



## Proposed Tree Care Licensing Law Position Paper

### Executive Summary:

#### *What the Bill Provides.*

- The objective of this bill is to prevent the (average) **30 fatalities a year in Florida** (and an even greater number of documented and undocumented injuries) in the tree and landscape business.
- The proposed bill requires tree care workers in Florida to adhere to existing industry standards as outlined in the American National Standards Institute (ANSI) Standards A-300 Parts 1 - 9 and the ANSI Z133 Safety Standard for Arboricultural Operations.
- To accomplish this, the resulting law will:
  - Create a licensing board under the Department of Agriculture and Consumer Services.
  - Require licenses for professionals who conduct tree work aerially (i.e., off the ground).
  - Require companies who conduct aerial tree work to carry workers' compensation insurance and general liability insurance.
  - Require licensed professionals to remain current with regard to advances in climbing/safety equipment and tree care practices through continuing education.
- The proposed law is designed to be inclusive and limit barriers to entry by:
  - Providing two levels of licensure (including a tree care practitioner designation, which has no testing requirement and covers the primary services offered by early-career professionals).
  - Exempting many existing practitioners from testing requirements.
  - The proposed law also provides exemptions for:
    - Public utilities (e.g., line clearance)
    - Agricultural activities (e.g., tree and palm nurseries, citrus, etc.)
    - Ground-based landscape construction or maintenance activities (e.g., general landscaping)
    - Government employees in the performance of their duties
- Finally, the proposed law recognizes the need for rapid post-hurricane recovery and allows for the waiver of license requirements during declared emergencies.

#### *Why Florida Needs This Law.*

- In a special report on the tree care fatalities and injuries, the Occupational Health and Safety Administration (OSHA) reported that "The tree care industry's fatality rate for tree care operations make tree trimming and pruning among the most hazardous occupations in the country." The top fatal events identified by OSHA include:
  - Falls (e.g., from tree or aerial lift)
  - Electrocutions (e.g., while working on trees near power lines)
  - Struck by (e.g., tree branch or falling equipment)
  - Chainsaw lacerations
  - Caught in/pulled through chipper
- Based on research by leading tree-worker safety expert, Dr. John Ball, using data from the Bureau of Labor Statistics, determined that:
  - Florida is tied with California as having the greatest number of tree care fatalities in the United States (though California has nearly double the population)

- Florida also has 122 (reported) significant and debilitating tree care injuries annually.
- The seven states with tree care licensing have lower incident rates and lower fatality rates; this includes Louisiana, a state with licensure, that **has a recorded fatality rate that is 1/10<sup>th</sup> of Florida's fatality rate.**

### ***Who is Florida ISA?***

The Florida Chapter of the International Society of Arboriculture (Florida ISA) is a non-profit membership association that provides services to the tree care industry in Florida. Its mission is to promote the scientifically based practice of arboriculture (i.e. tree care) through research, education, and public awareness.

### **Enclosures:**

- Full Florida ISA Position Paper
- Proposed Licensure bill
- Review of Tree Care Incidents in Florida by Dr. John Ball
- OSHA Tree Care Issues - published March 2020



## Proposed Tree Care Licensing Law Position Paper

### *Why Florida Needs This Law.*

Florida has a disproportionate number of fatalities and morbidity for tree care workers as compared to the rest of the United States. While the state accounts for 6% of the country's population, it is associated with 11% of the country's tree care-specific fatalities. This places it on par with California, a state with nearly double the population. Together, Florida and California lead the nation in this grim statistic.

In their March 2020 *Issues Document*, OSHA reported that "The tree care industry's fatality rate for tree care operations make tree trimming and pruning among the most hazardous occupations in the country." This same document also stated "the tree care industry has a high rate of fatalities (estimated at 1 in 1,000 tree trimmers). This fatality rate is nearly 30 times higher than the national average for all workers." Each year, 75 tree care workers die in the United States while trying to make their livelihood. This equals **1 to 2 deaths every week**. Causes of death can be quite jarring and range from electrocution (the primary cause of tree worker fatalities in Florida) to falls to being hit by passing vehicles at roadside worksites.

In the supporting document *A Review of Tree Operation Incidents in Florida* (see below), Dr. John Ball reports that Florida averages "30 fatal incidents per year for the landscape services sector<sup>1</sup>". Florida also has 122 non-fatal injuries annually. The majority of reported injuries are not minor - they are life-altering lacerations from chain saws, head injuries from dropping tree parts, or loss of mobility associated with falls from aerial work positions. Lesser injuries are likely far more common and reported at lower frequency.

As an association that represents the tree care industry, these statistics are entirely unacceptable. Florida ISA has worked hard over the last 25 years using our voluntary certification and education efforts to remedy this problem, however, we only impact about 20% of the tree care industry in Florida. It is clear that real change cannot occur without government help.

We need Florida government to help us help ourselves solve this horrendous problem.

This proposed bill does not create barriers to employment in the tree care industry in Florida. All existing and future tree care practitioners can continue to practice. This bill will require individuals and companies who practice tree care for and on behalf of the public to:

- Carry general liability and workers compensation insurance (consistent with current Florida exemption law) to protect customers and employees
- Follow safe work practices and proper tree care standards as provided for in ANSI Standards A-300 Parts 1 - 9 and the ANSI Z133 Safety Standard for Arboricultural Operations.
- Maintain a license to facilitate compliance with this new tree care law.
- Receive continuing education.

---

<sup>1</sup> Tree care accidents reports are often intermixed with those of the green industry in general.

### ***A Brief Summary Of The Law.***

The proposed law has two main objectives. First, it is intended to reduce the fatalities and debilitating injuries that disproportionately affect the tree care industry in Florida. Secondly, the proposed law seeks to improve the protection of tree owners and the quality of tree care provided to Florida tree owners and ensure that the professionals they hire have adequate insurance to offset the risks associated with tree work.

