

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 283 Self-service Storage Facility Liens

**SPONSOR(S):** Civil Justice Subcommittee, Borrero

**TIED BILLS:**           **IDEN./SIM. BILLS:** SB 456

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 5 N, As CS	Mawn	Jones
2) Regulatory Reform & Economic Development Subcommittee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

The Self-Storage Facility Act, set out in Part III of Ch. 83, F.S., regulates the relationship between the owner of a self-service storage facility or self-contained storage unit and the facility's or unit's tenants. Under the Act, the facility or unit owner 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 relating to the personal property and for expenses necessary for its preservation or reasonably incurred in its sale or other disposition under the Act. Such lien attaches when the personal property is brought to the self-service storage facility or when the tenant takes possession of the self-contained storage unit, and the lien's priority is as provided in s. 83.808, F.S.

To enforce such a lien, a self-service storage facility or self-contained storage unit owner may sell the tenant's personal property as provided in the Act. However, before any such sale may occur, the facility or unit owner must give notice of an impending sale to the tenant in person, by e-mail, or by first-class mail with a certificate of mailing to the tenant's last known address, and conspicuously post such notice at the self-service storage facility or on the self-contained storage unit. Such notice must specify 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. Following the expiration of the time given in the notice, the facility or unit owner must also:

- Advertise the sale in a newspaper of general circulation in the area where the facility or unit is located once a week for two consecutive weeks; or
- If there is no such newspaper, post the advertisement at least ten days before the sale in at least three conspicuous places in the neighborhood where the facility or unit is located.

CS/HB 283 requires that a rental agreement for storage space contain a provision authorizing the tenant to designate an alternate contact person, which person may be contacted only for purposes of providing the required notice of sale or as the rental agreement otherwise authorizes. The bill also:

- Specifies that the designation of an alternate contact person does not give such person an interest in the stored contents.
- Requires that the notice of sale be given in a specified manner to the alternate contact person.
- Requires that a rental agreement contain a warning that stored contents, if advertised for sale, will be described in the advertisement.
- Authorizes the advertisement of sale to be published on a public website that customarily conducts or advertises personal property auctions in lieu of newspaper publication and specifies how the sale must be advertised if there is no qualifying newspaper and the facility or unit owner does not publish online.
- Requires that, if an advertisement of sale is to be published on a public website, the notice sent to the tenant must identify the public website on which the advertisement is to be published.

The bill does not appear to have a fiscal impact on state or local governments. The bill provides an effective date of July 1, 2024.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Self-Service Storage Facility Act Definitions

The Self-Storage Facility Act, set out in Part III of Ch. 83, F.S., regulates the relationship between the owner of a self-service storage facility or a self-contained storage unit and the facility's or unit's tenants. Significantly, the Act allows the owner to seize and sell the personal property within the storage unit if the tenant does not pay rent and specified conditions are met. Under the Act:

- "Last known address" means the street address or post office box address provided by the tenant in the latest rental agreement or in a subsequent written change-of-address notice provided by hand delivery, first-class mail, or e-mail;
- "Owner" means the owner, operator, lessor, or sublessor of a self-service storage facility or self-contained storage unit or his or her agent or any other person authorized by him or her to manage the facility or to receive rent from a tenant under a rental agreement;
- "Rental agreement" means any agreement or lease which establishes or modifies terms, conditions, rules, or any other provisions concerning the use and occupancy of a self-service storage facility or of a self-contained storage unit;
- "Self-contained storage unit" means 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;
- "Self-service storage facility" means 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 and where no individual storage space is used for residential purposes; and
- "Tenant" means a person or the person's sublessee, successor, or assign entitled to the use of storage space at a self-service storage facility or in a self-contained storage unit, under a rental agreement, to the exclusion of others.<sup>1</sup>

##### Liens Under the Self-Storage Facility Act

A lien is a claim against property that evidences a debt, obligation, or duty.<sup>2</sup> A self-service storage facility or self-contained storage unit owner has a lien upon all personal property, whether or not owned by the tenant, located at the self-service storage facility or in a self-contained storage unit for rent, labor charges, or other charges relating to the property and for expenses necessary for its preservation or reasonably incurred in its sale or other disposition under the Self-Storage Facility Act.<sup>3</sup> Such lien attaches when the personal property is brought to the storage facility or when the tenant takes possession of the self-contained storage unit, and the lien's priority<sup>4</sup> is as provided in s. 83.808, F.S.; however, in the event of default, the owner must give notice to persons holding perfected security interests<sup>5</sup> in which the tenant is named as the debtor.<sup>6</sup>

##### Withholding Access to Personal Property Upon Nonpayment of Rent

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<sup>1</sup> S. 83.803, F.S.

<sup>2</sup> Fla. Jur. 2d Liens § 37:1.

<sup>3</sup> S. 83.805, F.S.

<sup>4</sup> A lien's priority determines the order in which the lienholder will be paid after sale of the property to which the lien attached. Generally, earlier-recorded liens take priority over later-recorded liens. State and federal law may also specify a particular lien's priority. Legal Information Institute, Debtor and Creditor, [https://www.law.cornell.edu/wex/debtor\\_and\\_creditor](https://www.law.cornell.edu/wex/debtor_and_creditor) (last visited Jan. 11, 2024).

<sup>5</sup> A security interest arises when, in exchange for a loan, a borrower pledges in a security agreement specified assets owned by the borrower, which assets the lender may take and sell if the borrower defaults on the loan. Legal Information Institute, *Secured Transactions*, [https://www.law.cornell.edu/wex/secured\\_transactions](https://www.law.cornell.edu/wex/secured_transactions) (last visited Jan. 11, 2024).

<sup>6</sup> S. 83.805, F.S.

If a tenant in a self-service storage facility or self-contained storage unit fails to pay the rent for such storage space when it becomes due, the facility or unit owner may, without notice, after five days from the date the rent was due, deny the tenant access to the personal property located in the facility or unit.<sup>7</sup> In denying the tenant access to such personal property, the owner may proceed without judicial process – that is, without obtaining a court order – if this can be done without breach of the peace.<sup>8</sup>

#### Lien Enforcement: Notice of Sale or Other Disposition

To satisfy an owner's lien under the Self-Storage Facility Act, s. 83.806, F.S., specifies that the owner must notify the tenant by written notice delivered in person, by e-mail, or by first-class mail with a certificate of mailing to the tenant's last known address, and such notice must be conspicuously posted at the self-service storage facility or on the self-contained storage unit. If the facility or unit owner sends notice of a pending sale of property to the tenant's last known e-mail address and does not receive a response, return receipt, or delivery confirmation from the same e-mail address, the owner must send notice of the sale to the tenant by first-class mail with a certificate of mailing to the tenant's last known address before the sale.<sup>9</sup>

The notice must include:

- An itemized statement of the facility or unit owner's claim, showing the amount due at the time of the notice and the date when the amount became due;
- The same description, or a reasonably similar description, of the personal property as provided in the rental agreement;
- A demand for payment within a specified time of not less than 14 days after the notice's delivery;
- 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; and
- The name, street address, and telephone number of the owner whom the tenant may contact to respond to the notice.<sup>10</sup>

The notice is presumed delivered when it is deposited with the United States Postal Service and properly addressed with postage prepaid.<sup>11</sup>

#### Lien Enforcement: Advertisement of Sale or Other Disposition

After the expiration of the time given in the notice of sale, an advertisement of the sale or other disposition must be published once a week for two consecutive weeks in a newspaper of general circulation in the area where the self-service storage facility or self-contained storage unit is located.<sup>12</sup> A lien sale may be conducted on a public website that customarily conducts personal property auctions, and the facility or unit owner is not required to hold a license to post property for online sale.<sup>13</sup> Should a sale involve the property of multiple tenants, one advertisement may be used to dispose of the property at any one sale.<sup>14</sup>

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<sup>7</sup> S. 83.8055, F.S.

