

ENROLLED

CS/HB 1159

2019 Legislature

1  
 2 An act relating to private property rights; creating  
 3 s. 163.045, F.S.; prohibiting local governments from  
 4 requiring notices, applications, approvals, permits,  
 5 fees, or mitigation for the pruning, trimming, or  
 6 removal of trees on residential property if a property  
 7 owner obtains specified documentation; prohibiting  
 8 local governments from requiring property owners to  
 9 replant such trees; providing an exception for  
 10 mangrove protection actions; amending s. 163.3209,  
 11 F.S.; deleting a provision that authorizes electric  
 12 utilities to perform certain right-of-way tree  
 13 maintenance only if a property owner has received  
 14 local government approval; creating s. 70.002, F.S.;  
 15 creating a Property Owner Bill of Rights; requiring  
 16 county property appraisers to provide specified  
 17 information on their websites; providing an effective  
 18 date.

19  
 20 Be It Enacted by the Legislature of the State of Florida:

21  
 22 Section 1. Section 163.045, Florida Statutes, is created  
 23 to read:  
 24 163.045 Tree pruning, trimming, or removal on residential  
 25 property.--

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26           (1) A local government may not require a notice,  
 27 application, approval, permit, fee, or mitigation for the  
 28 pruning, trimming, or removal of a tree on residential property  
 29 if the property owner obtains documentation from an arborist  
 30 certified by the International Society of Arboriculture or a  
 31 Florida licensed landscape architect that the tree presents a  
 32 danger to persons or property.

33           (2) A local government may not require a property owner to  
 34 replant a tree that was pruned, trimmed, or removed in  
 35 accordance with this section.

36           (3) This section does not apply to the exercise of  
 37 specifically delegated authority for mangrove protection  
 38 pursuant to ss. 403.9321-403.9333.

39           Section 2. Section 163.3209, Florida Statutes, is amended  
 40 to read:

41           163.3209 Electric transmission and distribution line  
 42 right-of-way maintenance.—After a right-of-way for any electric  
 43 transmission or distribution line has been established and  
 44 constructed, no local government shall require or apply any  
 45 permits or other approvals or code provisions for or related to  
 46 vegetation maintenance and tree pruning or trimming within the  
 47 established right-of-way. The term "vegetation maintenance and  
 48 tree pruning or trimming" means the mowing of vegetation within  
 49 the right-of-way, removal of trees or brush within the right-of-  
 50 way, and selective removal of tree branches that extend within

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51 the right-of-way. The provisions of this section do not include  
 52 the removal of trees outside the right-of-way, which may be  
 53 allowed in compliance with applicable local ordinances. Prior to  
 54 conducting scheduled routine vegetation maintenance and tree  
 55 pruning or trimming activities within an established right-of-  
 56 way, the utility shall provide the official designated by the  
 57 local government with a minimum of 5 business days' advance  
 58 notice. Such advance notice is not required for vegetation  
 59 maintenance and tree pruning or trimming required to restore  
 60 electric service or to avoid an imminent vegetation-caused  
 61 outage or when performed at the request of the property owner  
 62 adjacent to the right-of-way, ~~provided that the owner has~~  
 63 ~~approval of the local government, if needed.~~ Upon the request of  
 64 the local government, the electric utility shall meet with the  
 65 local government to discuss and submit the utility's vegetation  
 66 maintenance plan, including the utility's trimming  
 67 specifications and maintenance practices. Vegetation maintenance  
 68 and tree pruning or trimming conducted by utilities shall  
 69 conform to ANSI A300 (Part I)-2001 pruning standards and ANSI  
 70 Z133.1-2000 Pruning, Repairing, Maintaining, and Removing Trees,  
 71 and Cutting Brush-Safety Requirements. Vegetation maintenance  
 72 and tree pruning or trimming conducted by utilities must be  
 73 supervised by qualified electric utility personnel or licensed  
 74 contractors trained to conduct vegetation maintenance and tree  
 75 trimming or pruning consistent with this section or by Certified

