

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1555 Private Property Rights to Prune, Trim, and Remove Trees

**SPONSOR(S):** McClain

**TIED BILLS:** IDEN./SIM. BILLS: CS/SB 518

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Property Rights Subcommittee	17 Y, 0 N	Petruzzelli	Jones
2) Local Administration & Veterans Affairs Subcommittee	18 Y, 0 N	Darden	Miller
3) Judiciary Committee	17 Y, 0 N	Petruzzelli	Kramer

### SUMMARY ANALYSIS

Local governments sometimes require property owners to obtain a permit or pay a fee before trimming, pruning, or removing trees. To make the maintenance and removal of dead, dying, overgrown, or diseased trees on residential properties easier, the Florida Legislature enacted s. 163.045, F.S., in 2019. The law prohibits a local government from requiring notice, approval, application, permit, fee, or mitigation for the pruning, trimming, or removal of a tree on a residential property when the property owner obtains documentation from a certified arborist or a Florida-licensed landscape architect stating that the tree presents a danger to persons or property. In addition, a local government may not require a property owner to replant a tree that was pruned, trimmed, or removed in accordance with the law.

The bill amends s. 163.045, F.S., to provide that a local government may not burden a property owner's rights to prune, trim, or remove trees on his or her own residential property if the tree "poses an unacceptable risk" to persons or property. A tree poses an "unacceptable risk" if removal is the only means of practically mitigating the risk below "moderate," as defined by the tree risk assessment procedures in Best Management Practices—Tree Risk Assessment, Second Edition (2017).

The bill also adds definitions for the terms "documentation" and "residential property." The definition for "documentation" requires that an onsite assessment be made in a certain manner by a specified type of certified arborist or architect. The bill defines residential property as a single-family detached building located on a lot that is actively used for single-family residential purposes. The building may either be a conforming use or a legally recognized nonconforming use in accordance with the local jurisdiction's land development regulations.

The bill may have an indeterminate fiscal impact on local governments.

The bill provides an effective date of July 1, 2022.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Local Governments

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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</sup>

##### Private Property Rights Protection

The Legislature has recognized that some laws, regulations, and ordinances may inordinately burden private property rights, and that protecting the rights of individual private property owners is an important state interest.<sup>6</sup> The Bert J. Harris, Jr. Private Property Rights Protection Act provides property owners relief when a law, rule, or regulation burdens private property but does not amount to a constitutional taking.<sup>7</sup> Additionally, Florida's Land Use and Environmental Dispute Resolution Act allows landowners to seek relief when a governmental entity's order or action is unreasonable or unfairly burdens the owner's use of real property.<sup>8</sup>

##### Local Tree Pruning, Trimming, and Removal Regulation

Local governments sometimes require property owners to obtain a permit or pay a fee before trimming, pruning, or removing trees. Given the fact that Florida is a national leader in tropical storms and hurricanes, tree damage is a common occurrence. To make the maintenance and removal of dead, dying, overgrown, or diseased trees on residential property easier, the Legislature enacted s. 163.045, F.S., in 2019. The law limits<sup>9</sup> the ability of local governments to regulate tree pruning, trimming, or removal on residential property, when the property owner obtains documentation from a certified arborist<sup>10</sup> or a Florida-licensed landscape architect that the tree presents a danger to persons or property.<sup>11</sup> Specifically, the law prohibits a local government from requiring a notice, approval,

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<sup>1</sup> Art. VIII, s. 1(f), Fla. Const.

<sup>2</sup> Art. VIII, s. 1(g), Fla. Const.

<sup>3</sup> Art. VIII, s. 2(b), Fla. Const. See also s. 166.021(1), F.S.

<sup>4</sup> S. 125.01, F.S.

<sup>5</sup> S. 166.021, F.S.

<sup>6</sup> S. 70.001, F.S.

<sup>7</sup> *Id.*

<sup>8</sup> S. 70.51, F.S.

<sup>9</sup> This section does not apply to the exercise of specifically delegated authority for mangrove protection pursuant to ss. 403.9321-403.9333, F.S. S. 163.045(3), F.S.

<sup>10</sup> The arborist must be certified by the International Society of Arboriculture. S. 163.045(1), F.S.

