

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1109

Arboriculture

SPONSOR(S): Tobia

TIED BILLS:

IDEN./SIM. BILLS: SB 2656

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture & Natural Resources Policy Committee		Deslatte	Reese
2) General Government Policy Council			
3) Natural Resources Appropriations Committee			
4) Full Appropriations Council on General Government & Health Care			
5)			

SUMMARY ANALYSIS

The bill creates a voluntary licensure program for arborists 18 years of age and older. An arborist is a specialist in the care and maintenance of trees. The bill provides nonrefundable fees for licensure and renewal, not to exceed \$300 per year. Fees collected are to be deposited in the Incidental Trust Fund of the Department of Agriculture and Consumer Services (department). The bill also provides that licensed landscape architects may hold themselves out as state licensed arborists. This bill gives the department the authority to implement the bill's provisions, including creation of a licensure process, adoption of rules, and setting fees for licensure.

The bill reverses legislation enacted in 2005 and exempts tropical foliage to exempt status from the provisions of Florida's License and Bond Law.

The bill provides an appropriation of one position and associated rate and expenses of \$72,280 from the Incidental Trust Fund to the department to carry out the provisions of this act. The provision in the bill exempting tropical foliage from the provisions of Florida's License and Bond Law reduces state revenues by an estimated \$23,730 in FY 2009-10 and by \$24,441 in FY 2010-11.

The bill has an effective date of July 1, 2009.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Arboriculture

An arborist is a specialist in the care and maintenance of trees. Currently, there is no state regulation or licensure program for arborists in Florida. The International Society of Arboriculture (ISA) has an arborist certification procedure for persons who have a minimum of three years experience in some aspect of tree care and have passed an exam developed by an international panel of experts.¹ ISA reports on its website that its mission statement is to promote the professional practice of arboriculture and foster a greater awareness of the benefits of trees through research, technology, and education. There is a Florida chapter² of the ISA whose mission is to promote the scientifically based practice of arboriculture through research, education and public awareness. The Division of Forestry in the department estimates that there are over 2,000 Florida ISA certified members.

The International Society of Arboriculture estimates that the average fatality rate for all industries in the United States is four deaths per 100,000 each year. The fatality rate for those practicing arboriculture is 35 per 100,000 each year. The risk of an accident involving arboriculture is three times higher than that of police officers or firemen. One out of every 120 accidents involving arboriculture results in serious injury involving two or more days in the hospital or death³.

Although the equipment used in the practice of arboriculture has become safer, accident rates have increased. Accidents involving chippers are more deadly than accidents involving chainsaws. Each year in the United States, twenty-six thousand accidents involving chainsaws injure rather than kill⁴.

Vegetation Maintenance is Important in Mitigating Storm Damage

In the aftermath of Hurricane Wilma, the Florida Public Service Commission held a workshop to discuss the damage incurred by electric utility facilities due to hurricanes and to explore ways of minimizing that damage and resulting power outages.⁵ Public testimony at that workshop highlighted the need to properly maintain trees and other vegetation in order to mitigate damage to the state's electric power grid.

¹ <http://www.isa-arbor.com/home.aspx>

² <http://www.floridaisa.org/>

³ Florida Chapter International Society of Arboriculture, www.floridaisa.org

⁴ ID

⁵ Florida Public Service Commission Workshop, January 23, 2006.

In addition, tree damage to residential homes during hurricane events is a significant source of property loss and financial impact. Researchers at the University of Florida surveyed tree damage in the aftermath of Hurricanes Erin and Opal in 1995. These two storms struck the Florida Panhandle at approximately the same landfall within nine weeks of each other. Post storm surveys found:

Twenty-one percent and 8% of the fallen trees damaged property in Erin and Opal. (Of all the trees surveyed, just 2% and 1% damaged property.) Homes accounted for 67% and 29% of the damage in each of the hurricanes; the rest was damage to minor structures such as signs, fences and sidewalks.⁶

Vegetation management is recognized as a major component of property damage mitigation associated with major storm events.

