

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 559 Self-Service Storage Facilities  
**SPONSOR(S):** Business & Professions Subcommittee; La Rosa  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 720

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	8 Y, 2 N, As CS	Anderson	Anstead
2) Regulatory Affairs Committee			

### SUMMARY ANALYSIS

The Florida Self-storage Facility Act (the Act) controls the relationship between the owner of a self-service storage facility and a tenant with whom the owner has entered into an agreement. The act controls the enforcement of an owner's lien upon all personal property located at the self-service storage facility for failure to pay rent.

Self-service storage facility owners are currently permitted to sell personal property in a tenant's storage unit if the tenant fails to pay rent. The facility owner is required to give notice to the tenant of the intent to sell the property before the sale. After the time provided in the notice expires, the facility owner must publish an advertisement of the sale in a newspaper of general circulation prior to the sale or disposition of the contents of the unit. If there is no newspaper of general circulation in the region, the owner can post the advertisement in at least three conspicuous places in the neighborhood.

The bill provides an alternative method for publishing advertisements for the sale of a tenant's property. The bill allows the advertisement to be published on a publicly accessible Internet website for 2 consecutive weeks. The bill eliminates the option of posting notice of the sale in three conspicuous places in the neighborhood.

The bill provides that a lien sale may be conducted on a public website that typically conducts personal property auctions. The facility owner does not have to be licensed as an auctioneer to post property on such a website.

The bill limits the value of property contained in a storage unit if the value was limited in the rental agreement. This provision appears to be a restatement of current case law.

The bill authorizes a facility owner to have a motor vehicle or watercraft towed, without liability for damages, if a lien is claimed and if the tenant has failed to pay rent or other charges. The bill requires a facility owner to contact the Department of Highway Safety and Motor Vehicles for information regarding the property owner and any lienholders and requires the facility owner to send written notice to such persons. The facility owner is authorized to sell the motor vehicle or watercraft if the property owner or lienholder receives notice and does not satisfy the lien.

This bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

Sections 83.801-83.809, F.S., comprise Florida's "Self-storage Facility Act" (the Act). The Act provides remedies for the owner of a self-service storage facility<sup>1</sup> in the event that a tenant does not pay rent. The Act gives the facility owner the ability to deny a tenant access to his or her property if the tenant is more than five days delinquent in paying rent.<sup>2</sup>

The Act provides that the owner of a self-service storage facility has a lien upon all personal property located at a self-service storage facility for rent, labor charges, or other charges in relation to the personal property and for the expenses necessary to preserve or dispose of the property.<sup>3</sup> The facility owner is required to take certain steps before satisfying the lien.

First, the tenant must be provided written notice prior to the sale of the property. The notice must be delivered in person or by certified mail to the tenant's last known address and conspicuously posted at the self-service storage facility. The notice must contain a statement showing the amount due, the date it became due, a description of the property, a demand for payment within 14 days, and 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.

If the owner has not become current on the payments after the expiration of the time provided by the notice, the facility owner may advertise for a sale of the property. An advertisement of the sale must be published once a week for 2 consecutive weeks in a newspaper of general circulation in the area where the self-service storage facility is located. If there is no such newspaper of general circulation, the advertisement must be posted at least 10 days before the sale in at least three conspicuous places in the neighborhood where the self-service storage facility is located.<sup>4</sup> The advertisement must include a brief and general description of the property believed to be contained in the storage unit, the address of the facility, the name of the tenant, and the time, place, and manner of the sale or other disposition, which may not be sooner than 15 days after the first publication.<sup>5</sup>

The facility owner may then satisfy the lien from the proceeds of the sale. The balance, if any, is held by the facility owner for delivery on demand to the tenant. A notice of any balance must be delivered by the facility owner to the tenant in person or by certified mail. The balance is considered abandoned if the tenant does not claim it within two years.<sup>6</sup>

Current law also requires the facility owner to hold the sale proceeds for holders of liens against the property whose liens have priority over the facility owner's lien. The facility owner must provide notice of the amount of sale proceeds to such lienholders by either personal delivery or certified mail.<sup>7</sup>

##### **Effect of the Bill**

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<sup>1</sup> "Self-service storage facility" is defined by s. 83.803(1), F.S., as any real property designed and used for the purpose of renting or leasing individual storage space to tenants who are to have access to such space for the purpose of storing and removing personal property.

