

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 1400

INTRODUCER: Community Affairs Committee and Senator Albritton

SUBJECT: Private Property Rights

DATE: April 3, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Yeatman	CA	Fav/CS
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1400 adds a provision allowing an electric utility to maintain vegetation in the right of way at the request of the adjacent property owner without prior approval from the local government. The bill prohibits a local government from enforcing an ordinance or regulation requiring a permit for the pruning, trimming, or removal of certain trees on residential property during March 1 through June 1 of the calendar year under specified circumstances, and the bill prohibits a local government from removing specified trees during this time frame. The bill allows local governments to require a property owner to replant a tree that has been removed in accordance with these provisions. The bill does not apply to mangrove trees.

II. Present Situation:

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.¹ 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.² Likewise, municipalities have those governmental, corporate, and proprietary powers

¹ FLA. CONST. art. VIII, s. 1(f).

² FLA. CONST. art. VIII, s. 1(g).

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.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

Local Tree Pruning, Trimming and Removal Regulations

Currently, in Florida there are 67 counties and 412 municipalities.⁶ 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,⁷ historic, landmark, legacy, special interest, significant, or specimen⁸ trees.

For example, in Broward County the removal of any historical tree⁹ 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.¹⁰ Furthermore, municipalities within Broward County are authorized

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

⁴ Section 125.01, F.S.

⁵ Section 166.021(3), F.S.

⁶ *See* ch. 7, F.S.; *The Local Government Formation Manual 2018-2020*, Appx. B and E, available at: <https://www.myfloridahouse.gov/Sections/Documents/loadaddoc.aspx?PublicationType=Committees&CommitteeId=3025&Session=2019&DocumentType=General%20Publications&FileName=2018-2020%20Local%20Government%20Formation%20Manual%20Final.pdf> (last visited March 29, 2019).

⁷ A heritage tree is typically a large, individual tree with unique value, which is considered irreplaceable. The major criteria for heritage tree designation are age, rarity, and size, as well as aesthetic, botanical, ecological, and historical value. *See* Peter A. Coates, *American Perceptions of Immigrant and Invasive Species: Strangers on the Land*, 140 (University of Ca. Press 2006).

⁸ A specimen tree is a tree with any individual trunk that has a DBH (diameter at breast height) of 18 inches or greater (or a circumference of 56.5 inches or greater) when measured at point 4 1/2 feet from the ground at natural grade. In the case of multiple-trunked trees, the DBH shall mean the sum of each trunk's diameter measured at the point 4 1/2 feet from where the tree emerges from the ground at natural grade. The following trees are not considered specimen: Non-native fruit trees that are cultivated or grown for the specific purpose of producing edible fruit, including, but not limited to, mangos, avocados or species of citrus; Non-native species of the genus *Ficus*; and all multi-trunk palms except *Paurotis palm*/Everglades palm (*Acoelorrhapha wrightii*) and *Reclinata palm* (*Phoenix reclinata*), which have a minimum overall height of 15 feet. *See* Miami-Dade County, *Tree Removal or Relocation Permits*, available at <https://www.miamidade.gov/permits/tree-removal.asp> (last visited April 3, 2019).

⁹ 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. *See* Broward County Code of Ordinances, Volume 1, available at https://library.municode.com/fl/broward_county/codes/code_of_ordinances?nodeId=COBRCOFLVOI (last visited March 29, 2019).

¹⁰ *Id.* at s. 405

to adopt and enforce their own tree preservation regulations in addition to Broward County's regulation of trees.¹¹

Mangrove Trimming

In 1996, the Florida Legislature enacted the 1996 Mangrove Trimming and Preservation Act (MTPA).¹² 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.¹³

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.¹⁴

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.¹⁵

III. Effect of Proposed Changes:

Section 1 amends s. 163.3209, F.S., to allow an electric utility to maintain vegetation in the right of way at the request of the adjacent property owner without prior approval from the local government.

Section 2 creates s. 163.3214, F.S., relating to tree pruning, trimming, or removal on residential property. From March 1 through June 1 of the calendar year, a local government is prohibited from doing either of the following:

¹¹ *Id.* at s. 407

¹² Chapter 95-299, s. 1, LAWS OF FLA. *See* ss. 403.9321-403.9333, F.S.

¹³ 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 March 29, 2019).

¹⁴ *Id.*

¹⁵ Section 163.3209, F.S.

- If the property owner has obtained documentation from an arborist certified by the International Society of Arboriculture that the tree is a danger to persons or property and the tree is not a listed endangered species, enforce an ordinance or regulation governing the pruning or trimming of specimen, heritage, or patriarch trees, as defined by local ordinances or regulations, or the pruning, trimming, or removal of other trees on residential property which requires a permit, an application, the provision of notice, a fee, or a fine.
- Authorize the removal of specimen, heritage, or patriarch trees, as defined by local ordinances or regulations.

The bill provides a local government may enforce ordinances or regulations pertaining to the replanting of trees that have been removed in accordance with this section.

The bill does not apply to the exercise of specifically delegated authority for mangrove protection pursuant to the Mangrove Trimming and Preservation Act.¹⁶

Section 3 provides the bill takes effect July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

¹⁶ Sections 403.9321-403.9333, F.S.

B. Private Sector Impact:

Property owners would save costs associated with permit fees to trim or cut down certain trees.

C. Government Sector Impact:

Local governments may see a decline in money collected in connection to fines or fees associated with various tree ordinances in effect.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill prohibits a local government from authorizing the removal of specimen, heritage or patriarch trees from March 1 through June 1 even with a permit.

VIII. Statutes Affected:

This bill amends section 163.3209 of the Florida Statutes. The bill creates section 163.3214 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 April 2, 2019:

The committee substitute:

- Amends s. 163.3209, F.S., to allow an electric utility to maintain vegetation in the right of way at the request of the adjacent property owner without prior approval from the local government.
- Prohibits application of local government ordinances from requiring a permit for pruning, trimming and removal of certain trees during a specified time period.
- Prohibits a local government from authorizing the removal of certain trees during a specified time period.
- Authorizes a local government to enforce ordinances or regulations pertaining to the replanting of trees under certain circumstances.
- Exempts mangrove trees from the bill's application.
- Deletes provisions regarding the Private Property Bill of Rights.

B. Amendments:

None.