

HB 531

2013

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A bill to be entitled  
An act relating to ad valorem tax exemptions; amending  
s. 196.199, F.S.; providing that certain leasehold  
interests and improvements to land owned by the United  
States, a branch of the United States Armed Forces, or  
any agency or quasi-governmental agency of the United  
States are exempt from ad valorem taxation under  
specified circumstances; providing that such leasehold  
interests and improvements are entitled to an  
exemption from ad valorem taxation without an  
application being filed for the exemption or the  
property appraiser approving the exemption; providing  
for retroactive application; providing an effective  
date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (1) of section  
196.199, Florida Statutes, is amended to read:

196.199 Government property exemption.—

(1) Property owned and used by the following governmental  
units shall be exempt from taxation under the following  
conditions:

(a)1. All property of the United States is ~~shall be~~ exempt  
from ad valorem taxation, except such property as is subject to  
tax by this state or any political subdivision thereof or any  
municipality under any law of the United States.

2. Notwithstanding any other provision of law, for

29 purposes of the exemption from ad valorem taxation provided in  
 30 subparagraph 1., property of the United States includes any  
 31 leasehold interest of and improvements affixed to land owned by  
 32 the United States, any branch of the United States Armed Forces,  
 33 or any agency or quasi-governmental agency of the United States  
 34 if the leasehold interest and improvements are acquired or  
 35 constructed and used pursuant to the federal Military Housing  
 36 Privatization Initiative of 1996, 10 U.S.C. ss. 2871 et seq. As  
 37 used in this subparagraph, the term "improvements" includes, but  
 38 is not limited to, actual housing units and any facilities that  
 39 are directly related to such housing units, including any  
 40 housing maintenance facilities, housing rental and management  
 41 offices, parks and community centers, and recreational  
 42 facilities. Any leasehold interest and improvements described in  
 43 this subparagraph shall be construed as being owned by the  
 44 United States, the applicable branch of the United States Armed  
 45 Forces, or the applicable agency or quasi-governmental agency of  
 46 the United States and are exempt from ad valorem taxation  
 47 without the necessity of an application for exemption being  
 48 filed or approved by the property appraiser.

49 Section 2. This act shall take effect upon becoming a law  
 50 and shall apply retroactively to January 1, 2007.

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** 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		Thompson	De La Paz
2) Finance & Tax Subcommittee			
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 more cost effective construction, financing, and management of military family housing.

The Housing Initiative expressly exempts such public-private leaseholds and improvements from state or local ad valorem property taxation. However, recent questions regarding taxation have arisen due to the nature of the ownership of housing developments under the Housing Initiative and the number of local taxing authorities affected by Housing Initiative projects.

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. Since control and ownership of Housing Initiative (public-private) projects is not vested unilaterally in the government, there may be some ambiguity as to whether such leaseholds and improvements constructed pursuant to the Housing Initiative are included within the ad valorem tax exemption under this section.

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 will likely have a positive fiscal impact on housing for military personnel and their families.

The Revenue Estimating Conference has determined this bill will have no fiscal impact on revenues.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Military Housing Privatization Initiative**

###### General Overview

During the 1990s, the DoD designated nearly two-thirds (approximately 180,000) 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<sup>5</sup> 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>6</sup>

In a typical privatized military housing project, a military department (Army, Navy, Air Force, or Marines) 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. 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>

<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 1/24/2013).

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

<sup>5</sup> The private sector has the ability to attract private capital and complete projects faster than using traditional military construction (MILCON) methods.

<sup>6</sup> 10 U.S.C. § 2871 et seq.

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

<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 1/24/2013).

## Taxation of Federal Property

Generally, the federal government and property owned by the federal government are immune from state and local taxation.<sup>9</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>10</sup> Congress has the exclusive authority to determine whether and to what extent its instrumentalities are immune from state and local taxes.<sup>11</sup>

Ad valorem taxes that Congress *has* authorized for leasehold property on federal land under 10 U.S.C. § 2667, are expressly *not* authorized under the Housing Initiative.<sup>12</sup> Specifically, 10 U.S.C. § 2878(e)(1) of the Housing Initiative states that “[t]he conveyance or lease of property or facilities under this section shall not be subject to the following provisions of law . . . Section 2667 of this title.” In other words, the Housing Initiative expressly exempts such leaseholds and improvements from state or local ad valorem taxation.

