

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 Judiciary Committee

BILL: CS/SB 646

INTRODUCER: Regulated Industries Committee and Senator Wise

SUBJECT: Self-Storage Facilities

DATE: February 17, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Waters	Imhof	RI	Fav/CS
2.	Irwin	Cibula	JU	Favorable
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

The bill changes the notice requirements related to enforcing an owner’s lien against items stored in a self-service storage facility. Specifically, the bill allows for notice by e-mail or first-class mail along with a certificate of mailing. It also revises the provisions relating to when notice is presumed to have been delivered. The bill requires rental agreements and applications for rental agreements to have a provision disclosing whether the applicant is a member of the uniformed services.

This bill substantially amends the following sections of the Florida Statutes: 83.803, 83.806, and 83.808.

II. Present Situation:

The Florida Self-storage Facility Act¹ (Act) controls the relationship between the owner of a self storage facility and a tenant. The Act controls the enforcement of an owner’s lien, including the

¹ Sections 83.801-83.809, F.S.

notice requirements for the sale of the personal property of the tenant who fails to pay moneys due to the owner.²

Section 83.803(6), F.S., defines the term “last known address” to mean the “address provided by the tenant in the latest rental agreement or the address provided by the tenant by hand delivery or certified mail in a subsequent written notice of a change of address.”

Section 83.806(1), F.S., requires that the tenant be notified of an enforcement of a lien. The notice must be in writing and must be delivered in person or by certified mail³ to the tenant’s last known address and conspicuously posted at the self-service storage facility or on the self-contained storage unit. The notice must include:

- An itemized statement of the owner’s claim;
- A description of the personal property;
- A demand for payment within a specified time, not less than 14 days after delivery of the notice;
- A conspicuous statement that unless the claim is paid within the time stated in the notice the personal property will be advertised for sale or other disposition and will be sold or otherwise disposed of at a specified time and place; and
- The name, street address, and telephone number of the owner whom the tenant may contact to respond to the notice.⁴

Under s. 83.806(3), F.S., any notice given in the enforcement action is presumed delivered when it is deposited with the United States Postal Service, registered, and properly addressed with postage prepaid.

In the event of a sale, s. 83.806(8), F.S., requires the owner to provide notice of any balance remaining to the tenant either in person or by certified mail to the last known address of the tenant. If other lienholders are involved, the owner must also provide a notice of the amount of the sale proceeds to the secured lienholders in person or by certified mail.⁵

The Servicemembers Civil Relief Act protects military personnel called to active duty from termination of storage leases under prescribed circumstances. Under that act:

A person holding a lien on the property or effects of a servicemember may not, during any period of military service of the servicemember and for 90 days thereafter, foreclose or enforce any lien on such property or effects without a court order granted before foreclosure or enforcement.⁶

² Section 83.806, F.S.

³ Certified mail allows the owner to find out when their item was delivered or when delivery was attempted. United States Postal Service website, available at <https://www.usps.com/send/insurance-and-extra-services.htm> (last visited February 15, 2012).

⁴ Section 83.806(2), F.S.

⁵ Section 83.806(8), F.S.

⁶ 50 App. U.S.C. s. 537(a)(1).

A person is subject to penalties for a misdemeanor for violating the act.⁷

III. Effect of Proposed Changes:

Section 1. amends s. 83.803(6), F.S., to expand the definition of last known address to include the street address, post office box, or e-mail address provided by the tenant in a rental agreement or in a subsequent written change of address notice provided by first-class mail or e-mail. The bill deletes a provision which may have required a tenant to provide a new address to an owner by certified mail.

Section 2. amends s. 83.806(1), F.S., to remove the requirement that a tenant be notified of the owner's claim by certified mail. The bill allows written notice of a pending sale of property to be delivered in person, by e-mail, or by first-class mail along with a certificate of mailing. Specifically, if the owner notifies the tenant by e-mail, a response, return receipt, or delivery confirmation from the tenant's last known e-mail address is required for the notice to be effective. If a response, return receipt, or delivery confirmation is not received, the owner must send notice of the sale to the tenant's last known address by first-class mail⁸ along with a certificate of mailing,⁹ before proceeding with the sale.

The bill amends s. 83.806(3), F.S., to delete a requirement that a notice sent by mail must be "registered" in order for the notice to be presumed delivered when deposited with the U.S. Postal Service.¹⁰ Accordingly, any notice sent by mail, registered or not, is presumed delivered when deposited with the U.S. Postal Service.

The bill amends s. 83.806(8), F.S., to permit the owner to notify the tenant or secured lienholders of any balance remaining from the proceeds of a sale of property by first-class mail along with a certificate of mailing, and removes the reference to certified mail.

Section 3. amends s. 83.808(8), F.S., to require contract rental agreements or applications for a rental agreement to contain a provision disclosing whether the applicant is a member of the uniformed services as that term is defined in 10 U.S.C. s. 101(a)(5).¹¹ This requirement may help servicemembers avoid a foreclosure on their property in a storage unit during a period of military service.

Section 4. provides an effective date of July 1, 2012.

⁷ 50 App. U.S.C. s. 537(c).

⁸ First-class mail provides the sender with delivery in three days or less and can be combined with additional services to confirm delivery. United States Postal Service website, available at <https://www.usps.com/send/first-class.htm> (last visited February 15, 2012).

⁹ A certificate of mailing provides the owner evidence of when the item was mailed with the date the mail was accepted by the United States Postal Service. United States Postal Service website, available at <https://www.usps.com/send/insurance-and-extra-services.htm> (last visited February 15, 2012).

¹⁰ Registered mail provides the sender the opportunity to insure the item for up to \$25,000. United States Postal Service website, available at <https://www.usps.com/send/insurance-and-extra-services.htm> (last visited February 15, 2012).

¹¹ The term "uniformed services" means—(A) the armed forces; (B) the commissioned corps of the National Oceanic and Atmospheric Administration; and (C) the commissioned corps of the Public Health Service. 10 U.S.C. s. 101(a)(5).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may lower the cost for owners of self-storage facilities with respect to providing the required notice to tenants and secured lienholders under the Florida Self-storage Facility Act.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not define the term “certificate of mailing.” The Legislature may wish to amend the bill to define a “certificate of mailing” as document provided by the United States Postal Service which provides the sender with the date an item was mailed and confirmation that the item was accepted by the United States Postal Service.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Regulated Industries on January 19, 2012:

Provides a technical amendment that clarifies the language to ensure that a certificate of mailing is only required when sending first-class mail.

B. Amendments:

None.

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