

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 133 Fees in Lieu of Security Deposits

SPONSOR(S): Judiciary Committee, Mooney and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 494

FINAL HOUSE FLOOR ACTION: 89 Y's

22 N's

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

CS/HB 133 passed the House on April 20, 2023, and subsequently passed the Senate on April 28, 2023.

A lease is an interest in real property held under a rental agreement by which the property owner ("landlord") gives another person ("tenant") the right to occupy or use the property for a set time period. As part of a rental agreement, a landlord may require a tenant to pay a security deposit, which is a dollar amount often applied to cover premises damage beyond normal wear and tear. There is no limit to the security deposit amount a landlord may charge, but, generally speaking, most landlords charge the equivalent of one to two month's rent.

For a low-income family, a security deposit may be unaffordable, preventing the family from obtaining housing, or keeping the family in substandard housing even when the family could otherwise afford to move.

Recognizing this, some landlords have begun offering their tenants security deposit alternatives, including fees paid in lieu of a security deposit; but no statutory guardrails exist for such options.

The bill creates s. 83.491, F.S., to provide statutory guardrails for fees in lieu of a security deposit. Specifically, the bill authorizes but does not require a landlord to offer a tenant the option to pay such a fee; if a landlord offers this option, the landlord must give the tenant written notice:

- That the tenant has the option to pay a security deposit instead of the fee, which fee may not be increased during the rental agreement's term;
- That the tenant may, at any time, terminate the fee payment agreement and instead pay a security deposit in the amount specified in the rental agreement or, if not so specified, in the amount otherwise offered to new tenants for substantially similar units on the date the tenant terminates the agreement;
- That the fee is nonrefundable, if applicable;
- That the fee is only for securing occupancy without needing to pay a security deposit;
- That the fee payment does not change the tenant's obligation to pay rent and fees or the costs of repairing premises damage above normal wear and tear; and
- That if the landlord uses any portion of the fee to purchase insurance, the tenant is not the insured or a beneficiary of such insurance, and the insurance does not change the tenant's obligation to pay rent and fees or the costs of repairing premises damage above normal wear and tear.

The bill also:

- Authorizes a landlord to give the tenant the option of paying a security deposit in monthly installments while participating in the fee program and specifies notice requirements for such an option;
- Requires that, if the tenant chooses the fee option, the landlord and the tenant must sign a written fee payment agreement;
- Provides that a fee in lieu of a security deposit may be a recurring monthly fee, payable on the same date that the rent is due under the lease, or payable upon another chosen schedule;
- Sets requirements for a landlord claiming unpaid rent or fees under a lease agreement or premises damages where the tenant paid a fee in lieu of a security deposit; and
- Applies to rental agreements entered into or renewed on or after July 1, 2023.

The bill does not appear to have any fiscal impact on state or local governments. The bill was approved by the Governor on June 2, 2023, ch. 2023-181, L.O.F., and will take effect on July 1, 2023.

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

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I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Security Deposits

A lease is an interest in real property held under a rental agreement by which the property owner (“landlord”) gives another person (“tenant”) the right to occupy or use the property for a specified time period.¹ As part of a rental agreement, a landlord may require a tenant to pay a security deposit, which is a dollar amount held by the landlord as security for the rental agreement’s performance and often applied to cover premises damage beyond normal wear and tear.²

Section 83.49, F.S., governs security deposits for residential tenancies in Florida. Though this section does not limit the security deposit amount a landlord may charge, generally speaking, most landlords charge the equivalent of one to two month’s rent.³ Regardless of the amount charged, a landlord must hold a security deposit by:

- Posting a surety bond;⁴
- Storing the deposit in an interest-bearing account in a Florida banking institution;⁵ or
- Storing the deposit in a non-interest-bearing account in a Florida banking institution.⁶

Florida law requires a landlord who rents five or more individual dwelling units to give written notice to a tenant, either in the rental agreement or within 30 days after receiving the tenant’s security deposit, which notice must:

- Disclose the manner and location in which the landlord holds the security deposit;
- Be given to the tenant in person or by mail;⁷
- Either state:
 - The name and address of the financial institution holding the tenant’s deposit; or
 - That the landlord has posted a surety bond;
- State whether the tenant is entitled to interest on the deposit; and
- Contain a disclosure relating to procedures for the landlord to make claims against the security deposit, including a requirement that the tenant provide the landlord with his or her new address where notices relating to the security deposit may be sent.⁸

¹ West’s Encyclopedia of American Law, Leasehold (2008), <https://legaldictionary.thefreedictionary.com/leasehold> (last visited May 1, 2023). See s. 689.01, F.S.

