

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 Appropriations Subcommittee on Finance and Tax

BILL: SB 354

INTRODUCER: Senator Thrasher

SUBJECT: Ad Valorem Tax Exemptions

DATE: March 7, 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>Babin</u>	<u>Diez-Arguelles</u>	<u>AFT</u>	Pre-meeting
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

SB 354 revises and clarifies Florida’s ad valorem tax exemption for government-owned property to address federal lands leased pursuant to the U.S. Military Housing Privatization Initiative of 1996. The tax exemption for government-owned property is amended to clarify that it includes leases of – and improvements to – land owned by the United States, various branches of United States Armed Forces and agencies of the federal government. The term “improvements” includes, but is not limited to, actual housing units and related facilities.

The Revenue Estimating Conference estimates that this bill will have an insignificant fiscal impact on local government revenues.

The bill substantially amends section 196.199, Florida Statutes (F.S.).

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) housing and the shortage of affordable private sector housing for military families.¹ At the beginning of the program, the DOD owned approximately 257,000 family housing units worldwide both on and off-base; more than 50 percent of the units were

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

deemed to be in need of renovation or replacement.² Under the MHPI, the DOD works with the 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 ground lease, the federal government negotiates an extension of the lease or elects 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

The Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes.⁴ However, 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, the assessed value is determined. The assessed value is then reduced by any applicable exemptions to produce the taxable value.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, State of Florida and political subdivisions and municipalities of the state are exempt from ad valorem taxation.

² The Office of the Deputy Undersecretary of Defense Installations and Environment, *Military Housing Privatization*, available at <http://www.acq.osd.mil/housing/overview.htm> (last visited March 07, 2013).

³ *Id.*

⁴ Fla. Const. Art. VII, s. 4.

⁵ See s. 196.031, F.S.

⁶ See s. 196.199, F.S.

Governmental property is sometimes leased to private parties. When government property is leased to a private party, the resulting “governmental leasehold” 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

Congress has waived federal immunity for ad valorem taxation of some leasehold interests on federal lands.¹¹ However, the MHPI expressly provides that this waiver of immunity does not apply to MHPI leases or conveyances.¹²

***Southeast Housing LLC v. Borglum* in Monroe County**

The eight MHPI projects in Florida have not been subject to ad valorem tax until recently. In 2012, the Monroe County property appraiser determined that the project at Naval Air Station Key West was not immune or exempt from ad valorem taxation retroactive to 2008. Litigation is pending over that issue.¹³

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 revised definition 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 acquired or constructed and used to provide housing pursuant to the MHPI. “Improvements,” as used in the exemption, include, 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.” Under the bill, any such leasehold interest or improvement is to be construed as owned by the United States without the necessity of an exemption application being filed or approved by the property appraiser.

⁷ See s. 196.199(2)(b), F.S. Section 192.001 (11)(b), F.S., 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 See Title 10 U.S.C. § 2667

¹² Title 10 U.S.C. § 2878(e)(1). In addition, sections 2781-2885 of the MHPI generally repealed prior Congressional consent to ad valorem state taxation.

¹³ See *Southeast Housing LLC, v. Borglum*, No. 2012-CA-000831-K (Fla. 16th Cir. Ct. 2012).

Section 2 provides for an effective date of upon becoming law and that applies 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:

Private entities operating housing facilities pursuant to the MHPI will have certainty as to the ad valorem tax liabilities associated with United States property.

C. Government Sector Impact:

The Revenue Estimating Conference (REC) has determined that this bill will have an insignificant fiscal impact on local government revenues.¹⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Department of Revenue asserts that the federal government has equitable ownership of the improvements constructed pursuant to the MHPI, and therefore, such improvements are not

¹⁴ 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>. 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.

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).