

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 Judiciary

BILL: CS/SB 1400

INTRODUCER: Community Affairs Committee and Senator Albritton

SUBJECT: Private Property Rights

DATE: April 10, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Peacock</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>Tulloch</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1400 provides private property owners a limited reprieve from local ordinances requiring prior permission to trim, prune, or remove trees in two situations. First, the bill amends s. 163.3209, F.S., to allow a year-round reprieve in the case of an adjacent right of way and permits an electric utility to prune trees and maintain vegetation in the right of way at the request of the adjacent property owner without prior approval from the local government when necessary to either restore service or to prevent an imminent, vegetation-caused outage.

Second, the bill creates s. 163.3214, F.S., a temporary reprieve prohibiting a local government in the months leading up to Florida's hurricane season, between March 1 and June 1 of each calendar year, from:

- Enforcing an ordinance or regulation requiring a permit, for
 - Pruning or trimming any tree on residential property; and
 - Removing any tree except heritage, patriarch, or specimen trees on residential property.
- Authorizing removal of heritage, patriarch, or specimen trees.

However, the temporary reprieve from enforcement narrowly applies to property owners who can provide documentation from an arborist certifying that a tree both creates a dangerous condition and is not an endangered species.

The bill also allows local governments to require property owners to "replant" trees that were removed in accordance with these provisions. The bill does not apply to mangrove trees.

The bill is effective July 1, 2019.

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, 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 counties⁶ and 412 municipalities.⁷ 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 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.

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, 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 Apr. 3, 2019).

⁷ Florida League of Cities, *Municipal Directory Odering & Advertising Information*, <https://www.flcities.com/resources/municipal-directory/municipal-directory-information> (last visited Apr. 3, 2019). *See also* *The Local Government Formation Manual 2018-2020*, Appx. 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 Apr. 3, 2019).

community resource.⁸ The terms used to describe such trees may include heritage,⁹ historic, landmark, legacy, patriarch,¹⁰ special interest, significant, or specimen¹¹ trees.

For example, in Broward County the removal of any historical tree¹² 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.¹³ 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.¹⁴

Mangrove Trimming

In 1996, the Florida Legislature enacted the 1996 Mangrove Trimming and Preservation Act (MTPA).¹⁵ “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.”¹⁶

“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.”¹⁷ “Projects that involve alterations, and

⁸ See generally, American Society of Consulting Arborists, *Tree Ordinances*, available at <https://www.asca-consultants.org/page/TreeOrdinances> (last visited Apr. 3, 2019).

⁹ 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).

¹⁰ A patriarch tree refers to “the oldest member or representative of a group.” See MERRIAM-WEBSTER DICTIONARY (defining patriarch at 1c(1), noting that “the cypress ... is the *patriarch* of native trees, going back to the time of the dinosaur”), available at <https://www.merriam-webster.com/dictionary/patriarch> (last visited Apr. 4, 2019). In Tallahassee, for example, patriarch live oaks are protected, see Tallahassee Land Dev. Cod. s. 5-83; and a live oak on FSU's campus with a trunk diameter of 72 inches, suggesting it is 160 years old, was deemed a patriarch tree in 2010. See FSU Plants, *FSU's Patriarch Oaks* (Aug. 18, 2011), available at <http://fsuplants.blogspot.com/2011/08/fsus-patriarch-oaks.html> (last visited Apr. 4, 2019).

¹¹ 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).

¹² The 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].” See Broward County Code of Ord., ch. 27, Art. XIV, s. 404, available at https://library.municode.com/fl/broward_county/codes/code_of_ordinances?nodeId=COBRCOFLVOI (last visited Apr. 3, 2019).

¹³ *Id.* at s. 405(a), (b).

¹⁴ *Id.* at s. 407(a).

¹⁵ Chapter 95-299, s. 1, LAWS OF FLA. See ss. 403.9321-403.9333, F.S.

¹⁶ 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. 3, 2019).

