

# Avoiding the Specter of Patriot Village: The Military Housing Privatization Initiative's Effect on Federal Funding of Education

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## Introduction

The federal government has long recognized the importance of education.<sup>1</sup> Congress acknowledged this in 1950 when it passed the Federal Impact Aid Statute, which provides federal financial assistance to local school districts that educate, among others, children of military service members.<sup>2</sup> Ironically, by improving on-post military family housing through the recently enacted Military Housing Privatization Initiative,<sup>3</sup> installation commanders are now in a position to jeopardize inadvertently the amount of federal impact aid funding that their local elementary and secondary schools receive. A good example of this unintended consequence of privatization is Patriot Village on Travis Air Force Base, California.

Patriot Village is a housing development that was built within the boundaries of the base on land owned by a private developer and leased to the Air Force.<sup>4</sup> The residents of the 300-unit development are active duty service members and their families, and approximately 160 of the children in Patriot Village attend Travis Unified School District schools.<sup>5</sup> Although these students have an enrollment impact on the school district, the district loses between \$300,000 and \$400,000 in impact aid funds each year because these children

do not reside on federal property within the meaning of the impact aid statute.<sup>6</sup>

## The Decline of Military Housing

Congress enacted the Military Housing Privatization Initiative (MHPI) as part of the National Defense Authorization Act for Fiscal Year 1996.<sup>7</sup> The goal of the MHPI was to provide "new authority to acquire and [to] improve military housing and supporting facilities through the use of private expertise and capital."<sup>8</sup> The impetus behind the MHPI was the deteriorating state of military family housing and the eagerness of the Department of Defense (DOD) to gain legislative authority to pursue alternatives to standard military construction contracts. Joshua Gotbaum, Assistant Secretary of Defense for Economic Security, outlined the DOD's concerns and proposed solutions to the House of Representatives during hearings on the 1996 Defense Authorization Act.<sup>9</sup> Mr. Gotbaum emphasized that ensuring a high quality of life for American troops and their families is critical for retaining a quality professional military force. However, he described current on-base family housing as inadequate and "dramatically in need of renovation and repair."<sup>10</sup> The scope of the problem is extensive.<sup>11</sup>

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1. See S. REP. NO. 89-146, at 4 (1965), *reprinted in* 1965 U.S.C.C.A.N. 1446, 1449. "Americans regard the public schools as a most vital civic institution for the preservation of a democratic system of government." *Abington Sch. Dist. v. Schempp*, 374 U.S. 203, 230 (1963) (Brennan, J., concurring).

2. See 20 U.S.C. § 236 (1950) (Congress passed the statute in "recognition of the responsibility of the United States for the impact which certain federal activities have on local educational agencies in which such activities are carried on"). See also Elementary and Secondary Education Act of 1965, Pub. L. No. 89-10, 1965 U.S.C.C.A.N. 1446, 1450 (citing Senator Robert Taft's declaration that "[e]ducation is primarily a state function, but as in the fields of health, relief, and medical care, the federal government has a secondary obligation to see that there is a basic floor under those essential services for all adults and children in the United States").

3. See National Defense Authorization Act for Fiscal Year 1996, Pub. L. No. 104-106, § 2801, 110 Stat. 206 (1996) (codified at 10 U.S.C. §§ 2871-85).

4. *Hearing on Impact Aid Before the Subcommittee on Early Childhood, Youth, and Families of the House of Representatives Committee on Economic and Educational Opportunities*, 104th Cong. 24 (1996) (testimony of Superintendent Paul Rose of the Travis Unified School District).

5. *Id.*

6. *Id.* at 25.

7. Pub. L. No. 104-106, § 2801, 110 Stat. 206 (codified at 10 U.S.C. §§ 2871-85).

8. Statement by President William J. Clinton upon Signing S. 1124 [National Defense Authorization Act for Fiscal Year 1996], 32 WEEKLY COMP. PRES. DOC. 260 (Feb. 19, 1996).

9. See H.R. REP. NO. 104-8, at 347 (1995).

10. *Id.* at 347-48. Robert Bayer, the principal assistant deputy undersecretary of defense, has also stated, "We want to hold onto our best personnel; our best personnel are often now married. In order to do that, we need to provide them with quality housing, safe housing, so that when they are deploying they can focus their attention on their mission." *Hearing on Impact Aid Before the Subcommittee on Early Childhood, Youth, and Families of the House of Representatives Committee on Economic and Educational Opportunities*, 104th Cong. 7 (1996).

