

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1365 Unauthorized Public Camping and Public Sleeping

**SPONSOR(S):** Judiciary Committee, Garrison and others

**TIED BILLS:** IDEN./SIM. BILLS: SB 1530

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration, Federal Affairs & Special Districts Subcommittee	14 Y, 0 N	Darden	Darden
2) Judiciary Committee	16 Y, 6 N, As CS	Padgett	Kramer
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

CS/HB 1365 creates ss. 125.0231 and 166.0453, F.S., to prohibit a county or municipality from authorizing or otherwise permitting any person from regularly engaging in public camping or public sleeping on any public property, public building, or public right-of-way under the county or municipality's jurisdiction unless such person has been lawfully issued a temporary permit authorizing such activity by the county or municipality.

The bill authorizes a county or municipality, in its discretion, to designate property owned by the county or municipality to be used for public camping or public sleeping for a continuous period of no longer than one year. The bill prohibits a county or municipality from designating property to be used for public camping or public sleeping if the property is in a location where such a designation would adversely and materially affect the property value or safety and security of other existing residential or commercial property. Under the bill, if a county or municipality designates public property to be used for public camping or public sleeping, the county or municipality must establish and maintain minimum standards and procedures related to ensuring security, minimum sanitation, and access to mental health and substance abuse treatment, unless the county is a fiscally constrained county or the municipality is located in a fiscally constrained county and complying with such requirements would result in a financial hardship.

The bill requires a county or municipality that designates public property to be used for public camping or public sleeping to provide notice to the Department of Children and Families (DCF) within 30 days of making such a designation and to post the minimum standards and procedures required by the bill to the county's or municipality's publicly accessible website. The bill requires DCF to inspect such designated property within specified time periods.

Under the bill, a resident of the county or municipality or the owner of a business located in the county or municipality may bring a civil action to enjoin the county or municipality from authorizing public camping or public sleeping. If the civil action is successful, a person or business may recover reasonable expenses incurred in bringing such an action. The bill requires an application for an injunction to be accompanied by an affidavit confirming that the applicant has provided notice of the violation to the county or municipality and that the county or municipality failed to cure the violation within five business days.

The bill provides the following definitions:

- "Public camping" means lodging or residing overnight in a temporary outdoor habitation used as a dwelling or living space and evidenced by the erection of a tent or other temporary shelter, the presence of bedding or pillows, or the storage of personal belongings. The term does not include lodging or residing overnight in a motor vehicle that is registered, insured, and located in a place where it may lawfully be.
- "Public sleeping" means lodging or residing overnight in an outdoor space without a tent or other temporary shelter.

The bill may have a fiscal impact on state government expenditures by requiring DCF, if a county or municipality designates property to be used for public sleeping or public camping, to inspect such property. The bill may have a fiscal impact on a local government that chooses to designate county or municipal property to be used for public sleeping or public camping by requiring the county or municipality to expend funds to maintain specified conditions on such property, and authorizing a court to award reasonable expenses if a person prevails in a civil action to enjoin a violation of the provisions of the bill.

The bill provides an effective date of October 1, 2024.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives .**

**STORAGE NAME:** h1365c.JDC

**DATE:** 2/8/2024

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### Ordinances

The Florida Constitution grants local governments broad home rule authority. 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> Municipalities have governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform municipal functions and provide municipal services, and exercise any power for municipal purposes except when expressly prohibited by law.<sup>3</sup> A local government enactment may be inconsistent with state law if the:

- State Constitution preempts the subject area;
- Legislature preempts the subject area; or
- Local enactment conflicts with a state statute.

Local governments exercise their powers by adopting ordinances. The adoption or amendment of a regular ordinance, other than an ordinance making certain changes to zoning, may be considered at any regular or special meeting of the local governing body.<sup>4</sup> Notice of the proposed ordinance must be published at least 10 days before the meeting in a newspaper of general circulation in the area; state the date, time, and location of the meeting, the title of the proposed ordinance, and locations where the proposed ordinance may be inspected by the public; and advise that interested parties may appear and speak at the meeting. Municipal ordinances must also be read by title or in full on at least two separate days.<sup>5</sup> Ordinances may only encompass a single subject and may not be revised or amended solely by reference to the title.<sup>6</sup>

##### Homelessness and Public Camping

According to the January 2023 Point-In-Time Count,<sup>7</sup> 653,104 people are experiencing homelessness across the United States, including 30,756 in Florida.<sup>8</sup> Over the past five years, the number of people in Florida who are experiencing homelessness has increased by 9 percent.<sup>9</sup> In 2023, approximately 50 percent of people experiencing homelessness in Florida were unsheltered, meaning their primary nighttime residence is a place not suitable for human habitation, such as a sidewalk, vehicle, abandoned building, or park.<sup>10</sup> Living unsheltered can have significant impacts on a person's health

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

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

<sup>3</sup> Art. VIII, s. 2(b); *see also* s. 166.021(1), F.S.