Florida License and Bond Law

The Florida License and Bond Law (law) was enacted in 1941 to give market protection to producers of perishable agricultural commodities. The law is intended to facilitate the marketing of Florida agricultural products by encouraging a better understanding between buyers and sellers and by providing a marketplace that is relatively free of unfair trading practices and defaults.

In 2004, the Committee on Agriculture in the Florida House of Representatives reviewed the law as part of an interim project and recommended changes to the then-current statutes. During the 2005 legislative session, HB 1231 implemented the recommendations suggested by the interim project. Based on one of the recommendations, the bill amended the definition of the term “agricultural products” to include tropical foliage as a non-exempt agricultural product produced in the state. Until that point, tropical foliage had been exempt from the provisions of the law. For the most part, agricultural products considered exempt from the law are generally those offered by growers or groups of growers selling their own product(s); all persons who buy for cash and pay at the time of purchase with U.S. currency; dealers operating as bonded licensees under the Federal Packers and Stockyards Act; or retail operations purchasing less than \$1,000 in product per month from Florida producers. Due to the manner by which the foliage business is conducted, the change implemented by HB 1231 has not proven beneficial to the foliage industry and they have requested a reenactment of the exemption.

Effect of Proposed Changes

This bill creates Chapter 598, F.S., titled the “Florida Arborist Licensing Law.” The proposed law creates a voluntary licensure program for arborists and requires any person practicing or offering to practice arboriculture in this state as a licensed arborist to obey the requirements of this chapter for the well-being of the citizens of Florida. Persons practicing arboricultural activities are not required to be licensed in Florida to practice arboriculture under this Act, therefore, it is unknown how many of these persons may decide to become licensed and have the “licensed Florida Arborist” designation. The bill specifies that licensed landscape architects may practice arboriculture but only a person licensed under the new chapter 548, F.S., may hold themselves out as a state-licensed arborists. The bill also authorizes state emergency response team members designated under the state comprehensive emergency management plan pursuant to chapter 252, F.S., to provide and conduct charitable arboriculture services and to train volunteers to provide such services.

The bill provides definitions for: “arboriculture or arboriculture services,” “arborist of record,” “department,” “landscape tree maintenance,” “licensed arborist,” “person,” and “practice of arboriculture.” The bill also gives the department all powers and duties necessary to implement the provisions of Chapter 598, F.S., including, but not limited to, the authority to adopt rules relating to implement the following⁷:

- Organizational and operational guidance, and requirements for licensing;

⁶ Mary L. Duryea, University of Florida IFAS Extension, Wind and Trees: Surveys of Tree Damage in the Florida Panhandle after Hurricanes Erin and Opal, <http://edis.ifas.ufl.edu/FR010>.

⁷ Pursuant to ss. 120.536 (1) and 120.54, F.S.

- Licensure process and renewals;
- Setting of fees for licensure and renewal; and
- Provision of a roster of licensed arborists.

This bill provides guidelines for establishing the fees. The amount of the fees shall not exceed the cost of implementing, reviewing, or administrative processing of the particular activity or process. Fees shall be set according to the following schedule:

- A nonrefundable licensure fee not to exceed \$300;
- An annual renewal fee not to exceed \$300; and
- Fees collected under this chapter are to be deposited into the Incidental Trust Fund (ITF) of the Division of Forestry and be used to defray expenses associated with administration of the licensure program.

The bill also provides that an applicant seeking licensure must:

- Submit a written request for licensure and remit the nonrefundable fee;
- Furnish proof that she or he is at least 18 years of age;
- Disclose any act or offense or investigation of such act or offense in any jurisdiction related to the applicant's ability to practice arboriculture;
- Submit evidence of current certification by the International Society of Arboriculture (ISA);
- Provide proof of liability; and
- Submit a signed statement that the applicant will comply with current industry standards, including, but not limited to, ANSI Z-133-1 and A-300⁴ series and any other related standards of the ISA and best management practices adopted by rule by the department.