The proposed law creates a licensing board under the Department of Agriculture and Consumer Services to oversee a state-mandated license for professionals engaged in aerial tree work. This law will not impact individuals who work with trees from the ground (e.g., landscapers) as this work is inherently less risky and less specialized. Similarly, it will not impact allied industries that manage trees as part of their normal operations (see exemptions section below).

Recognizing that aerial tree work itself ranges in complexity and knowledge requirements, the proposed law has two different license levels with graduated eligibility requirements. Many practitioners operate successful tree care companies that focus solely on tree pruning and the removal of trees. These professionals will be able to obtain licensure given their existing experience, proof of adequate insurance, and completion of an online or in-person course on safe work practices and industry standards.

For more specialized tree care practices related to tree health and long-term viability (e.g., installation of tree support systems, disease management and diagnosis, etc.), a more advanced level of license will be available. To obtain the more advanced license, practitioners will need to pass an exam as approved by the board. This requirement will be familiar to many who already engage in these activities, as the state has 1600 tree care practitioners who voluntarily sat for the International Society of Arboriculture (ISA) Certified Arborist examination as a means of distinguishing themselves amongst their peers and potential clientele.

In addition to the individual requirements specific to each of the two levels of licensure noted above, several key commonalities will exist for this program. First, regardless of the level of licensure pursued, tree care companies who perform aerial tree work will need to show proof that their workers are covered by workers' compensation insurance that is in compliance and consistent with current Florida workers compensation exemption law. It is an unfortunate reality that, despite the inherent risk and physical demands associated with aerial tree work, all-too-many companies operate without this critical safety net for their employees. Lack of this insurance and the nature of tree care injuries puts many Florida tree owners in considerable jeopardy.

Moreover, tree care companies subject to this law will also need to offer proof of generally liability insurance to the board and their clients. Accidents happen during tree work. Sadly, these mishaps can result in injury, death, or property damage (both the client's property and the property of his/her/their neighbors). State licensure will assure Florida residents and businesses that the professionals they hire have the needed protections in place to cover any losses or damages associated with a tree care-related incident.

Finally, all licensed arborists will be required to maintain a record of continuing education. Currently practitioners in the state have a wealth of options for staying current regarding advances in safety and the science of tree care. Face-to-face training is available through the Florida ISA, the University of Florida Extension, and third-party training firms. A similar abundance of online training is available

given the current pandemic. Free and for fee options are available. At the core of the continuing education requirements will be and adherence to the latest American National Standard Institute ANSI Z133 (safety) and ANSI A300 (practice) standards for tree care. The law will provide for enforcement provisions of the above requirements, as well as an appeals process for individuals who fail to maintain minimum compliance.

### ***Who Is Exempt From This Law?***

Currently, the following industries, which conduct some tree care work as part of their normal operations, are exempted in the draft version of the proposed bill:

- Public utilities (e.g., line clearance)
- Agricultural activities (e.g., tree and palm nurseries, citrus, etc.)
- Ground based landscape construction or maintenance activities (e.g., general landscaping)
- Government employees in the performance of their duties

In addition to these allied industries, we recognize that rapid response and recovery are needed during times of emergency such as hurricanes. As such, the law provides for a waiver for communities engaged in post-storm response. This will allow professionals from outside the State of Florida to assist local tree care workers as they work to bring a sense of normalcy back to the Florida's residents and communities.

### ***Attachments Explained.***

As part of this information package, you will find a report written by Dr. John Ball. Dr. Ball is a distinguished professor and tree worker safety expert at the University of South Dakota. He has tracked and documented tree care-related incidents across the United States throughout much of his career. In an attempt to quantify the human loss associated with tree care fatalities and injuries, Florida ISA asked Dr. Ball to prepare an assessment of tree care workplace incidents in the State of Florida. The report is included below, following the proposed bill. Additional supporting documentation includes a summary of a special report published this year (March 2020) by the Occupational Safety and Health Administration (OSHA). Both of these reports were referenced when preparing this position paper.

### ***Who Is Florida ISA?***

The Florida Chapter of the International Society of Arboriculture (Florida ISA) is a non-profit membership association that provides services to the tree care industry in Florida. We provide tree care professionals in Florida a voluntary tree care certification program, 22 continuing education opportunities state-wide, industry newsletters, research grants program, specialty license plate and more. Florida ISA has 1600 members and 2000 Certified Arborists. Florida ISA is also an advocate and serves as the voice for the tree care industry in Florida.

In our 25 year history Florida ISA has gifted the University of Florida with nearly 1 million dollars in support of arboriculture faculty and tree research. The funding for these gifts have come from our Tree-Are-Cool specialty license plate, in fact 80% of all of our license plate revenue goes to the University of Florida. Florida ISA has also provided more than \$500,000 in other arboriculture research grants in a wide range of topics. Remarkably Florida ISA has been the sole source of research dollars to find the source and cure for Lethal Bronzing (LB). LB is a fatal disease of numerous palm species in Florida and Texas, including the state tree of Florida, the sabal palm.

# Proposed Tree Care Licensure Bill

Bill number (xxxx)

A bill to be entitled

An act relating to arboriculture; creating ch. 598, F.S.;

providing a short title; providing purpose statement;

providing exemptions from requirements of chapter; providing definitions;

proving an effective date.

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

Section 1. Chapter 598, Florida Statutes, creating

sections 598.001, 598.002, 598.003, 598.004, 598.005, 598.006,

598.007, 598.008, 598.009, 598.010, 598.011, 598.012, 598.013,

598.014, 598.015, 598.016, 598.017, 598.018, 598.019, 598.020, 598.021, 598.022, 598.023, and

598.024, 598.025 is created to read:

## **Chapter 598**

### **PROFESSIONAL TREE CARE**

#### **598.001 Short title.**

This chapter may be cited as the "Florida Arborist and Tree Care Practitioners Licensing Act."