<sup>2</sup> Section 83.8055, F.S.

<sup>3</sup> Section 83.805, F.S.

<sup>4</sup> Section 83.806, F.S.

<sup>5</sup> Section 83.806(4)(a), F.S.

<sup>6</sup> Section 83.806(8), F.S.

<sup>7</sup> *Id.*

The bill provides an alternative method for publishing advertisements for the sale or disposition of the contents of a storage unit after proper notice to the unit owner. The facility owner is permitted to advertise the sale for two consecutive weeks on a publicly accessible Internet website. The bill eliminates the method of advertising a sale by posting the advertisement in three conspicuous locations in the neighborhood.

The bill creates s. 83.806(9), F.S., to limit the value of property that may be stored in a storage unit if the value is limited in the rental agreement. This limits the liability of the facility to the amount stated in the contract if the contents of the unit are damaged or stolen or if the facility owner wrongfully sells the tenant's property. This provision appears to be a restatement of current case law.<sup>8</sup>

The bill creates s. 83.806(10), F.S., to allow a facility owner to have the motor vehicle or watercraft towed without liability for damage to the vehicle or watercraft after it is towed. Alternatively, the facility owner may sell the motor vehicle or watercraft by public auction. Before the sale, the facility owner must contact the Department of Highway Safety and Motor Vehicles (DHSMV) to determine whether there are any lienholders and for contact information for the motor vehicle or watercraft owner. Within 10 days of receiving such information, the facility owner must send written notice to the lienholder and property owner by first class mail. The notice must state that: 1) the facility owner is holding the motor vehicle or watercraft, 2) a lien has attached, 3) payment is required within 30 days, and 4) the property may be sold if the lien is not satisfied. If an owner or lienholder receives notice of the sale and does not satisfy the lien, the facility owner may sell the motor vehicle or watercraft.

**B. SECTION DIRECTORY:**

Section 1 amends s. 83.806, F.S., revising requirements for the advertisement of the sale or disposition of property held in a self-service storage facility and providing options and notice requirements for the disposition of motor vehicles or watercraft claimed to be subject to a lien.

Section 2 provides an effective date of July 1, 2016.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

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<sup>8</sup> See *Muns v. Shurgard Income Properties Fund 16-Limited Partnership*, 682 So.2d 166 (Fla. 4<sup>th</sup> DCA 1996).

#### D. FISCAL COMMENTS:

Self-service storage facility owners may be able to more easily recoup losses from tenants who lapse on rent payments and may be able to recover more of the debt owed if they are able to use alternative and less expensive advertising methods. Newspapers of general circulation may experience a corresponding reduction in advertising revenue. The price of a newspaper advertisement for public auction varies widely statewide by publication and metropolitan area. An advertisement for public auction costs up to \$225 in at least one publication,<sup>9</sup> but the price may not necessarily reflect the total cost per storage unit because a facility owner could purchase one advertisement for the public auction of multiple units.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

There appears to be no rulemaking authority added or amended.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

The limitation of the liability of the facility owner for the value of the tenant's property, as agreed to in the rental agreement, may have the effect of allowing for an actionable claim for damages by the tenant if the facility owner sells the property for less than the amount indicated in the contract. This provision could be clarified to indicate that the agreed upon limitation in the contract does not reflect fair market value and is not a determination of the value of the property.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 2, 2015, the Business & Professions Subcommittee considered and adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Provides that the sale of a tenant's property may be advertised on an Internet website for 2 consecutive weeks rather than in a "commercially reasonable" manner.
- Clarifies subsection (10) and requires a facility or unit owner to contact DHSMV for information regarding the property owner and lienholders before selling a motor vehicle or watercraft at public auction.

This staff analysis is drafted to reflect the committee substitute.

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<sup>9</sup> Palm Beach Post Place a Legal Ad, available at <http://www2.palmbeachpost.com/projects/classifieds/place-a-legal.php> (last accessed December 4, 2015).