Approximately one-third of military families live in on-post government housing, and the DOD owns about 350,000 houses.<sup>12</sup> The average age of these houses is thirty-three years; twenty-five percent of them are over forty years old.<sup>13</sup> Because many of these structures were not well maintained, they require new electrical, heating, and plumbing systems. Although conditions vary, the DOD found that it has well over 200,000 unsuitable houses which need to be repaired or closed.<sup>14</sup>

In light of the military's housing problem, the DOD determined that it could not solve the problem by itself; it needed private capital and private management.<sup>15</sup> Before the DOD could take advantage of private capital, however, it was essential for Congress to provide the service secretaries with the authority, the mechanisms, and the flexibility to harness this private capital.

There is no single 'magic bullet' to this problem. In real estate, one size does not fit all. Each location, each project, the terms of each

deal will vary in many respects: market conditions, market penetration, land cost and availability, developer capabilities, and our housing renovation or construction requirements. Approaches that work in one location can fail dismally at another. Therefore, the Department will need a 'kit bag' of tools and flexibility in the way we use them, to respond and [to] take advantage of each installation's unique circumstances.<sup>16</sup>

The legislative "kit bag" had to allow for the selling of existing on-base housing; the renting back of existing housing after renovation or replacement; the exchange of government-owned land for housing; co-investment with private investors to create military/commercial housing projects; and the encouragement of investment by insuring investors against changes in personnel levels or stationing.<sup>17</sup>

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11. Although the military housing problem has been gradually worsening over time because of many different factors, the DOD has specified four main reasons for the deterioration of its family housing. First, during the cold war years that followed World War II, the DOD was forced to allocate financial resources to increase force levels, to modernize the military structure, and to ensure the effective readiness of the fighting forces. As a result, investment in military housing was frequently a secondary concern. Second, federal housing procurement and management procedures have become increasingly centralized and specialized. Third, contract specifications have become overly detailed, depriving government contractors of the flexibility to adjust to their local needs and increasing the overall cost of the contract. Fourth, the federal government's focus on annual appropriations constrained resources for long-term projects like housing. H.R. REP. NO. 104-8, at 348-349, 359 (1995).

12. *Id.* at 358.

13. *Id.*

14. *Id.* The House of Representatives made similar findings in its conference report on the National Defense Authorization Act for Fiscal Year 1997.

The condition of military housing for families and unaccompanied personnel . . . is in a similar state of deterioration. According to the Defense Science Board Task Report on Quality of Life, 62% of barracks and dormitories are currently unsuitable, and 64% of family housing units are in the same condition. In spite of these serious deficiencies, the administration's budget request fails to keep pace with current levels of funding to support the construction of barracks and dormitories . . . . The administration also proposes to reduce funding for the basic maintenance of family housing.

H.R. CONF. REP. NO. 104-724, at 828 (1996).

15. *See* H.R. REP. NO. 104-8, at 362 (1995):

Our housing problem cannot be solved using traditional military construction methods. [The] DOD spends on average about \$6700 per year (including \$2000 for utilities) to maintain and [to] operate our old inefficient houses; that figure is rising. To build new on-base housing, we spend \$135,000 per unit. These costs are substantially above private industry averages. At current funding levels and acquisition cycle times, it would take 30-40 years to correct our housing deficit. We must find a better way.

Mr. Gotbaum testified: "[T]he private market provides the authorities of most of our housing; two-thirds of it for families. There is a place to go. Almost every other institution in our nation relies for housing and facilities upon private capital and private management." *Id.*

16. *Id.* at 365.

17. *Id.* In the conclusion of his housing and quality of life paper to the House of Representatives, Mr. Gotbaum stated:

We can develop practical and cost-effective tools to make use of private capital, but only with your help. We will need strong Congressional support, not only to legislate new authorities, but also to streamline executive and congressional budgeting and appropriations practices, to work with the flexibility and schedules of the private sector. With your support, we can gain access to billions of dollars of private capital and the extraordinary depth of private expertise. Together we can improve the quality of life for hundreds of thousands of service members and their families.

*Id.* at 367.

## Congress Responds with the Military Housing Privatization Initiative

On 10 February 1996, Congress responded to the DOD's concerns by enacting the MHPI, which gives the secretaries of the various military agencies broad, temporary authority to undertake the privatization of military housing.<sup>18</sup> Specifically, the statute authorizes service secretaries to "exercise any authority or any combination of authorities provided under [the statute] to provide for the acquisition or construction by private persons of . . . family housing units on or near military installations within the United States and its territories and possessions."<sup>19</sup> Under the MHPI, the service secretaries may make direct loans and loan guarantees to private entities for the acquisition or construction of military family housing,<sup>20</sup> lease military family housing units constructed by private entities,<sup>21</sup> make equity and creditor investments in private entities undertaking projects for the acquisition of military family housing,<sup>22</sup> provide rental guarantees,<sup>23</sup> and make differential lease payments.<sup>24</sup> However, the grant of authority which has the potential for having the greatest ramifications outside of the housing arena is the ability of the service secretaries to convey or to lease existing property and facilities to private entities.<sup>25</sup>