#### **598.002 Purpose.**

The Legislature recognizes that tree care services are consistently ranked as one of the most hazardous work activities. The Legislature further recognizes the potential hazards to life and property which can arise from untrained tree care personnel. In order to provide safety for workers engaged in tree care services, to enhance the safety of its residents, and provide for the protection of trees and property, it is declared to be the public policy of the state that, any person practicing or offering to practice tree care services in this state shall meet the requirements of this chapter:

#### **598.003 Definitions relative to licensing of arborists, tree care practitioners.**

For the purposes of this chapter:

“Board” is defined as the Florida Board of Tree Experts established pursuant to 598.004 of this act.

“Licensed Tree Care Practitioner (LTCP)” is defined as a person licensed to provide tree care practitioner services in the State. pursuant to 598.008 subsection b.

“Licensed Florida Arborist (LFA)” is defined as a person licensed to provide arboricultural services in this State. pursuant to 598.008 subsection a.

“Tree care practitioner services” is defined as and includes tree pruning, repairing, or removal, removal, and stump grinding or removal.

“Tree care services” is defined as tree care practitioner services and arboricultural services as established by this act.

“Arboricultural services,” unless otherwise exempted in this chapter, is defined as tree pruning,

repairing, or removal, stump grinding or removal, tree establishment, fertilization, cabling and bracing, lightning protection, consulting, diagnosis, and treatment of tree problems or diseases, tree management during site planning and development, tree assessment and risk management, and application of pesticides or any other form of tree maintenance.

#### **598.004 Florida Board of Tree Experts.**

There is established in the Department of Agriculture and Consumer Services the Florida Board of Tree Experts. The board shall consist of nine members, including the Commissioner of the Department of Agriculture and Consumer Services or the commissioner's designee, who shall serve ex officio, and eight members, appointed by the commissioner as follows: five shall be Licensed Florida Arborists, two shall be Licensed Tree Care Practitioners, and one shall possess knowledge of arboriculture or forestry, including urban forestry. The initial Licensed Florida Arborist and Licensed Tree Care Practitioner members of the board first appointed need not be licensed until 180 days following the promulgation of initial regulations by the board to carry out the provisions of this act. Thereafter, the members of the board subsequently appointed shall be licensed before appointment. Three of the initial Licensed Florida Arborist members of the board of tree experts shall be appointed for a term of three years, and one of the initial Licensed Tree Care Practitioners shall be appointed for a term of three years; the remaining two initial Licensed Florida Arborists and the remaining initial Licensed Tree Care Practitioner shall be appointed for a term of two years; and the initial member possessing knowledge of arboriculture or forestry shall be appointed for a term of one year. Thereafter, all members appointed shall serve for terms of three years or until their successors are appointed and qualified. Vacancies shall be filled for the unexpired terms only.

#### **598.005 Board, officers, meetings, compensation.**

The board shall annually elect from among its members a chairman and a vice- chairman. The board shall meet at least four times per year and may hold additional meetings as necessary to discharge its duties. A majority of the total authorized membership of the board may exercise any of the powers of the board at any meeting. The members of the board shall serve without compensation, but the board may, within the limits of funds appropriated or otherwise made available to it, reimburse members for actual expenses necessarily incurred in the discharge of their official duties, according to rules and regulations promulgated by the Commissioner of Agriculture and Consumer Services.

#### **598.006 Duties of board.**

The board shall:

Review the qualifications of an applicant for licensure under the act;

Establish standards for examinations for licensure;

Issue and renew licenses and assess fees therefor;

Establish standards by regulation, which shall include, but not be limited to, the appropriate standards of the American National Standards Institute (ANSI), and any related standards and best management practices;

Suspend or revoke licenses or registrations for violations of the act;

Maintain a registry of licensees;

Adopt a canon of professional ethics;

Adopt such regulations as may be necessary to effectuate the purposes of the act;

Establish fees by regulation for examinations, applications for licensure, and license renewals. The fees shall be sufficient to defray expenses incurred by the board in the performance of its duties under the act; and

Conduct such worksite inspections as may be necessary to enforce the provisions of this act; and

Maintain a registry of businesses engaged in tree care services and charge a fee therefor.

**598.007 Development, designation of examinations to determine qualification.**

The board shall develop an examination or designate examinations to evaluate the knowledge, ability, and fitness of applicants to perform as Licensed Florida Arborists, and shall administer the examinations at least semi-annually at times and places to be determined by the board. The board shall provide for adequate written notice of the time and place of the examinations. An applicant who fails an examination may not retake the examination earlier than three months following the initial examination. There shall be no limitation on the number of times an examination may be taken. All licenses shall be issued on a biennial basis. A person may seek renewal of a license upon submission of a renewal application and the payment of a renewal fee established by the board. If a license expires without being renewed, the license may be renewed within one year of expiration upon the payment of a prorated fee. The determination of the board as to an applicant's qualifications for any examination shall constitute final agency action.

**598.008 Licensure required for Licensed Florida Arborist, Licensed Tree Care Practitioner.**

a. No person shall present himself to the public as a Licensed Florida Arborist or use the designation "LFA," without licensure by the board. A person shall not be eligible for licensure pursuant to this subsection until the final promulgation of initial regulations by the board to carry out the provisions of this act. A candidate for licensure shall:

be at least 18 years of age;

be of good moral character;

(i) be a graduate from a four-year college with a degree in forestry, arboriculture, ornamental horticulture, natural resources, or any other curriculum approved by the board and have been employed in professional tree care full-time for a period of at least one year preceding the date of his/her/their licensure; or

(ii) have completed two years of college in a curriculum approved by the board, and have been continuously employed full-time in the practice of arboriculture for a period of at least three years preceding the date of his application for licensure; or

(iii) be continuously employed full-time in the practice of arboriculture for at least five years immediately preceding the date of application for licensure; or

(iv) have maintained an industry credential approved by the board for at least 3 years immediately preceding the date of application for licensure;

and except as provided in subsection c. of this section, have passed an examination established or designated by the board.



