permits or approvals for vegetation maintenance, tree pruning, or trimming within the right-of-way.⁴⁵

State law requires a utility to give five business days' advance notice to a local government official prior to conducting vegetation maintenance activities within a right-of-way. No advance notice is required for service restoration, to avoid an imminent vegetation caused outage, or when performed at the request of the property owner adjacent to the right-of-way, provided the owner already has any required approval from the local government.⁴⁶

Local governments may develop and adopt a vegetation maintenance plan to govern vegetation maintenance in an electric utility right-of-way. The plan must be developed with input from the electric utility and must not be inconsistent with minimum requirements adopted by the Public Service Commission. The plan cannot require the utility to plant trees or other vegetation that will achieve a height greater than 14 feet in the right-of-way.⁴⁷ If a local government adopts a plan, the state requirements do not apply to the right-of-way.

³⁷ S. 403.9324(6), F.S.

³⁸ See s. 403.9328, F.S.

³⁹ Federal Energy Regulatory Commission (FERC), *Tree Trimming & Vegetation Management*, <https://www.ferc.gov/industries/electric/indus-act/reliability/vegetation-mgt.asp> (last visited Mar. 11, 2019).

⁴⁰ FERC, *Frequently Asked Questions*, <https://www.ferc.gov/resources/faqs/tree-veget.asp?csrt=3277879312755443250> (last visited Mar. 11, 2019).

⁴¹ Tree Care Industry Association, *ANSI A300 Standards*,

https://www.tcia.org/TCIA/BUSINESS/ANSI_A300_Standards_/TCIA/BUSINESS/A300_Standards/A300_Standards.aspx?hkey=202ff566-4364-4686-b7c1-2a365af59669 (last visited Mar. 11, 2019).

⁴² Tree Care Industry Association, *ANSI Z133 2017*, https://tcia.org/TCIA/News/Business/ANSI_Z133_2017_Revision_Overview.aspx (last visited Mar. 11, 2019).

⁴³ "Right-of-way" means land necessary for the construction and maintenance of a connected associated linear facility, such as a railroad line, pipeline, or transmission line as owned by or proposed to be certified by the applicant. S. 403.503(11), F.S.

"Transmission line right-of-way" means land necessary for the construction, operation, and maintenance of a transmission line. S. 403.522(23), F.S.

⁴⁴ S. 163.3209, F.S.

⁴⁵ S. 163.3209, F.S. "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."

⁴⁶ S. 163.3209, F.S.

⁴⁷ S. 163.3209, F.S. 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. Select Committee on Hurricane Response and Preparedness, *The*

State law does not supersede or nullify the terms of any 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, 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, control over the statute.⁴⁸

Effect of Proposed Changes

The bill prohibits local governments from requiring a permit, application, notice, fee, approval, or mitigation for the pruning, trimming, or removal of a tree on residential property that has been certified to present a danger to persons or property. The certification must be provided by an arborist certified by the International Society of Arboriculture or a licensed landscape architect. The bill prohibits a local government from requiring a property owner to replant a tree that was maintained according to these provisions. The bill does not apply to authority delegated to local governments under the Mangrove Trimming and Preservation Act.

The bill removes the requirement that a property owner receive approval by the local government before requesting an electric utility to maintain vegetation in the adjacent utility right-of-way.

Finally, the bill requires county property appraisers to post a Property Owner Bill of Rights on the appraiser's website in the form provided. The required form is not comprehensive and must state on the website that it does not represent all property rights under Florida law. The form must list the following seven property rights:

- The right to acquire, possess, and protect your property.
- The right to use and enjoy your property.
- The right to exclude others from your property.
- The right to dispose of your property.
- The right to due process.
- The right to just compensation for property taken for a public purpose.
- The right to relief, or payment of compensation, when a new law, rule, regulation, or ordinance of the state or a political entity unfairly affects your property.

B. SECTION DIRECTORY:

- Section 1. Creates s. 163.045, F.S., prohibiting local governments from requiring notices, applications, permits, fees, approvals, or mitigation for tree maintenance in certain situations.
- Section 2. Amends s. 163.3209, F.S., revising an exception to electric utilities providing advance notice to local governments.
- Section 3. Creates s. 70.002, F.S., requiring county property appraisers to post a Property Owner Bill of Rights on their websites.
- Section 4. Provides an effective date of July 1, 2019.

Florida House of Representatives, *Select Committee on Hurricane Response and Preparedness Final Report* at 45 (January 16, 2018), <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2978&Session=2018&DocumentType=General Publications&FileName=SCHRP - Final Report online.pdf> (last visited Mar. 11, 2019).

⁴⁸ *Id.*

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Indeterminate. There may be a negative fiscal impact associated with prohibiting a local government from requiring a fee, permit, or fine for the maintenance or removal of trees in certain circumstances. In addition, there may be a negative fiscal impact on local governments to update county property appraiser websites with the required Property Owner Bill of Rights form language.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There may be a positive fiscal impact on residential property owners who are not required to obtain permits for tree maintenance in specified circumstances or replace removed trees.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill prohibits local governments from requiring fees for the removal or maintenance of trees in specified instances and requires each county property appraiser to post the Property Owners Bill of Rights on their respective websites. However, an exemption may apply. Laws having an insignificant fiscal impact are exempt from the requirements of Art. VII, s. 18 of the Florida Constitution.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither provides authority nor requires rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 18, 2019, the State Affairs Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removed certain conditions required to perform the residential tree maintenance specified in the bill, authorized additional professionals to certify the required conditions, and clarified the bill does not apply to mangrove trees.

This analysis is drafted to the committee substitute as approved by the State Affairs Committee.