

SSA 2010 Legislative Activity Update

By Tim Dietz – SSA VP, Communications & Government Relations

Since the inception of the SSA state affiliation program, dozens of volunteers and professionals have teamed together to address a number of legislative issues. The past two years have been exceptionally busy as the SSA and its partners have fought sales tax threats, established late fee regulations and improved lien laws coast to coast. Through its Legislative Issues Fund, largely funded by the industry's largest companies, the Association continues to support industry-friendly laws and regulations. Below is an update on 2010 initiatives:

Arizona: Arizona's lien notification and "protected property" bill was signed into law by Governor Jan Brewer on April 19. The law offers an email notification option during the lien process and will limit the liability of self storage operators in the event that private information or other "protected property," including alcohol and firearms, is abandoned. The SSA contributed financial support for this effort.

California: On June 30, the California Senate Judiciary Committee voted to adjust the state's current lien law as it relates to mail notification protocols and the critically important "Declaration in Opposition" provision. The bill, which was championed by the California SSA with financial support from the national SSA, now needs to be voted upon by the full Senate and Assembly before going to Governor Schwarzenegger's desk. These actions are not expected for several weeks while the legislature is in recess.

The new law relaxes the notification requirements for self storage operators, allowing delivery via certificate of mailing, as opposed to the more expensive certified mail standard. Most of the changes however, focused on the pesky Declaration. California and Nevada lien laws are unique to the industry because of this part of the statute, which if signed by the tenant requires operators to file suit in order to follow through with a lien.

For many years the self storage industry sought to eliminate the measure completely; however legislators were not open to dramatic changes to what they considered consumer-oriented laws. Compromises however, led to some changes that will result in significant savings to California self storage operators when and if it becomes law.

The new language provides that storage operators would have the option to file suit in small claims court, a much less costly procedure than through the current superior court system. Operators can still file in superior court when small claims court is not the best forum, such as with an out-of-state tenant.

Further, the law provides storage operators with guidance on when a Declaration can be considered invalid. For example, one of the most common types of defects is when delinquent tenants provide an incorrect address or no address in the Declaration. The new law states:

...declaration is not valid if, (a) the address provided in this declaration is not my current address; or (b) I change my address at any time prior to service of an action on the lien and I do not provide the owner with the new address within 10 days of the change.

Another new provision of the law requires the tenant to explicitly declare why they feel that the lien

on his/her property is invalid. Again, this was included to purge baseless declaration filings before the matter proceeds any further.

Florida: April's effort to attach lien law improvement language to S.606 appeared to be on track until one legislator argued that the issue was "not germane." Florida SSA and its lobbyist were frustrated at this vague argument that did not come up in committee and does not appear to be compelling. The Florida legislature adjourned on April 30, so these efforts will have to be picked up during the next session. The SSA contributed financial support and consulting support for this effort.

Illinois: HB174 currently sits in the Rules Committee and the expectation is that it will not be passed before the November elections. It would apply state sales tax to a number of services, with self storage included. If this sales "service" tax bill falters, it is expected that the legislature will move to increase the income tax instead. The SSA contributed financial support for this effort.

Oakbrook Terrace (Illinois): The City of Oakbrook Terrace has decided to table its self storage "accommodations tax" plan indefinitely. This was the best potential outcome because the City will always reserve the right to readdress the measure. The positive result followed the threat of legal action by the affected parties (particularly Public Storage) and outcry from the SSA and IL-Mini-Storage Association. In May, SSA vice president of Government Relations Tim Dietz traveled to the Chicago suburb to testify against the tax alongside the affected parties and the Illinois-Mini-Storage Association.