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76 Arborists certified by the Certification Program of the  
 77 International Society of Arboriculture. A local government shall  
 78 not adopt an ordinance or land development regulation that  
 79 requires the planting of a tree or other vegetation that will  
 80 achieve a height greater than 14 feet in an established electric  
 81 utility right-of-way or intrude from the side closer than the  
 82 clearance distance specified in Table 2 of ANSI Z133.1-2000 for  
 83 lines affected by the North American Electric Reliability  
 84 Council Standard, FAC 003.1 requirement R1.2. This section does  
 85 not supersede or nullify the terms of specific franchise  
 86 agreements between an electric utility and a local government  
 87 and shall not be construed to limit a local government's  
 88 franchising authority. This section does not supersede local  
 89 government ordinances or regulations governing planting,  
 90 pruning, trimming, or removal of specimen trees or historical  
 91 trees, as defined in a local government's ordinances or  
 92 regulations, or trees within designated canopied protection  
 93 areas. This section shall not apply if a local government  
 94 develops, with input from the utility, and the local government  
 95 adopts, a written plan specifically for vegetation maintenance,  
 96 tree pruning, tree removal, and tree trimming by the utility  
 97 within the local government's established rights-of-way and the  
 98 plan is not inconsistent with the minimum requirements of the  
 99 National Electrical Safety Code as adopted by the Public Service  
 100 Commission; provided, however, such a plan shall not require the

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101 planting of a tree or other vegetation that will achieve a  
 102 height greater than 14 feet in an established electric right-of-  
 103 way. Vegetation maintenance costs shall be considered  
 104 recoverable costs.

105 Section 3. Section 70.002, Florida Statutes, is created to  
 106 read:

107 70.002 Property Owner Bill of Rights.-Each county property  
 108 appraiser office shall provide on its website a Property Owner  
 109 Bill of Rights. The purpose of the bill of rights is to identify  
 110 certain existing rights afforded to property owners but is not a  
 111 comprehensive guide. The Property Owner Bill of Rights does not  
 112 create a civil cause of action. The Property Owner Bill of  
 113 Rights must state:

114  
 115 PROPERTY OWNER

116 BILL OF RIGHTS

117 This Bill of Rights does not represent all of your rights under  
 118 Florida law regarding your property and should not be viewed as  
 119 a comprehensive guide to property rights. This document does not  
 120 create a civil cause of action and neither expands nor limits  
 121 any rights or remedies provided under any other law. This  
 122 document does not replace the need to seek legal advice in  
 123 matters relating to property law. Laws relating to your rights  
 124 are found in the State Constitution, Florida Statutes, local  
 125 ordinances, and court decisions. Your rights and protections

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126 include:

127 1. The right to acquire, possess, and protect your  
128 property.

129 2. The right to use and enjoy your property.

130 3. The right to exclude others from your property.

131 4. The right to dispose of your property.

132 5. The right to due process.

133 6. The right to just compensation for property taken for a  
134 public purpose.

135 7. The right to relief, or payment of compensation, when a  
136 new law, rule, regulation, or ordinance of the state or a  
137 political entity unfairly affects your property.

138 Section 4. This act shall take effect July 1, 2019.

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1159 Private Property Rights  
**SPONSOR(S):** State Affairs Committee, La Rosa and others  
**TIED BILLS:** IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	12 Y, 3 N	Rivera	Miller
2) Commerce Committee	19 Y, 4 N	Smith	Hamon
3) State Affairs Committee	19 Y, 4 N, As CS	Rivera	Williamson

### SUMMARY ANALYSIS

Counties and municipalities develop and implement land use comprehensive plans and ordinances to manage growth within their jurisdictions. Comprehensive plans must be sensitive to private property rights and not inordinately burden property owners. The "Bert Harris, Jr., Private Property Rights Protection Act" entitles property owners to relief when government action inordinately burdens their existing use of real property or any vested right to a specific use of real property.

