

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 2018
By: Flores
Local Government
4/4/2023
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The 87th Legislature passed H.B. 1925, which instituted a statewide ban on camping in public places. The purpose was to address the growing problem of homeless campsites in public areas that presented a safety and health hazard to those living there as well as to the surrounding communities. Among the bill's provisions, local entities were prohibited from adopting or enforcing a policy that prohibited or discouraged enforcement of a public camping ban and required plan approval for designated camping areas.

Unfortunately, many areas still have open campsites throughout their cities, and none have submitted a plan for designated campsites. The attorney general has found it difficult to seek injunctive relief under the existing statutory framework. A change in the law is needed to make it easier to enforce the ban and for the attorney general to take action against cities that continue to allow open camping in their jurisdictions.

S.B. 2018 specifies that a local entity may not prohibit or discourage the investigation or enforcement of violations of the public camping ban following official, written complaints made by a person. The bill provides that a policy that encourages diversion or provision of services under the statute must be a court-ordered program and contains reporting guidelines for courts that operate such programs as well as reporting requirements to the Office of the Attorney General criminal justice division of citizen complaints. S.B. 2018 specifies that a property can be utilized for camping as long as the plan has been approved by the Texas Department of Housing and Community Affairs. Additionally, it contains provisions for declaring a local entity that does not enforce the camping ban a "violating local entity" and authorizes the Department of Public Safety of the State of Texas to enforce the camping ban as well as withhold sales taxes for the amount of money the state spent that year in enforcing the camping ban.

(Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 2018 amends current law relating to prohibitions on camping in a public place.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the attorney general in SECTION 9 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 364.002(a), Local Government Code, as follows:

(a) Prohibits a local entity from adopting or enforcing a policy under which the entity prohibits or discourages the enforcement of any public camping ban, including prohibiting or discouraging the investigation or enforcement of a violation of a public camping ban.

SECTION 2. Amends Chapter 364, Local Government Code, by adding Sections 364.0021, 364.0022, 364.0023, and 364.0024, as follows:

Sec. 364.0021. USE OF PROPERTY FOR CAMPING PURPOSE. Prohibits a local entity from permitting camping by homeless individuals on a property designated for that

purpose until the Texas Department of Housing and Community Affairs has approved a plan for the property under Section 2306.1122 (Approval Required), Government Code.

Sec. 364.0022. COMPLAINTS AND REPORTING. (a) Requires a local entity to develop and implement a process that allows a person to file a complaint with the local entity regarding a violation of a public camping ban.

(b) Requires a local entity, each year, to report to the attorney general, in the form and manner prescribed by the attorney general, the following information:

(1) the number of complaints received as part of the local entity's complaint process implemented under Subsection (a);

(2) the disposition of each complaint, including court-ordered diversion programs;

(3) the number of arrests made or citations in lieu of arrest issued for a violation of a public camping ban; and

(4) any other information related to public camping as required by the attorney general.

Sec. 364.0023. ENFORCEMENT REQUIRED BY LOCAL ENTITY; DECLARATION AS "VIOLATING LOCAL ENTITY." (a) Requires a local entity, for each complaint received by the local entity under Section 364.0022(a), to take an action to resolve the complaint not later than the 90th day after the date the complaint is received.

(b) Requires the attorney general, if the local entity does not the required action before the end of the period prescribed by Subsection (a), to issue a written declaration that the local entity is a "violating local entity" for the state fiscal year in which the end of the period prescribed by Subsection (a) occurs. Requires the attorney general to send a copy of the written declaration to the local entity and the Comptroller of Public Accounts of the State of Texas (comptroller).

Sec. 364.0024. ENFORCEMENT BY DEPARTMENT OF PUBLIC SAFETY AND ATTORNEY GENERAL; RECOVERY OF COSTS. (a) Authorizes the attorney general or the Department of Public Safety of the State of Texas (DPS) to enforce Section 48.05 (Prohibited Camping), Penal Code.

(b) Authorizes the attorney general or DPS, for each enforcement action described by Subsection (a) that occurs within the boundaries of a local entity that is a "violating local entity," to recover any costs associated with the enforcement action from the local entity in accordance with Section 321.5026 or 323.5026, Tax Code, as applicable.

