

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 Finance and Tax

BILL: SB 686

INTRODUCER: Senator Lee

SUBJECT: Military Housing Ad Valorem Tax Exemptions

DATE: March 20, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ryon</u>	<u>Ryon</u>	<u>MS</u>	<u>Favorable</u>
2.	<u>Babin</u>	<u>Diez-Arguelles</u>	<u>FT</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____

I. Summary:

Current law exempts “property of the United States” from ad valorem tax. SB 686 provides that property of the United States includes leasehold interests of – and improvements affixed to – land if the leasehold interest and improvements are used pursuant to the Military Housing Privatization Initiative of 1996. The bill exempts the actual housing units and directly-related facilities, such as housing maintenance facilities, housing management offices, parks and recreational facilities.

The Revenue Estimating Conference has determined that the bill has an indeterminate negative or zero fiscal impact on local government revenues.

The bill is effective July 1, 2015, and applies retroactively to January 1, 2007.

II. Present Situation:

Military Housing Privatization Initiative

The 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, the 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 the MHPI program, the DoD works with the private sector to revitalize military family housing by employing a variety of financial tools

¹ National Defense Authorization Act for Fiscal Year 1996, Pub. Law No. 104-106, §§ 2801-2841 104th Cong. (Feb. 10, 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 Mar. 18, 2015).

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.
- Eglin Air Force Base.
- Hurlburt Field.
- 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.⁴

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.⁵ Such exemptions include, but are not limited to: homestead exemptions and exemptions for property used for educational, religious, or charitable purposes.⁶

Government Property Exemption in Florida

Florida law generally exempts government property from ad valorem taxation.⁷ 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.

³ *Id.*

⁴ The Office of the Deputy Under Secretary of Defense Installations and Environment, *Military Housing Privatization*, available at http://www.acq.osd.mil/housing/state_fl.htm (last visited Mar. 18, 2015).

⁵ See s. 196.031, F.S.

⁶ FLA. CONST. art. VII, ss. 3 and 6.

⁷ See s. 196.199, F.S.

Taxation of Federal Property

Generally, property owned by the federal government is 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 the federal immunity from ad valorem taxation for certain federal property that is leased to private parties.¹¹ However, this waiver of immunity is expressly made inapplicable to MHPI property.¹²

Current Litigation

Until recently, all of the MHPI projects in Florida were treated as immune from ad valorem taxes. Beginning in 2012, some property appraisers began treating the property as taxable under the theory that the property was no longer owned by the federal government. Current litigation involves the projects at Naval Air Station Key West, Naval Air Station Pensacola, Naval Air Station Whiting Field, Eglin Air Force Base and Hurlburt Field.

A trial court and an appellate court have ruled on the case involving Naval Air Station Key West. Both decisions conclude that the MHPI property is immune because the federal government is still the equitable owner of the property.¹³ Additionally, the trial court determined that such improvements are exempt even if the property is not immune because the use and ownership of the improvements remain consistent with the property tax exemptions provided in s. 196.199, F.S.¹⁴

Similar lawsuits have recently been filed in three other counties in Florida. In 2013, the Escambia County property appraiser denied the ad valorem tax exemption for the MHPI project at Naval Air Station Pensacola that had been in effect from 2008 through 2012. The MHPI developer filed a lawsuit in July 2014 contesting Escambia County property appraiser's removal and denial of the exemption.¹⁵

In December 2014, the developer of the MHPI project at Naval Air Station Whiting Field filed a lawsuit contesting the Santa Rosa County property appraiser's removal and denial of ad valorem exemption. The lawsuit follows the property appraiser's termination of a Payment in Lieu of Taxes agreement that was agreed upon in 2009 by the property appraiser and the developer.¹⁶

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 Title 10 U.S.C s. 2667.

¹² Title 10 U.S.C. s. 2878(e)(1).

¹³ *Southeast Housing LLC v. Borglum*, No. 2012-CA-000831-K, (Fla. 16th Cir. Ct., March 2014); *Russell v. Southeast Housing, LLC*, No. 3D14-746 (Fla. 3rd DCA 2015). The 3rd DCA decision is not final pending disposition of timely filed motion for rehearing.

¹⁴ *Southeast Housing LLC v. Borglum*, No. 2012-CA-000831-K, (Fla. 16th Cir. Ct., March 2014).

¹⁵ *See Southeast Housing LLC v. Jones*, No. 2014-CA-000293 (Fla. 1st Cir. Ct., July 2014).

¹⁶ *See Southeast Housing, LLC, v. Brown*, No. 2014-CA-1174 (Fla. 1st Cir. Ct., December 2014).

Also in December 2014, the developer of the MHPI project at Eglin Air Force Base and Hurlburt Field filed a lawsuit contesting the Okaloosa County property appraiser's denial of the developer's initial application for ad valorem exemption in June 2014.¹⁷

III. Effect of Proposed Changes:

The bill amends s. 196.199, F.S., to provide that property of the United States that is exempt from taxation 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 used pursuant to the Military Housing Privatization Initiative of 1996.

The term "improvements" includes 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 is to be construed as owned by the United States, regardless of whether title is held by the United States, and the ad valorem exemption requires neither an exemption application, nor approval from the property appraiser.

The bill does not apply to transient public lodging establishments.

The bill provides an effective date of July 1, 2015, and applies retroactively to January 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill may reduce the ability of counties and municipalities to raise revenues in the aggregate. If the property in Florida used pursuant to the MHPI is immune, the Revenue Estimating Conference (REC) has determined that the bill has a zero impact. If the property is not immune, the REC has determined that the bill has an indeterminate negative impact, and thus, the bill may implicate the mandates provisions of Art. VII, Section 18, of the Florida Constitution if the negative indeterminate impact is significant.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁷ See *Corvias Air Force Living, LLC, v. Smith*, No. 2014-CA-004502F (Fla. 1st Cir. Ct. December 2014).

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The REC has determined that this bill will have a zero or negative indeterminate fiscal impact.¹⁸

B. Private Sector Impact:

The bill will ensure that the property of private entities operating pursuant to the MHPI will continue to be exempt from ad valorem taxes.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 196.199 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of 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.

¹⁸ Revenue Estimating Conference, *Military Housing Ad Valorem Tax HB361* (Feb. 04, 2015) available at http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2015/_pdf/page110-112.pdf.