HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 531 Ad Valorem Tax Exemptions
SPONSOR(S): Patronis
TIED BILLS: **IDEN./SIM. BILLS:** SB 354

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Veteran & Military Affairs Subcommittee	13 Y, 0 N	Thompson	De La Paz
2) Finance & Tax Subcommittee	13 Y, 3 N, As CS	Aldridge	Langston
3) Economic Affairs Committee			

SUMMARY ANALYSIS

In response to challenges the Department of Defense (DoD) was facing to repair, renovate, and construct military family housing, Congress enacted the Military Housing Privatization Initiative (Housing Initiative) in 1996. The Housing Initiative authorizes public-private partnerships between the military and private developers to facilitate cost effective construction, financing, and management of military family housing.

Section 196.199, F.S., currently provides an exemption from ad valorem taxation for United States property. This exemption specifically applies to leasehold interests in property owned by the United States government when the lessee serves or performs a governmental, municipal or public purpose or function.

CS/HB 531 provides a definition of property of the United States that includes any leasehold interest of, and improvements affixed to, land owned by the United States acquired or constructed and used pursuant to the Housing Initiative. The bill provides that the term "improvements" includes actual housing units and any facilities that are directly related to such units. The bill provides that an application for exemption is not necessary for leasehold interests and improvements described in the bill.

The bill also amends the definition of "permanent residence" in ch. 196, F.S., which relates to property tax exemptions, to provide that "[t]he permanent residence of a person incarcerated in a state correctional institution as defined in s. 944.02 or similar institution in another state or a Federal correctional institution is the location of such institution." Eligibility for the homestead exemption(s) provided in Article VII, section 6 of the Florida Constitution, is based upon the "permanent residence" of the property owner, or another legally or naturally dependent upon the owner.

The Revenue Estimating Conference (REC) estimated that the provisions of the bill related to s. 196.199, F.S., will have no revenue impact. The REC has not yet estimated the provision of the bill related to the definition of "permanent residence" in s. 196.012(18), F.S.

The bill is effective upon becoming law and applies retroactively to January 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Background- Military Housing Privatization Initiative

During the 1990s, DoD designated nearly two-thirds (approximately 180,000 houses) of its domestic family housing inventory as inadequate, needing repair or complete replacement.[1] Many of the housing units were constructed during World War II or soon after, and were designed only to last a few years. The problem was severe enough that many feared that service members would leave the military due to the lack of adequate housing. In addition, many older units had environmental problems such as lead-based paint, asbestos, and could not meet current building codes.[2] To remedy the problem, DoD estimated it would cost approximately $20 billion and take up to 40 years using the traditional military construction (MILCON) approach. In response, DoD began seeking a cheaper and faster solution.[3]

In 1996, Congress enacted the Military Housing Privatization Initiative (Housing Initiative) codified at 10 U.S.C. § 2871 et seq.[4] The Housing Initiative provides DoD with various authorities to allow private-sector financing and expertise in order to improve the military housing situation. Such authorities can be used individually or in combination and include:

- Guarantees, both loan and rental;
- Conveyance or leasing of existing property and facilities;
- Differential lease payments;
- Investments, both limited partnerships and stock or bond ownership; and
- Direct loans.[5]

In a typical privatized military housing project, a military department (Army, Navy, or Air Force) enters into an agreement with a private developer selected in a competitive process to own, maintain and operate military family housing. Jointly, the military department and private developer create a public-private venture (PPV). The military department then leases land, improved, unimproved or both, to the PPV for a term of 50 years while retaining both a present and future interest in the land and any improvements. As part of the terms of the lease agreement, the private developer is subsequently responsible for constructing new homes or renovating existing houses and leasing this housing, giving preference to service members and their families. The land and title to the houses conveyed to the PPV, as well as any improvements made by the PPV, during the duration of the lease automatically revert to the military department upon expiration or termination of the ground lease.[6] The Housing Initiative provides flexibility in the structure and terms of the transactions with the private sector. Unlike traditional MILCON projects, these projects are controlled by a private developer acting through the PPV rather than through unilateral government control.[7,8]