Village of Harwood Heights (Illinois): on March 11, the Village of Harwood Heights, Illinois (near Chicago)

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enacted a self storage “accommodations tax”—3% of the gross rent, imposed on tenants, to be collected and remitted by the owner or operator. The only business affected is one self storage facility operated by Public Storage. The company was not informed about the potential for this tax before the board of trustees implemented it and the Village attorney has been cryptic about their plans. State law requires that new taxes be levied uniformly and not arbitrarily, yet no other tenants of real property rents are targeted. It appears that when presented with this argument the municipality considered broadening the tax to other real estate sectors, thus neutralizing the “uniform and not arbitrary” legal argument. If and when this is done the SSA will work with PS to encourage opposition from the other affected real estate sectors. A fact sheet has been developed to bring the other real estate sectors up to speed on the issue.

Maine: The Self Storage Association worked with the Maine SSA to fight what was considered to be a burdensome abandoned records law initially proposed in 2009. At first, proponents of the measure placed the responsibility and liability of abandoned records with the self storage operator. The SSA contacted the officials involved, noting that the operators simply rent the space and cannot be accountable for sensitive items left in the rented space. The SSA drafted testimony and helped the Maine SSA find a local lobbyist. After winning a delay of one year, the SSA and Maine SSA were invited to propose more appropriate language.

Pro-business legislators voiced their support for the self storage community, including one member who called the entire concept “nothing more than regulatory creep.” Ultimately an industry-positive bill was

adopted and became effective in April. It significantly limits the liability of self storage operators. The law reads, in part, that in the case of abandoned records the operator “may destroy the personal information without liability to any person.” The law references the Maine Fair Trade Practices Act, which is violated “if an occupant fails to protect personal information, an operator sells such personal information if there is reasonable knowledge that it exists, or a purchaser of such personal information fails to turn it in to the operator.” Although Maine is a small state, this served as a good precedent, creating a good solution that can be referenced in other states. The SSA contributed financial and consulting support for this effort.

Michigan: Several bills have been introduced that could ultimately wind up as a tax on self storage. Most legislators will be up for re-election in November, however, so the Association and the lobbyist believe the tax will be addressed soon. But eventually, this will have to be debated. There is a serious concern that during the lame duck session election representatives with no political motives will pass the tax hike. The SSA contributed financial support for this effort.

New York: SSA vice president of government relations, Tim Dietz, and general counsel Carlos Kaslow traveled to Albany the week of June 14 to meet with the NY-SSA in support of a limited insurance license law. The following week, the bills were passed in the respective houses of the legislature. The law would clarify the right of operators to offer point-of-rent tenant insurance. The bill was vetoed last year after passing both the House and Senate. The current law includes revisions addressing the issues noted within the Governor’s veto report. The SSA contributed financial and consulting support for this effort over the past three years.

New York: Bill 4313B is not related to self storage; however, it does affect

the auction industry and could negatively influence certain lien situations. NY-SSA president Chris McGrath was successful in offering an amendment to the bill that exempts lien activities. It reads:

Notwithstanding any other provision of law, this section shall not apply to auction sales conducted pursuant to an order of a court of competent jurisdiction, including an order of a bankruptcy judge or trustee, or a sale of secured property pursuant to the uniform commercial code, or the sale of property which is subject to a lien or assignment pursuant to the laws of the state of New York.

The bill passed both the House and Senate during the week of June 21, and awaits the Governor’s signature.

North Carolina: The state faces an \$800 million shortfall for the fiscal year beginning July 1, and many legislators are backing a plan that would tax private services. As has been the case in other states, revenue administrators have included self storage among the list of services they plan to target with a tax. The SSA contributed \$5,000 to the NC-SSA to help with lobbying efforts to fight the plan and consulting support for this effort.

Wisconsin: AB707, a lien improvement bill, was signed by Governor Jim Doyle on May 18 after having passed the Senate on April 22 and Assembly on March 16. SSA board member Lisa Chiappetta and SSA vice president of government relations Tim Dietz testified before a Senate committee in favor of the bill in March. The primary stipulations of the bill, supporting facility operators with a value limitation measure and limiting exposure to litigation involving non-tenants, remain in the law. The measure also redefines what constitutes a reasonable auction sale: three or more bidders. The Internet notification provision in the bill was taken out this session after the newspaper lobby protested. The SSA consulted on this effort. ❖