

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SB 354

INTRODUCER: Senator Thrasher

SUBJECT: Ad Valorem Tax Exemptions

DATE: March 5, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Toman</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
2.	<u>Spaulding</u>	<u>Ryon</u>	<u>MS</u>	Favorable
3.	_____	_____	<u>AFT</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

SB 354 revises and clarifies parameters for an ad valorem tax exemption of United States government owned property pursuant to the U.S. Military Housing Privatization Initiative of 1996. The tax exemption would apply to leasehold interests and improvements to land owned by the United States and various branches of United States Armed Forces and agencies of the federal government. “Improvements” include, but are not limited to, actual housing units and related facilities under the federal initiative. Any leasehold interest or improvement shall be considered owned by the United States and the ad valorem tax exemption requires neither an exemption application, nor approval from the property appraiser.

The bill substantially amends section 196.199, Florida Statutes.

II. Present Situation:

Military Housing Privatization Initiative

The U.S. Military Housing Privatization Initiative (MHPI) was enacted as part of the National Defense Authorization Act for fiscal year 1996 in an effort to address the poor condition of Department of Defense (DoD) owned housing and the shortage of affordable private sector housing for military families.¹ At the beginning of the program, DoD owned approximately 257,000 family housing units worldwide both on and off-base with over 50 percent of the units deemed in need of renovation or replacement.² Under MHPI authorities, the DoD works with the

¹ National Defense Authorization Act for Fiscal Year 1996, Pub. L. No. 104-106, §§ 2801-2841 (1996).

² The Office of the Deputy under Secretary of Defense Installations and Environment, *Military Housing Privatization*, available at <http://www.acq.osd.mil/housing/overview.htm> (last visited February 26, 2013).

private sector to revitalize military family housing by employing a variety of financial tools including: direct loans, loan guarantees, equity investments, and conveyance or leasing of property or facilities.³

In standard MHPI projects, a branch of the United States Armed Forces enters into a long term (fifty years) ground lease of the land under the housing areas with a private developer. Title to the housing units is conveyed to the developer by quitclaim deed. Within a time schedule set by contract, the developer rehabilitates or constructs a target level of housing units and is responsible for the leasing, management and maintenance of the units. At the end of the long term lease, the federal government may negotiate an extension of the lease or elect to acquire the improvements from the developer or its successor at no charge.

There are currently MHPI developments at the following military installations in Florida:

- Tyndall Air Force Base,
- MacDill Air Force Base,
- Patrick Air Force Base,
- Navy Southeast: Duval,
- Navy Southeast: Monroe,
- Navy Southeast: Duval(2),
- Navy Southeast: Escambia, and
- Navy Southeast: Santa Rosa.

Property Valuation in Florida

Section 4, Article VII of the Florida Constitution, requires that all property be assessed at just value for ad valorem tax purposes. Sections 3, 4, and 6, Article VII of the Florida Constitution, provide for specified assessment limitations, property classifications and exemptions. After the property appraiser has considered any assessment limitation or use classification affecting the just value of a property, an assessed value is produced. The assessed value is then reduced by any exemptions to produce the taxable value.⁴ Such exemptions include, but are not limited to: homestead exemptions and exemptions for property used for educational, religious, or charitable purposes.⁵

Government Property Exemption in Florida

Florida law generally exempts government property from ad valorem taxation.⁶ Subject to certain conditions, property of the United States, property of Florida and property of political subdivisions and municipalities of the state are exempt from ad valorem taxation. Portions of governmental property may be leased to private parties. In instances where the government

³ *Id.*

⁴ See s. 196.031, F.S.

⁵ Fla. Const. art. VII, ss. 3 and 6.

⁶ See s. 196.199, F.S..

leases property to a private party, the lease is called “governmental leasehold” and is subject to tax as “intangible personal property.”⁷

Taxation of Federal Property

Generally, the federal government and property owned by the federal government are immune from state and local taxation.⁸ The federal government’s immunity from taxation extends to its agents and its instrumentalities.⁹ Congress has the exclusive authority to determine whether and to what extent its instrumentalities are immune from state and local taxes.¹⁰

Ad valorem taxes that Congress *has* authorized for leasehold property on federal land under 10 U.S.C. § 2667, are expressly *not* authorized under the MHPI. Specifically, 10 U.S.C. § 2878(e)(1) of the MHPI states that “[t]he conveyance or lease of property or facilities under this section shall not be subject to . . . Section 2667 of this title.” In other words, the Housing Initiative expressly exempts such leaseholds and improvements from state or local ad valorem taxation.