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[1] GAO-09-352, *Military Housing Privatization* , http://www.gao.gov/assets/290/289739.pdf, at 1.
[2] Phillip Morrison, *State Property Tax Implications for Military Privatized Family Housing Program*, Air Force Law Review, Vol. 56 (2005) at 263. http://www.afjag.af.mil/shared/media/document/AFD-081009-011.pdf.
[3] The Office of the Deputy Under Secretary of Defense Installations and Environment, Military Privatization Initiative, Overview, http://www.acq.osd.mil/housing/overview.htm, provides that DoD currently owns 257,000 family housing units on- and off-base. About 60 percent need to be renovated or replaced because they have not been sufficiently maintained or modernized over the last 30 years. (site last visited 3/2/2013).
[4] National Defense Authorization Act for Fiscal Year 1996, Pub. L. No. 104-106, §§ 2801-2841 (1996).
[5] 10 U.S.C. § 2871 et seq.
[6] GAO-09-352, http://www.gao.gov/assets/290/289739.pdf, at pages 10 and 11.
[7] Phillip Morrison, *State Property Tax Implications for Military Privatized Family Housing Program*, *supra* note 2 at 266.
[8] The Office of the Deputy Under Secretary of Defense Installations and Environment, Housing Projects, Projects Awarded, http://www.acq.osd.mil/housing/projawarded.htm, reported as of February, 2012, 105 housing projects have been awarded; and 11 projects are pending. (site last visited 3/2/2013)

There are currently Housing Initiative developments at the following military installations in Florida:[9]

- Tyndall Air Force Base
- MacDill Air Force Base
- Patrick Air Force Base
- Naval Air Station Jacksonville
- Naval Air Station Key West
- Naval Air Station Pensacola
- Naval Air Station Whiting Field
- Naval Station Mayport
- Naval Support Activity Panama City

Property Taxes in Florida

The Florida Constitution reserves ad valorem taxation to local governments and prohibits the state from levying ad valorem taxes on real and tangible personal property.[10] The ad valorem tax or "property tax" is an annual tax levied by counties, cities, school districts, and some special districts based on the value of real and tangible personal property as of January 1 of each year.[11] 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.[12] Such exemptions include, but are not limited to: homestead exemptions and exemptions for property used for educational, religious, or charitable purposes.[13] The Florida Constitution strictly limits the Legislature's authority to provide exemptions or adjustments to fair market value.[14] However, the Florida Constitution provides for property tax relief in the form of certain valuation differentials, assessment limitations, and exemptions.[15]

Taxation of United States Property

Generally, the federal government and property owned by the federal government are immune from state and local taxation.[16] The federal government's immunity from taxation required by state law to fall upon the federal government extends to its agents and its instrumentalities.[17] Congress has the exclusive authority to determine whether and to what extent its instrumentalities are immune from state and local taxes.[18]

Statutory Exemption for United States Property

Section 196.199(1)(a), F.S., recognizes the immunity that property of the United States enjoys, and the ability of Congress to waive that immunity in specified circumstances: "All property of the United States shall be exempt from ad valorem taxation except such property as is subject to tax . . . under any law of the United States." This section of statute does not specifically describe leaseholds and

[9] The Office of the Deputy Under Secretary of Defense Installations and Environment, Housing Projects, Projects Awarded, Florida. http://www.acq.osd.mil/housing/state_fl.htm (site last visited 3/2/2013)
[10] Section 1(a), Art. VII, Florida Constitution.
[11] Section 192.001(12), F.S., defines "real property" as land, buildings, fixtures, and all other improvements to land. The terms "land," "real estate," "realty," and "real property" may be used interchangeably. Section 192.001(11)(d), F.S., defines "tangible personal property" as all goods, chattels, and other articles of value (but does not include the vehicular items enumerated in s. 1(b), Art. VII of the State Constitution and elsewhere defined) capable of manual possession and whose chief value is intrinsic to the article itself.
[12] See s. 196.031, F.S.
[13] Sections 3, and 6, Art. VII, Florida Constitution.
[14] Sections 3, 4, and 6, Art. VII, Florida Constitution.
[15] Valuation differentials, assessment limitations, and exemptions are authorized in Article VII, Florida Constitution.
[16] *McCullough v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819); *United States v. New Mexico*, 455 U.S. 720 (1982).
[17] *Kern-Limerick, Inc. v. Scurlock*, 347 U.S. 110 (1954); Rohr Corp. v. San Diego County, 362 U.S. 628 (1960).
[18] *Maricopa County v. Valley Bank*, 318 U.S. 357 (1943).

improvements constructed pursuant to the Housing Initiative as being eligible for this exemption from ad valorem taxation.

