

HB440 3rd Substitute: Homeless Services Amendments

2022 General Session

Sponsors: Representative Steve Eliason, Senator Jacob Anderegg

Key Provisions:

- I. Requires annual winter overflow plan in Salt Lake County;
- II. Implements failsafe provisions if an adequate overflow plan is not identified in Salt Lake County;
- III. Amends the Homeless Mitigation Fund including how municipalities qualify for funding, how municipalities apply for funding, and how the funding is allocated;
- IV. Modifies Utah Homeless Council membership within the Office of Homeless Services;
- V. Establishes the Utah Homeless Network Steering Committee within OHS and describes membership and duties of the steering committee; and
- VI. Appropriates \$5m ongoing to the Homeless Mitigation Fund and \$1m one-time ARPA funding to the third tier of the Homeless Mitigation Fund.

I. Salt Lake County Winter Overflow

A. Process:

1. COM shall annually prepare an overflow plan in consultation with the LHC and in coordination with the COG.
2. LHC shall provide the following information to the COM to assist with preparing an overflow plan:
 - a) Information re: the need for one or more temporary shelters to operate within the applicable county during the subsequent overflow period
 - b) Potential occasions within the applicable county for one or more temporary overflow shelters during the subsequent overflow meetings
3. On or before September 1 of each year, the COG shall submit the COM overflow plan to OHS
4. The COG may not make changes to the overflow plan prepared by the COM unless the changes are approved by the COM.

B. Plan Requirements:

1. Establish plans for the operation of one or more temporary overflow shelters within SLCo during the subsequent overflow period from October 1-April 30 of the following year.
2. Ensure that each temporary overflow shelter will meet all local zoning requirements before beginning operations
3. Provide assurances that individuals experiencing homelessness in SLCo will have sufficient access to shelter during the subsequent overflow period
4. Be approved by
 - a) The COM
 - b) The chief executive in each municipality in SLCo in which a temporary overflow shelter is planned to be located under the overflow plan

C. OHS Review:

1. Within 10 Days after the day on which OHS receives an overflow plan, OHS shall complete a review of the overflow plan to determine if the overflow plan complies with this section
2. The OHS shall determine noncompliance if
 - a) After completing a review of an overflow plan, OHS determines that the overflow plan does not meet the statutory requirements outlined above
 - b) The COG fails to submit an overflow plan as required

3. No later than five days after the day on which OHS determines noncompliance, the office shall send notice of noncompliance to the chair of the COM, the LHC, The COG, the legislative body of each municipality located within the applicable county. *If this happens, the failsafe provisions activate.*

II. Salt Lake County Failsafe

- A. Should the SLCo COM/COG fail to submit an adequate plan to OHS, the failsafe provisions will be triggered.
- B. Flex: Increased capacity at existing shelters
 1. A homeless shelter located within SLCo may have an occupant load factor of one individual for every 40 net square feet
 - a) A municipality located in SLCo may not enact or enforce an ordinance that imposes a capacity limit on a homeless shelter that conflicts with the capacity listed above (40 net square feet)
 2. A homeless shelter located within SLCo may not expand the shelter's capacity unless
 - a) The shelter complies with the fire code listed above
 - b) The fire code official approves the layout of the homeless shelter
 - c) For a shelter in operation on January 1, 2022, the homeless shelter's total capacity does not exceed 25% of the capacity limit applicable to the homeless shelter on January 1, 2022 (*i.e., flex up to the lesser of fire code or 125% capacity*)
 - d) The flex does not apply to a homeless shelter that is reserved exclusively for use by families.
- C. Preemption: *Operation of a temporary shelter in a state facility or appropriate non-state facility*
 1. OHS approval: an entity may not operate a temporary overflow shelter unless OHS first authorizes the operation
 2. State Facilities:
 - a) A municipality in SLCo may not enact or enforce an ordinance that restricts an entity from operating a temporary overflow shelter from a state facility located within that applicable county.
 - b) OHS may contract with a for-profit or nonprofit entity to operate a temporary overflow shelter from a state facility located within SLCo in coordination with the Division of Facilities Construction and Management and in accordance with Utah Procurement Code.
 3. Additional Facility Considerations (including state and non-state facilities)
 - a) OHS shall prioritize the conversion of a hotel or motel as a temporary overflow shelter and consider any information provided by the LHC to the COM
 - b) Unless otherwise approved by the municipality in which the temporary overflow shelter is located, OHS may not authorize the operation of a temporary overflow shelter
 - (1) Within a one-mile radius of a homeless shelter
 - (2) Within 1,000 feet of a community location as defined in [retail tobacco specialty business code](#) (public or private school (K- high school), licensed child-care facility or preschool, trade or technical school, church, public library, public playground, public park, youth center or other space used primarily for youth-oriented activities, a public recreational facility, a public arcade)
 - (3) Within 600 feet of any property zoned for residential use

4. If OHS authorizes the operation of a temporary overflow shelter within a municipality under the preemption, the office may not authorize a temporary overflow shelter within the same municipality during the three overflow periods immediately following the overflow period in which OHS authorized the operation in the municipality unless otherwise approved by the municipality (i.e., a municipality cannot be preempted more than once in a four-year period unless it approves)
5. The aggregate number of beds available at all temporary overflow shelters in the failsafe provision may not exceed 230 beds.