b. No person shall present himself to the public as a Licensed Tree Care Practitioner or use the designation "LTCP," without licensure by the board. A person shall not be eligible for licensure pursuant to this subsection until the final promulgation of initial regulations by the board to carry out the provisions of this act. A candidate for licensure shall:

be at least 18 years of age;

be of good moral character;

(i) be a graduate from a four-year college with a degree in arboriculture or an equivalent major field of study, and have been continuously employed full-time in the practice of arboriculture for a period of at least one year preceding the date of his application for licensure; or

(ii) be a graduate from a two-year college with a degree in arboriculture or an equivalent major field of study, and have been continuously employed full-time in the practice of arboriculture for a period of at least one year preceding the date of his application for licensure; or

(iii) be continuously employed full-time in the practice of arboriculture for at least three years preceding the date of his application for licensure; or

(iv) have maintained an industry credential approved by the board for at one year immediately preceding the date of application for licensure;

and take a mandatory course on pruning, tree worker safety, and insurance requirements as established by the board within 360 days of initial licensure.

c. Notwithstanding the provisions of subsections a. and b., for 360 days after the date regulations are promulgated pursuant to the provisions of this act:

(i) any person who currently maintains an International Society of Arboriculture Certified Arborist or Board-Certified Master Arborist credential may acquire the license of Florida Licensed Arborist without sitting for examination pursuant to subsection a of this section, pursuant to regulations established by the board;

and any person who currently maintains an International Society of Arboriculture Certified Arborist or Board-Certified Master Arborist credential or any person of good moral character who has documented to the satisfaction of the board that he/she/they has been engaged in the practice of arboriculture for seven years preceding the effective date of this act may acquire a license as a Licensed Tree Care Practitioner upon taking the mandatory course on pruning, tree worker safety, and insurance requirements, pursuant to regulations established by the board.

Licenses issued pursuant to this subsection shall be renewed biennially.

Persons licensed under this act shall receive a certificate evidencing their licensure.

Any person licensed as a Licensed Tree Care Practitioner may subsequently apply for licensure as a Licensed Florida Arborist upon meeting the qualifications for licensure.

#### **598.009 Form for application; maintenance of records.**

Applications for licenses as a Licensed Florida Arborist or a Licensed Tree Care Practitioner shall be on forms prescribed and furnished by the board and shall contain statements under oath showing

the applicant's education or other qualification for licensure. The application shall be accompanied by an application fee as established by the board by regulation. No license shall be issued in the name of a corporation, firm, partnership, or other form of business organization.

The board shall maintain a record of all individual applicants for licensure and all licensees, including the person's name, age, education, and other qualifications, the person's place of residence, the location in which the person is employed, and a record of the person's fulfillment of any continuing education requirements established by this act.

The board may, in its discretion, grant a Licensed Florida Arborist license or a Licensed Tree Care Practitioner license to any person who is not a resident of this State and who is the lawful holder of a substantially equivalent license or certification issued by another jurisdiction, as determined by the board.

**598.010 Continuing education requirement.**

a. Licensed Florida Arborists shall complete, as a condition for biennial license renewal, no less than 20 credits of continuing education in courses of study approved by the board. Each hour of instruction shall be equivalent to one credit. The board may waive requirements for continuing education on an individual basis for reasons of hardship such as illness or disability or other good cause. Evidence of the fulfillment of this requirement shall be submitted to the board in a form and manner established by the board. Proof of current ISA Certified Arborist or Board Certified Master Arborist Credentials may be used as documentation of continuing education compliance.

b. Licensed Tree Care Practitioners shall complete, as a condition for biennial license renewal, no less than 10 credits of continuing education in courses of study approved by the board. Each hour of instruction shall be equivalent to one credit. The board may waive requirements for continuing education on an individual basis for reasons of hardship such as illness or disability or other good cause. Evidence of the fulfillment of this requirement shall be submitted to the board in a form and manner established by the board. Proof of current ISA Certified Arborist, Board Certified Master Arborist, ISA Tree Worker: Climber Specialist or Aerial Lift Specialist, Tree Care Industry Association Certified Treecare Safety Professional credentials may be used as documentation of continuing education compliance.

c. Educational courses that have been approved for International Society of Arboriculture (ISA) Certified Arborist continuing education units shall be accepted as continuing education credits for Florida Licensed Arborists and Licensed Tree Care Practitioners. University and college courses related to arboriculture that are taken with a passing grade within the renewal period will provide 10 credits of continuing education per course credit hour. Other acceptable continuing education courses or sources of continuing education credits may be designated in a manner established by the board.

**598.011 Compliance with laws and regulations in rendering professional services.**

In rendering professional services, a Licensed Florida Arborist or Licensed Tree Care Practitioner shall comply in all respects with the applicable laws and regulations pertaining to tree care services and shall have the duty to make every reasonable effort to protect the safety, health, property, and welfare of the public. This shall include ensuring the safe operation of all equipment used in the performance of tree care services, under guidelines established by the Department of Agriculture and Consumer Services or by the board.

**598.012 Refusal to issue, renew, suspension, revocation of license.**

The board may refuse to issue or renew or may suspend or revoke a license or may refuse to admit a

person to an examination for licensure, after notice and hearing, upon a finding that an applicant or licensee:

Has obtained a license or authorization to sit for an examination through fraud, deception, or misrepresentation;

Has conducted work, or allowed work to be conducted under his supervision, in a manner not in compliance with standards approved by the board;

Has engaged in the use of dishonesty, fraud, deception, misrepresentation, false promise, or false pretense in the course of his business;

Has engaged in gross negligence or gross incompetence;

Has engaged in repeated acts of negligence or incompetence;

Has engaged in occupational misconduct, as determined by the board;

Has been convicted of any crime involving moral turpitude, any crime relating adversely to the activities regulated by the board, or any crime of the first, second, third, or fourth degree;

Has had his authority to engage in the activities regulated by the board revoked or suspended by any other state, agency, or authority;

Has failed to comply with the provisions of this act or any regulation promulgated pursuant thereto, including canons of ethics established by the board;

Is incapable, for medical or any other good cause, of discharging the functions of a licensee in a manner consistent with the health, safety, and welfare of the public;

Has engaged in any form of false or misleading advertising or promotional activities, including, but not limited to, holding himself out to be a Licensed Florida Arborist, Licensed Tree Care Practitioner, an arborist, a tree surgeon, a tree care business, or any similar designation, or using the abbreviation "LFA" or "LTCP." without being licensed as a Licensed Florida Arborist or a Licensed Tree Care Practitioner as provided for in this act; or

Has failed to maintain records required by the board.