Local government vegetation and tree maintenance regulations vary but can require property owners to obtain permits before pruning, trimming, or removing any tree. Property owners with native mangrove trees on their property are subject to additional state or, in certain instances, local regulation. Electric utilities are also subject to federal requirements when maintaining vegetation in utility rights-of-way. Where a local government has no proper vegetation maintenance plan for electric utility rights-of-way, state law requires electric utilities to take certain action including providing a local government five business days' advance notice before performing any vegetation maintenance within a right-of-way unless the work is to restore service, avoid imminent outages, or upon request by an adjacent property owner who already has any required approval from the local government.

The bill prohibits local governments from requiring a permit, application, notice, fee, approval, or mitigation for the pruning, trimming, or removal of a dangerous tree on residential property upon documentation by a certified arborist or licensed landscape architect, and prohibits local governments from requiring a property owner to replant a tree that is maintained under the specified conditions. The bill does not affect authority delegated under the state's mangrove protection laws. The bill also allows a property owner adjacent to an electric utility right-of-way to request an electric utility perform vegetation maintenance in the right-of-way without approval from the local government.

Finally, the bill requires county property appraisers to post a Property Owner Bill of Rights on their websites, which lists a property owner's right to acquire, possess, and protect property; use and enjoy property; exclude others from property; dispose of property; due process; just compensation for property taken for a public purpose; and relief when a new state or local government law, rule, regulation, or ordinance unfairly affects property. The website must state the Bill of Rights is not comprehensive and does not represent all property rights under Florida law.

The bill may have a negative, insignificant fiscal impact to local governments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### Home Rule Authority

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>

##### Protection of Private Property Rights

The "Bert Harris Jr., Private Property Rights Protection Act" (Bert Harris Act) entitles private property owners to relief when a specific action of a governmental entity inordinately burdens the owner's existing use of real property or a vested right to a specific use of real property.<sup>6</sup> The Bert Harris Act recognizes that the inordinate burden, restriction, or limitation on private property rights as applied may fall short of a taking under the State Constitution or the U.S. Constitution and establishes a separate and distinct cause of action for relief or payment of compensation when a new law, rule, or ordinance of the state, or a political entity in the state, unfairly affects real property.<sup>7</sup> The Bert Harris Act applies to governmental entities, including the state and local governments, but does not apply to the U.S. government, federal agencies, or state or local government entities exercising formally delegated U.S. or federal agency powers.<sup>8</sup>

In addition to action that inordinately burdens a property right, an owner may seek relief when a government entity imposes a condition on the proposed use of the real property that amounts to a prohibited exaction.<sup>9</sup> A prohibited exaction occurs when an imposed condition lacks an essential nexus to a legitimate public purpose and is not roughly proportionate to the impacts of the proposed use that the governmental entity seeks to avoid, minimize, or mitigate.<sup>10</sup>

<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). *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(2), F.S.

<sup>7</sup> S. 70.001(1), F.S.

<sup>8</sup> S. 70.001(3)(c), F.S.

<sup>9</sup> S. 70.45(2), F.S.

<sup>10</sup> S. 70.45(1)(c), F.S.



The "Florida Land Use and Environmental Dispute Resolution Act" (Land Use Act) allows a land owner to request relief from a government entity's development order or enforcement action when the order or action is unreasonable or unfairly burdens the use of the owner's real property.<sup>11</sup> Parties in pending judicial proceedings may also use the dispute resolution process outlined in the Land Use Act if all parties agree and the court approves.<sup>12</sup>

### The Community Planning Act

State growth policies are managed under the State Comprehensive Plan.<sup>13</sup> Local governments manage local growth through comprehensive plans enforced by local land use ordinances.<sup>14</sup> A key principle guiding both state planning and local comprehensive plans is the protection of private property rights.<sup>15</sup>

The State Comprehensive Plan provides long-range policy guidance for the orderly social, economic, and physical growth of the state in a manner consistent with the protection of private property rights.<sup>16</sup> Under "The Community Planning Act," local governments create and adopt comprehensive plans which are sensitive to private property rights, have no undue restriction, and leave property owners free from government action that would harm their property or constitute an inordinate burden on their property rights under the Bert Harris Act.<sup>17</sup>

