

**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

<b>BILL #:</b>	CS/CS/HB 531	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SPONSOR(S):</b>	Economic Affairs Committee; Finance & Tax Subcommittee; and Patronis	118 Y's	0 N's
<b>COMPANION BILLS:</b>	(CS/SB 354)	<b>GOVERNOR'S ACTION:</b>	Vetoed

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**SUMMARY ANALYSIS**

CS/CS/HB 531 passed the House on April 24, 2013 as CS/SB 354 as amended. The Senate refused to concur with the House amendment and asked the House to recede on May 1, 2013. The House receded from the House amendment and subsequently passed the bill on May 2, 2013. The bill recognizes in statute that leaseholds and improvements constructed and used to provide housing to active duty military persons and their families pursuant to the federal Military Housing Initiative on land owned by the federal government are exempt from ad valorem taxation.

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.

The bill 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 applies only to leaseholds and improvements used to provide housing for active duty military persons and their families. The bill allows ad valorem taxation on Housing Initiative property that is not occupied by active duty military. Under the Housing Initiative, such occupants may generally include military retirees, federal government civilians, and general public. If portions of the property are occupied by persons other than active duty military and their family, the exempt portion of the property is equal to a fraction, of which the numerator is the number of active duty residential units, and the denominator is the total number of residential units on the property.

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

The bill does not apply to transient public lodging establishments (hotels).

The bill will have an indeterminate positive fiscal impact to local governments and negative fiscal impact to the private sector. The Revenue Estimating Conference (REC) has not estimated the impacts of the bill as amended.

The effective date of this bill was upon becoming law and it applied retroactively to January 1, 2007; however, it was vetoed by the Governor on June 12, 2013.

# I. SUBSTANTIVE INFORMATION

## A. EFFECT OF CHANGES:

### Current Situation

#### Background- Military Housing Privatization Initiative

During the 1990s, the Department of Defense (DoD) designated nearly two-thirds (approximately 180,000 houses) of its domestic family housing inventory as inadequate, needing repair or complete replacement.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

In 1996, Congress enacted the Military Housing Privatization Initiative (Housing Initiative) codified at 10 U.S.C. § 2871 et seq.<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> 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.<sup>7,8</sup>

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<sup>1</sup> GAO-09-352, *Military Housing Privatization*, <http://www.gao.gov/assets/290/289739.pdf>, at 1.

<sup>2</sup> 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>.

<sup>3</sup> 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).

<sup>4</sup> National Defense Authorization Act for Fiscal Year 1996, Pub. L. No. 104-106, §§ 2801-2841 (1996).

<sup>5</sup> 10 U.S.C. § 2871 et seq.

<sup>6</sup> GAO-09-352, <http://www.gao.gov/assets/290/289739.pdf>, at pages 10 and 11.

<sup>7</sup> Phillip Morrison, *State Property Tax Implications for Military Privatized Family Housing Program*, *supra* note 2 at 266.

There are currently Housing Initiative developments at the following military installations in Florida:<sup>9</sup>

- 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.<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup> Such exemptions include, but are not limited to: homestead exemptions and exemptions for property used for educational, religious, or charitable purposes.<sup>13</sup> The Florida Constitution strictly limits the Legislature’s authority to provide exemptions or adjustments to fair market value.<sup>14</sup> However, the Florida Constitution provides for property tax relief in the form of certain valuation differentials, assessment limitations, and exemptions.<sup>15</sup>

### Taxation of United States Property

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

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<sup>8</sup> 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)

<sup>9</sup> 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](http://www.acq.osd.mil/housing/state_fl.htm) (site last visited 3/2/2013)

<sup>10</sup> Section 1(a), Art. VII, Florida Constitution.

<sup>11</sup> 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.

<sup>12</sup> See s. 196.031, F.S.

<sup>13</sup> Sections 3, and 6, Art. VII, Florida Constitution.

<sup>14</sup> Sections 3, 4, and 6, Art. VII, Florida Constitution.

<sup>15</sup> Valuation differentials, assessment limitations, and exemptions are authorized in Article VII, Florida Constitution.

<sup>16</sup> *McCullough v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819); *United States v. New Mexico*, 455 U.S. 720 (1982).

<sup>17</sup> *Kern-Limerick, Inc. v. Scurlock*, 347 U.S. 110 (1954); *Rohr Corp. v. San Diego County*, 362 U.S. 628 (1960).

<sup>18</sup> *Maricopa County v. Valley Bank*, 318 U.S. 357 (1943).

## 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 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.<sup>19</sup>

### **Proposed Changes**

The bill recognizes in statute that leaseholds and improvements constructed and used to provide housing to active duty military persons and their families pursuant to the federal Military Housing Initiative on land owned by the federal government are exempt from ad valorem taxation.

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## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

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<sup>19</sup> See *Southeast Housing LLC, v. Borglum*, No. 2012-CA-000831-K (Fla. 16th Cir. Ct. 2012).

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill will have an indeterminate significant positive fiscal impact for the local governments that contain Housing Initiative projects. According to the Revenue Estimating Conference, eight developments have been constructed in Florida due to the Housing Initiative. The total amount in dispute (due to retroactive application) in the Monroe County litigation (including penalty and interest) is \$11.5 million. The 2012 taxable value of the property in question is \$167,851,781.<sup>20</sup> Under the bill, a fraction of the annual taxable value of Housing Initiative leaseholds and improvements (units occupied by active duty military persons and their families) will not be subject to ad valorem taxation. The Revenue Estimating Conference has not conducted an analysis of the impacts of the partial assessments provided for in the bill as passed by the Legislature.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will have an indeterminate negative fiscal impact on the private sector. Private developers that participate in Housing Initiative projects will be negatively impacted by the bill, retroactively and prospectively. As a consequence, costs may be passed on to all occupants of Housing Initiative units. The Revenue Estimating Conference has not conducted an analysis of the bill as passed by the Legislature.

Also, since Congress has the exclusive authority<sup>21</sup> to determine whether and to what extent its instrumentalities are immune from state and local taxes, any state law purporting to supersede Congressional authorization for taxation will likely create additional litigation and costs to taxpayers.

D. FISCAL COMMENTS:

Allowing ad valorem taxation on United States property may deter private developers from participating in military housing developments pursuant to the Housing Initiative, thereby resulting in reduced housing upgrades and levels of service provided to servicemembers in the state.

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<sup>20</sup> 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>.

<sup>21</sup> *Maricopa County v. Valley Bank*, 318 U.S. 357 (1943).