SECTION 3. Amends Section 48.05, Penal Code, by amending Subsection (i) and adding Subsection (i-1), as follows:

(i) Requires a peace officer enforcing this section, subject to Subsection (i-1), if a person is arrested or detained solely for an offense under this section, to ensure that all of the person's personal property not designated as contraband under other law is preserved by taking certain actions, including taking custody of the person's nonhazardous personal property and allowing the person to retrieve the property after the person is released from custody. Makes a nonsubstantive change.

(i-1) Provides that Subsection (i) does not apply to personal property that is a permanent or semipermanent structure unless the structure is a camping tent.

SECTION 4. Amends Subchapter F, Chapter 321, Tax Code, by adding Section 321.5026, as follows:

Sec. 321.5026. DISTRIBUTION OF TRUST FUNDS TO MUNICIPALITY THAT FAILS TO ACT ON PUBLIC CAMPING BAN COMPLAINT. (a) Defines "violating local entity."

(b) Prohibits the comptroller, notwithstanding Section 321.502 (Distribution of Trust Funds), after the date the comptroller receives notice that a municipality is a violating local entity for a state fiscal year, from sending to the municipality its share of the taxes collected by the comptroller under Chapter 321 (Municipal Sales and Use Tax Act) during the state fiscal year until the comptroller makes any deduction required by Subsection (c).

(c) Requires the comptroller, before sending a violating local entity its share of the taxes collected by the comptroller under this chapter during a state fiscal year, to deduct the amount reported to the comptroller for the violating local entity under Subsection (d) and to credit that deducted amount to the general revenue fund. Authorizes money credited to the general revenue fund under this subsection to be appropriated only to the attorney general or DPS, as applicable.

(d) Requires the attorney general and DPS, not later than August 1 of each state fiscal year, to report to the comptroller the amount of money the attorney general or DPS spent in that state fiscal year to taking law enforcement actions described by Section 364.0024, Local Government Code, in each violating local entity. Requires the attorney general and DPS to make a reasonable estimate of the amount spent after the date the report is made until the end of the state fiscal year based on amounts spent before the date the report is made.

SECTION 5. Amends Subchapter F, Chapter 323, Tax Code, by adding Section 323.5026, as follows:

Sec. 323.5026. DISTRIBUTION OF TRUST FUNDS TO COUNTY THAT FAILS TO ACT ON PUBLIC CAMPING BAN COMPLAINT. (a) Defines "violating local entity."

(b) Prohibits the comptroller, notwithstanding Section 321.502, after the date the comptroller receives notice that a county is a violating local entity for a state fiscal year, from sending to the county its share of the taxes collected by the comptroller under Chapter 323 (County Sales and Use Tax Act) during the state fiscal year until the comptroller makes any deduction required by Subsection (c).

(c) Requires the comptroller, before sending a violating local entity its share of the taxes collected by the comptroller under this chapter during a state fiscal year, to deduct the amount reported to the comptroller for the violating local entity under Subsection (d) and to credit that deducted amount to the general revenue fund. Authorizes money credited to the general revenue fund under this subsection to be appropriated only to the attorney general or DPS, as applicable.

(d) Requires the attorney general and DPS, not later than August 1 of each state fiscal year, to report to the comptroller the amount of money the attorney general and DPS spent in that state fiscal year to taking enforcement actions described by Section 364.0024, Local Government Code, in each violating local entity. Requires the attorney general and DPS to make a reasonable estimate of the amount spent after the date the report is made until the end of the state fiscal year based on amounts spent before the date the report is made.

SECTION 6. Makes application of Section 48.05, Penal Code, prospective.

SECTION 7. Makes application of Sections 321.5026 and 323.5026, Tax Code, as added by this Act, prospective.

SECTION 8. Requires each local entity, as defined by Section 364.001 (Definitions), Local Government Code, not later than December 1, 2023, to develop and implement the complaint process required under Section 364.0022, Local Government Code, as added by this Act.

SECTION 9. Requires the attorney general, not later than January 1, 2024, by rule to prescribe the form and manner for reporting as required by Section 364.0022, Local Government Code.

SECTION 10. Effective date: September 1, 2023.