² S. 83.43(12), F.S.

³ Amy O’Connell, *Florida Security Deposit Limits and Deadlines*, Nolo Legal Encyclopedia (2020), <https://www.nolo.com/legal-encyclopedia/florida-security-deposits-36204.html> (last visited May 1, 2023).

⁴ A surety bond is a promise to be liable for another’s debt or default. It is a three-party contract by which one party (the surety) guarantees the performance or obligations of a second party (the principal, here the landlord) to a third party (the obligee, here the tenant). Generally, the landlord must post the surety bond with the clerk of the circuit court in the county in which the dwelling unit is located in the total amount of the security deposit and advanced rent held or \$50,000, whichever is less, and pay the tenant interest at the rate of 5 percent per year. S. 83.49(1)(c), F.S.; National Association of Security Bond Providers, *What are Surety Bonds*, [https://www.nasbp.org/getabond/about-surety#:~:text=A%20surety%20bond%20is%20a,third%20party%20\(the%20obligee\)](https://www.nasbp.org/getabond/about-surety#:~:text=A%20surety%20bond%20is%20a,third%20party%20(the%20obligee)) (last visited May 1, 2023).

⁵ The tenant must receive and collect interest in an amount of at least 75 percent of the annualized average interest rate payable on such account or at the rate of 5 percent per year, simple interest. The landlord may not commingle such money with any other funds the landlord holds or use it until it is actually due to him or her. S. 83.49(1)(b), F.S.

⁶ The landlord may not commingle such money with any other funds the landlord holds or use it until it is actually due to him or her. S. 83.49(1), F.S.

⁷ After providing this notice, if the landlord changes the manner or location in which he or she is holding the security deposit, he or she must notify the tenant in writing within 30 days of the change. S. 83.49(2), F.S.

⁸ *Id.*

Florida law also generally requires a landlord to return a tenant's deposit, and any interest accrued but not yet paid to the tenant,⁹ within 15 days after the tenant vacates the premises at the lease's termination.¹⁰ However, if the landlord intends to impose a claim on all or part of the security deposit, the landlord must notify the tenant of his or her intentions by certified mail to the tenant's last known mailing address within 30 days after the tenant vacates the premises; a landlord who fails to send such notice forfeits his or her right to impose such a claim but may file a civil action for damages after returning the deposit.¹¹ If the tenant does not object to the landlord's claim within 15 days after receiving the notice, the landlord has 30 days from the notice to deduct the amount of his or her claim and return the deposit's balance to the tenant.¹² If the tenant objects, either party may file a civil action to adjudicate the right to the security deposit, and the prevailing party is entitled to receive his or her court costs and a reasonable attorney fee from the losing party.¹³

Security Deposits as a Barrier to Affordable Housing

For a low-income family, a security deposit may be unaffordable, preventing the family from accessing housing, or keeping the family in substandard housing even when the family could otherwise afford to move.¹⁴ Moreover, since Florida law permits landlords to keep security deposits for 15 days after a tenant vacates a unit, the delay may keep a low-income tenant from being able to immediately move into new housing that also requires a security deposit.¹⁵ Recognizing this, some landlords have begun offering their tenants security deposit alternatives, including the option to:

- Buy security deposit insurance;¹⁶
- Post a surety bond;¹⁷ or
- Pay fees apportioned monthly or on some other set schedule.

However, no statutory guardrails exist for such options.