¹⁷ *Id.* at 5 (“Before You Trim”).

trimming projects that exceed the allowances of the exemptions and general permits, may be authorized through individual permits in s. 403.9328, F.S.”¹⁸ “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[.]”¹⁹

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.”²⁰ 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.²¹

Hurricane Season

According to the National Hurricane center, “[t]he official hurricane season for the Atlantic Basin (the Atlantic Ocean, the Caribbean Sea, and the Gulf of Mexico) is from 1 June to 30 November.”²²

III. Effect of Proposed Changes:

CS/SB 1400 provides private property owners a limited reprieve from local ordinances requiring prior permission to trim, prune, or remove trees in two situations.

First, **section 1** amends s. 163.3209, F.S., to allow a year-round reprieve in the case of an adjacent right of way. Section 1 permits 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 when necessary to either restore service or to prevent an imminent, vegetation-caused outage.

Notably, s. 163.3209, F.S., also expressly references specimen and historical trees (referenced in Section 2). Section 163.3209, F.S., states that “[t]his 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.”

¹⁸ *Id.*

¹⁹ *Id.* (citing s. 403.9328(5), F.S.).

²⁰ Section 163.3209, F.S.

²¹ *Id.*

²² National Hurricane Center, *Tropical Cyclone Climatology*, available at <https://www.nhc.noaa.gov/climo/> (last visited Apr. 4, 2019).

Second, **section 2** creates s. 163.3214, F.S., to provide a temporary reprieve to property owners in the months leading up to Florida's hurricane season by prohibiting a local government, between March 1 and June 1 of each calendar year, from:

- Enforcing an ordinance or regulation requiring a permit, for
 - Pruning or trimming any tree on residential property; and
 - Removing any tree except heritage, patriarch, or specimen trees on residential property.
- Authorizing removal of heritage, patriarch, or specimen trees.

However, the temporary reprieve from enforcement narrowly applies to property owners who can provide documentation from an arborist certifying that a tree both creates a dangerous condition and is not an endangered species. If the tree is an endangered species, it appears the local government can enforce its ordinances and possibly prohibit pruning, trimming, or removal notwithstanding any danger created by the tree.

Additionally, the particular wording of the bill appears to ban local governments from authorizing the removal of specimen, heritage, or patriarch trees for any reason from March 1 through June 1 of a calendar year. However, the intent may have been to preserve the authority of local governments to require property owners to obtain permits before these trees are removed.

The bill defers to the definitions of specimen, heritage, and patriarch trees in local ordinances and regulations. If a local ordinance contains an expansive definition of these types of trees, the effect of the bill may be significantly affected.

The bill also provides that a local government may enforce ordinances or regulations pertaining to the "replanting" of trees that have been removed in accordance with this section. This provision appears to refer to the replacement of removed trees.

The bill does not apply to the exercise of specifically delegated authority for mangrove protection pursuant to the Mangrove Trimming and Preservation Act.²³

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.

²³ Sections 403.9321-403.9333, F.S.

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 may save costs associated with permit fees to trim or cut down certain trees. However, they must still expend funds for an arborist and may still have to pay for permit fees if the arborist determines the tree is an endangered species. Additionally, property owner will be able to remove specimen, heritage, or patriarch trees even if such action is recommended by an arborist to abate a dangerous condition, thereby exposing the property owner to either fines or expenses associated with the loss of property. Allowing greater flexibility in removing dangerous trees may reduce the risk of property damage and insurance claims.

C. Government Sector Impact:

Local governments may temporarily see a decline in revenues from fines or fees associated with various tree ordinances in effect.

VI. Technical Deficiencies:

On line 104, the bill refers to the “replanting” of trees but it is unlikely that a tree that has been removed would be replanted. Thus, it appears “replanting” should be changed to “replacing.”

The bill does not define the terms heritage, specimen, and patriarch trees.

VII. Related Issues:

The bill’s total prohibition on a local government authorizing the removal of specimen, heritage, or patriarch trees without providing any exceptions for trees creating dangerous conditions seems to be at odds with the intent of the bill, to provide homeowners with a temporary reprieve from seeking permission to trim, prune, and remove trees before hurricane season.

Additionally, the bill does not address the authority of homeowner’s associations to restrict the trimming, pruning, and removal of trees during the months prior to hurricane season.

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 Substantial 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 enforcement of local government ordinances 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 requiring 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.