**598.014 Biennial registration; required information.**

Every business engaged in providing tree care services shall register biennially with the board as a condition of doing business in this State and shall provide the following information:

The name and residence of the owner or owners of the tree care business;

The principal address of the tree care business, and any branch office or subsidiary of the business;

The names and addresses of every Licensed Florida Arborist or Licensed Tree Care Practitioner employed by the business and the location of each such licensee, if at a branch office other than the business' main office;

Proof of general liability insurance or a letter of credit of a type and amount required by the board

by regulation;

Proof of workers' compensation insurance coverage required;

Proof that at least one employee of the tree care business, located at the principal office of the tree care business shall be licensed either as a Licensed Florida Arborist or Licensed Tree Care Practitioner, and at least one employee of the tree care business, located at each branch office of the tree care business shall be licensed either as a Licensed Florida Arborist or Licensed Tree Care Practitioner; and

Any other information required by the board.

**598.015 Instruction, training for employees.**

Every tree care business shall provide instruction and training for its employees in the proper use, inspection and maintenance of tools and equipment and shall require that safe working practices are observed in accordance with the appropriate standards of the American National Standards Institute (ANSI), as well as any additional standards designated by the board by regulation. Every tree care business shall submit documentation of its training program for employees to the board annually, which shall include a model tree safety program checklist, proof of general liability insurance coverage or a letter of credit in an amount established by the board, and proof of workers' compensation insurance.

**598.016 Temporary Waiver of Licenses for Storm Response.**

In the event a state of emergency has been declared due to hurricanes, tropical storms or other Acts of God, the Commissioner of Agriculture and Consumer Services, or the commissioner's designee may temporarily waive the licensure requirements for affected counties for up to 45 days with the option to renew the waiver period.

**598.017 Revocation, suspension of registration.**

The board may revoke or suspend a registration of any tree care business, after notice and hearing, that the business:

Has failed to demonstrate that the employer, or at least one employee in each principal office and branch location who is responsible for the supervision of workers in the performance of tree care services, is in possession of a Licensed Florida Arborist or a Licensed Tree Care Practitioner License;

Has failed to ensure the safe operation of all equipment used in the performance of tree care services;

Has allowed work to be conducted in a manner not in compliance with standards approved by the board;

Has failed to provide instruction and training for its employees, as required by this act;

Has engaged in the use of dishonesty, fraud, deception, misrepresentation, false promise, or false pretense in the course of his business;

Has been found guilty of gross negligence or incompetence;

Has had the authority to engage in tree care services revoked or suspended by any other state, agency, or authority;

Has failed to comply with the provisions of this act or any regulation promulgated pursuant thereto;

Has engaged in any form of false or misleading advertising or promotional activities; or

Has failed to maintain records required by the board.

**598.018 Cooperation with Department of Agriculture and Consumer Services, Board.**

In the performance of tree care services, a Florida Licensed Arborist or Licensed Tree Care Practitioner and every tree care business shall cooperate fully with the Department of Agriculture and Consumer Services and the board in an investigation or adjudication of an alleged violation of this law or any regulations promulgated pursuant thereto, and upon request, shall provide copies of any documents that shall be requested in connection therewith.

**598.019 Investigation of unlawful activity.**

Whenever it shall appear to the board or the Department of Agriculture and Consumer Services that a person has engaged in, or is engaging in, any unlawful activity under the provisions of this act, the person may be required to file, on a form prescribed by regulation, a statement in writing under oath as to the facts and circumstances concerning the rendering of any service or other violation of this act. The board or the department may examine any person in connection with any act or practice subject to the act, inspect any premises upon which any violation is alleged to have taken place or premises that constitute the licensee's place of business, and examine any record, book, document, account or paper maintained by or for any licensee in the conduct of his business.

**598.020 Notice, hearing prior to suspension, revocation of license.**

Suspension or revocation of a license by the board shall take place only following notice and a hearing, sent to the licensee at least 20 days prior to the hearing. No license shall be revoked or suspended until the conclusion of any hearing. The board shall render its judgment no later than 20 days following the conclusion of the hearing.

**598.021 Additional fines.**

In addition to suspension or revocation of a license, the board may levy a fine, not to exceed \$1,000 for a first violation and not to exceed \$2,500 for a second or subsequent violation of this act. If the violation is of a continuing nature, each day during which it continues shall constitute an additional, separate, and distinct offense.

**598.022 Injunction prohibiting act, practice.**

Whenever it shall appear to the board or the Department of Agriculture and Consumer Services that a violation of this act has occurred, is occurring, or will occur, the Attorney General, in addition to any other proceeding authorized by law, may seek and obtain in a summary proceeding in the Superior Court an injunction prohibiting the act or practice. The court may assess a civil penalty in accordance with the provisions of this act, but the court shall not suspend or revoke any license issued by the board.

**598.023 Appeal.**

Any person aggrieved by an order or finding by the board or the commissioner may appeal the order or finding to the Superior Court.