<sup>11</sup> S. 163.045(1), F.S.

application, permit, fee, or mitigation in such instance.<sup>12</sup> Additionally, a local government may not require a property owner to replant a tree that was pruned, trimmed, or removed in accordance with the section.<sup>13</sup>

### “Residential” Property

When s. 163.045, F.S., was enacted, no definition of “residential property” was included in law. In 2019, a Tampa mobile home park owner was fined \$420,000 for cutting down trees on his property, despite the fact that he had the requisite documentation from a certified arborist.<sup>14</sup> The tree-cutting firm’s arborist who signed off on the tree removal was fined the \$420,000 amount as well.<sup>15</sup> The City of Tampa claimed that s.163.045, F.S., did not apply to the mobile home park because the property was zoned commercial, not residential, even though it was divided into residential mobile home lots.<sup>16</sup>

### **Effect of Proposed Changes**

The bill amends s. 163.045, F.S., to modify the standard of what level of danger or risk a tree must present to satisfy the statutory requirements. Specifically, the bill requires that the documentation complying with the statute must exhibit that the tree “poses an unacceptable risk” to persons or property. The bill provides that a tree presents an “unacceptable risk” if removal is the only means of practically mitigating the risk below “moderate,” as defined by the tree risk assessment procedures in Best Management Practices—Tree Risk Assessment, Second Edition (2017).<sup>17</sup>

The bill defines the terms “documentation” and “residential property” for purposes of the section. The bill defines “documentation” as “an onsite assessment performed in accordance with the tree risk assessment procedures outlined in Best Management Practices—Tree Risk Assessment, Second Edition (2017)” by a certified arborist<sup>18</sup> or a Florida-licensed landscape architect, and signed by the arborist or architect. By adding this definition, the bill provides more detail and clarity as to what documentation is required to disallow local government from requiring action of a property owner. Under this definition, the assessment must be performed onsite and must be signed by the arborist or architect performing the assessment.

The bill defines “residential property” as “a single-family, detached building located on a lot that is actively used for single-family residential purposes and that is either a conforming use or a legally recognized nonconforming use<sup>19</sup> in accordance with the local jurisdiction’s applicable land development regulations.” The bill also changes statutory language so that a property owner must “possess” the appropriate documentation from a certified arborist<sup>18</sup> or Florida licensed landscape architect. The bill provides an effective date of July 1, 2022.

### **B. SECTION DIRECTORY:**

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<sup>12</sup> *Id.*

<sup>13</sup> S. 163.045(2), F.S.

<sup>14</sup> Charlie Frago, *Tampa Seeks to Fine Gandy Tree Cutters a Record \$840,000*, Tampa Bay Times (Sept. 18, 2019), <https://www.tampabay.com/news/tampa/2019/09/18/tampa-seeks-to-fine-gandy-tree-cutters-a-record-840000/> (last visited Feb. 11, 2022).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> The International Society of Arboriculture developed a series of Best Practices for the purpose of interpreting tree care standards and providing guidelines of practice for arborists, tree workers, and the people who employ their services. ISA, in Best Management Practices—Tree Risk Assessment, Second Edition (2017), available at <https://www.isa-arbor.com/store/product/324>, (last visited Feb. 11, 2022).

<sup>18</sup> The arborist must be certified by the International Society of Arboriculture.

<sup>19</sup> A nonconforming use or structure is one in which the structure was legally permitted prior to a change in law, and the change in law no longer permits the re-establishment of such structure or use. Mark A. Rothenberg, *The Status of Nonconforming Use Law in Florida*, Florida Bar Journal (March 2005), <https://www.floridabar.org/the-florida-bar-journal/the-status-of-nonconforming-use-law-in-florida/#:~:text=definition%2C%20a%20nonconforming%20use%20or%20structure%20is%20one,So.%20d%20751%2C%20754%20%28Fla.%20th%20DCA%201985%29%3A> (last visited Feb. 11, 2022).

**Section 1:** Amends s. 163.045, F.S., relating to tree pruning, trimming, or removal on residential property.

**Section 2:** Provides an effective date of July 1, 2022.

## 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:

The bill may have an insignificant negative fiscal impact on local governments due to reduced fines caused by the bill's modification of the ability of certain residential property owners to cut down, trim, or prune their trees without the need for local government approval.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VIII, s. 18 of the Florida Constitution may apply because the bill may limit the ability of a county or municipality to impose fines or fees upon a property owner who wishes to cut or trim trees on his or her property. However, an exemption may apply because the bill may have only an insignificant fiscal impact.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

Not applicable.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**