III. Homeless Mitigation Fund

A. Contributions:

1. Local: The Homeless Mitigation Fund is supported by every city and town without a homeless shelter as well as every county. Each contributes 1.8% of its 50% population distribution of the 1% local sales tax option with a cap of \$200k/year.
2. Statewide: HB 440 includes a \$5m ongoing appropriation to the mitigation fund.

B. Eligibility:

1. Tier 1:
 - a) a municipality located in a county of the first or second class
 - b) Has or is proposed to have a homeless shelter that has the capacity to provide temporary shelter to at least 80 individuals per night, as verified by OHS
 - (1) Operates year-round
 - (2) Is not subject to restrictions that limit the hours, days, weeks, or months of operation
 - c) Due to the location of an eligible shelter within the municipality's geographic boundaries, requires eligible services
2. Tier 2:
 - a) A municipality in counties of the third, fourth, fifth, or six class
 - b) Has or is proposed to have a homeless shelter that has the capacity to provide temporary shelter to at least 25 individuals per night, as verified by OHS, in their geographic boundaries
 - (1) Operates year-round
 - (2) Is not subject to restrictions that limit the hours, days, weeks, or months of operation
 - c) Due to the location of an eligible shelter within the municipality's geographic boundaries, requires eligible services
3. Tier 3:
 - a) A municipality that has a homeless shelter that has the capacity to provide temporary shelter to at least 50 individuals per night, as verified by OHS
 - (1) Operates no less than 3 months from October 1 - April 30 of the following year,
 - b) A municipality that has an existing homeless shelter that increases capacity during the overflow period as defined in the Overflow section of the bill.

C. Distribution Formula:

1. Tier 1 (92.5% of the mitigation fund)
 - a) 70% shall be disbursed proportionately among applicants based on the total number of individuals experiencing homelessness in each eligible shelter within each eligible municipality
 - b) 20% shall be disbursed proportionately among applicants based on the total number of individuals experiencing homelessness served by eligible shelters

within each municipality as compared to the total population of the municipality, as determined by OHS

c) 10% shall be disbursed proportionately among applicants based on the total year-round capacity of all eligible shelters within each municipality, as determined by the office.

d) Distribution Cap: Greater of \$2.75m or 25% of the Tier 1 funds

2. Tier 2 (2.5% of the mitigation fund)

a) 70% shall be disbursed proportionately among applicants based on the total number of individuals experiencing homelessness in each eligible shelter within each eligible municipality

b) 20% shall be disbursed proportionately among applicants based on the total number of individuals experiencing homelessness served by eligible shelters within each municipality as compared to the total population of the municipality, as determined by OHS

c) 10% shall be disbursed proportionately among applicants based on the total year-round capacity of all eligible shelters within each municipality, as determined by the office.

d) Distribution Cap: 50% of the Tier 2 funds

3. Tier 3 (5% of the mitigation fund)

a) Disbursed to Tier 3 eligible municipalities that have been approved to receive funds in accordance with a formula established by OHS and approved by the Utah Homelessness Council.

b) OHS may disburse funds to a 3rd tier municipality regardless of whether the municipality receives funds under the first or second tiers.

c) Includes \$1m one-time ARPA funding for Tier 3 in addition to the 5%.

D. Application & Evaluation Process:

1. A Municipality may apply for account funds to mitigate the impacts of the location of an eligible shelter through the provision of eligible services in the eligible municipalities' boundaries

a) Eligible services means public safety services or any other services that mitigate the impacts of the location of an eligible shelter, as further defined by OHS rulemaking

2. On or after July 1, 2022

a) The Homelessness Council shall set aside time on the agenda of a homelessness council meeting that occurs between July 1 and November 30 to allow an eligible municipality to present a request for account funds by

(1) Sending an electronic copy of the request to the homelessness council before the meeting

(2) Appearing at the meeting to present the request

b) The request shall contain

(1) A proposal outlining the need for eligible services including a description of each eligible service for which the eligible municipality requests mitigation funds

(2) A description of the eligible municipality's proposed use of account funds

(3) A description of the outcome that the funding would be used to achieve, including indicators that would be used to measure progress towards the specified outcomes

