

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 361 Military Housing Ad Valorem Tax Exemptions

**SPONSOR(S):** Local & Federal Affairs Committee; Finance & Tax Committee; Trumbull and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 686

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Committee	16 Y, 0 N, As CS	Dugan	Langston
2) Veteran & Military Affairs Subcommittee	10 Y, 1 N	Renner	Kiner
3) Local & Federal Affairs Committee	17 Y, 0 N, As CS	Renner	Kiner

### SUMMARY ANALYSIS

Current Florida law provides an exemption from ad valorem taxation for property owned by the United States. 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. Federal law also recognizes the immunity of property of the United States from ad valorem taxation.

The bill recognizes in statute that leaseholds and improvements constructed and used to provide housing pursuant to the federal Military Housing Privatization Initiative (Housing Initiative) on land owned by the federal government are exempt from ad valorem taxation.

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, regardless of whether title is held by the United States. The bill also provides that it is not necessary for an application for an exemption to be filed or approved by the property appraiser.

Typically, such leaseholds and improvements are executed through public-private ventures (PPV), whereby the title ultimately reverts back to the military department. Until recently, local governments have not attempted to assess ad valorem taxes on Housing Initiative projects.

The bill does not apply to transient public lodging establishments (hotels). The bill also provides that existing agreements to provide municipal services by cities and counties are not affected by the ad valorem exemption.

On February 2, 2015, the Revenue Estimating Conference estimated the bill will have a local government revenue impact of either zero or negative, indeterminate on local government collections of ad valorem revenues.

The bill applies retroactively to January 1, 2007.

The bill has an effective date of July 1, 2015.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED 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. 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, the DoD estimated it would cost approximately \$20 billion and take up to 40 years using the traditional military construction (MILCON) approach. In response, the DoD began seeking a cheaper and faster solution.<sup>3</sup>

In 1996, Congress enacted<sup>4</sup> the Military Housing Privatization Initiative (Housing Initiative) to provide the DoD with authority to allow private-sector financing and expertise in order to improve the military housing situation.<sup>5</sup> Such authority includes:<sup>6</sup>

- 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/or
- direct loans.

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 housing units or renovating existing housing units and leasing this housing, giving preference to service members and their families.<sup>7</sup> The land and title to the housing units 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>8</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>9,10</sup>

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

<sup>2</sup> Phillip Morrison, *State Property Tax Implications for Military Privatized Family Housing Program*, Vol. 56, *Air Force Law Review*, page 263 (2005).

<sup>3</sup> The Office of the Deputy Under Secretary of Defense (DUSD) Installations and Environment, *Military Privatization Initiative, Overview*, available at: <http://www.acq.osd.mil/housing/overview.htm> (last visited February 12, 2015). According to this site, the 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.

<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> 10 U.S.C. §§ 2872-2878

<sup>7</sup> Each military department develops a “waterfall” policy, where preference is generally given in the following order: (1) active duty military personnel with dependents, (2) active duty without families, (3) military reservists, (4) DoD civilians, (5) military retirees, (6) civilians.

<sup>8</sup> GAO-09-352, at pages 10 and 11.

<sup>9</sup> Phillip Morrison article, *supra* note 2, at page 266.

There are currently Housing Initiative developments at the following military installations in Florida:<sup>11</sup>

- Eglin Air Force Base
- Hurlburt Field
- MacDill 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
- Patrick Air Force Base
- Tyndall Air Force Base

### 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>12</sup> The ad valorem 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>13</sup> The Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes,<sup>14</sup> and it provides for specified assessment limitations, property classifications and exemptions.<sup>15</sup> 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>16</sup> Such exemptions include, but are not limited to: homestead exemptions and exemptions for property used for educational, religious, or charitable purposes.<sup>17</sup> The Florida Constitution strictly limits the Legislature's authority to provide exemptions or adjustments to just value.<sup>18</sup> However, the Florida Constitution provides for property tax relief in the form of certain valuation differentials, assessment limitations, and exemptions.<sup>19</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>20</sup> The federal government's immunity from taxation required by state law extends to its agents and its instrumentalities.<sup>21</sup> Congress has the exclusive authority to determine whether and to what extent its instrumentalities are immune from state and local taxes.<sup>22</sup>

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<sup>10</sup> DUSD, Installations and Environment, Housing Projects, Projects Awarded as of February 2012, available at: <http://www.acq.osd.mil/housing/projawarded.htm> (last visited February 12, 2015).

<sup>11</sup> DUSD, Installations and Environment, Housing Projects, Projects Awarded, Florida, available at: [http://www.acq.osd.mil/housing/state\\_fl.htm](http://www.acq.osd.mil/housing/state_fl.htm) (last visited February 12, 2015).