### *Local Comprehensive Plan Elements*

Local comprehensive plans are required to address a number of concepts including strategies for the orderly and balanced future land development of the area and procedures for monitoring and evaluating the plan's implementation.<sup>18</sup> Along with optional elements,<sup>19</sup> plans must include the following nine elements:

- Capital improvements;<sup>20</sup>
- Future land use plan;
- Intergovernmental coordination;
- Conservation;
- Transportation;
- Sanitary sewer, solid waste, drainage, potable water and aquifer recharge;
- Recreation and open space;
- Housing; and
- Coastal management (for coastal local governments).<sup>21</sup>

All local government land development regulations must be consistent with the local comprehensive plan.<sup>22</sup> Additionally, all public and private development, including special district projects, must be consistent with the local comprehensive plan.<sup>23</sup> However, plans cannot require any special district to undertake a public facility project that would impair the district's bond covenants or agreements.<sup>24</sup>

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<sup>11</sup> S. 70.51(3), F.S.

<sup>12</sup> S. 70.51(29), F.S.

<sup>13</sup> See ss. 186.002 and 187.101, F.S.

<sup>14</sup> S. 163.3167(1)(b), F.S.

<sup>15</sup> Ss. 163.3161(10) and 187.201(14)(a), F.S.

<sup>16</sup> S. 187.101(1) and (3), F.S. The plan's goals and policies must also be reasonably applied where they are economically and environmentally feasible and not contrary to the public interest.

<sup>17</sup> S. 163.3161(10), F.S.

<sup>18</sup> S. 163.3177(1), F.S.

<sup>19</sup> S. 163.3177(1)(a), F.S.

<sup>20</sup> S. 163.3177(3)(a), F.S. The capital improvements element must be reviewed by the local government on an annual basis.

<sup>21</sup> S. 163.3177(6)(a)-(g), F.S.

<sup>22</sup> S. 163.3194(1)(b), F.S.

<sup>23</sup> See ss. 163.3161(6) and 163.3194(1)(a), F.S.

<sup>24</sup> S. 189.081(1), F.S.

## Vegetation Management

### *Local Tree Pruning, Trimming, and Removal Regulations*

Currently, Florida has 67 counties and over 400 municipalities.<sup>25</sup> Local governments may have tree ordinances that specify the species that must be used in a given area depending on the land use, require a permit prior to trimming or removing trees, or protect certain trees because they are considered an important community resource.

For example, in Broward County the removal of any historical tree<sup>26</sup> 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.<sup>27</sup> Furthermore, municipalities within Broward County may adopt and enforce their own tree preservation regulations in addition to Broward County's tree regulations.<sup>28</sup> County tree regulations may be suspended during emergency conditions caused by hurricanes or other natural disasters by the county administrator.<sup>29</sup>

Orange County requires a permit or authorization to remove a protected tree<sup>30</sup> unless an exemption or exception applies. The law does not restrict tree trimming or maintenance but encourages property owners to practice proper trimming habits that avoid the need for "severe" trimming of any tree.<sup>31</sup> Permits are not required for trees located on single-family residential lots equal to or less than two acres with an occupied residential dwelling.<sup>32</sup> Permitting requirements are waived during county-declared emergencies.<sup>33</sup>

### *Mangrove Trimming and Preservation Act*

Florida has three native species of mangrove trees growing along its coastline, which can be harmed or killed if not trimmed properly.<sup>34</sup> The "1996 Mangrove Trimming and Preservation Act" (Act)<sup>35</sup> requires the Department of Environment Protection (DEP) to regulate the trimming and alteration of mangroves statewide, except where DEP has delegated its authority to local governments that meet certain requirements and request such delegation.<sup>36</sup> The Act prohibits mangrove trimming or alteration without

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<sup>25</sup> See ch. 7, F.S.; *The Local Government Formation Manual 2018-2020*, Appendices B and E, available at <https://www.myfloridahouse.gov/Sections/Documents/loadoc.aspx?PublicationType=Committees&CommitteeId=3025&Session=2019&DocumentType=General Publications&FileName=2018-2020 Local Government Formation Manual Final.pdf> (last visited Mar. 8, 2019).

