HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 357 Self-Service Storage Facilities
SPONSOR(S): Careers & Competition Subcommittee; Moraitis, Jr.
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 264

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee	12 Y, 0 N, As CS	Willson	Anstead
2) Civil Justice & Claims Subcommittee		MacNamara	Bond
3) Commerce Committee			

SUMMARY ANALYSIS

The Self-storage Facility Act (the Act) governs the relationship between the owner of a self-service storage facility and a tenant with whom the owner has entered into an agreement. The owner has a statutory lien upon all personal property located at the self-service storage facility for failure to pay rent. A self-service storage facility owner may sell such 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.

The bill provides that a lien sale may be conducted on a public website that typically conducts personal property auctions, and that 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 by the rental agreement.

The bill provides that, when a lien is claimed on property that is a motor vehicle or watercraft and charges are 60 days or more past due, a facility owner may sell the motor vehicle or watercraft pursuant to the Act or have the motor vehicle or watercraft towed. If towing is elected, the facility owner is no longer liable for the property after the wrecker takes possession. The wrecker operator that takes possession of a motor vehicle or watercraft must comply with notification and sale requirements in current law regarding towing from private property.

The bill allows a storage facility to charge a reasonable late fee for the nonpayment of rent, and for any expenses incurred as a result of rent collection or lien enforcement. The late fee and conditions must be stated in the rental agreement, and the bill provides that a reasonable late fee is the greater of $20 or 20 percent of the monthly rent.

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

The bill has an effective date of July 1, 2017.

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 in the event that a tenant does not pay rent.[1] 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 tenant has not satisfied 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]

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[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 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.*

Effect of the Bill

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 codification of current case law.[8]

In addition to selling the motor vehicle or watercraft pursuant to s. 83.806, F.S., the bill provides that, when a lien is claimed on property that is a motor vehicle or watercraft and charges are 60 days past due, a facility owner may have the motor vehicle or watercraft towed. If towed, the facility owner is no longer liable for the property after the wrecker takes possession. 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.[9]

The bill also allows a storage facility to charge a reasonable late fee for each rental period that a tenant does not pay rent. However, this fee may be imposed and collected only if its amount is set forth in the contract with the tenant. Also, the fee may not exceed the greater of $20 or 20 percent of the monthly rent. In addition to the late fee, any reasonable expense incurred by an owner as a result of rent collection or lien enforcement may be charged to the tenant.

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, limiting the maximum value of certain property under certain circumstances, 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. 83.808, F.S., authorizing a facility or unit owner to charge a tenant certain fees under certain conditions

Section 3: Provides an effective date of July 1, 2017.

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.

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

[9] s. 713.78, F.S., relates to liens for recovering, towing, or storing vehicles and vessels. The statute requires owners to pay towing fees and provides responsibilities to obtain possession of the vehicle or vessel.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill could increase the use of Internet-based sales by storage facilities, and these sales would likely benefit the website hosting the sales. Additionally, the use of Internet-based sales may increase the number of bidders on items from a delinquent tenant's storage unit and result in higher prices for items sold. As a result, there may be additional funds to pay the storage facility's lien and perhaps additional surplus fund for the tenant.

D. FISCAL COMMENTS:

None.

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:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 22, 2017, the Careers & Competition Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment allows facility owners to sell motor vehicles and watercraft in the same manner as other property under s. 83.806, F.S. This analysis is drafted to the committee substitute as passed by the Careers & Competition Subcommittee.