<sup>4</sup> *See* ss. 125.66(2)(a) and 166.041, F.S. In addition to general notice requirements, a local government must provide written notice by mail to all property owners before adopting a zoning change involving less than 10 contiguous acres. Ss. 125.66(4)(a) and 166.041(3)(c)1., F.S. If a zoning change involves 10 or more contiguous acres, the local government must conduct two public hearings, advertised in a newspaper, before adopting the ordinance. Ss. 125.66(4)(b) and 166.041(3)(c)2., F.S.

<sup>5</sup> S. 166.041(3)(a), F.S.

<sup>6</sup> Ss. 125.67 and 166.041(2), F.S.

<sup>7</sup> A "Point-in-Time Count" is a count of sheltered and unsheltered people experiencing homelessness on a single night in January. This data is collected by the United States Department of Housing and Urban Development. Department of Housing and Urban Development, Point-in-Time Count and Housing Inventory Count, <https://www.hudexchange.info/programs/hdx/pit-hic/#2024-pit-count-and-hic-guidance-and-training> (last visited Feb. 7, 2024).

<sup>8</sup> *See* Department of Housing and Urban Development, Office of Policy Development and Research, *2007 - 2023 Point-in-Time Estimates by State*, <https://www.huduser.gov/portal/datasets/ahar/2023-ahar-part-1-pit-estimates-of-homelessness-in-the-us.html> (last visited Feb. 7, 2024).

<sup>9</sup> Florida Department of Children and Families, *Florida's Council on Homelessness – Annual Report*, <https://www.myflfamilies.com/sites/default/files/2023-07/Florida%27s%20Council%20On%20Homelessness%20Annual%20Report%202023.pdf> (last visited Feb. 7, 2024).

<sup>10</sup> *Id.*

and safety. Unsheltered persons experiencing homelessness are at a 270 percent greater risk of mortality compared to those who are sheltered.<sup>11</sup>

Jurisdictions that have placed restrictions on public camping have seen significant declines in the size of the population of persons experiencing homelessness. Voters in Austin, Texas reinstated a previously repealed camping ban by referendum in 2021.<sup>12</sup> According to January 2023 Point-In-Time Count, the persons experiencing homelessness in Austin had declined by five percent compared to 2020, but with 19 percent more persons sheltered and 20 percent fewer who were unsheltered.

### Effect of Proposed Changes

CS/HB 1365 creates ss. 125.0231 and 166.0453, F.S., to prohibit a county or municipality from authorizing or otherwise permitting any person from regularly engaging in public camping or public sleeping on any public property, public building, or public right-of-way under the county's or municipality's jurisdiction unless such person has been lawfully issued a temporary permit authorizing such activity by the county or municipality.

The bill authorizes a county or municipality, in its discretion, to designate certain property owned by the county or municipality to be used for public camping or public sleeping for a continuous period of no longer than one year. The bill prohibits a county or municipality from designating property to be used for public camping or public sleeping if the property is in a location where such a designation would adversely and materially affect the property value or safety and security of other existing residential or commercial property.

Under the bill, if a county or municipality designates public property to be used for public camping or public sleeping, the county or municipality must establish and maintain minimum standards and procedures related to the designated property for the purposes of:

- Ensuring the safety and security of the designated property and the persons lodging or residing on such property;
- Maintaining sanitation, including providing access to clean and operable restrooms and running water;
- Coordinating with the local continuum of care to provide access to behavioral health services, including substance abuse and mental health treatment resources; and
- Prohibiting illegal drug use and alcohol use on the designated property and enforcing such prohibition.

The bill exempts a fiscally constrained county or a municipality that is located in a fiscally constrained county that designates public property to be used for public camping or public sleeping from the requirement to establish and maintain the minimum standards and procedures specified in the bill, except for the prohibition on illegal drug use or alcohol use, if the governing board of such a county or municipality makes a finding that compliance with the other requirements would result in a financial hardship.

The bill requires a county or municipality that designates public property to be used for public camping or public sleeping to:

- Provide notice to the Department of Children and Families (DCF) within 30 days after making such a designation and provide DCF with the location of such property; and
- Post the minimum standards and procedures required by the bill to the county's or municipality's publicly accessible website, which must remain publicly available as long as the public property is designated for public camping or public sleeping.

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<sup>11</sup> C. Y. Liu, S. J. Chai, and J. P. Watt, *Communicable disease among people experiencing homelessness in California*, *Epidemiology and Infection* 148 (2020), <https://www.cambridge.org/core/journals/epidemiology-and-infection/article/communicable-disease-among-people-experiencing-homelessness-in-california/01D82460F7E8092791D0C5B1B94C8343> (last visited Feb. 7, 2024).