The bill provides that the department shall not knowingly issue licenses to applicants under investigation or who have committed an act or offense relating to arboriculture in any jurisdiction. The department shall suspend or revoke the license of licensed arborists who do not comply with the established standards. A license shall be renewed if the arborist remains in compliance with the established standards. A licensed arborist must notify the department within 30 days of his or her primary place of practice if the address changes. Inactive, suspended, or revoked licenses shall be reactivated upon written request and approval by the department. Duplicate licenses must be marked "DUPLICATE" and the department is required to maintain a roster of licensed arborists.

The bill reverses legislation enacted in 2005 to return tropical foliage to exempt status from the provisions of the License and Bond law.⁸

Finally, the bill includes an appropriation of \$72,280 from the ITF to the department to carry out the provisions of this act.

B. SECTION DIRECTORY:

Section 1. Creates ch. 598, F.S., providing a short title; providing a purpose statement; providing definitions; providing exceptions; providing powers and duties of the Department of Agriculture and Consumer Services; providing rulemaking authority; establishing a maximum annual fee for licensure; providing for deposit and use of fee proceeds; establishing licensure procedures and requirements to practice arboriculture and provide arboriculture services; providing for issuance of a license; providing grounds for denial of a license or refusal to renew a license; providing for license suspension or revocation; providing for license renewal; providing for reactivation of a license under certain conditions; providing for issuance of a duplicate license under certain circumstances; requiring a roster of licensed arborists.

Section 2. Amends s. 604.15, F.S., revising a definition to make tropical foliage exempt from regulation under provisions relating to dealers in agricultural products.

Section 3. Provides an appropriation.

Section 4. Provides an effective date.

⁸ Sections 604.15-604.34, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

	<u>FY 09-10</u>	<u>FY 10-11</u>	<u>FY 11-12</u>
1. Revenues:			
A. Recurring			
Agricultural Products Dealers License (General Inspection Trust Fund)	\$ 23,730	\$ 24,441	\$ 25,175
2. Expenditures: According to the Department of Agriculture and Consumer Services:			
A. Recurring			
1. Positions	<u>FY 09-10</u>	<u>FY 10-11</u>	<u>FY 11-12</u>
1-Administrative Assistant II (0712)	\$49,544	\$49,544	\$49,544
Total Salaries	\$49,544	\$49,544	\$49,544
2. Expenses (*)			
Support Staff Expense Package	5,426	5,426	5,426
1 @ \$5,426			
Human Resources Allocation	401	401	401
1 @ \$401			
Travel	4,300	2,000	2,000
Additional Supplies	2,500	500	500
3. Contracted Services AGMIC (**)	<u>5,000</u>	<u>5,000</u>	<u>5,000</u>
Total Recurring Costs	\$67,171	\$62,871	\$62,871

(*) Expenses and Human Resources package total reflects one position. Travel and supplies reflect travel for initial rulemaking development, initial workshop discussions, and for implementation of the program.

(**) AGMIC costs reflect Oracle programming to develop software application to satisfy minimum estimated program requirements.

B. Non-Recurring

1. Expenses	
Support Staff Exp. Package	2,971
1 @ \$2,971	
2. OCO-All staff-1 @ \$1,000	<u>1,000</u>
Total Non-Recurring Costs	\$3,971

Non-Operating Costs

Administrative Overhead: (2.2% Salaries)	\$1,090	\$1,090	\$1,090
General Revenue Service Charge	indeterminate(***)	indeterminate	indeterminate
Total Non-Operating Costs	\$1,090	\$1,090	\$1,090

(***) An indeterminate amount of General Revenue service charge will be paid depending on the trust fund from which the program costs are expended.

