

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: SB 1400

INTRODUCER: Senator Albritton

SUBJECT: Private Property Rights

DATE: April 1, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Yeatman	CA	Pre-meeting
2.	_____	_____	JU	_____
3.	_____	_____	RC	_____

I. Summary:

SB 1400 prohibits a local government from enforcing an ordinance or regulation requiring a permit for the pruning, trimming, or removal of trees on residential property during certain weather conditions or declared state of emergency or upon proof from a certified arborist that the tree is damaged, diseased, pest-infested, or presents a danger to others. The bill prohibits local governments from requiring a property owner to replant a tree that has been removed in accordance with these provisions.

The bill also requires each county property appraiser to post a Property Owner Bill of Rights on its website. Such bill of rights does not create a civil cause of action.

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 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,

¹ FLA. CONST. art. VIII, s. 1(f).

² FLA. CONST. art. VIII, s. 1(g).

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

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, historic, landmark, legacy, special interest, significant, or specimen trees.

For example, in Broward County the removal of any historical tree⁷ 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.⁸ 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.⁹

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 Permit (ERP) along with other ERP activities for the same property.

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/loaddoc.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 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).

⁸ *Id.* at s. 405

⁹ *Id.* at s. 407

¹⁰ Chapter 95-299, s. 1, LAWS OF FLA. See ss. 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 March 29, 2019).

Mangrove impacts associated with and located within the footprint of an ERP authorized activity do not require a separate authorization under the MTPA.¹²

III. Effect of Proposed Changes:

Section 1 creates s. 163.3214, F.S., relating to tree pruning, trimming, or removal on residential property. The bill prohibits a local government from enforcing an ordinance or regulation governing the pruning, trimming, or removal of trees on residential property which requires a permit, an application, the provision of notice, a fee, or a fine when either of the following applies:

- The residential property is in a county that is subject to a tropical storm watch or warning or a hurricane watch or warning or is experiencing a tropical storm, a hurricane, or a declared state of emergency, and the property owner has determined that a tree on his or her property is damaged, diseased, or pest-infested, or presents a danger to others or property.
- The property owner has obtained from an arborist who is certified by a certification program of the International Society of Arboriculture proof that the tree is damaged, diseased, or pest-infested, or presents a danger to others or property.

The bill prohibits a local government from requiring a property owner to replant a tree that has been removed in accordance with this section.

Section 2 creates s. 715.015, F.S., relating to a property owner bill of rights. The bill requires each property appraiser office to provide on its website a property owner bill of rights.

The purpose of the bill of rights is to identify certain existing rights afforded to property owners. The bill of rights is not a comprehensive listing. The property owner bill of rights does not create a civil cause of action. The property owner bill of rights must state the following statement and list the seven property rights enumerated below:

PROPERTY OWNER BILL OF RIGHTS

This Bill of Rights does not represent all of your rights under Florida law regarding your property and should not be viewed as a comprehensive guide to property rights. This document does not create a civil cause of action and neither expands nor limits any rights or remedies provided under any other law. This document is not intended to replace the need to seek legal advice in matters relating to property law. Laws relating to your rights are found in the Florida Constitution, the Florida Statutes, local ordinances, and court decisions.

As a property owner, you have the following rights and protections:

- The right to acquire, possess, and protect property.
- The right to use and enjoyment of property.
- The right to exclude others from property.
- The right to dispose of property.

¹² *Id.*

- 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 in the state unfairly affects real property.

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.

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:

None.

VIII. Statutes Affected:

This bill creates sections 163.3214 and 715.015 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.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