In addition, certain sections of the MHPI specifically repealed prior Congressional consent to ad valorem state taxation as well as consent to taxation of intangible personal property.¹¹

Southeast Housing LLC v. Borglum in Monroe County

Until recently, all eight of the MHPI projects in Florida have not been subject to ad valorem tax. In 2012, the Monroe County property appraiser subjected the project at Naval Air Station Key West to tax retroactive to 2008. A legal case is currently pending on this matter in the Sixteenth Judicial Circuit.¹²

III. Effect of Proposed Changes:

Section 1 amends s. 196.199, F.S., to revise the definition of property of the United States for the purposes of an exemption from ad valorem taxation. The revision includes any leasehold interest of and improvements affixed to land owned by the United States, any branch of the United States Armed Forces, or any agency or quasi-governmental agency of the United States. The exemption applies if the leasehold interest and improvements are used to provide housing pursuant to the Military Housing Privatization Initiative of 1996. The term “improvements” includes, but is not limited to, actual housing units and any facilities that are directly related to such housing units, including any housing maintenance facilities, housing rental and management offices, parks and community centers, and recreational facilities. Any leasehold interest or improvement shall be construed as owned by the United States and the ad valorem exemption requires neither an exemption application, nor approval from the property appraiser.

⁷ See s. 196.199(2)(b), F.S. Section 192.001 (11)(b) defines “intangible personal property” as money, all evidences of debt owed to the taxpayer, all evidences of ownership in a corporation or other business organization having multiple owners, and all other forms of property where value is based upon that which the property represents rather than its own intrinsic value.

⁸ *McCullough v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819).

⁹ *Kern-Limerick, Inc. v. Scurlock*, 347 U.S. 110 (1954).

¹⁰ *Maricopa County v. Valley Bank*, 318 U.S. 357 (1943).

¹¹ 10 U.S.C. §§ 2781-2885 and §2878.

¹² See *Southeast Housing LLC, v. Borglum*, No. 2012-CA-000831-K (Fla. 16th Cir. Ct. 2012).

Section 2 provides an effective date upon becoming law which shall apply retroactively to January 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Clarifying ad valorem tax exemption eligibility standards for United States property may ensure that private entities operating pursuant to the Housing Initiative will continue to be eligible for such exemptions.

C. Government Sector Impact:

The Revenue Estimating Conference (REC) recently met to determine the fiscal impact of SB 354 and its House companion, HB 531.¹³ In its analysis, the REC cited a Department of Revenue belief that there is sufficient evidence present for a property appraiser to determine that the United States government has equitable ownership of the improvements at MHPI developments; therefore the provisions of SB 354 would not alter the current administration of the law. Because of this, the REC determined the bill would have no fiscal impact on local governments.¹⁴

VI. Technical Deficiencies:

None.

¹³ Revenue Estimating Conference, *Military Housing Ad Valorem Tax HB531/SB354* (Feb. 04, 2013) available at <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2013/pdf/page11-13.pdf>.

¹⁴ According to the REC, the total amount in dispute in the Monroe County litigation is \$11.5 million including penalty and interest. The 2012 value of the property in question is \$167,851,781.

VII. Related Issues:

It is the position of the Department of Revenue that the federal government has equitable ownership of the improvements constructed pursuant to the MHPI and therefore such improvements are not taxable under the current law, however, no Florida court has ruled on the taxability of MHPI projects under this state law principle.¹⁵

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁵ Florida Department of Revenue, Senate Bill 354 Analysis (Feb. 7, 2013) available at <http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=504> Also see *Leon County Education Facilities Authority v. Hartsfield*, 698 So.2d 526 (Fla. 1997); *First Union National Bank of Florida v. Ford*, 636 So.2d 523 (Fla. 5th DCA 1993).