

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 715 Self-service Storage Facilities

SPONSOR(S): Civil Justice Subcommittee; Caldwell

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 646

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	15 Y, 0 N, As CS	Cary	Bond
2) Judiciary Committee	15 Y, 0 N	Cary	Havlicak

SUMMARY ANALYSIS

The Self-storage Facility Act allows a facility owner to sell personal property in a storage facility if the tenant fails to pay rent. The facility owner is required to give notice of the intent to sell the property to the tenant before selling the property and is required to give notice to the tenant if the sale of the property results in more money than is necessary to pay the rent due. Notice must be delivered to the tenant or mailed by certified mail. The bill removes the requirement to use certified mail and allows notices to be provided to the tenant by first-class mail with a certificate of mailing, and by e-mail in certain circumstances.

This bill also requires the rental agreement or application to contain a provision disclosing whether the applicant is a member of the military.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background - Notice

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-storage facility¹ or a self-contained storage unit² in the event that a tenant does not pay rent. The Act gives the facility owner the ability to deny a tenant's access to his or her property if the tenant is more than five days delinquent in paying rent.³

The Act provides that the owner of a self-storage facility or self-contained storage unit has a lien upon all personal property located at a self-service storage facility or in a self-contained storage unit for rent, labor charges, or other charges in relation to the personal property and for expenses necessary to preserve or dispose of the property.⁴ The facility owner's lien is enforced as follows:

- The tenant is notified by written notice⁵ delivered in person or by certified mail to the tenant's last known address and conspicuously posted at the self-service storage facility or on the self-contained storage unit. If mailed, the notice given is presumed delivered when it is deposited with the United States Postal Service and properly addressed with postage prepaid.
- After the expiration of the time given in the notice, 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 or self-contained storage unit is located. If there is no newspaper of general circulation in the area where the self-service storage facility or self-contained storage unit is located, 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 or self-contained storage unit is located.⁶

In the event of a sale, the facility owner may 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.⁷

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 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.⁸

The notices required by s. 83.806, F.S., must be sent by certified mail to the tenant's last known address.⁹ The last known address means the address provided by the tenant in the latest rental agreement or an address provided by the tenant by hand delivery or certified mail in a subsequent

¹ "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.

² "Self-contained storage unit" is defined by s. 83.803(2), F.S, as any unit not less than 200 cubic feet in size, including, but not limited to, a trailer, box, or other shipping container, which is leased by a tenant primarily for use as storage space whether the unit is located at a facility owned or operated by the owner or at another location designated by the tenant.

³ Section 83.8055, F.S.

⁴ Section 83.805, F.S.

⁵ 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.

⁶ Section 83.806, F.S.

⁷ Section 83.806(8), F.S.

⁸ *Id.*

⁹ Section 83.806(1), F.S.

written notice of a change of address.¹⁰ Certified mail provides verification of proof of delivery by requiring the recipient's signature for delivery.¹¹ Currently, the USPS charges \$2.85 for certified mail service in addition to applicable postage for the piece.¹²

Effect of the Bill - Notice

The bill amends 83.803(6), F.S., to change the definition of "last known address" to specifically include a post office box address and to include a change of address if provided by the tenant. The new definition also allows the tenant to provide the address by first class mail or e-mail notice, in addition to hand delivery.

This bill amends s. 83.806, F.S., to provide that most notices required by s. 83.806, F.S., may either be delivered to the tenant or lienholder, e-mailed, or mailed by first-class mail, rather than certified mail. However, e-mail notice may not be utilized to notify the tenant of any balance resulting from a sale of the contents of the storage unit or to notify the tenant or secured lienholders as to the amount of the sale.

A certificate of mailing must be included with the notification if notification is made by mail. In order for e-mail notice to be valid, the facility owner must receive a response, a return receipt, or delivery confirmation from the same e-mail address. If the facility owner does not receive any of these, the facility owner must send notice of the sale to the tenant by first-class mail, along with a certificate of the mailing, before proceeding with the sale.

This bill also amends s. 83.803(6), F.S., to provide that tenants may provide notice of change of address by first class mail or e-mail. It removes the requirement that tenants mail notice by certified mail.

Background - Rental Agreements

The Servicemembers Civil Relief Act (50 U.S.C. ss. 501-596) requires a court order to enforce a lien against some members of the military. Persons are subject to federal criminal penalties for failing to comply with the Servicemembers Civil Relief Act. Current law does not contain a requirement that applicants for a self-storage lease disclose whether they are in the military. Under current law, the owner of a self-storage facility might not know a renter is in the military and could violate federal law by not obtaining a court order before conducting a sale of the property belonging to a member of the military.

Effect of the Bill - Additional Provisions in Rental Agreements

This bill amends s. 83.808, F.S., to require a rental agreement to contain a provision disclosing whether the applicant is a member of the uniformed services as defined in 10 U.S.C. s. 101(a)(5).¹³ This provision discloses the renter's military status to the owner of the facility. This bill does not change the requirement that the owner of a self-service storage facility comply with the Servicemembers Civil Relief Act.

B. SECTION DIRECTORY:

Section 1 amends s. 83.803, F.S., relating to the definition of "last known address."

Section 2 amends s. 83.806, F.S., relating to enforcement of liens.

¹⁰ Section 83.803(6), F.S.

¹¹ See <https://www.usps.com/send/insurance-and-extra-services.htm> (last visited December 12, 2011).

¹² *Id.*

¹³ 10 U.S.C. s. 101(a)(5) provides the definition of "uniformed services" for purposes of the Servicemembers Civil Relief Act. It defines uniformed services as the armed forces, the commissioned corps of the National Oceanic and Atmospheric Administration, and the commissioned corps of the Public Health Service.

Section 3 amends s. 83.808, F.S., relating to contracts.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill allows the owner of a self-service storage facility to send notice for certain actions via e-mail or first-class mail and a certificate of mailing instead of certified mail. The cost of a first-class stamp is \$.45 and a certificate of mailing is an additional \$1.15, while certified mail costs the price of a first-class stamp and an additional \$2.85.

This bill also requires the owner of a self-service storage facility to modify rental agreements or applications to contain a new provision disclosing whether the applicant is a member of the uniformed services, which may initially cost owners money to prepare if their agreements or applications do not already contain such a provision.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 18, 2012, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment corrects a minor drafting concern that the bill could have been read to require a certificate of mailing for personal and e-mail delivery of notice. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.