Effect of the Bill

The bill creates s. 83.491, F.S., to provide statutory guidelines for a security deposit alternative to assist low-income renters in obtaining housing. Specifically, the bill provides that, if a rental agreement requires a security deposit, a landlord may but is not required to offer a tenant the option to pay a fee in lieu of a security deposit, which fee may be a recurring monthly fee, payable on the same date that the rent payment is due under the rental agreement, or payable upon a schedule that the landlord and tenant specify in the rental agreement. However, the bill specifies that such a fee, or an insurance product or surety bond accepted by a landlord in lieu of a security deposit, is not a security deposit as defined in Florida law.

⁹ Where a landlord must pay interest to a tenant, the landlord must pay the interest to the tenant directly, at least annually. However, no interest is due to a tenant who wrongfully terminates his or her tenancy before the rental term's end. S. 83.49(9), F.S.

¹⁰ A renewal of an existing rental agreement is considered a new rental agreement, and any security deposit carried forward is considered a new security deposit. S. 83.49(3)(a) and (6), F.S.

¹¹ *Id.*

¹² S. 83.49(3)(b), F.S.

¹³ S. 83.49(3)(c), F.S.

¹⁴ Kathryn A. Sabbeth, (*Under*) *Enforcement of Poor Tenants' Rights*, 27 *Geo. J. on Poverty L. & Pol'y* 97 (2019), https://www.law.georgetown.edu/poverty-journal/wp-content/uploads/sites/25/2020/01/05_Sabbeth_Article_v2.pdf (last visited May 1, 2023).

¹⁵ *Id.*

¹⁶ Security deposit insurance gives tenants the option to buy an insurance policy for a low-rate monthly insurance premium (usually 5-15 dollars per month) instead of paying a security deposit to protect the landlord from any unpaid rent and property damage which a security deposit would normally cover. Adam Kovacevich, *Florida's Renters Need Relief- Security Deposit Alternatives Can Help*, *The Tallahassee Democrat*, March 6, 2022, <https://www.tallahassee.com/story/opinion/2022/03/06/floridas-renters-need-relief-security-deposit-alternatives-can-help-opinion/9367488002/> (last visited May 1, 2023).

¹⁷ Such a surety bond is issued by a surety provider in exchange for a low one-time bond premium and guarantees that the surety will pay the landlord (here, the obligee) the cost of any unpaid rent or damages up to a specified amount. The surety will then seek reimbursement from the tenant (here, the principal). The Guarantors, *A Renter's Guide to the Surety Bond*, <https://www.the guarantors.com/blog/renters/a-renters-guide-to-the-surety-bond> (last visited May 1, 2023).

Under the bill, if the landlord offers a tenant the option to pay a fee in lieu of a security deposit, the landlord:

- May not use a prospective tenant's choice to pay, or offer to pay, a fee in lieu of a security deposit as criteria in determining whether to approve or deny an occupancy application.
- Must offer all new tenants renting a dwelling unit on the same premises the option to pay such a fee unless the landlord chooses to prospectively terminate the fee option for all new rental agreements.
- Must notify the tenant in writing:
 - That the tenant may pay a security deposit instead of the fee at any time.
 - That the tenant may, at any time, terminate the written agreement to pay the fee and instead pay a security deposit:
 - In the amount specified in the rental agreement; or
 - If such an amount is not specified in the rental agreement, in the amount that is otherwise offered to new tenants for a substantially similar dwelling unit on the date that the tenant terminates the agreement.
 - Whether any additional charges apply for the options specified above.
 - The amount of the payments required for each option the landlord offers.
 - That the fee:
 - Is nonrefundable, if applicable.
 - Is only for securing occupancy without paying a required security deposit.
 - Does not limit or change the tenant's obligation to pay rent and fees, if any, under the rental agreement or the costs of repairing premises damage beyond normal wear and tear.
 - That if the landlord uses any portion of the fee to purchase insurance, the:
 - Tenant is not the insured and is not a beneficiary of such coverage; and
 - Insurance does not limit or change the tenant's obligations to pay rent and fees under the rental agreement or the costs of repairing premises damage beyond normal wear and tear.

