

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 Judiciary

BILL: CS/SB 1530

INTRODUCER: Judiciary Committee and Senator Martin

SUBJECT: Unauthorized Public Camping and Public Sleeping

DATE: February 6, 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>RC</u> | _____ |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1530 generally requires counties and municipalities to prohibit individuals from regularly sleeping or camping on public property, at public buildings, or on public rights-of-way within their jurisdictions. The bill, however, 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 state of emergency.

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 issuing a report on whether the governmental entity is maintaining the minimum standards. A fiscally constrained county or municipality in a fiscally constrained county is exempted from establishing and maintaining the minimum standards specified in the bill.

The bill additionally permits a person who is a resident or owner of a local business 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 sections 125.0231 and 166.0453, F.S., to generally prohibit counties and municipalities from permitting individuals from sleeping or camping on public property, at public buildings, or on public rights-of-way.

Definitions

“Public camping” 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.

“Public sleeping” is defined to mean lodging or residing overnight in an outdoor space without a tent or other temporary shelter.

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.

Government Prohibitions Against Authorizing Public Camping or Public Sleeping

A county or municipality may not authorize or permit any person to regularly engage in public camping or sleeping on public property within its jurisdiction without a temporary permit issued by the county or municipality.

Designation of a County or Municipal Property

Restrictions and Requirements

A county or municipality may designate property that it owns to be used for public camping or sleeping but it may not be used for a continuous period of longer than 1 year. Additionally, the property may not be located where it would adversely and materially affect the property value or safety and security of other existing residential or commercial property.

If a county or municipality designates its property for public camping or sleeping, it must establish and maintain the following 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.

Within 30 days after designating a property, the county or municipality must:

- Notify the Department of Children and Families of the designation and provide the location of the property.
- Post the minimum standards requirements on its website and make the post publicly available as long as the property remains so designated.

Duties of the Department of Children and Families

The Department of Children and Families must, within 90 days of the designation, and at least once more after 180 days if the property remains designated, inspect the property and issue a report to the county or municipality which may include recommendations to assist in maintaining the minimum standards and procedures. The county or municipality must post the inspection report on its website within 5 business days after receiving the report.

Fiscally Constrained Counties and Municipalities

A fiscally constrained county or a municipality located within a fiscally constrained county is not required to establish and maintain the minimum standards and procedures if the governing board makes a finding that compliance with those requirements would result in a financial hardship.

Legal Recourse to Enjoin Violations

The bill permits a resident of the county or municipality or a business owner in those locations 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.

When the Provisions of the Bill Do Not Apply

With regard to counties, 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. With regard to municipalities, the provisions do not apply when the Governor has declared a state of emergency in the county where the municipality is located or another county located immediately adjacent to the county where the municipality is located.

Additionally, the provisions do not apply when a state of emergency has been declared under chapter 870 in the county or in the county where the municipality is located. Chapter 870 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

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

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 bill does not require counties and municipalities “to spend funds or to take an action requiring the expenditure of funds.” A county or municipality may, in its discretion, designate certain public properties for public sleeping or public camping as provided in the limited circumstances stated in the bill and if it so chooses, then funds will likely be needed to meet the criteria in the bill.

¹¹ Section 870.041, F.S.

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.

B. Private Sector Impact:

In other states where local governments appear to permit homeless encampments on public sidewalks outside of businesses, there have been many reports of businesses losing customers and having to close.¹² Conversely, businesses might benefit from the bill by retaining customers to the extent that the bill requires local governments to clear existing homeless encampments or to the extent that the bill will prevent the encampments from existing in the first instance. Likewise, businesses and others may avoid the costs of cleaning up refuse commonly associated with homeless encampments and the costs of crime associated with homeless encampments. Moreover, the bill might result in increased property values for properties currently located near homeless encampments. On the other hand, property values might decline to the extent that the bill causes homeless encampments to move onto private properties.

¹² Genevieve Wong, *Shop owners across US take action as homeless camps threaten business, safety*, NEW YORK POST (Apr. 22, 2023), <https://nypost.com/2023/04/22/us-shop-owners-take-action-as-homeless-camps-threaten-business/>; NBC Los Angeles News 4, *Santa Monica's Third Street Promenade Battling Homeless Problem, Along With Economy* (Feb. 16, 2021), <https://www.nbclosangeles.com/news/local/streets-of-shame/santa-monicas-third-street-promenade-battling-homeless-problem-along-with-economy/2528299/>; Hannah Everman and Jeremy Harris, 'We're tired': 116-year-old Seattle business to close shop over encampment safety concerns, KomoNews (Feb. 3, 2023), <https://komonews.com/news/local/seattle-homeless-crisis-116-year-old-business-closing-sodo-neighborhood-business-emmanuels-rug-and-upholstery-cleaners-relocating-unhoused-homelessness-rv-encampment-camp-concerns-mayor-bruce-harrell-safety-concerns-raw-sewage-campers>.

C. Government Sector Impact:

Counties and municipalities will likely incur additional costs to clear homeless encampments from public property to the extent that the bill requires additional efforts to clear encampments or prevent them from occurring.

If a plaintiff prevails in a lawsuit against a county or municipality, then he or she is entitled to recover reasonable expenses against the local government. This cost is indeterminate and could have a fiscal impact on local governments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

It is unclear whether the bill may interfere with existing local parks and recreation operations. While the bill contains exceptions for states of emergency issued by the Governor or local officers, it is unclear whether the bill may interfere with local emergency management operations during scenarios that do not rise to a state of emergency, such as cold weather warnings.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 125.0231, 166.045.

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

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

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
