

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 727 Liens on Personal Property in Self-Service Storage Facilities & Self-Contained Storage Units

SPONSOR(S): Caldwell

TIED BILLS: None **IDEN./SIM. BILLS:** SB 1174

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	10 Y, 2 N	Cary	Bond
2) Judiciary Committee	13 Y, 5 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. 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, then the Act allows the owner to post the advertisement in at least three conspicuous places in the neighborhood.

The bill provides an alternative method of publishing advertisement of the sale by posting on an Internet website for two consecutive weeks. The bill eliminates the option of posting in three conspicuous places, so that if there is no newspaper of general circulation in the area, the facility owner would have to post the advertisement on a website.

This bill also limits the amount that can be recovered in an action against the facility to the limit of the value of property that may be stored, as set forth in the rental agreement. This provision appears to be a restatement of current law.

The bill also allows an owner to have a car towed if there is no prior lienholder and limits liability for the unit owner after the tow truck removes the vehicle.

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

The bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

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 notice 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, first-class mail, or e-mail in a

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.

subsequent 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

After the expiration of the time provided by the notice, if the owner has not come current on the payments, the facility owner may advertise for a sale of the property. Currently, the sale must be advertised once a week for two consecutive weeks in a newspaper of general circulation in the area.¹² The advertisement must include a brief and general description of the proper 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.¹³ If there is no newspaper of general circulation in the area of the facility, then the advertisement may be posted in the neighborhood where the facility is located in at least 3 conspicuous places for at least ten days before the sale or disposition may be conducted.¹⁴

If the tenant does not satisfy the lien and pay the owner's reasonable expenses, the facility owner may resume possession of the premises and sell the property.¹⁵ The owner may satisfy the lien from the proceeds of the sale, to the extent that the owner's lien is not inferior to another lien on any of the property.¹⁶ The balance from the sale, if any, must be held by the facility owner to be delivered to other lienholders, or if there are none, to the tenant upon request.¹⁷ After two years, the owner may keep the proceeds from the sale if he has provided notice to other lienholders and they have not made a claim on the amount of the lien.¹⁸

Effect of the Bill

The bill amends s. 83.806(4), F.S., to allow the facility owner to advertise the sale or disposition of the contents of the unit by posting the sale for 2 consecutive weeks on any Internet website that is accessible to the public. The bill eliminates the alternative method of advertising a sale by posting the advertisement in three conspicuous locations in the neighborhood. This would require the owner of a facility in an area with no newspaper of general circulation to post the advertisement on the Internet.

The bill creates s. 83.806(9), F.S., to limit the amount that can be recovered in an action against the facility to the limit of the value of property that may be stored, as set forth 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 and the facility has breached its duty. This provision appears to be a restatement of current law.¹⁹

The bill creates s. 83.806(10), F.S., to limit the liability of the facility if the contents of the unit include a vehicle that does not have a prior lienholder. In such a case, the facility owner may have the vehicle towed, and the owner would not have liability for damage to the vehicle after it is towed away. The bill does not allow a facility owner to have a vehicle towed if there is a prior lienholder. Presumably, the owner would need to contact the lienholder for repossession.

B. SECTION DIRECTORY:

Section 1 amends s. 83.806, F.S., relating to enforcement of a lien.

Section 2 provides an effective date of July 1, 2013.

¹⁰ Section 83.803(6), F.S.

¹¹ See <https://www.usps.com/send/insurance-and-extra-services.htm> (last visited March 18, 2013).

¹² Section 83.806(4), F.S.

¹³ Section 83.806(4)(a), F.S.

¹⁴ Section 83.806(4)(b), F.S.

¹⁵ Section 83.806(6), F.S.

¹⁶ Section 83.806(8), F.S.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ See *Muns v. Shurgard Income Properties Fund 16-Limited Partnership*, 682 So.2d 166 (Fla. 4th DCA 1996).

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 does not appear to have any direct impact on the private sector.

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

None.