**598.024 Exemptions.**

The provisions of this act shall not apply to:

Any public utility or any employee of a public utility while engaged in the actual performance of his

duties as an employee;

Any employer under contract with a public utility who is engaged in tree trimming or any other utility vegetation management practice for purpose of line clearance, or any employee of the employer while engaged in the actual performance of duties in regard to tree trimming or other utility vegetation management practice or for the installation of underground facilities or associated site construction;

Any agricultural or silviculture activities on lands classified as agriculture pursuant to chapter 193.461 Florida Statutes;

Ground-based landscape construction activities, including those performed by, or under the direction of, a landscape architect, or ground-based landscape maintenance activities such as pruning, fertilization, insect and disease control, planting, transplanting, temporary stabilization, and all other forms of ground based landscape maintenance, in compliance with the sections of the American National Standards Institute practice standards set forth by the board by regulation, with applicable safety standards and regulations promulgated by the federal Occupational Safety and Health Administration, and with any pesticide regulations promulgated by the Department of Agriculture and Consumer Services. For the purposes of this subsection, ground based landscape maintenance is defined as operations that do not involve climbing, the use of aerial lifts, cranes, rope and rigging operations, or the removal of trees over 6-inch D.B.H;

Any person or employer that does not offer tree care services for hire;

Any trees being removed pursuant to an approved site plan or subdivision approval, provided that the tree removal activities are performed in compliance with the sections of the American National Standards Institute practice standards set forth by the board by regulation, with applicable safety standards and regulations promulgated by the Federal Occupational Safety and Health Administration, and with applicable safety standards of the American National Standards Institute as designated by the board by regulation; and

Any employee of a municipality or county while engaged in the actual performance of his duties as an employee.

**598.025 Deposit, use of fees and penalties.**

All fees and penalties collected pursuant to this act shall be deposited with the board, and their use shall be authorized by the board for the purposes of carrying out the provisions of this act.

This act shall take effect immediately, except for 598.015, which shall take effect upon the final promulgation of initial regulations by the board necessary to carry out the provisions of this act. Approved MONTH DAY, YEAR.

END BILL

# **A Review of Tree Operation Incidents in Florida**

**Written By:**

**Dr. John Ball, Professor, South Dakota State University, and**

**Tim Walsh, ISA Certified Arborist**

There are approximately 84,000 landscape services workers in Florida. These are workers employed by 12,200 companies or offices. About 20 percent of these companies identify themselves as primarily tree services either for residential customers or utility line clearance. Many of the landscape services companies that work in the residential sector perform tree work as well as landscaping.

A review of the past two decades of fatal occupational injuries showed an average of 30 fatal incidents per year for the landscape services sector in Florida. About a third of these are identified as a tree service by their name. The remainder are determined to be a landscape company by their name.

This is a higher number than occurs in most other states. About half the fatal incidents in the landscape services sector occur in seven states and among these seven, Florida has the second highest total and almost equal to the highest, California. However, California has almost double the number of workers.

If only tree services are reviewed, Florida had about 11 percent of all the tree worker fatalities, equal to California and these two states had more than any other state. However, California has twice the number of workers employed by tree services.

A review of Florida tree operation fatalities, regardless of whether the company is identified as a tree or landscape company, shows a different pattern than is common with the rest of the country. Electrocuting, death from an electrical shock, is the most common fatal incident among Florida tree workers, almost 50 percent of the total. Electrocutings comprise about 15 percent of the fatalities of tree workers on a national basis.

The Florida electrocutings occurred to workers of landscape service companies that identified themselves as either a tree or landscape company. The fatal incidents include indirect contact with a powerline through a cut palm frond to contact with a worker operating an aerial lift without any dielectric properties. Almost all the fatal contact with electric current incidents occurred to workers employed by a tree or landscape company, not to a worker conducting line clearance on behalf of a utility.

Being struck by a falling tree was also a common tree operation fatality, about 14 percent of the fatal incidents. These occur to workers felling palm trees as well as hardwood trees and pines. The most common incidents were the chain saw operator struck by the tree they were felling. Another common incident was a ground-worker struck by the falling tree.

Other tree operation incidents with a high percentage of fatalities include ground-workers struck by falling branches, climbers falling from trees, aerial lift operators falling from the buckets and workers either caught-in chipper or struck by objects such as ropes or winch lines that were pulled into the chipper.

In 2019 alone there were 11 fatalities in Florida for just tree workers, 3 by electrocution, 3 were struck-by falling limbs, 2 were struck-by falling trees, 1 was struck by traffic, 1 fell out of the bucket and 1 fell off the headache rack.

There were also fatal incidents involving chain saws. These incidences were often to climbers or aerial lift operators struck in the head or neck by a chain kicking back.

Severe nonfatal injuries are more difficult to link to a tree or landscape company. Most companies have "Tree Service", "Tree Expert", "Tree & Landscaping" or similar phrasing in their name. A single-person company, of which there are many in the South, does not report these injuries and are unlikely to identify themselves by a company name when appearing at the emergency room. Hence the smaller the company, the less likely the data is identifiable to a tree worker.

Regardless it appears that Florida has a higher severe nonfatal rate than that of the national average rate. Severe nonfatal injuries are those that involve at least one day inpatient hospitalization, an amputation or loss of eye. Injuries that are managed by first aid at the job site or in an urgent care or hospital emergency room but not formally admitted to the hospital (this means sprain and strains, common incidents for lost days) will not be reported.

The proportion of these severe nonfatal incidents also differs from the rest of the country. Electric shock incidents, which involved severe burns, were about five times more common in Florida than the rest of the country. These often were indirect contact through an aluminum pole saw, a tool that is not permitted to be used near power lines. The other was chain saw, often being used to cut palm fronds, that lacerated the left lower arm of the climber. These two types of incidents, contact with an electric current and being struck by a chain saw, were the most common severe nonfatal injuries.

Almost all these incidents could have been avoided or eliminated had the workers been following the standards within the ANSI Z133 *American National Standard for Arboricultural Operations – Safety Requirement*. Most likely many workers performing tree operations in Florida are not familiar with the standard.