<sup>12</sup> Fla. Const. art. VII, s. 1(a).

<sup>13</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 article VII, section 1(b) of the Florida Constitution and elsewhere defined) capable of manual possession and whose chief value is intrinsic to the article itself.

<sup>14</sup> Fla. Const., art. VII, s. 4.

<sup>15</sup> Fla. Const. art. VII, ss. 3, 4, and 6.

<sup>16</sup> s. 196.031, F.S.

<sup>17</sup> Fla. Const. art. VII, ss. 3 and 6.

<sup>18</sup> Fla. Const. art. VII, ss. 3, 4, and 6.

<sup>19</sup> Valuation differentials, assessment limitations, and exemptions are authorized in article VII of the Florida Constitution.

<sup>20</sup> *McCullough v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819); *United States v. New Mexico*, 455 U.S. 720 (1982).

<sup>21</sup> *Kern-Limerick, Inc. v. Scurlock*, 347 U.S. 110 (1954); *Rohr Corp. v. San Diego County*, 362 U.S. 628 (1960).

<sup>22</sup> *Maricopa County v. Valley Bank*, 318 U.S. 357 (1943).

## Statutory Exemption for United States Property

Current law 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.”<sup>23</sup> Thus, federally-owned property may be subject to taxation in Florida if specifically allowed by federal law; however, Housing Initiative property does not allow such taxation.<sup>24</sup>

Current law also 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.<sup>25</sup> 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.” 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.

## 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 reversed a position he had held for several years and asserted that the Housing Initiative project improvements at Naval Air Station Key West were subject to tax retroactive to 2008 because the owner of the improvements was not exempt.<sup>26</sup> However, a circuit court judge in the Sixteenth Judicial Circuit determined that such improvements are exempt from property tax because the use and ownership of the improvements are consistent with the property tax exemptions provided in s. 196.199.<sup>27</sup> The court found that the operation, construction and renovation of military housing is a governmental function,<sup>28</sup> and, even though the nongovernmental lessee technically held legal title to the property, the United States Navy was the equitable owner of the property.<sup>29</sup> The Monroe County property appraiser appealed the decision to the Third District Court of Appeals.<sup>30</sup> On March 11, 2015, the Third District Court of Appeals found that the Navy has its ultimate purpose served by the agreement with Southeast Housing, oversees construction, controls access to the properties, supervises operations, directs the rental of the properties, continues to benefit from the revenue, receives most of the profits, and takes back title to the properties at the end of the lease within the useful life of the improvements.<sup>31</sup> Therefore, the improvements are immune from state ad valorem taxation because the Navy retains beneficial ownership of the improvements.

In 2014, a similar lawsuit was filed in Escambia County after the county property appraiser denied the ad valorem tax exemption for a Housing Initiative lessee in 2013.<sup>32</sup> In Escambia County, the original exemption was granted in 2008 based on the percentage of rented units occupied by active duty personnel, as determined by “rent rolls” provided annually by the Housing Initiative lessee.<sup>33</sup> The property appraiser granted the ad valorem exemption in 2008 through 2012, but removed and denied the exemption in 2013. The property appraiser notified the Housing Initiative lessee of the removal and denial through a letter sent on July 1, 2013, which stated that “Florida law...provides that property owned by a non-governmental entity or lessee...shall be subject to ad valorem taxation.”<sup>34</sup> The Housing Initiative lessee filed a lawsuit on July 23, 2014, arguing that the property appraiser’s removal and

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<sup>23</sup> s. 196.199(1)(a), F.S.

<sup>24</sup> 10 U.S.C. § 2878(e)(1).

<sup>25</sup> s. 196.199(2)(a), F.S.

<sup>26</sup> *Southeast Housing LLC v. Borglum*, No. 2012-CA-000831-K (Fla. 16th Cir. Ct., August 2012).

<sup>27</sup> *Southeast Housing LLC v. Borglum*, No. 2012-CA-000831-K, (Fla. 16th Cir. Ct., March 2014).

<sup>28</sup> *Id.* at page 9.

<sup>29</sup> *Id.* at page 11.

<sup>30</sup> *Russell v. Southeast Housing LLC*, No. 3D14-746 (3d DCA, May 2014).

<sup>31</sup> *Id.* at page 23

<sup>32</sup> *Southeast Housing LLC v. Jones*, No. 2014-CA-000293 (Fla. 1st Cir. Ct., February 2014).

<sup>33</sup> *Southeast Housing LLC v. Jones*, No. 2014-CA-000293, Plaintiff’s Complaint at paragraph 41, (July 23, 2014).