<sup>8</sup> *Id.*

<sup>9</sup> S. 83.806, F.S.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

The advertisement must include:

- A brief and general description of what is believed to constitute the personal property contained in the storage unit;
- The address of the self-service storage facility or the address where the self-contained storage unit is located and the tenant's name; and
- The time, place, and manner of the sale or other disposition, which sale or other disposition must take place at least 15 days after the first publication.<sup>15</sup>

However, 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 ten days before the date of the sale or other disposition in at least three conspicuous places in the neighborhood where the self-service storage facility or self-contained storage unit is located.<sup>16</sup>

#### Lien Enforcement: Sale or Other Disposition

Any sale or other disposition of a tenant's personal property must conform to the terms of the notification and must be conducted in a commercially reasonable manner.<sup>17</sup> However, before any such sale or other disposition, the tenant may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under the Self-Storage Facility Act and thereby redeem the personal property.<sup>18</sup> Upon receipt of such payment, the owner must return the property to the tenant and thereafter has no liability to any person with respect to such personal property.<sup>19</sup> However, if the tenant fails to redeem the personal property or satisfy the lien, including reasonable expenses, he or she will be deemed to have unjustifiably abandoned the self-service storage facility or self-contained storage unit, and the owner may resume possession of the premises for himself or herself.<sup>20</sup>

In the event of a sale, the facility or unit owner may satisfy his or her lien from the sale's proceeds, if the owner's lien has priority over all other liens on the personal property.<sup>21</sup> The lien rights of secured lienholders are automatically transferred to the remaining proceeds of the sale, and the balance, if any, must be held by the owner for delivery on demand to the tenant.<sup>22</sup> A notice of any balance must be delivered to the tenant in person or by first-class mail with a certificate of mailing to the tenant's last known address.<sup>23</sup> If the tenant fails to claim the balance within two years after the sale date, the proceeds are deemed abandoned, and the facility or unit owner has no further obligation to pay the balance.<sup>24</sup>

If the facility or unit owner's lien does not have priority over all other liens, the sale proceeds must be held for the benefit of those lienholders with priority over the owner's lien.<sup>25</sup> A notice of the amount of the sale proceeds must be delivered by the facility or unit owner to the tenant and secured lienholders in person or by first-class mail with a certificate of mailing to their last known addresses.<sup>26</sup> If the tenant or the secured lienholders do not claim the sale proceeds within two years after the sale date, the proceeds are deemed abandoned, and the owner has no further obligation to pay the proceeds.<sup>27</sup>

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

## Lien Enforcement: Motor Vehicles and Watercraft

If a lien is claimed on a motor vehicle or a watercraft and rent and other charges related to such property remain unpaid for 60 days after the maturity of the obligation to pay the rent and other charges, the facility or unit owner may sell the property under the Self-Storage Facility Act or have the property towed.<sup>28</sup> If a motor vehicle or watercraft is towed, the facility or unit owner is not liable for the motor vehicle or watercraft or any damages thereto once a wrecker takes possession of such property.<sup>29</sup> However, such wrecker must comply with all notification and sale requirements set out in s. 713.78, F.S., relating to liens for recovering, towing, or storing vehicles and vessels.<sup>30</sup>

## Rental Agreements

Section 83.808, F.S., sets out additional provisions that govern rental agreements under the Self-Service Storage Facility Act. Specifically, a rental agreement must contain a provision disclosing whether the applicant is a member of the uniformed services as that term is defined in 10 U.S.C. s. 101(a)(5).<sup>31</sup> Further, the owner of a self-service storage facility or self-contained storage unit may charge a tenant a reasonable late fee for:

- Each period that he or she fails to pay rent due under the rental agreement. The amount of the late fee and the conditions for imposing such fee must be stated in the rental agreement or in an addendum to such agreement.<sup>32</sup> For purposes of the Act, a late fee of \$20, or 20 percent of the monthly rent, whichever is greater, is reasonable and does not constitute a penalty.<sup>33</sup>
- Any expenses incurred as a result of rent collection or lien enforcement.<sup>34</sup>

However, s. 83.809, F.S., clarifies that nothing in the Act may be construed as impairing or affecting the right of any person to create additional rights, duties, and obligations in a rental agreement, and the provisions of the Act are in addition to all other rights allowed by law in a creditor-debtor or landlord-tenant relationship.

## **Effect of Proposed Changes**

### Rental Agreements

CS/HB 283 amends s. 83.808, F.S., to require that a rental agreement for storage space in a self-service storage facility or self-contained storage unit contain a provision authorizing the tenant to designate an optional alternate contact person, which person may be contacted only for the purposes of giving the notice of sale required under the Self-Storage Facility Act or as the rental agreement otherwise authorizes. Under the bill, the designation of an alternate contact person does not give such person an interest in the stored contents.

The bill also amends this section to require that such a rental agreement include a warning that, if the property contained in the storage unit is advertised for sale or other disposition, a description of what is believed to constitute such personal property will be published in the advertisement for sale.

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Where a tenant is an active duty member of the uniformed services and deployed, the Servicemembers Civil Relief Act provides additional protections for the tenant's property. S. 83.808, F.S.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

### Lien Enforcement: Notice

The bill amends s. 83.806, F.S., to specify that the written notice required by that section to be sent to the tenant before any sale or disposition of the tenant's personal property must also be sent to the alternate contact person designated by the tenant, if any, at such person's last known address. Under the bill, if the facility or unit owner sends notice of a pending sale to the alternate contact person's last known e-mail address and receives no response, return receipt, or delivery confirmation from such e-mail address, the owner must send notice of the sale to the alternate contact person by first-class mail with a certificate of mailing to such person's last known address before proceeding with the sale.

Further, the bill amends this section to require that, if the advertisement of sale will be published on a public website, the notice sent to the tenant (and the alternate contact person, if applicable) must include the name of the website on which the advertisement will be published.

### Lien Enforcement: Sale or Other Disposition

The bill amends s. 83.806, F.S., to allow the publishing of an advertisement of sale or other disposition on a public website that customarily conducts or advertises personal property auctions, which publication must be for 7 consecutive full days, in lieu of newspaper publication. Further, the bill specifies that, if there is no qualifying newspaper of general circulation and the facility or unit owner does not publish the advertisement on a qualifying public website, the advertisement must be posted at least ten days before the date of the sale or other disposition in at least three conspicuous places in the neighborhood in which the self-service storage facility or self-contained storage unit is located.

### Effective Date

The bill provides an effective date of July 1, 2024.

#### B. SECTION DIRECTORY:

**Section 1:** Amends s. 83.806, F.S., relating to enforcement of lien.

**Section 2:** Amends s. 83.808, F.S., relating to contracts.

**Section 3:** Provides an effective date of July 1, 2024.

## 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 have a positive economic impact on:

- Owners of a self-service storage facility or self-contained storage unit to the extent that such an owner chooses to publish the advertisement of the sale on a qualifying public website instead of in a newspaper and thereby reduces his or her publication costs.
- Tenants of a self-service storage facility or self-contained storage unit to the extent that their designation of an alternate contact person leads to the tenant receiving notice of an upcoming sale and the tenant is thereby able to pay the rent amount he or she owes and redeem his or her personal property.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On January 11, 2024, the Civil Justice Subcommittee considered an amendment and reported the bill favorably as a committee substitute. The amendment:

- Restored to current law the requirement that an advertisement of sale published in a newspaper be published once a week for two consecutive weeks.
- Required that, if the advertisement of sale will be published on a public website, the notice to the tenant must identify the website on which the advertisement will be published.
- Specified that an advertisement of sale published on a public website must be published for seven consecutive full days.
- Restored to current law the requirement that a sale of stored contents be held no earlier than 15 days after the first publication of the advertisement of sale.
- Required that a rental agreement include a warning that, if the property is advertised for sale or other disposition, a description of what is believed to constitute the personal property contained in the storage unit will be published in the advertisement.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.