

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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**BILL:** CS/SB 108

**INTRODUCER:** Transportation Committee and Senator Rodriguez

**SUBJECT:** Trees and Vegetation Within the Rights-of-way of Certain Roads and Rail Corridors

**DATE:** March 14, 2023      **REVISED:** \_\_\_\_\_

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Price</u>	<u>Vickers</u>	<u>TR</u>	<u>Fav/CS</u>
2.	<u>Hunter</u>	<u>Ryon</u>	<u>CA</u>	<u>Favorable</u>
3.	<u>Price</u>	<u>Twogood</u>	<u>RC</u>	<u>Pre-meeting</u>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 108 revises provisions relating to a prohibition against removal, cutting, or destruction of any trees or other vegetation within the rights-of-way of roads located on the State Highway System. The bill provides that the prohibition does not apply if the Florida Department of Transportation (FDOT) suspends such prohibition pursuant to a declared state of emergency.

The FDOT is required to adopt informational guidelines related to the removal process for debris from an emergency that is subject to an emergency declaration, including, but not limited to, a hurricane or a tropical storm.

The bill takes effect July 1, 2023.

**II. Present Situation:**

With some exception, utility work in the FDOT's right-of-way requires a permit. Current law prohibits the removal, cutting, marring, defacing, or destruction of any trees or other vegetation, either by direct personal action or by cause any other person to take such action, within the

rights-of-way of roads located on the State Highway System (SHS)<sup>1</sup> or within publicly owned rail corridors unless prior written permission has been granted by the FDOT.<sup>2</sup>

The only exception to the prior-written-permission requirement is in cases “where normal tree trimming is required to ensure the safe operation of utility facilities, and such tree trimming is performed in accordance with the provisions of its [the FDOT’s] utility accommodations guide, and any subsequent amendments thereto.”<sup>3</sup>

Vegetation control relating to utility installations in the FDOT’s right-of-way which is performed by a utility agency/owner (UAO) in compliance with the FDOT’s *Utility Accommodation Manual (UAM)* may be completed *without* applying for a new permit (one that is in addition to the permit issued for the initial utility installation) under certain conditions.<sup>4</sup>

Rule 14-46.001, F.A.C., incorporates by reference the FDOT’s UAM which contains a number of provisions that regulate vegetation control relating to utility installations in the right-of-way. A UAO may cut vegetation manually or mechanically on a routine or periodic basis provided the work does not exceed limits necessary for proper utility maintenance. Where vegetation interferes with safe utility maintenance and operation, the utility shall do all the following:

- Trim trees in accordance with UAM Section 3.18.2.<sup>5</sup>
- Remove brush cuttings or debris discharged into routinely maintained area.
- Stockpile debris outside the mowing limits and clear zone for later disposal.
- Leave in place all undergrowth.

Section 3.18.2 of the UAM provides:

The UAO shall trim trees to ensure the safe installation, maintenance, and operation of the UAO’s utilities. Where the UAO trims trees, the UAO shall comply with the ANSI A300 Standard Practices.<sup>6</sup> The UAO shall not cause irreparable damage to a tree by trimming. Such trimming shall employ recognized and approved methods of modern vegetation control, with emphasis on tree health. The UAO may use mechanical tree trimming machines for routine maintenance. The UAO shall remove all waste and debris associated with the trimming from the R/W unless FDOT specifies otherwise in writing.

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<sup>1</sup> “State highway system” means the interstate system and all other roads within the state which were under the jurisdiction of the state on June 10, 1995, and roads constructed by an agency of the state for the State Highway System, plus roads transferred to the state’s jurisdiction after that date by mutual consent with another governmental entity, but not including roads so transferred from the state’s jurisdiction. These facilities shall be facilities to which access is regulated. Section 334.03(24), F.S.

<sup>2</sup> Section 337.405, F.S. As examples of the required “prior written permission,” requests to remove, cut, or trim vegetation screening outdoor advertising signs for which sign permits have been issued pursuant to ch. 479, F.S., are initiated by application to the FDOT under Rule 14-10.057, F.A.C. Requests for approval to alter, remove, or install landscaping on the FDOT’s right-of-way are initiated through submission of a landscape plan under Rule 14-40.003, F.A.C.

<sup>3</sup> *Id.*

<sup>4</sup> See the FDOT’s *Utility Accommodation Manual*, 2.3, *Work Not Requiring New Permits*, 2.3.1, *Work Types*, at p. 13 of 44, available at [uam2017.pdf \(windows.net\)](#) (last visited February 28, 2023).

<sup>5</sup> *Id.*, 3.18. *Vegetation Control*, at p. 23 of 44.

<sup>6</sup> ANSI A300 Standards are described as “the generally accepted industry standards for tree care practices.” See TCIA, *ANSI A300 Standards*, available at [\(1\) New Message \(tcia.org\)](#) (last visited February 28, 2023).

A violator of these provisions is guilty of a second degree misdemeanor,<sup>7</sup> punishable by a definite term of imprisonment not exceeding 60 days,<sup>8</sup> plus a possible additional \$500 fine.<sup>9</sup>

### III. Effect of Proposed Changes:

The bill amends s. 337.405, F.S., revising the exceptions under which the removal, cutting, marring, defacing, or destruction of any trees or other vegetation with the rights-of-way of roads on the SHS or within publicly owned rail corridors. The prohibition applies unless:

- The FDOT suspends the prohibition pursuant to a declaration of a state of emergency,
- The FDOT grants written permission before the removal or cutting of such trees or other vegetation, or
- Normal tree trimming is required to ensure the safe operation of utility facilities and such tree trimming is performed in accordance with the provisions of the FDOT's UAM.

The FDOT's authority to suspend the prohibition appears to be entirely within its discretion under a declared state of emergency unless, of course, suspension is in response to issuance by the Governor of an executive order or proclamation declaring a state of emergency which *orders* the FDOT to suspend the prohibition. The existing exception for written permission is unchanged, except for editorial revision to improve readability, as is the exception from permitting for normal tree trimming where such trimming is required to ensure safe operation of utility facilities and is performed in accordance with the FDOT's UAM.

The bill also requires the FDOT to adopt informational guidelines related to the removal process for debris from an emergency that is subject to an emergency declaration, including, but not limited to, a hurricane or a tropical storm.

The bill takes effect July 1, 2023.

### 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.

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<sup>7</sup> Section 337.405(2), F.S.

<sup>8</sup> Section 775.082(4)(b), F.S.

<sup>9</sup> Section 775.083(1)(e), F.S.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The FDOT would be required to adopt informational guidelines related to the removal process for debris from an emergency that is subject to an emergency declaration. The fiscal impact to the FDOT is indeterminate but likely insignificant.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 337.405 of 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 Transportation on February 14, 2023:**

The committee substitute restores the FDOT's authority to adopt rules to implement the entire section of law being amended (s. 337.405, F.S.), rather than just one paragraph, and clarifies the FDOT's responsibility with respect to guidelines for removal of debris from an emergency that is subject to an emergency declaration, by providing that such guidelines are informational.

B. Amendments:

None.