Where a tenant agrees to pay such a fee, the landlord and the tenant must sign a written agreement for fee collection, which agreement may not contain any clause that contradicts s. 83.45, F.S., relating to unconscionable rental agreements or provisions, or s. 83.47, F.S., relating to prohibited provisions in rental agreements, and must, at a minimum, specify:

- The fee amount, which amount may not be increased during the rental agreement's term.
- How and when the fee is to be collected.
- The process and timeframe during which a tenant must pay the security deposit amount specified in the rental agreement if the tenant defaults on the fee.
- That the written agreement may be terminated at any time if the tenant pays the security deposit amount specified in the rental agreement.
- That if the tenant pays the security deposit amount specified in the rental agreement, then the tenant's default on paying the fee or termination of the written agreement may not adversely impact the tenant's credit report.

Such written agreement must also include a disclosure in substantially the following form:

This fee is not a security deposit and payment of the fee does not absolve the tenant of any obligations under the rental agreement, including the obligation to pay rent as it becomes due and any costs and damages beyond normal wear and tear that the tenant or his or her guests may cause.

The tenant may terminate this agreement at any time and stop paying the fee and instead pay a security deposit as provided in s. 83.491, Florida Statutes.

This agreement has been entered into voluntarily by both parties and the tenant agrees to pay the landlord a fee in lieu of a security deposit as authorized under s. 83.491, Florida Statutes. If the landlord uses any portion of the tenant's fee to purchase insurance, the tenant is not insured and is not a beneficiary of such coverage, and the insurance does not change the tenant's financial obligations under the rental agreement.

This disclosure is basic. Please refer to Part II of Chapter 83, Florida Statutes, to determine your legal rights and obligations.

At the tenancy's conclusion, the landlord must notify the tenant within 30 days if there are any costs or fees due for unpaid rent, fees, or other obligations under the rental agreement, including costs necessary to repair premises damage beyond normal wear and tear. Further, the landlord may not submit a claim to an insurer to recover the landlord's losses associated with unpaid rent, fees, or other obligations under the rental agreement until at least 15 days after giving the tenant notice as specified above. Such a claim must include an itemized list of any unpaid amounts and the dates such amounts were due, documentation supporting any itemized damages and repair costs, and a copy of any written objection or report of a communication of objection raised by the tenant.

If an insurer pays the claim to a landlord but has subrogation rights, the insurer may, within one year after the tenancy that was the subject of the claim ends, seek reimbursement from the tenant for the amounts paid to the landlord. However, if the insurer seeks reimbursement from the tenant, the following conditions apply:

- The insurer must provide the tenant with all loss documentation which the landlord provided to the insurer in support of the landlord's claim and a copy of the settlement statement documenting the insurer's payment of the claim.
- The tenant retains any defenses against the insurer which the tenant would otherwise have against the landlord.
- A landlord may not accept payment from both a tenant and an insurer for amounts associated with the same rent, fees, or damage.

Finally, the bill:

- Authorizes a landlord to give a tenant the option to pay the security deposit in monthly installments while participating in the fee program and specifies notice requirements for such an option.
- Specifies that nothing in the bill:
 - Requires a fee collected in lieu of a security deposit to be used to purchase an insurance product or a surety bond; or
 - Prohibits a tenant from being offered or sold an insurance product or a surety bond to present to the landlord in lieu of a security deposit if the offer or sale of such insurance product or surety bond complies with Florida law.
- Provides that acceptance by a landlord of an insurance product or a surety bond that is purchased or procured by a tenant or a landlord may not be considered an offer on the part of the landlord to allow a tenant to pay a fee in lieu of a security deposit.
- Specifies that it applies to rental agreements entered into or renewed on or after July 1, 2023.

The bill was approved by the Governor on June 2, 2023, ch. 2023-181, L.O.F., and will take effect on July 1, 2023.

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:

The bill may, by creating guardrails for an agreement to pay a fee in lieu of a security deposit and for the payment of a security deposit in monthly installments while the tenant participates in the fee program, protect from financial loss or harm landlords and tenants who enter into such agreements.

D. FISCAL COMMENTS:

None.