(4) The amount of funds requested

- c) Reporting: On or before November 30, an eligible municipality that received account funds during the previous fiscal year shall file electronically with the homeless council a report that includes
 - (1) A summary of the amount of account funds that the eligible municipality expended and the eligible municipality's specific use of those funds
 - (2) An evaluation of the eligible municipality's effectiveness in using the account funds to address the eligible municipality's needs due to the location of an eligible shelter
 - (3) An evaluation of the eligible municipality's progress regarding the outcomes and indicators described in (2)(c)(iii) and
 - (4) Any proposals for improving the eligible municipality's effectiveness in using account funds that the eligible municipality may receive in future fiscal years
 - (5) *the homeless council may request additional information as needed to make their evaluation as described in subsection (2)(e) (summarized below)
 - d) Evaluation: Homelessness Council shall evaluate a request made in accordance with this subsection using the following factors
 - (1) The strength of the proposal that the eligible municipality provided to support the request
 - (2) If the eligible municipality received account funds during the previous fiscal year, the efficiency with which the eligible municipality used any account funds during the previous fiscal year
 - (3) The availability of funding for the eligible municipality as outlined in the formula
 - (4) The availability of alternative funding for the eligible municipality to address the eligible municipality's needs due to the location of an eligible shelter
 - (5) Whether the eligible municipality enacts and enforces an ordinance that prohibits camping
 - (6) Any other consideration identified by the homelessness council
 - e) After making the evaluation, the homelessness council shall vote to either approve or deny an eligible municipality's request for account funds.
 - (1) The homeless council shall support the decision with findings on each of the factors identified in the evaluation process.
 - f) Funding Disbursement: If the homeless council approves an eligible municipality's request to receive account funds, the office, subject to appropriation, shall calculate the amount of funds for disbursement to the eligible municipality.
 - (1) An eligible municipality that is approved to receive account funds may submit an invoice of the eligible municipality's expenses, with supporting documentation, to the office monthly for reimbursement.
- 3. OHS Reporting: On or before October 1, the coordinator, in cooperation with the homeless council shall submit a report to Social Services appropriations
 - 4. Rulemaking: OHS shall make rules governing the process for calculating the amount of funds that an eligible municipality may receive in accordance with the Administrative Rulemaking Act

E. Certification of an eligible municipality

1. The office shall certify each year, on or after July 1 and before the first meeting of the homelessness council after July 1, the municipalities that meet requirements of a first-tier eligible municipality or a second-tier eligible municipality as of July 1
2. On or before October 1, OHS shall provide a list of municipalities certified as first or second tier eligible municipalities to the State Tax Commission

IV. Utah Homeless Council Membership

A. Amended to include:

1. Commissioner of public safety or the commissioner's designee
 - a) Instead of the executive director of the department of health (incorporated with the new Health and Human Services office)
2. Five local representatives appointed by the steering committee. At least two must be private providers of services for people experiencing homelessness.
3. Expands executive committee from eight to 9 members: includes a local representative appointed by the co-chairs.

V. Utah Homeless Network Steering Committee

A. Membership:

1. Chair of each LHC or their designee
2. One individual who has experienced homelessness, appointed by the co-chairs of the steering committee
3. One representative for the collaborative applicant for the Balance of State continuum of care, appointed by the collaborative applicant.
 - a) "Collaborative applicant" = entity designated by a continuum of care to collect and submit data and apply for funds on behalf of the continuum of care, as required by HUD
4. One representative of the collaborative applicant for the Mountainland continuum of care, appointed by the collaborative applicant
5. One representative for the SLCo continuum of care, appointed by the collaborative applicant
6. One representative of the OHS program staff, appointed by the coordinator
7. One representative of the office's data staff, appointed by the coordinator

B. Co-Chairs

1. Steering committee shall select two members amongst the steering committee membership to serve as co-chairs.
 - a) One co-chair shall be chosen among the members representing the Mountainland, SLCo, Davis, or Weber-Morgan LHCs.
 - b) One co-chair shall be chosen among the members representing all other LHCs not listed above.
2. Co-chairs are responsible for the call and conduct of meetings

C. Administration:

1. Majority of members constitutes a quorum
2. The action of a majority of the quorum constitutes the action of the steering committee
3. A member may not receive compensation or benefits for the member's service but may receive a per diem and travel expenses.
4. OHS and DWS shall provide administrative support to the steering committee

D. Duties:

1. Support connections across continuum of care, LHCs, and state and local governments

2. Coordinate statewide emergency and crisis response in relation to services for individuals experiencing homelessness
3. Provide training to providers of services for individuals experiencing homelessness, stakeholders, and policymakers
4. Educate the public and other interested persons regarding the needs, challenges, and opportunities for individuals experiencing homelessness, and
5. Make recommendations to the homeless council regarding the awarding of funding in the Homeless Shelter Cities Mitigation Restricted Account

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