

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1365 Unauthorized Public Camping and Public Sleeping
SPONSOR(S): Health & Human Services Committee, 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	17 Y, 3 N, As CS	Curry	Calamas

SUMMARY ANALYSIS

CS/CS/HB 1365 creates s. 125.0231, F.S., to prohibit a county or municipality from authorizing or otherwise allowing any person from regularly engaging in public camping or sleeping on any public property, public building, or public right-of-way under the county or municipality's jurisdiction unless the county designates property for such purposes.

The bill authorizes a county, by majority vote of the county's governing body, to designate property owned by the county or by a municipality within the county to be used for public camping or sleeping for up to one year. If the designated property is within a municipality, the designation is contingent upon concurrence of the municipality, by majority vote of the municipality's governing body. The designation is also contingent on certification by the Department of Children and Families (DCF), when the county requests it and certifies to DCF that certain criteria are met.

Under the bill, if a county designates public property to be used for public camping or sleeping, the county must establish and maintain minimum standards and procedures related to ensuring safety, security, sanitation, mental health and substance abuse services coordination, and illegal substance and alcohol use prohibition, unless the county is a fiscally constrained county and complying with such requirements would result in a financial hardship. The bill requires a county to publish the minimum standards and procedures on the county and municipality's website within 30 days after certification of designation. The bill authorizes DCF to inspect such designated property at any time and provide notice to the county recommending closure of designated property if requirements for maintaining the property are not being met.

The bill establishes a civil cause of action for injunctive relief. It authorizes a resident of the county, owner of a business located in the county, or the Attorney General to bring a civil action to enjoin the county or municipality from authorizing public camping or sleeping without designating property for that use. If successful, the petitioner may recover reasonable expenses. The bill requires an application for an injunction to be accompanied by an affidavit confirming that the applicant provided written 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 creates exemptions from its provisions during declared emergencies, in certain situations.

The bill has no fiscal impact on DCF and may have a negative fiscal impact on a local government that chooses to designate property for public sleeping or public camping.

The bill provides an effective date of October 1, 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.¹ 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.² 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.³ 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.⁴ 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.⁵ Ordinances may only encompass a single subject and may not be revised or amended solely by reference to the title.⁶

Homelessness and Public Camping

According to the January 2023 Point-In-Time Count,⁷ 653,104 people are experiencing homelessness across the United States, including 30,756 in Florida.⁸ Over the past five years, the number of people in Florida who are experiencing homelessness has increased by 9 percent.⁹ 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.¹⁰ Living unsheltered can have significant impacts on a person's health

¹ Art. VIII, s. 1(f), Fla. Const.

² Art. VIII, s. 1(g), Fla. Const.

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

⁴ *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.

⁵ S. 166.041(3)(a), F.S.

⁶ Ss. 125.67 and 166.041(2), F.S.

⁷ 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).

⁸ *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).

⁹ 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).

¹⁰ *Id.*

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

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 2021.¹² 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/CS/HB 1365 creates s. 125.0231, F.S., to prohibit a county or municipality from authorizing or otherwise allowing any person from regularly engaging in public camping or sleeping on any public property, public building, or public right-of-way under the county's or municipality's jurisdiction unless the county designates property for such purposes. Under the bill, this prohibition would apply to the following activities:

- 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; and
- Lodging or residing overnight in an outdoor space without a tent or other temporary shelter

The prohibition does not apply to lodging or residing overnight in a motor vehicle that is registered, insured, and located in a place where it may lawfully be, or to recreational camping on property designated for such purposes.

The bill authorizes the county, by majority vote of the county's governing body, to designate property owned by the county or municipality within the boundaries of the county to be used for public camping or sleeping for a continuous period of no longer than one year. If the designated property is within the boundaries of a municipality, the designation is contingent upon concurrence of the municipality, by majority vote of the municipality's governing body.

The bill requires the Department of Children and Families (DCF) to certify a county's designation and makes the designation effective upon certification. To obtain DCF certification, the county must submit a request to the Secretary of DCF and include certification that, and documentation proving:

- There are not sufficient open beds in homeless shelters in the county for the homeless population of the county;
- The designated property is not contiguous to property designated for residential use by the county or municipality in the local government comprehensive plan and future land use map;
- The designated property would not adversely and materially affect the property value or safety and security of other existing residential or commercial property in the county or municipality; and
- The county has developed a plan to satisfy the requirements for maintaining the designated property.

Upon receipt of a county's request to certify a designation, DCF must notify the county of the date of receiving the request, and any omission of error, within 10 days after receipt. DCF must certify the designation within 45 days of receipt of a complete submission from the county. The designation shall be deemed certified on the 45th day if DCF does not take action.

¹¹ 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).

¹² 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).

Under the bill, if a county designates county or municipal property to be used for public camping or sleeping, the county 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, which must include, at a minimum, providing access to clean and operable restrooms and running water;
- Coordinating with the regional managing entity to provide access to behavioral health services, which must include substance abuse and mental health resources; and
- Prohibiting illegal drug use and alcohol use on the designated property and enforcing such prohibition.

The bill exempts a fiscally constrained county that designates public property to be used for public camping or sleeping from the requirement to establish and maintain the minimum standards and procedures specified in the bill if the governing board of such a county makes a finding that compliance with the 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 sleeping to publish the minimum standards and procedures required by the bill on the county and, if applicable, the municipality's publicly available website within 30 days after certification of a designation by DCF, which must remain publicly available as long as the property remains designated for public camping or sleeping.

The bill authorizes DCF to inspect any designated property at any time, and provide notice to the county recommending closure of the designated property if the requirements for maintaining the property are not being met. The bill requires the county and municipality, if applicable, to publish the notice issued by DCF on the county and municipality's publicly available website within five days of receiving the notice.

Under the bill, a resident of a county or municipality, an owner of a business located in a county, or the Attorney General may bring a civil action in any court of competent jurisdiction against a county or applicable municipality to enjoin the county or municipality from authorizing public camping or sleeping on public property. If the civil action is successful, a resident 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 applicable municipality;
- The applicant has provided the county or applicable municipality five business days to cure the alleged violation; and
- The county or applicable municipality has failed to take all reasonable actions to cure the alleged violation within five business days of receiving written notice of the violation.

The bill creates exemptions for declared emergencies if:

- The Governor has declared a state of emergency in the county or another county immediately adjacent to the county and has suspended the provisions of the bill pursuant to s. 252.36.
- A state of emergency has been declared in the county under ch. 870, F.S.¹³

The bill provides that the Legislature determines and declares the bill fulfills an important state interest of ensuring the health, safety, welfare, quality of life, and aesthetics of Florida communities while simultaneously making adequate provision for the homeless population of the state.

¹³ 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.

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:

1. Revenues:

None.

2. Expenditures:

None.

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:

None.

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.

On February 22, 2024, the Health and Human Services Committee adopted a strike all amendment and reported the bill favorably as a committee substitute. The amendment:

- Prohibits a county or municipality from authorizing any person to regularly engage in public camping or sleeping unless the county, by majority vote of the county’s governing body, designates property for such purposes and makes designation of property within the boundaries of a municipality contingent upon the concurrence of the municipality, by a majority vote of the municipality’s governing body.
- Requires DCF to certify the county’s designation of property, upon request, and makes the designation effective upon certification. The request must include certification of and documentation proving certain requirements
- Requires the county to establish and maintain minimum standards and procedures for property designated for public camping or sleeping for purposes of ensuring safety, security, sanitation, mental health and substance abuse services coordination, and illegal substance and alcohol use prohibition.
- Requires the county to publish the minimum standards and procedures on the county and municipality’s website, if applicable, within 30 days after certification of designation.
- Authorizes DCF to inspect any designated property at any time and provide notice to the county recommending closure of designated property if requirements for maintaining the property are no longer being met.
- Authorizes a county resident, owner of business located in county, or the Attorney General to bring civil action against the county or municipality to enjoin the county or municipality from authorizing public camping or sleeping.
- Creates exemptions for declared emergencies in certain situations.

This analysis is drafted to the committee substitute as passed by the Health and Human Services Commission.