<sup>26</sup> Ch. 27, art. XIV, s. 404, 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.

<sup>27</sup> *Id.* at s. 405. Nuisance trees are exempt from the prohibitions in the tree preservation ordinances. *Id.* at 406. A "nuisance tree" is defined to be one of 10 identified trees including the *Schinus terebinthifolius* (Brazilian pepper tree/Florida holly). *Id.* at 404.

<sup>28</sup> *Id.* at s. 407. Municipalities may regulate exclusively within their jurisdictions upon certification by Broward County with some exceptions.

<sup>29</sup> *Id.* at 406.

<sup>30</sup> Protected trees are native trees in certain zones and include Red maple, Red buckeye, and Pignut hickory trees. See Ch. 15, Art. VIII, ss. 283 and 301(e), Orange County Code of Ordinances.

<sup>31</sup> Ch. 15, Art. VIII, s. 278, Orange County Code of Ordinances.

<sup>32</sup> Ch. 15, Art. VIII, s. 279(a), Orange County Code of Ordinances.

<sup>33</sup> Ch. 15, Art. VIII, s. 279(b), Orange County Code of Ordinances.

<sup>34</sup> See 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](https://floridadep.gov/sites/default/files/Mangrove-Homeowner-Guide-sm_0.pdf) (last visited Apr. 18, 2019).

<sup>35</sup> Ch. 95-299, s. 1, Laws of Fla. See also ss. 403.9321-403.9333, F.S.

<sup>36</sup> See s. 403.9324, F.S. Currently, authority has been delegated to the local governments of Broward, Hillsborough, Miami-Dade, and Pinellas Counties; the City of Sanibel; and the Town of Jupiter Island. See Florida Department of Environmental Protection, *Mangrove Trimming - Delegated Local Governments*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/mangrove-trimming-delegated-local> (last visited Apr. 18, 2019).

a permit issued by DEP or a delegated local government,<sup>37</sup> unless the trimming or alteration falls within certain exceptions.<sup>38</sup>

### *Electric Transmission and Distribution Line Right-of-Way Maintenance*

Tree contact with transmission lines is a leading cause of electric power outages and a common cause of blackouts.<sup>39</sup> Vegetation maintenance plans are important to electric utility providers in order to avoid tree-related outages and are regulated at the local, state, and federal level. The Federal Energy and Regulatory Commission (FERC) requires utilities to follow approved reliability standards for proper vegetation management around power lines.<sup>40</sup> Florida requires electric utility vegetation maintenance plans to follow ANSI A300 Part 1,<sup>41</sup> which provides generally accepted pruning standards for tree, shrub, and other woody plant maintenance and ANSI Z133.1-2000,<sup>42</sup> which provides comprehensive safety guidance for arborists for vegetation maintenance within an electric utility right-of-way.<sup>43</sup> Florida also requires maintenance activities to be supervised by qualified utility personnel, licensed contractors under the utility's control, or certified arborists.<sup>44</sup>

Absent a local vegetation maintenance plan, local governments are authorized to request a meeting with a utility provider to discuss the utility's vegetation maintenance plan, including the utility's trimming specifications and maintenance practices. However, local governments are restricted in adopting any ordinances or regulations that regulate plant height and width requirements and may not require permits or approvals for vegetation maintenance, tree pruning, or trimming within the right-of-way.<sup>45</sup>

State law requires a utility to give five business days' advance notice to a local government official prior to conducting vegetation maintenance activities within a right-of-way. No advance notice is required for service restoration, to avoid an imminent vegetation caused outage, or when performed at the request of the property owner adjacent to the right-of-way, provided the owner already has any required approval from the local government.<sup>46</sup>

Local governments may develop and adopt a vegetation maintenance plan to govern vegetation maintenance in an electric utility right-of-way. The plan must be developed with input from the electric utility and must not be inconsistent with minimum requirements adopted by the Public Service Commission. The plan cannot require the utility to plant trees or other vegetation that will achieve a height greater than 14 feet in the right-of-way.<sup>47</sup> If a local government adopts a plan, the state requirements do not apply to the right-of-way.

