

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

**SPONSOR(S):** 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		Padgett	Kramer
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

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. 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. 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. Local governments exercise these powers by adopting ordinances.

HB 1365 creates ss. 125.0231 and 166.0453, F.S., to prohibit a county or municipality from authorizing or permitting public sleeping or public camping on public property, public buildings, or public rights-of-way within the jurisdiction of the county or municipality without a lawfully issued temporary permit.

The bill authorizes a county or municipality, in its discretion, to designate certain property owned by the county or municipality for public sleeping or public camping if the Department of Children and Families (DCF) determines that the conditions of such property are sufficient. Such conditions include:

- Minimum sanitation levels, including, but not limited to, access to clean and operable restrooms and running water;
- Security being present on the site at all times;
- Access to behavioral health services, including, but not limited to, substance abuse and mental health treatment resources;
- Prohibiting drugs and alcohol on the designated property; and
- Prohibiting the designated area from being located where it adversely and materially affects the value or security of existing residential or commercial properties.

Under the bill, a person or business may bring a civil action in any court of competent jurisdiction against any county or municipality to enjoin a violation of the provisions of the bill. 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 provisions of the bill do not apply during a state of emergency issued by the Governor.

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

The bill may have a fiscal impact on state government expenditures by requiring DCF, if a county or municipality designates property for public sleeping or public camping, to inspect such property to ensure that it meets conditions specified in the bill. The bill may have a fiscal impact on local government expenditures by requiring a county or municipality that chooses to designate county or municipal property for public sleeping or public camping to expend funds to maintain specified conditions on such property, and authorizing a court to award reasonable expenses if a person files 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:** h1365b.JDC

**DATE:** 2/5/2024

# 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. 5, 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. 5, 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. 5, 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

HB 1365 creates ss. 125.0231 and 166.0453, F.S., to prohibit a county or municipality from authorizing or permitting public sleeping or public camping on public property, public buildings, or public rights-of-way within the jurisdiction of the county or municipality without a lawfully issued temporary permit.

The bill authorizes a county or municipality, in its discretion, to designate certain property owned by the county or municipality for public sleeping or public camping if the Department of Children and Families (DCF) determines that the conditions of such property are sufficient. Such conditions include:

- Minimum sanitation levels, including, but not limited to, access to clean and operable restrooms and running water;
- Security being present on the site at all times;
- Access to behavioral health services, including, but not limited to, substance abuse and mental health treatment resources;
- Prohibiting drugs and alcohol on the designated property; and
- Prohibiting the designated area from being located where it adversely and materially affects the value or security of existing residential or commercial properties.

Under the bill, a person or business may bring a civil action in any court of competent jurisdiction against any county or municipality to enjoin a violation of the provisions of the bill. 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 provisions of the bill do not apply during a state of emergency issued by the Governor.

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:

#### 1. Revenues:

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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. 5, 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. 5, 2024).

None.

2. Expenditures:

To the extent that counties or municipalities designate county or municipal property 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 determining whether the conditions of such property meet the requirements provided in 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 for public sleeping or public camping since the county or municipality is required to maintain specified conditions on such property. 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, 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 sleeping or public camping, to determine the sufficiency of specified conditions on such property. 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