Grant Total Costs (Incidental TF)	\$72,232	\$63,961	\$63,961
Grand Total Revenue (Incidental TF)	indeterminate	indeterminate	indeterminate
(General Inspection TF)	\$23,730	\$24,441	\$25,175

C. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments

2. Expenditures:

None

D. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Arborists are to be charged an annual fee to be licensed and maintain ISA certification as well as appropriate levels of insurance. The bill also exempts dealers who sell tropical foliage from the requirement to be licensed and bonded. According to the department, it will decrease the protection provided by the agricultural bond and create a financial vulnerability for those growers who no longer have the protection of ensuring they are paid for their product.

E. FISCAL COMMENTS:

The bill includes an appropriation of \$72,280 from the Incidental Trust Fund within the department. An indeterminate amount of revenue will be collected and deposited into the Incidental Trust Fund from the annual registration of an unknown number of arborists or arboricultural services providers voluntarily choosing to practice or offer to practice arboriculture as a "licensed Florida arborist" in the state. The maximum annual licensure fee is \$300. There are estimated to be over 2,000 Certified Florida members of the International Society of Arborists that could generate over \$600,000 of annual revenue if 100% of these members become licensed at the maximum annual licensing fee of \$300. These members will not be required to be licensed in Florida to practice arboriculture under this Act and as a result, may not become "licensed Florida Arborists"; therefore it is unknown how many of these members may decide to become licensed and have the "licensed Florida Arborist" designation.

The Division of Marketing (division) within the department reports that there are approximately 577 tropical foliage dealers who are currently licensed by the division and a possible 350 dealers who are prospective licensees. Of the 577 who have tropical foliage licenses, only 52 deal in tropical foliage alone. By exempting tropical foliage dealers from the definition of agricultural products, the division will experience a loss of revenue in the General Inspection Trust Fund of \$24,441 for FY 2010-11 and a loss of \$25,175 for FY 2011-12.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

This bill gives the department all powers and duties necessary to implement the provisions of chapter 598, F.S., including, but not limited to, the authority to adopt rules pursuant ss.120.536 (1) and 120.54, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Application of New Chapter 598, F.S.

New s. 598.002, F.S., declares the following purpose for the creation of the “Florida Arborist Licensing Law”:

It is declared to be the public policy of the state that, in order to safeguard life, health, and property; the mitigation of property insurance; the cleanup of damage from hurricanes, tropical storms, and other severe storm events; and the public well-being of its citizens, **any person practicing or offering to practice arboriculture in this state as a licensed arborist shall meet the requirements of this chapter.**

The words in bold indicate that only persons **practicing or offering to practice arboriculture in this state as a licensed arborist** are required to meet the licensure requirements included in the chapter. Presumably, persons practicing or offering to practice arboriculture in this state **but not as a licensed arborist** are not required to meet the licensure requirements. The bill provides no penalties for practicing arboriculture or arboriculture services without a license. As such, the licensure program appears to be voluntary. However, several provisions appear to create exemptions from the voluntary licensure program, seemingly in conflict with the voluntary nature of the program.

Lines 69 – 73 provide that:

A landscape architect licensed under part II of chapter 481 is authorized to practice arboriculture; however, as provided in s. 598.006(4), only a person licensed under this chapter may hold herself or himself out as a state-licensed arborist.

Similarly, lines 74 – 81 provide:

To prevent injury to life or property after a disaster, state emergency response team members designated under the state comprehensive emergency management plan pursuant to chapter 252 are authorized to provide and conduct charitable arboriculture services and to train volunteers to provide such services; however, as provided in s. 598.006(4), only a person licensed under this chapter may hold herself or himself out as a state-licensed arborist.

Tropical Foliage

The Department of Agriculture and Consumer Services states that, in July 2007, a firm dealing in tropical foliage was ordered to pay over \$97,000 to a South Florida nursery for tropical foliage it purchased but failed to pay for. During the 2007-08 FY, the department processed claims totaling \$180,266 filed by Florida producers against agricultural dealers listing tropical foliage among the commodities handled.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES