

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: CS/CS/SB 1530

INTRODUCER: Fiscal Policy Committee; Judiciary Committee; and Senator Martin

SUBJECT: Unauthorized Public Camping and Public Sleeping

DATE: February 26, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	Favorable
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
3.	<u>Hackett</u>	<u>Yeatman</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1530 preempts counties and municipalities from authorizing individuals to regularly sleep or camp on public property, at public buildings, or on public rights-of-way within their jurisdictions. The bill authorizes counties and municipalities to allow public sleeping or camping on designated public property by issuing temporary permits to be used only at the designated area. The prohibitions against camping or sleeping on public property do not apply when the Governor has declared a state of emergency or when local officers have declared a local state of emergency under ch. 870, F.S.

A designated property may not be used continuously for longer than 1 year and must meet certain minimum standards and procedures. The Department of Children and Families must be notified when a property is designated, and then is responsible for inspecting the property and certifying the designation based on certain factors.

The bill additionally permits a resident, local business owner, or the Attorney General to bring a civil action against a county or municipality to enjoin practices of allowing unlawful sleeping or camping on public property. When filing an application for an injunction, the plaintiff must also file an affidavit demonstrating that the governmental entity has been notified of the problem and that the problem has not been cured. A prevailing plaintiff may recover reasonable expenses incurred in bringing the action.

Individuals who sleep or camp on public property without authorization are not subject to penalties under the bill.

The bill takes effect October 1, 2024.

II. Present Situation:

Estimates of Homeless Populations

According to the U.S. Department of Housing and Urban Development, on a single night in January 2023, approximately 653,104 people were homeless in the United States. This represents about 20 of every 10,000 people. Approximately 60 percent of those who were homeless were staying in shelters while 40 percent were unsheltered or staying in a location that was not intended for humans to live.¹ The report estimated Florida's homeless population on a single night to be 30,756.²

Legislation Related to Homeless Encampments

Several states and local governments recently have heard or passed legislation related to homeless encampments on public property. Some of these efforts have been directed at banning or removing homeless encampments,³ while others have moved toward creating rights for homeless populations to camp on public property.⁴

Litigation Related to Homelessness

State and Federal Courts have opined on the constitutionality of these varied provisions on a case-by-case basis.⁵ Significantly, the Ninth Circuit Court of Appeals found that an Oregon city's ordinance which precluded the use of bedding supplies when sleeping in public violated the Federal constitution's "cruel and unusual punishments" clause⁶ as applied to individuals who were involuntarily experiencing homelessness and who lacked shelter in which to lawfully sleep.⁷ On January 12, 2024, the U.S. Supreme Court agreed to take up the Oregon case to

¹ The U.S. Department of Housing and Urban Development, Office of Community Planning and Development, *The 2023 Annual Homelessness Assessment Report (AHAR) to Congress*, 12 (Dec. 2023).

<https://www.huduser.gov/portal/sites/default/files/pdf/2023-AHAR-Part-1.pdf>.

² *Id.*, at 16. Additionally, the Annual Report of Florida's Council on Homelessness estimated the population for one night in January to be 30,809. See the report, page 2, Florida's Council On Homelessness Annual Report *available at* Florida's Council On Homelessness Annual Report 2023.pdf (myflfamilies.com).

³ See e.g., 2023 Georgia Senate Bill No. 62, *available at*

<https://legiscan.com/GA/bill/SB62/2023#:~:text=A%20BILL%20to%20be%20entitled,Title%2050%20of%20the%20O.C.G.A.%2C;2024%20Kentucky%20House%20Bill%20No.%205,available%20at%20https://apps.legislature.ky.gov/record/24rs/hb5.html>.

⁴ See e.g., 2017 Colorado House Bill No. 17-1314 *available at*

https://leg.colorado.gov/sites/default/files/documents/2017A/bills/2017a_1314_01.pdf.

⁵ See e.g., 2022 Missouri House Bill No. 1606, *available at*

<https://house.mo.gov/billtracking/bills221/hlrbillspdf/3703H.08T.pdf>; *Frank v. City of St. Louis*, 458 F. Supp. 3d 1090, 1092 (E.D. Mo. 2020).

⁶ U.S. CONST. amend. VIII.

⁷ *Johnson v. City of Grants Pass*, 72 F.4th 868, 890 (9th Cir. 2023), cert. granted sub nom. *Grants Pass, OR v. Johnson*, No. 23-175, 2024 WL 133820 (Jan. 12, 2024).

determine whether the enforcement of generally applicable laws regulating camping on public property is constitutional.⁸

In contrast to the Ninth Circuit, the Eleventh Circuit previously upheld similar restrictions in 2000. A homeless man challenged a municipal ordinance of the City of Orlando that prohibited any “camping” on public property. Among other findings, the court noted that “Homeless persons are not a suspect class, nor is sleeping out-of-doors a fundamental right.”⁹

Local Legislation in Florida

Numerous local governments in Florida have passed local legislation banning camping. Miami Beach, for example, provides that it is unlawful for any person to engage in camping on any public place within the city unless specifically authorized for that purpose by the city manager or his designee.¹⁰ The ordinance defines camping as:

- Sleeping in a temporary shelter out-of-doors or otherwise being in a temporary shelter out-of-doors; or
- Cooking over an open flame or fire out-of-doors or using non-city designated cooking facilities outdoors.

The Miami Beach ordinance is enforceable by requiring an offender to vacate the area. The willful refusal to vacate the area is punishable with a fine not exceeding \$500 or by imprisonment for up to 60 days. If the official encounters a person camping who volunteers that he or she has no home or other permanent shelter, he or she must be given an opportunity to enter a homeless shelter or similar facility, if available. If no such facility is available, an arrest may not be made.

III. Effect of Proposed Changes:

The bill creates s. 125.0231, F.S., to preempt counties and municipalities from permitting individuals to regularly sleep or camp on public property, at public buildings, or on public rights-of-way.

“Public camping or sleeping” is defined to mean 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, or recreational camping on property designated for such purposes.

Designation of a County or Municipal Property

A county may, by majority vote of its governing body, designate public property for use for public camping or sleeping for no longer than one continuous year. If the property is within a

⁸ *Id.*

⁹ *Joel v. City of Orlando*, 232 F.3d 1353, 1357 (11th Cir. 2000).

¹⁰ See section 70-45, Miami Beach Code of Ordinances, available at

https://library.municode.com/fl/miami_beach/codes/code_of_ordinances?nodeId=SPAGEOR_CH70MIOF_ARTIIPUPL_DIVIGE_S70-45CAPR.

municipality, the municipality's governing body must concur with the designation by majority vote.

Such designation may not become effective until the designation is submitted to and certified by the Department of Children and Families (DCF). Certification must be completed by DCF within 45 days of receipt of a complete submission, and requires the following findings:

- There are not sufficient open beds in homeless shelters in the county for the homeless population;
- The designated property is not contiguous to residential use property as shown by the local government comprehensive plans;
- The designated property would not adversely and materially affect the value, safety, or security of existing residential and commercial property in the county; and
- The county has developed a plan to satisfy the minimum standards for such designated property.

If a county designates county or municipal property for public camping or sleeping, it must establish and maintain minimum standards and procedures to:

- Ensure the safety and security of the property and persons lodging or residing there.
- Maintain sanitation, which includes providing access to clean and operable restrooms and running water.
- Coordinate with the local continuum of care to provide access to behavioral health services, including substance abuse and mental health treatment resources.
- Prohibit illegal drug and alcohol use on the property and enforce the prohibitions.

These standards must be published on the county's and any applicable municipality's website for the duration of the designation. Except for prohibiting drugs and alcohol, the minimum maintenance standards do not apply in a fiscally constrained county if the governing board makes a finding that compliance would result in financial hardship.

DCF may inspect any designated property at any time, and the secretary of DCF may provide notice to the county recommending closure of the designated property if any requirement is no longer satisfied. Such notice must be publicly available on the county's and municipality's website within 5 days of receipt.

Legal Recourse to Enjoin Violations

The bill permits a resident of the county, a business owner, or the Attorney General to bring a civil action in any court of competent jurisdiction against a county or municipality to enjoin practices of allowing unlawful sleeping or camping on public property. A successful plaintiff may recover reasonable expenses including court costs, reasonable attorney fees, investigative costs, witness fees, and deposition costs.

When a plaintiff applies for an injunction, he or she must also provide an accompanying affidavit attesting that:

- He or she has provided written notice of the alleged violation to the governing board of the county or municipality.

- The county or municipality was provided 5 business days to cure the alleged violation.
- The county or municipality has not cured the alleged violation within 5 business days of receiving written notice of the alleged violation.

States of Emergency

The provisions of the bill do not apply when the Governor has declared a state of emergency in the county or another county immediately adjacent to the county and has suspended the law, or when a local state of emergency has been declared under ch. 870, F.S., in the county. Chapter 870, F.S., authorizes local officers to declare a state of emergency within a county or municipality when overt acts of violence or the imminent threat of violence occurs and the Governor has not declared a state of emergency to exist.¹¹

The bill contains a finding of important state interest.

The bill takes effect October 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandates restrictions likely do not apply, as the bill does not directly require local governments to spend funds or to take an action requiring the expenditure of funds. A county or municipality may, but is not required to, designate certain public properties for public sleeping or public camping as provided by the bill, which would likely require expenditures.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

¹¹ Section 870.041, F.S.

B. Private Sector Impact:

None.

C. Government Sector Impact:

A prevailing plaintiff in a lawsuit against a county or municipality is entitled to recover reasonable expenses against the local government. This cost is indeterminate and could have a fiscal impact on local governments.

The Department of Children and Families may see costs related to certification and inspection of public property designated for public sleeping and camping. Total costs will depend on utilization of the designation throughout the state.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 125.0231 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Fiscal Policy on February 22, 2024:

The committee substitute:

- Amends the definitions of public camping and sleeping, providing that the term does not include recreational camping;
- Unifies the two separate sections for county and municipal provisions;
- Permits a county to designate property for public sleeping, and a municipality to concur in the designation;
- Requires certification by DCF that certain criteria, including an insufficient number of open beds in the county's homeless shelters and the designated property not being contiguous to residential property, have been met before property may be designated for public sleeping;
- Permits DCF to inspect designated property and recommend closure;
- Permits the Attorney General to bring suit related to property designated for public sleeping; and
- Revises applicability during declared states of emergency to require suspension of the statute, rather than automatic suspension during emergency.

CS by Judiciary on February 5, 2024:

The committee substitute is an expansion of the underlying bill and differs significantly from the original bill by:

- Providing definitions of “public camping” and “public sleeping.”
- Restricting how long a public property may be used for public camping or sleeping.
- Requiring the governmental entity to post on its website the minimum standards and procedures governing the public property.
- Expanding the Department of Children and Families’ oversight role to inspect the property and issue a report.
- Exempting a fiscally constrained county or a municipality in a fiscally constrained county from certain minimum standards and procedures concerning the public property if it would result in a financial hardship.
- Requiring a plaintiff or affected resident business owner to submit an affidavit concerning certain facts when applying for an injunction.
- Authorizing local officers to declare a state of emergency as an additional basis for when the provisions of the bill do not apply.

B. Amendments:

None.