<sup>37</sup> S. 403.9324(6), F.S.

<sup>38</sup> See s. 403.9328, F.S.

<sup>39</sup> Federal Energy Regulatory Commission (FERC), *Tree Trimming & Vegetation Management*, <https://www.ferc.gov/industries/electric/indus-act/reliability/vegetation-mgt.asp> (last visited Mar. 11, 2019).

<sup>40</sup> FERC, *Frequently Asked Questions*, <https://www.ferc.gov/resources/faqs/tree-vcget.asp?csrt=3277879312755443250> (last visited Mar. 11, 2019).

<sup>41</sup> Tree Care Industry Association, *ANSI A300 Standards*,

[https://www.tcia.org/TCIA/BUSINESS/ANSI\\_A300\\_Standards\\_/TCIA/BUSINESS/A300\\_Standards/A300\\_Standards.aspx?hkey=202ff566-4364-4686-b7c1-2a365af59669](https://www.tcia.org/TCIA/BUSINESS/ANSI_A300_Standards_/TCIA/BUSINESS/A300_Standards/A300_Standards.aspx?hkey=202ff566-4364-4686-b7c1-2a365af59669) (last visited Mar. 11, 2019).

<sup>42</sup> Tree Care Industry Association, *ANSI Z133 2017*,

[https://tcia.org/TCIA/News/Business/ANSI\\_Z133\\_2017\\_Revision\\_Overview.aspx](https://tcia.org/TCIA/News/Business/ANSI_Z133_2017_Revision_Overview.aspx) (last visited Mar. 11, 2019).

<sup>43</sup> "Right-of-way" means land necessary for the construction and maintenance of a connected associated linear facility, such as a railroad line, pipeline, or transmission line as owned by or proposed to be certified by the applicant. S. 403.503(11), F.S.

"Transmission line right-of-way" means land necessary for the construction, operation, and maintenance of a transmission line. S. 403.522(23), F.S.

<sup>44</sup> S. 163.3209, F.S.

<sup>45</sup> S. 163.3209, F.S. "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."

<sup>46</sup> S. 163.3209, F.S.

<sup>47</sup> S. 163.3209, F.S. The Florida House of Representatives Select Committee on Hurricane Response and Preparedness recommended repealing the statutory exception to statewide standards for vegetation management within power line rights-of-way for local governments that adopt plans that differ from the statutory standards. Select Committee on Hurricane Response and Preparedness, *The*

State law does not supersede or nullify the terms of any specific franchise agreements between an electric utility and a local government and must not be construed to limit a local government's franchising authority. In addition, 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, control over the statute.<sup>48</sup>

### Effect of Proposed Changes

The bill prohibits local governments from requiring a permit, application, notice, fee, approval, or mitigation for the pruning, trimming, or removal of a tree on residential property that has been certified to present a danger to persons or property. The certification must be provided by an arborist certified by the International Society of Arboriculture or a licensed landscape architect. The bill prohibits a local government from requiring a property owner to replant a tree that was maintained according to these provisions. The bill does not apply to authority delegated to local governments under the Mangrove Trimming and Preservation Act.

The bill removes the requirement that a property owner receive approval by the local government before requesting an electric utility to maintain vegetation in the adjacent utility right-of-way.

Finally, the bill requires county property appraisers to post a Property Owner Bill of Rights on the appraiser's website in the form provided. The required form is not comprehensive and must state on the website that it does not represent all property rights under Florida law. The form must list the following seven property rights:

- The right to acquire, possess, and protect your property.
- The right to use and enjoy your property.
- The right to exclude others from your property.
- The right to dispose of your property.
- The right to due process.
- The right to just compensation for property taken for a public purpose.
- The right to relief, or payment of compensation, when a new law, rule, regulation, or ordinance of the state or a political entity unfairly affects your property.