<sup>34</sup> *Id.* at paragraphs 50 and 51.

denial of the exemption is contrary to both state and federal law and is without legal basis or authorization.

Also in 2014, a similar lawsuit was filed in Santa Rosa County after the county property appraiser terminated a PILOT Agreement (Payment In Lieu of Taxes Agreement) entered into with a Housing Initiative lessee.<sup>35</sup> After an initial denial of the ad valorem exemption in 2008, the property appraiser and the lessee executed the PILOT agreement on January 21, 2009.<sup>36</sup> The agreement provided payment from the Housing Initiative lessee to various local governments in the county in exchange for the Housing Initiative project's classification as exempt from ad valorem taxation.<sup>37</sup> The payment represented the ad valorem taxes, recalculated annually, that would have been due from the civilian occupied military housing units (but not the land, which remains exempt under federal ownership).<sup>38</sup> Further, the agreement provided the parties agreed that the military housing units occupied by active duty or retired military personnel and their families were exempt from ad valorem taxation.<sup>39</sup> On November 27, 2013, the property appraiser sent the Housing Initiative lessee a letter providing notification that the PILOT agreement would be terminated effective December 31, 2013. The Housing Initiative lessee filed a lawsuit on December 17, 2014, arguing that the property appraiser's removal and denial of the exemption is contrary to both state and federal law and is without legal basis or authorization.

Additionally, a similar lawsuit was filed in Okaloosa County after the county property appraiser denied ad valorem exemption for a Housing Initiative lessee in 2014.<sup>40</sup> In Okaloosa County, the Housing Initiative lessee entered into Housing Initiative projects in 2013 at Eglin Air Force Base and Hurlburt Field, and submitted an application for ad valorem exemption on February 27, 2014.<sup>41</sup> However, the county property appraiser denied the application for each property on June 19, 2014.<sup>42</sup> The Housing Initiative lessee filed a lawsuit on December 3, 2014, arguing that the property appraiser's denial of the exemption was incorrect because equitable title to the properties is held by the United States.

### **Effect of Proposed Changes**

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

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 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).

Lastly, the bill provides that existing agreements to provide municipal services by cities and counties are not affected by the ad valorem tax exemption.

### **B. SECTION DIRECTORY:**

Section 1. Amends s. 196.199, F.S., relating to the government property ad valorem exemption.

Section 2. Provides retroactive applicability to January 1, 2007.

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<sup>35</sup> *Southeast Housing, LLC, v. Brown*, No. 2014-CA-1174 (Fla. 1st Cir. Ct., December 17, 2014).

<sup>36</sup> *Southeast Housing LLC v. Brown*, No. 2014-CA-1174, Plaintiff's Complaint at paragraph 45 (December 17, 2014).

<sup>37</sup> *Id.* at paragraphs 48 through 51.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Corvias Air Force Living, LLC, v. Smith*, No. 2014-CA-004502F (Fla. 1st Cir. Ct. December 4, 2014).

<sup>41</sup> *Corvias Air Force Living, LLC, v. Smith*, No. 2014-CA-004502F, Plaintiff's Complaint paragraph 20, 21, and 25 (December 4, 2014).

<sup>42</sup> *Id.* at paragraph 26.

Section 3. Provides an effective date of July 1, 2015.

## 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 estimates the bill could have zero or a negative, indeterminate impact on local government collections of ad valorem revenues.

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:

The negative, indeterminate fiscal impact possibility is a result of the uncertainty regarding the current administration of the tax. The various property appraiser offices of the state and the DOR play a role in the administration of the tax.

Four out of eight county property appraisers with Housing Initiative projects in their respective counties currently have litigation pending regarding the removal and denial of ad valorem exemptions on the Housing Initiative properties. The remaining four are treating the properties as exempt.

In response to the lawsuit filed against the Monroe County Property Appraiser, the Florida Department of Revenue filed an answer with the Court in which it concurred with the Housing Initiative lessee that the improvements at Naval Air Station Key West were exempt ad valorem taxation.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

The county/municipality mandates provision of Article VII, section 18 of the Florida Constitution may apply because, if the courts determine that ad valorem taxation is appropriate on improvements to Housing Initiative property, this bill may reduce the authority of local governments to raise total aggregate revenues by exempting such property from ad valorem taxation. However, the bill may be exempt under article VII, section 18(d) of the Florida Constitution because it may have an insignificant fiscal impact.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

None.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 12, 2015, the Finance & Tax Committee adopted an amendment which revised the bill to remove unneeded section directory language.

On March 19, 2015, the Local & Federal Affairs Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment provides that existing agreements to provide municipal services by cities and counties are not affected by the ad valorem tax exemption.

This bill analysis is written to CS/HB 361 as amended.