Section 196.199(2)(a), F.S., provides an exemption from ad valorem and intangible taxation for leasehold interests in property owned by the United States when the lessee is performing a "governmental, municipal, or public purpose or function" as defined in s. 196.012(6), F.S. Under s. 196.012(6), F.S., such a purpose is deemed served when "the lessee… is demonstrated to perform a function or serve a governmental purpose which could properly be performed or served by an appropriate governmental unit or … would otherwise be a valid subject for the allocation of public funds."

Current Litigation

Until recently, no attempt had been made to subject the Housing Initiatives projects in Florida to ad valorem tax. In 2012, the Monroe County property appraiser asserted that the Housing Initiative project improvements at Naval Air Station Key West were subject to tax retroactive to 2008. A legal case is currently pending on this matter in the Sixteenth Judicial Circuit.[19]

Homestead Exemption

Article VII, section 6(a) of the Florida Constitution provides in pertinent part:

> Every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, shall be exempt from taxation thereon, except assessments for special benefits, up to the assessed valuation of twenty-five thousand dollars and, for all levies other than school district levies, on the assessed valuation greater than fifty thousand dollars and up to seventy-five thousand dollars, upon establishment of right thereto in the manner prescribed by law.

These exemptions are reflected in s. 196.031, F.S., in pertinent part as follows:

> (1)(a) Every person who, on January 1, has the legal title or beneficial title in equity to real property in this state and who resides thereon and in good faith makes the same his or her permanent residence, or the permanent residence of another or others legally or naturally dependent upon such person, is entitled to an exemption from all taxation, except for assessments for special benefits, up to the assessed valuation of $25,000 on the residence and contiguous real property, as defined in s. 6, Art. VII of the State Constitution.
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> (2) Every person who qualifies to receive the exemption provided in paragraph (a) is entitled to an additional exemption of up to $25,000 on the assessed valuation greater than $50,000 for all levies other than school district levies. (emphasis supplied)

Proposed Changes

Housing Initiative Provisions

CS/HB 531 expressly recognizes in statute that property constructed pursuant to the federal Housing Initiative on land owned by the federal government is in fact federal government property and exempt from ad valorem taxation.

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

Specifically, the bill amends s. 196.199(1)(a), F.S., to provide a definition of property of the United States that 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, if the leasehold interest and improvements are acquired or constructed and used pursuant to the Housing Initiative.

The bill provides that 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.

The bill further provides that it is not necessary for an application for an exemption to be filed or approved by the property appraiser.

Definition of "Permanent Residence"

The bill also amends the definition of "permanent residence" in s. 196.012(18), F.S., to provide that "[t]he permanent residence of a person incarcerated in a state correctional institution as defined in s. 944.02 or similar institution in another state or a Federal correctional institution is the location of such institution." To establish entitlement to the homestead exemption(s) afforded under Article VII, s. 6 of the Florida Constitution, a person must:

- Have legal or equitable title to real estate; and either

- Maintain thereon their permanent residence; or
- Maintain thereon the permanent residence of another legally or naturally dependent upon the owner.

While the change to the definition of "permanent residence" would appear to preclude a person from being eligible for a homestead exemption on his or her property while incarcerated in a state correctional institution as defined in s. 944.02 or similar institution in another state or a Federal correctional institution, it would not preclude eligibility for a homestead exemption if the person's legal or natural dependents maintain their permanent residence thereon.

Effective Date

The bill has an effective date of upon becoming law and provides for retroactive application to January 1, 2007.

B. SECTION DIRECTORY:

Section 1. Amends the definition of "permanent residence" found in s. 196.012(18), F.S.

Section 2. Amends s. 196.199, F.S., relating to government property exemption.

Section 3. Provides an effective date of upon becoming law, and applies it retroactively to January 1, 2007.