### B. SECTION DIRECTORY:

- Section 1. Creates s. 163.045, F.S., prohibiting local governments from requiring notices, applications, permits, fees, approvals, or mitigation for tree maintenance in certain situations.
- Section 2. Amends s. 163.3209, F.S., revising an exception to electric utilities providing advance notice to local governments.
- Section 3. Creates s. 70.002, F.S., requiring county property appraisers to post a Property Owner Bill of Rights on their websites.
- Section 4. Provides an effective date of July 1, 2019.

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Florida House of Representatives, *Select Committee on Hurricane Response and Preparedness Final Report* at 45 (January 16, 2018), <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2978&Session=2018&DocumentType=General Publications&FileName=SCHRP - Final Report online.pdf> (last visited Mar. 11, 2019).

<sup>48</sup> *Id.*

## 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:

None.

2. Expenditures:

Indeterminate. There may be a negative fiscal impact associated with prohibiting a local government from requiring a fee, permit, or fine for the maintenance or removal of trees in certain circumstances. In addition, there may be a negative fiscal impact on local governments to update county property appraiser websites with the required Property Owner Bill of Rights form language.

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

There may be a positive fiscal impact on residential property owners who are not required to obtain permits for tree maintenance in specified circumstances or replace removed trees.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill prohibits local governments from requiring fees for the removal or maintenance of trees in specified instances and requires each county property appraiser to post the Property Owners Bill of Rights on their respective websites. However, an exemption may apply. Laws having an insignificant fiscal impact are exempt from the requirements of Art. VII, s. 18 of the Florida Constitution.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

The bill neither provides authority nor requires rulemaking by executive branch agencies.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On April 18, 2019, the State Affairs Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removed certain conditions required to perform the residential tree maintenance specified in the bill, authorized additional professionals to certify the required conditions, and clarified the bill does not apply to mangrove trees.

This analysis is drafted to the committee substitute as approved by the State Affairs Committee.

# The Florida Senate

## CS/HB 1159: Private Property Rights

GENERAL BILL by State Affairs Committee ; La Rosa ; (CO-INTRODUCERS) Sabatini

Private Property Rights; Prohibits local governments from requiring notices, applications, approvals, permits, fees, or mitigation for pruning, trimming, or removal of trees on residential property if property owner obtains specified documentation; prohibits local governments from requiring property owners to replant such trees; provides exception for mangrove protection actions; deletes provision that authorizes electric utilities to perform certain right-of-way tree maintenance only if property owner has received local government approval; creates Property Owner Bill of Rights; requires county property appraisers to provide specified information on their websites.

**Effective Date:** 7/1/2019

**Last Action:** 4/26/2019 House - Ordered enrolled -HJ 1011

**Bill Text:** [PDF](#)

### Bill History


Date	Chamber	Action
2/28/2019	House	• Filed
3/4/2019	House	• Referred to Local, Federal and Veterans Affairs Subcommittee; Commerce Committee; State Affairs Committee -HJ 119
3/5/2019	House	• Introduced -HJ 119
3/15/2019	House	• On Committee agenda-- Local, Federal and Veterans Affairs Subcommittee, 03/19/19, 8:00 am, 12 HOB
3/19/2019	House	• Favorable by Local, Federal and Veterans Affairs Subcommittee; YEAS 12 NAYS 3 -HJ 447 • Now in Commerce Committee -HJ 447