In addition, certain sections of the Housing Initiative specifically repealed prior Congressional consent to ad valorem state taxation as well as consent to taxation of intangible personal property.<sup>13</sup>

### **Ad Valorem Taxation**

As prescribed by the Florida Constitution, counties, municipalities, and other local governmental entities have the exclusive right to assess ad valorem taxes on real estate and tangible personal property.<sup>14</sup> The state constitution also requires all property to be assessed at just value.<sup>15</sup> As a result, county property appraisers have the responsibility of determining a property's just valuation,<sup>16</sup> and ensuring that all real property within their county is listed and valued on the real property assessment roll.<sup>17</sup> Property tax relief is provided in the form of valuation differentials, assessment limitations, and exemptions.<sup>18</sup>

Improvements to property, which are distinguished from leasehold interests, that are privately owned, are required to be taxed unless they are owned by an exempt entity and used for an exempt purpose.

Questions regarding taxation of projects under the Housing Initiative have arisen due to the federal nature of the housing developments and the number of local taxing authorities that are affected by Housing Initiative projects. Such projects could generate additional property tax revenues for the local governments that are affected.<sup>19</sup> One property appraiser has asserted that improvements on property developed pursuant to the Housing Initiative are not exempt, arguing that the improvements are not

<sup>9</sup> *McCullough v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819); *United States v. New Mexico*, 455 U.S. 720 (1982).

<sup>10</sup> *Kern-Limerick, Inc. v. Scurlock*, 347 U.S. 110 (1954); *Rohr Corp. v. San Diego County*, 362 U.S. 628 (1960).

<sup>11</sup> *Maricopa County v. Valley Bank*, 318 U.S. 357 (1943).

<sup>12</sup> The Black's Online Legal Dictionary 2<sup>nd</sup> Ed., defines “leasehold” as an estate in realty held under a lease; an estate for a fixed term of years; and “leasehold interest” as an exclusive claim or right to a time-limited-time owning and using a land parcel or other asset. Contrast to a freehold interest; it is for an undetermined period. Agreed-to by written lease. A valuable asset on its own as it can be traded or mortgaged like a physical asset.

<sup>13</sup> 10 U.S.C. §§ 2781-2885 and §2878.

<sup>14</sup> Fla. Const. art. VII.

<sup>15</sup> *Id.* at § 4.

<sup>16</sup> Section 193.011, F.S.

<sup>17</sup> Section 193.085(1), F.S.

<sup>18</sup> Fla. Const. art. VII.

<sup>19</sup> The U.S. Department of Education makes impact payments to agencies (e.g. school districts) not being substantially compensated for the loss in revenue resulting from federal use of the property. See, 20 U.S.C § 7702(a)(2).

property of the United States when held by a PPV, and therefore are taxable.<sup>20</sup> There are eight developments that have been constructed in Florida under the Housing Initiative.<sup>21</sup>

### **Exemptions for Government Property**

Florida law provides specific exemptions from state taxation of government property.<sup>22</sup>

Section 196.199(1)(a), F.S., provides an exemption from ad valorem taxation for United States property "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."

Section 196.199(2)(a), F.S., also provides the following "catch all" provision: "In all such cases, all other interests in the leased property shall also be exempt from ad valorem taxation."

### **Proposed Changes**

HB 531 clarifies 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.

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.

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 s. 196.199, F.S., relating to government property exemption.

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<sup>20</sup> In *Southeast Housing LLC, v. Borglum*, No. 2012-CA-000831-K (Fla. 16th Cir. Ct. 2012), the plaintiff, a PPV, is contesting ad valorem taxes assessed by the Monroe County property appraiser, on a Housing Initiative project.

<sup>21</sup> The eight bases are: 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. Source: Revenue Estimating Conference Analysis for HB 531/SB 354 dated 02/04/2013.

<sup>22</sup> Section 196.199, F.S.

Section 2. Providing an effective date of upon becoming law, and applying 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 met on February 8, 2013 with respect to this bill and SB 354 and determined that the bill had no fiscal impact on local governments.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Clarifying ad valorem tax exemption eligibility standards for United States property may ensure that private entities operating pursuant to the Housing Initiative will continue to be eligible for such exemptions

### D. FISCAL COMMENTS:

With the exception of the Monroe County Property Appraiser recently attempting to retroactively tax improvements constructed on a military base pursuant to the Housing Initiative, no other county has, at this time, attempted to assess ad valorem property taxes to Housing Initiative projects.<sup>23</sup>

## 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:

None.

### B. RULE-MAKING AUTHORITY:

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<sup>23</sup> *Southeast Housing, LLC v. Borghum*, *supra* note 20.

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

It is the position of the Department of Revenue that the federal government has equitable ownership of the improvements constructed pursuant to the Housing Initiative and therefore such improvements are not taxable under the current law, however, no Florida court has ruled on the taxability of Housing Initiative projects under this state law principle.<sup>24</sup>

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

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<sup>24</sup> 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. 5<sup>th</sup> DCA 1993).