<sup>12</sup> Katy McAfee and Ben Thompson, *Austin's homeless population dispersing after 2 years of camping ban enforcement*, *Community Impact* (May 25, 2023), <https://communityimpact.com/austin/central-austin/city-county/2023/05/25/austins-homeless-population-dispersing-after-2-years-of-camping-ban-enforcement/> (last visited Feb. 7, 2024).

The bill requires DCF, within 90 days after a county or municipality designates property to be used for public camping or public sleeping and at least once more after 180 days if the property remains so designated, to inspect such property and issue a report to the county or municipality with recommendations to assist the county or municipality in maintaining the minimum standards and procedures required under the bill. The bill requires the county or municipality to post the DCF report to the county's or municipality's publicly available website within five days of receiving the report.

Under the bill, a resident of a county or municipality or an owner of a business located in a county or municipality may bring a civil action in any court of competent jurisdiction against such a county or municipality to enjoin the county or municipality from authorizing public camping or public sleeping on county or municipal property. If the civil action is successful, a person or business may recover reasonable expenses including court costs, reasonable attorney fees, investigative costs, witness fees, and deposition costs. The bill requires an application for an injunction to be accompanied by an affidavit attesting that:

- The applicant has provided written notice of the alleged violation to the governing board of the county or municipality;
- The applicant has provided the county or municipality five business days to cure the alleged violation; and
- The county or municipality has failed to cure the alleged violation within five business days of receiving written notice of the violation.

The provisions of the bill do not apply to any time period in which:

- The Governor has declared a state of emergency in the county or another county immediately adjacent to the county, or the county in which a municipality is located or another county immediately adjacent to the county in which the municipality is located; or
- A state of emergency has been declared in the county or the county in which the municipality is located under ch. 870, F.S.<sup>13</sup>

The bill provides the following definitions:

- "Public camping" means lodging or residing overnight in a temporary outdoor habitation used as a dwelling or living space and evidenced by the erection of a tent or other temporary shelter, the presence of bedding or pillows, or the storage of personal belongings. The term does not include lodging or residing overnight in a motor vehicle that is registered, insured, and located in a place where it may lawfully be.
- "Public sleeping" means lodging or residing overnight in an outdoor space without a tent or other temporary shelter.

The bill provides that the Legislature determines and declares the bill fulfills an important state interest.

The bill provides an effective date of October 1, 2024.

## B. SECTION DIRECTORY:

**Section 1:** Creates s. 125.0231, F.S., relating to unauthorized public camping and public sleeping.

**Section 2:** Creates s. 166.0453, F.S., relating to unauthorized public camping and public sleeping.

**Section 3:** Provides that the bill fulfills an important state interest.

**Section 4:** Provides an effective date of October 1, 2024.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

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<sup>13</sup> Section 870.043, F.S., authorizes a county sheriff or designated municipal official such as the mayor or chief of police to declare a state of emergency if he or she determines that there has been an act of violence or a flagrant and substantial defiance of, or resistance to, a lawful exercise of public authority and that there is reason to believe that there is a clear and present danger of a riot or other general public disorder, widespread disobedience of the law, and substantial injury to persons or to property, all of which constitute an imminent threat to public peace or order and to the general welfare of the county or municipality.

1. Revenues:

None.

2. Expenditures:

To the extent that counties or municipalities designate county or municipal property to be used for public sleeping or public camping as authorized under the bill, the bill may have a fiscal impact on DCF since it is responsible for conducting inspections and making recommendations to assist a county or municipality with maintaining minimum standards and procedures required by the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate fiscal impact on a county or municipality that chooses to designate county or municipal property to be used for public sleeping or public camping since the county or municipality is required to maintain specified conditions on such property, unless the county is a fiscally constrained county or the municipality is located in a fiscally constrained county. Also, the bill authorizes a court to award reasonable expenses incurred in filing a civil action against a county or municipality for authorizing public sleeping or public camping on specified county or municipal property if a person prevails in such an action, which may have an indeterminate negative fiscal impact on local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires DCF, if a county or municipality designates certain county or municipal property for public camping or public sleeping, to conduct inspections of such property and to issue a report to the county or municipality. However, the bill does not provide DCF with rulemaking authority to implement this provision of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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

On February 7, 2024, the Judiciary Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment differed from the original bill in that it:

- Defined the terms “public camping” and “public sleeping.”
- Limited the designation of public property to be used for purposes of public camping or public sleeping to a continuous period of no longer than one year.
- Required a county or municipality that designates public property to be used for public camping or public sleeping to notify DCF within 30 days of making such a designation and to post minimum standards and procedures on the county’s or municipality’s publicly accessible website.
- Required DCF to conduct inspections of county or municipal property that has been designated to be used for public camping or public sleeping within specified time periods.
- Exempted a fiscally constrained county or a municipality located in a fiscally constrained county from complying with specified minimum standards and procedures required under the bill.
- Required a person who applies for an injunction to provide an affidavit attesting that he or she has provided notice of such a violation to the county or municipality and that the county or municipality failed to cure such violation within five business days.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.