Just this past week Tim and I presented the standard as a virtual workshop to tree workers in Louisiana. This state has a licensing requirement for tree workers and there is a continuing education requirement to maintain the license. Safety education is one component of this requirement. Louisiana has one of the lowest fatal incident rates, approximately one tenth of Florida's rate.



**Tree Care Operations Standard**  
**Small Business Advocacy Review Panel—Small Entity Representative**  
**Issues Document**  
**March 2020**

Table of Contents

1. Background.....	1
2. Scope and Affected Entities.....	4
a. Scope.....	4
b. Affected Entities.....	7
3. Regulatory Summary, Alternatives and Unit Costs.....	12
a. General Requirements.....	13
b. Training.....	30
c. Electrical Hazards.....	31
d. Motor Vehicles and Mobile Equipment.....	32
e. Portable Power Hand Tools and Equipment.....	39
f. Hand Tools and Equipment.....	41
g. Ladders.....	42
h. Work Procedures.....	43
4. Other Topics for Consideration and Comment.....	49

## **1. BACKGROUND**

Congress created the Occupational Safety and Health Administration (OSHA) to assure safe and healthful working conditions for working men and women by setting and enforcing standards and by providing training, outreach, education and assistance. Based on the preliminary research described below, OSHA believes that there are currently unsafe or hazardous conditions for working men and women in the tree care industry that could be improved through federal regulation.

Specifically, OSHA’s preliminary research has found that the tree care industry has a high rate of fatalities (estimated at 1 in 1,000 tree trimmers). This fatality rate is nearly 30 times higher than the national average for all workers (reported at 3.5 per 100,000). Accordingly, OSHA is considering a potential tree care operations rulemaking to address the hazards that can be associated with work in this industry. This Small Business Advocacy Review Panel is a preliminary step in exploring the potential for such a standard.

The agency currently applies a patchwork of standards and the OSH Act’s general duty clause, 29 U.S.C. 654(a)(1), to attempt to address the serious hazards in this industry. However, the relatively high frequency of fatalities and injuries for tree care workers indicates that further regulation may be needed to improve the safety of this work environment. We are interested in your views on whether regulation is needed to address hazards that may arise during tree care operations.

OSHA's potential tree care standard is based in part on, and is largely consistent with, the Virginia Occupational Safety and Health Program Tree Trimming Operations regulation.<sup>1</sup> The potential standard is also largely consistent with tree care regulations promulgated by Oregon, California, Maryland, and Michigan, as well as the American National Standards Institute (ANSI) Standard for Arboricultural Operations – Safety Requirements (ANSI Z133-2017). The ANSI standard is a voluntary consensus standard for the tree care industry.

The scope of OSHA's potential standard would include tree trimmers and pruners who engage in tree care operations work daily, as well as companies, municipalities, and organizations that occasionally perform tree care operations. The work performed to prune, repair, maintain or remove trees, as well as training and equipment use, would be regulated by this potential standard. The on-site support of tree care (for example, performing on-site groundwork, vehicle control, or operating equipment in connection with tree care) would also be covered under this potential standard.

OSHA has preliminarily determined the following:

- This rulemaking is preliminarily estimated to affect approximately 350,000 employees employed at about 53,000 establishments. Most of the affected workers are believed to be employed in Landscaping Services (NAICS 561730)<sup>2</sup>, but workers occasionally perform tree care operations across many industries, municipalities, and organizations.
- The tree care industry's fatality rate for tree care operations makes tree trimming and pruning among the most hazardous occupations in the country. The potential standard is intended to address the underlying causes of between 35 and 41 fatalities and about 1,110 non-fatal occupational injuries a year and to improve safety among an affected population of about 41,000 professional tree trimmers and pruners.<sup>3</sup>
- The total costs of this potential standard are estimated to be about \$106 million annually. Most of these costs would be borne by small entities (\$94 million), including very small entities that have fewer than 10 employees (\$72 million).
- The Preliminary Initial Regulatory Flexibility Analysis (PIRFA) estimates average costs for the industry sectors that would be affected by the potential standard. For small

---

<sup>1</sup> Virginia Occupational Safety and Health Program (VOSH) Tree Trimming Operations regulation, 16 Va. Admin. Code ch. 73 available at <http://law.lis.virginia.gov/admincode/title16/agency25/chapter73/>.

<sup>2</sup> The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. See <https://www.census.gov/eos/www/naics/> for more information.

<sup>3</sup> OSHA has not made any determination of how many fatalities a tree care standard would likely prevent. The numbers presented here show all fatalities among the affected entities engaged in the relevant activities. A potential standard is unlikely to prevent every fatality or injury, and the potential standard will ultimately be informed by additional factors such as feasibility.

entities, average costs do not exceed 1 percent of revenues, but do exceed 10 percent of profits for one industry sector (Professional, Scientific, and Technical Services). For very small entities (those employing fewer than 10 employees), average costs do not exceed 1 percent of revenue, but do exceed 15 percent of profits for some sectors.

- The PIRFA also estimates costs for some model entities in the Landscaping Services industry. For some model entities, the costs of implementing the potential standard may exceed 50 or even 100 percent of profits (See PIRFA Tables VII-32 – VII-35).
- For the small entities in the Administrative and Support Services sector, where the majority of tree trimmers and landscapers are employed, OSHA estimates an average annualized cost per entity of \$1,799 (see PIRFA Table VII-27). OSHA estimates that very small entities in this sector, those with fewer than 10 employees, would incur \$1,729 in average annualized costs per entity (see PIRFA Table VII-28). The costs of implementing the standard for any given entity can vary widely depending on a number of factors including the number of employees and number of tree care jobs, as well as existing qualifications and practices.
- Almost no landscapers—fewer than five percent—are expected to continue to perform tree care operations under the potential tree care standard (see PIRFA Table V-1).

