

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 559 Self-Service Storage Facilities

SPONSOR(S): Regulatory Affairs Committee; Business & Professions Subcommittee; La Rosa

TIED BILLS: **IDEN./SIM. BILLS:**

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	15 Y, 3 N, As CS	Anderson	Hamon
3) Appropriations Committee		Keith	Leznoff

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 an Internet website developed by the Department of Financial Services (DFS) for two 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, and the National Motor Vehicle Title Information System if necessary, 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.

The bill requires the DFS and the CFO to develop and maintain an Internet website to provide public notice of the sale of a self-storage facility tenant's property. The bill provides requirements for the website and requires the DFS to establish, by rule, a fee to cover website development and operational costs for the service of posting notice on its website.

The bill has an indeterminate fiscal impact on state government revenues and a significant fiscal impact on state government expenditures of the DFS. The amount of self-service storage facility owners who would potentially utilize the website is currently unknown. Additionally, the DFS estimates that provisions of the bill will require one full-time equivalent position and additional expenditures of \$145,723 in FY 2016-17 and \$101,393 annually thereafter to develop, implement, and maintain the website prescribed in the bill.

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

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0559d.APC

DATE: 2/19/2016

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation - Self-service storage facilities

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 facility¹ 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.²

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.³ 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.⁴ 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.⁵

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.⁶

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.⁷

Current Situation - Department of Financial Services

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 s. 83.8055, F.S.

³ s. 83.805, F.S.

⁴ s. 83.806, F.S.

⁵ s. 83.806(4)(a), F.S.

⁶ s. 83.806(8), F.S.

⁷ *Id.*

The Department of Financial Services ("DFS") does not regulate or administer self-service storage facilities. The DFS consists of several divisions and specialized offices,⁸ including the Division of Consumer Services and the Bureau of Unclaimed Property.

The Chief Financial Officer ("CFO") is the head of the DFS and is an elected member of the Cabinet, serves as the chief fiscal officer of the State of Florida⁹ and is designated as the State Fire Marshal.¹⁰ Additionally, the CFO is designated as the agent for service of process on insurers and other specific entities or persons licensed by the DFS and the Office of Insurance Regulation.¹¹

The various departments of the executive branch receive their statutory powers, duties and functions either in a general grant of authority to either the department head or the department by name or by a specific grant with reference to a particular named unit. The department head has discretion when allocating or reallocating those powers, duties and functions that are assigned to them or their department in a general manner.

The Division of Consumer Services within the DFS is tasked with preparing and disseminating information to inform or assist consumers.¹² The Division of Consumer Services manages a Civil Remedy Notice website that provides notice as set forth in s. 624.155, F.S., which requires a party filing suit against an insurer to file notice with both the insurer and the DFS at least 60 days before bringing an action against the insurer.¹³ Under ch. 17, F.S., the Bureau of Unclaimed Property (Bureau) within the DFS collects unclaimed property for custody and safekeeping.¹⁴ The Bureau must attempt to locate property owners and return property or proceeds to the person.

Effect of the Bill

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 an Internet website developed by the DFS. The bill provides that the unit owner is responsible for providing notice and the CFO is not liable for technical failures during the 14-day notice period or for the content in the posted notice. The bill eliminates the method of advertising a sale by posting the advertisement in three conspicuous locations in the neighborhood.

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

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.¹⁵

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. The bill requires a wrecker that takes possession of a motor vehicle or watercraft to comply with notification and sale requirements pursuant to s. 713.78, F.S. 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

⁸ s. 20.121, F.S.

⁹ FLA. CONST. art. IV, s. 4.

¹⁰ s. 633.104(1), F.S. Where applicable, references to the CFO in this bill analysis include the CFO's role as State Fire Marshal.

¹¹ ss. 48.151(1) and 48.151(3), F.S.

¹² s. 20.121(2)(h), F.S.

¹³ Department of Financial Services Civil Remedy System, <https://apps.fldfs.com/CivilRemedy/> (last visited Feb. 10, 2016).

¹⁴ Ch. 87-105, Laws of Fla. See also UNIFORM LAW COMMISSION, *Unclaimed Property Act Summary*, <http://www.uniformlaws.org/ActSummary.aspx?title=Unclaimed%20Property%20Act> (last visited Feb. 10, 2016); see also <https://www.ftreasurehunt.org/>, where DFS has a searchable database of currently unclaimed property.

