

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 Transportation

BILL: SB 108

INTRODUCER: Senator Rodriguez

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

DATE: February 13, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Vickers	TR	Pre-meeting
2.			CA	
3.			RC	

I. Summary:

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 bill also limits the FDOT's existing rulemaking authority, restricting its rules to the existing exception for normal tree trimming, where such trimming is required for safe operation of utility facilities, and the tree trimming is performed in accordance with the provisions of the FDOT's Utility Accommodation Manual.

Lastly, the FDOT is required to adopt 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)¹ or within publicly owned rail corridors unless prior written permission has been granted by the FDOT.²

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.”³

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.⁴

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 3.18.2.⁵
- 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.⁶ 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.

¹ “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.

² 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.

³ *Id.*

⁴ 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 6, 2023).

⁵ *Id.*, 3.18. *Vegetation Control*, at p. 23 of 44.

⁶ 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 8, 2023).

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

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.

The bill revises the FDOT's current rulemaking authority, limiting its rules to the exception for normal tree trimming required to ensure safe operation, where such tree trimming is performed in accordance with the provisions of the UAM. An applicable FDOT rule is already in place. Tree trimming which is not required to ensure safe operation of utility facilities or which is not performed in accordance with the FDOT's UAM constitutes a misdemeanor of the second degree, and a violator is punishable by a definite term of imprisonment not exceeding 60 days, plus a possible additional \$500 fine.

The bill also requires the FDOT to adopt 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.

⁷ Section 337.405(2), F.S.

⁸ Section 775.082(4)(b), F.S.

⁹ Section 775.083(1)(e), F.S.

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:

Unknown.

C. Government Sector Impact:

The FDOT would be required to review any rules adopted under the rulemaking authority in current s. 337.405, F.S., and may be required to revise other rules that cite that section of law as statutory authority.¹⁰

The FDOT would be required to adopt 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:

The bill removes the FDOT's authority to adopt rules implementing the provisions of the entire section (s. 337.405, F.S.), limiting rulemaking to the exception for normal tree trimming. That section currently serves as authority for other FDOT rules.

¹⁰ See, e.g., *supra* note 2.

To the extent that “guidelines” adopted by the FDOT (relating to the removal process for debris from an emergency subject to an emergency declaration) constitute a “rule,”¹¹ such “guidelines” may be subject to challenge.

VIII. Statutes Affected:

This bill substantially amends the following section of the Florida Statutes: 337.405.

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.

¹¹ “Rule” means each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule. The term also includes the amendment or repeal of a rule. Section 120.52(16), F.S.