OSHA has convened a Small Business Advocacy Review (SBAR) Panel under the Small Business Regulatory Enforcement Fairness Act (SBREFA). The SBAR Panel has several purposes. First, the Panel provides an opportunity for affected small businesses and small local government entities (Small Entity Representatives or SERs) to provide comments to OSHA in advance of a formal rulemaking process. Second, by reviewing the potential provisions that might be included in a Tree Care Operations standard and the estimates of the potential impacts of that rule, SERs and the Panel can offer recommendations to OSHA on ways to tailor the rule to make it more cost effective and less burdensome for affected small entities. Third, early comments permit identification of different regulatory alternatives the agency might consider. Finally, the SBAR Panel report can provide specific recommendations for OSHA to consider on issues such as reporting requirements, timetables of compliance, and whether some groups, including small entities, should be exempt from all or part of any proposed rule.

This document contains a brief discussion of each topic OSHA is considering including in a proposed standard and initial estimates of the unit costs of complying with those provisions. This document also presents potential regulatory alternatives (both those that reduce burdens on small entities and are considered significant alternatives under the Regulatory Flexibility Act (RFA) and those that may increase burdens) and questions for SERs. This issues document is meant to serve as both a summary of the longer PIRFA and as a discussion guide for SERs participating in the teleconferences.

OSHA welcomes comment on all aspects of the PIRFA, but this document focuses on specific areas of interest to the SBAR Panel. This document does not include discussions of wage rates or detailed calculations of total cost. If costs are incurred to purchase a good or service, OSHA presents the estimated dollar cost of that purchase, but where costs are accounted for in additional time requirements from employees, this presentation has largely focused on the estimated time demands. The full calculations of costs, tables, and references are found in the PIRFA. Throughout this document, the Panel has listed issues, along with questions, for which the Panel would appreciate SER input. However, SERs should feel free to bring up any relevant issues they would like the Panel to consider.

This document includes alternatives that may have the potential to meet the agency's statutory objectives, be feasible, and reduce the burden on small entities. The agency is presenting these alternatives consistent with the requirements of section 603(c) of the RFA, and to solicit feedback to assist the agency in the decision-making process. We welcome your views on the technological and economic feasibility of alternatives and the draft regulatory framework. In the case of a potential provision that would impose a requirement and an alternative that would not impose a requirement, SERs should feel free to suggest more nuanced alternatives that lie somewhere in the middle of these options; or to suggest entirely different means of addressing the hazards potential regulatory provisions are designed to address.

The OSH Act imposes a number of requirements OSHA must satisfy before adopting a standard. Among other things, a safety standard must be highly protective, materially reduce a significant risk to workers, be technologically feasible, and be economically feasible. It is important to note that the PIRFA is only one of several analyses OSHA would conduct in developing a proposed standard. OSHA has not yet prepared a health effects analysis, a preliminary risk assessment, or a technological feasibility assessment, and OSHA's economic feasibility analysis would be further refined to incorporate additional research and feedback from this Panel. We seek feedback that would help to inform any future analyses related to a potential tree care standard. We appreciate the contribution that your expertise and experience bring to the discussion of potential regulatory provisions to protect workers who engage in tree care activities, as well as to OSHA's understanding of the feasibility of requiring such provisions.

## **2. Scope and Affected Entities**

### *Scope*

OSHA has preliminarily determined that this potential standard would cover workers who prune, repair, maintain, or remove trees, and provide on-site support for tree care operations.

The potential standard would not apply to the use of earth-moving equipment to mechanically remove trees. Workers who would be covered by this potential standard (i.e., tree trimmers and

pruners) generally are not exposed to the hazards associated with using earth-moving equipment to mechanically remove trees. That type of work is generally done during activities such as site clearance or logging. OSHA notes that the manual felling of trees and other tree care operations would continue to be covered by a potential tree care operations standard even though earth-moving machinery may also be used at a site to remove trees. For example, if, after using an excavator to fell a tree, workers engage in limbing or bucking that tree, the limbing or bucking would be considered a tree care operation. As another example, a potential standard would apply to the manual felling of a tree to clear a site for the building of a home.

The potential standard would also not apply to the pruning, repairing, maintaining, or removing of shrubs, hedges, and similar bushes, or the mowing of lawns. This work is typically done on residential or commercial properties by landscaping firms, not by tree care firms.

This potential standard would cover tree care operations even if such work is not a routine part of the worker's job or the main activity performed by employers in a given NAICS industry. If the type of work performed meets the definition of tree care operations, the employer's performance of such work would fall under the scope of this draft regulatory framework. OSHA has preliminarily determined that the main occupations affected by a potential tree care operations standard would include landscaping and groundskeeping workers (landscapers); pesticide handlers, sprayers, and applicators, vegetation (spray technicians); tree trimmers and pruners (tree trimmers); and crane operators. We are interested in understanding if any other occupations would be significantly impacted by a potential tree care standard.

OSHA has preliminarily determined that 99 percent of the entities that engage in tree care operations and that would be impacted by a potential tree care standard are small entities, and that 83 percent are very small entities, with fewer than 10 employees. Because this potential standard would primarily impact small or very small entities, we are very interested in your views on whether the potential standard and individual provisions of the potential standard would be necessary and feasible, as well as on whether they would appropriately target potential hazards that you experience as you perform tree care operations.

OSHA has preliminarily estimated that all workers with the job title tree trimmers and pruners (BLS Standard Occupation Code (SOC) 30-3013)<sup>4</sup> are affected by the potential draft standard. Furthermore, workers with the job title landscaping and groundskeeping workers (SOC 30-3011) are affected where they perform tree care operations.

---

<sup>4</sup>The 2018 Standard Occupational Classification (SOC) system is a federal statistical standard used by federal agencies to classify workers into occupational categories for the purpose of collecting, calculating, or disseminating data. All workers are classified into one of 867 detailed occupations according to their occupational definition. See <https://www.bls.gov/soc/> for more information.