¹⁵ *Muns v. Shurgard Income Properties Fund 16-Limited Partnership*, 682 So.2d 166 (Fla. 4th DCA 1996).

Safety and Motor Vehicles (DHSMV) to determine whether there are any lienholders and for contact information for the motor vehicle or watercraft owner. If the motor vehicle or watercraft is not titled in Florida, the unit owner must search the National Motor Vehicle Title Information System to determine ownership and whether there are any lienholders.

Within 10 days of receiving such information, the facility owner must send written notice to the lienholder and property owner by certified mail. If a motor vehicle or watercraft owner identified is the same as the tenant in default who has been notified pursuant to s. 83.806(1), F.S., the facility owner may send written notice to the 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.

The bill creates s. 624.307(10), F.S., to require the DFS and the CFO to develop and maintain an Internet website to provide public notice of the sale of a self-storage facility tenant's property. The bill provides requirements for the website, including information that identifies the tenant; the location of the property; the type of property subject to sale; and the time, place, and manner of the sale. The bill requires the DFS to establish, by rule, a fee for the service of posting notice on its website. The fee must cover the development, implementation, and operational maintenance costs of the website and be deposited into the DFS's Administrative Trust Fund.

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: Amends s. 624.307, F.S., requiring DFS and the CFO to develop an Internet website to provide public notice of the sale of property belonging to a tenant of a self-service storage facility, providing requirements for the website, and authorizing rulemaking.

Section 3: Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Effects of the bill have an indeterminate impact to revenues deposited into the Administrative Trust Fund of the DFS. Specifically, the bill directs the DFS to establish, by rule, a fee for the service of posting notice of a sale of property on its website. The fee is intended to provide revenues to the DFS to cover the development, implementation, and operational maintenance costs of the website. However, it is unknown how many self-service storage facility owners will potentially utilize the website and if the revenue generated will support the website's operations.

2. Expenditures:

According to the DFS, estimates for the development, implementation, and operational maintenance of the website prescribed in the bill will require one full-time equivalent position and additional expenditures of \$145,723 in FY 2016-17 and \$101,393 annually thereafter.¹⁶ Additionally, the bill requires the DFS to adopt rules regarding the administration, operation, and maintenance of the website; however, the rulemaking requirement has no known fiscal impact as the rule making process is part of the daily operations of the DFS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

¹⁶ Florida Department of Financial Services, Agency Analysis of 2016 House Bill 559, p.1 (Feb. 10, 2016).

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. If the fee to post on the new website created by the DFS is lower than the cost of placing an advertisement in a newspaper, a self-service storage facility owner that chooses to post an advertisement on the new website and not in a newspaper may see a decrease in the cost of selling property belonging to a tenant in default.

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. The price also varies according to the day of the week and total run time of the advertisement. The cost per advertisement 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:

The bill requires the DFS to adopt rules regarding the administration, operation, and maintenance of the website.

C. DRAFTING ISSUES OR OTHER COMMENTS:

DFS has indicated that it is taking a neutral position as to the proposed website and neither supports nor opposes the proposed legislation.

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.

On February 4, 2016, the Regulatory Affairs Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Requires the Department of Financial Services and the Chief Financial Officer to develop and maintain an Internet website to provide public notice of the sale of a self-storage facility tenant's property and provides minimum guidelines for the website, requires a fee for posting notice, and authorizes rulemaking;
- Revises the alternative method for publishing advertisements to allow posts on the Internet website developed by the Department of Financial Services and limits liability of the Chief Financial Officer for technical failures or contents of notice;
- Requires a wrecker who takes possession of a motor vehicle or watercraft subject to lien to comply with certain notification and sale requirements;
- Requires a facility or unit owner to check the National Motor Vehicle Title Information System or an equivalent commercially available system before conducting a public auction and requires notice to a lienholder or owner to be provided by certified mail;
- Provides that notice can be provided by first-class mail if a motor vehicle or watercraft owner identified in a title search is the same person as the self-service storage facility tenant in default; and
- Conforms terminology.

This analysis is drafted to the committee substitute as passed by the Regulatory Affairs Committee.