Date	Chamber	Action
4/2/2019	House	• On Committee agenda-- Commerce Committee, 04/04/19, 8:00 am, Webster Hall
4/4/2019	House	• Favorable by Commerce Committee; YEAS 19 NAYS 4 -HJ 591 • Now in State Affairs Committee -HJ 591
4/16/2019	House	• On Committee agenda-- State Affairs Committee, 04/18/19, 8:00 am, Morris Hall
4/18/2019	House	• CS by- State Affairs Committee; YEAS 19 NAYS 4 -HJ 758
4/18/2019	House	• Pending review of CS -under Rule 7.18(c)
4/18/2019	House	• CS by State Affairs Committee read 1st time -HJ 756
4/20/2019	House	• Placed on Calendar -HJ 765
4/22/2019	House	• Placed on Special Order Calendar, 04/25/19
4/25/2019	House	• Read 2nd time -HJ 878 • Read 3rd time -HJ 878 • CS passed; YEAS 77 NAYS 36 -HJ 878
4/25/2019	Senate	• In Messages
4/25/2019	Senate	• Referred to Community Affairs; Judiciary; Rules -SJ 511 • Received -SJ 511
4/26/2019	Senate	• Withdrawn from Community Affairs; Judiciary; Rules -SJ 568 • Placed on Calendar, on 2nd reading
4/26/2019	Senate	• Substituted for <u>CS/CS/SB 1400</u> -SJ 568 • Read 2nd time -SJ 568 • Read 3rd time -SJ 568, 578 • CS passed; YEAS 22 NAYS 16 -SJ 578
4/26/2019	House	• Ordered enrolled -HJ 1011

## Related Bills

Bill Number	Subject	Filed By	Relationship	Last Action and Location	Track Bills
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Bill Number	Subject	Filed By	Relationship	Last Action and Location	Track Bills
S 1400 (c2)	Private Property Rights	Albritton	Similar	Last Action: 4/26/2019 S Laid on Table, refer to CS/HB 1159 -SJ 568	

## Bill Text

Version	Posted	Format
H 1159 Filed	2/28/2019 1:06 PM	<a href="#">PDF</a>
H 1159 c1	4/18/2019 3:58 PM	<a href="#">PDF</a>
H 1159 er	4/29/2019 9:18 AM	<a href="#">PDF</a>

## Committee Amendments

H 1159 Filed				
Amendment	Sponsor	Filed	Last Committee Action	Format
751711 - Amendment Remove lines 20-37 and insert:	La Rosa	4/17/2019 9:40 AM	Adopted without Objection 4/18/2019	<a href="#">PDF</a>

## Floor Amendments

H 1159 c1				
Amendments	Sponsor	Filed	Last Floor Action	Format
516180 - Amendment Delete lines 22 - 38 and insert:	Albritton	4/25/2019 8:16 PM	Senate: Withdrawn 4/26/2019	<a href="#">Web</a> <a href="#">Page</a> <a href="#">PDF</a>

## Bill Analyses

Type	Analysis	Author	Posted	Format
Bill Analysis	H 1159	Local, Federal and Veterans Affairs Subcommittee (Post-Meeting)	3/19/2019 10:58 AM	<a href="#">PDF</a>

Type	Analysis	Author	Posted	Format
Bill Analysis	H 1159	Commerce Committee (Post-Meeting)	4/4/2019 5:41 PM	<a href="#">PDF</a>
Bill Analysis	H 1159	State Affairs Committee (Post-Meeting)	4/18/2019 3:50 PM	<a href="#">PDF</a>

## Vote History - Committee

No Committee Vote History Available

## Vote History - Floor

Vote	Date	Chamber	Result
H 1159 c1	4/25/2019 3:37 PM	House	<a href="#">77 Yeas - 36 Nays</a>
H 1159 c1	4/26/2019 4:25 PM	Senate	<a href="#">22 Yeas - 16 Nays</a>

## Citations - Statutes (3)

Citation	Catchline	Location in Bill Bill Help	Location In Bill Help
70.002		<a href="#">Page 5</a> (PDF)	
163.045		<a href="#">Page 1</a> (PDF)	
<a href="#">163.3209</a>	Electric transmission and distribution line right-of-way maintenance.	<a href="#">Page 2</a> (PDF)	

## Citations - Constitution (0)

No Constitutional citations.

## Citations - Chapter Law (0)

No Chapter Law citations.

Disclaimer: The information on this system is unverified. The journals or printed bills of the respective chambers should be consulted for official purposes.

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