

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: SB 1530

INTRODUCER: Senator Martin

SUBJECT: Unauthorized Public Camping and Public Sleeping

DATE: February 2, 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>	Pre-meeting
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1530 generally requires counties and municipalities to prohibit individuals from 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 sleeping or camping on public property by issuing temporary permits, during a state of emergency declared by the Governor, or at designated areas of public property. These designated areas must have many of the characteristics of a homeless shelter, such as sanitary facilities, security, and behavioral health services and prohibitions against drugs and alcohol. The designated areas must also be located where other properties are not adversely affected.

The bill additionally permits a person or business to bring a civil action against a county or municipality to enjoin practices of allowing unlawful sleeping or camping on public property. 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 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

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%20C.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/hlr/bills/pdf/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).

⁸ *Id.*

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

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. A county or municipality, however, may authorize sleeping or camping on public property within its jurisdiction with a “lawfully issued temporary permit,” during a state of emergency declared by the Governor, or at designated areas of public property. Any area of public property designated by a county or municipality for sleeping or camping is subject to the following conditions, the sufficiency of which is to be determined by the Department of Children and Families:

- Minimum sanitation levels, including but not limited to access to clean and operable restrooms and running water;
- Security presence on site at all times;
- Access to behavioral health services, including, but not limited to substance abuse and mental health treatment;
- Drugs and alcohol are prohibited within the designated area; and
- The designated area may not be in a location where it adversely and materially affects the value or security of existing residential or commercial properties.

The bill additionally permits a person or business 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.

The bill contains a finding of important state interest.

The bill takes effect October 1, 2024.

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.

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.

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.¹¹ 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

¹¹ 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>.

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.

C. Government Sector Impact:

Counties and municipalizes 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:

The bill leaves the terms “sleeping,” “camping,” and “lawfully issued permit” undefined. It is unclear whether the bill may interfere with existing local parks and recreation operations. While the bill contains an exception for states of emergency issued by the Governor, 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 Changes:

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

None.

B. Amendments:

None.