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:

The Revenue Estimating Conference (REC) estimated that the provisions of the bill related to s. 196.199, F.S., will have no revenue impact on local governments. The REC has not yet estimated the revenue impact of the change to the definition of "permanent residence" contained in the bill, but staff estimates that it will have a positive impact on both school tax revenue and local non-school tax revenue. The magnitude of the positive revenue impact is unknown, but expected to be small.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Clarifying ad valorem tax exemption eligibility standards for United States property may ensure that military housing developed pursuant to the Housing Initiative will not be subjected to taxation.

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 an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

Article VII, section 6(a) of the Florida Constitution provides in pertinent part:

> Every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, shall be exempt from taxation thereon, except assessments for special benefits, up to the assessed valuation of twenty-five thousand dollars and, for all levies other than school district levies, on the assessed valuation greater than fifty thousand dollars and up to seventy-five thousand dollars, upon establishment of right thereto in the manner prescribed by law.

The Florida Supreme Court has held that although the Legislature is permitted to enact laws regulating "the manner" of establishing the right to the constitutional homestead tax exemption, it cannot substantively alter or materially limit the class of individuals entitled to the exemption under the plain language of the constitution.[20] The Court has also held that "[c]ontinuous physical presence without interruption is not required to constitute a homestead for tax exemption purposes. Temporary absence, regardless of the reason for such, from the homestead, will not deprive it of that character, provided an abiding intention to return is always present."[21] In another case, the 2nd District Court of Appeal stated "[o]nce the property has acquired the status of a homestead, this status would continue

[20] See, e.g., *Garcia v. Andonie*, 101 So.3d 339, 345 (Fla. 2012), referring to *Sparkman v. State*, 58 So.2d 431, 432 (Fla.1952)
[21] *City of Jacksonville v. Bailey*, 159 Fla. 11, 14 (Fla. 1947)

until an abandonment has occurred which being dependent upon the intent of the claimant, is a question of fact to be determined in each particular case."[22]

The Legislature has in the past established in statute certain circumstances under which abandonment of a homestead is deemed to have occurred. Section 196.061, F.S., provides in pertinent part that "[t]he rental of all or substantially all of a dwelling previously claimed to be a homestead for tax purposes shall constitute the abandonment of such dwelling as a homestead, and the abandonment shall continue until such dwelling is physically occupied by the owner." The First District Court of Appeal recently evaluated the constitutionality of this provision in a case involving a taxpayer who owned a condominium unit and participated in a rental program that rented out units on a short-term or daily basis, based on when the owner was absent from the property. The property appraiser revoked the taxpayer's homestead tax exemption based on the unit's status as rental property under s. 196.061, F.S. The Court held that "[a]rticle VII, section 6, provides that the legislature may establish by law the procedures for claiming the homestead tax exemption. Accordingly, section 196.061 is the legislature's establishment of how rental property is to be treated under the homestead exemption law and is not unconstitutional as applied to Appellees."[23]

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill as currently drafted applies retroactively to January 1, 2007. This could have unintended consequences with respect to the amendment to the definition of "permanent residence" in s. 196.012(18), F.S. For example, s. 196.161(1)(b), F.S., provides in pertinent part:

> [U]pon determination by the property appraiser that for any year or years within the prior 10 years a person who was not entitled to a homestead exemption was granted a homestead exemption from ad valorem taxes, it shall be the duty of the property appraiser making such determination to serve upon the owner a notice of intent to record in the public records of the county a notice of tax lien against any property owned by that person in the county, and such property shall be identified in the notice of tax lien. Such property which is situated in this state shall be subject to the taxes exempted thereby, plus a penalty of 50 percent of the unpaid taxes for each year and 15 percent interest per annum. …

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 8, 2013, the Finance and Tax Subcommittee adopted an amendment that:

- Amends the definition of "permanent residence" in s. 196.012(18), F.S., to provide that "[t]he permanent residence of a person incarcerated in a state correctional institution as defined in s. 944.02 or similar institution in another state or a Federal correctional institution is the location of such institution."

This analysis is updated to reflect this change.

[22] *Poppell v. Padrick*, 117 So.2d 435, 437 (Fla. App. 1959)
[23] *Haddock v. Carmody*, 1 So.3d 1133, 1136 (Fla.App. 1 Dist.,2009)