The Army's Strategic Management Plan calls for the *total privatization* of all Army Family Housing (AFH) facilities and operations in the U.S. by the year 2005 using [Capital Venture Initiative (CVI)] authorities. To do this we are focusing on whole-installation CVI

projects that allow the Army to divest of AFH ownership, operations, management, revitalization, and deficit reduction (the latter only if economically feasible). Therefore, CVI projects should be developed *by leveraging all existing assets* (e.g., land and housing) to consummate the deals, and any programmed MILCON project funds will be used for mortgage guarantees.<sup>26</sup>

## The Birth of the Federal Impact Act Statute

During World War II, the federal government had to carry out extensive and unprecedented mobilization and war-production programs.

These federal activities, involving as they did the removal of real property from local tax rolls, and a sudden and substantial increase in the population of many areas, placed a tremendous financial burden on many American communities, with the result that many of these communities found it extremely difficult, if not impossible, to maintain and [to] provide the necessary facilities and services for public education.<sup>27</sup>

In 1950, Congress enacted the Impact Aid Act<sup>28</sup> to provide assistance to state education agencies for the increased school-age populations which resulted from nearby military activities

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18. Under the legislation, the authority for military agencies to enter into privatization contracts expires five years from the statute's enactment on 10 February 1996. 10 U.S.C.A. § 2885 (West 1997).

19. *Id.* § 2872. The statute also grants the same authority to the service secretaries for the acquisition and construction by private persons of military unaccompanied housing units on or near such military installations. *Id.* However, since "military unaccompanied housing" refers to military housing intended to be occupied by members of the armed forces who are serving a tour of duty unaccompanied by dependents, such projects would not impact the education of the children of those military members.

20. *Id.* § 2873.

21. *Id.* § 2874.

22. *Id.* § 2875. In conjunction with investing in private entities for the acquisition or construction of military family housing units, the service secretary must "ensure that a suitable preference will be afforded members of the armed forces and their dependents in the lease or purchase, as the case may be, of a reasonable number of the housing units covered by the investment." *Id.* § 2875(d).

23. *Id.* § 2876.

24. *Id.* § 2877.

25. *Id.* § 2878. To facilitate the conveyance or lease of military property or facilities, the MHPI exempts the conveyance or lease from compliance with the Federal Property and Administrative Services Act (40 U.S.C. § 471), section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. § 11401), and section 321 of the Economy Act (40 U.S.C. § 303b). *Id.* at § 2878(d). Additionally, the service secretary is not bound by 10 U.S.C. § 2667, which authorizes military departments to lease only "non-excess property" (property presently not needed for public use). *Id.*

26. Policy Memorandum from Department of the Army, Assistant Chief of Staff for Installation Management, subject: Army Capital Venture Initiative (CVI) Program Guidance (1 Aug. 1997) (on file with author) (emphasis added).

27. S. REP. NO. 81-2489, at 1 (1950), *reprinted in* 1950 U.S.C.C.A.N. 4014.

28. Pub. L. No. 874, § 1124 (1950) (codified at 20 U.S.C. §§ 236 through 241-1).

and for significant losses in tax income due to federal ownership of property within local school districts.<sup>29</sup> Congress recognized that, since the United States had created these financial burdens on local school systems which were still legally bound to educate the children of military parents, the federal government had a responsibility to provide financial assistance to the local school systems.<sup>30</sup>

Although impact aid, as originally passed, was not meant to be a permanent measure,<sup>31</sup> it is now among the nation's oldest federal education programs.<sup>32</sup> The amount Congress has appropriated for impact aid has increased from the initial appropriation of \$29,080,788 in fiscal year 1951 to the fiscal year 1997 appropriation of \$730,000,000.<sup>33</sup>

In 1994, Congress repealed the original statutory authority and reauthorized impact aid with a new method of calculating the amount of financial assistance that local educational agencies would receive.<sup>34</sup> The reason for refashioning impact aid was to allow the federal government to assist states and local

school districts better in meeting modern educational demands. Specifically, Congress believed that the old method of calculating payments was overly complicated.<sup>35</sup> Although the method of calculating the amount of impact aid has changed, the purpose of the revised statute is practically identical to its predecessor.<sup>36</sup>

### Basic Support Under the Impact Aid Statute<sup>37</sup>

The impact aid statute created financial assistance payments known as basic support.<sup>38</sup> Basic support payments go directly to local school districts which provide free public education to children whose parents are in the military services.<sup>39</sup> Although the statute considers various factors which affect the amount of a school district's basic support payment,<sup>40</sup> a significantly smaller amount of aid is generally provided to a school district that educates military children who live on private property, as opposed to federal land.<sup>41</sup>

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29. See S. REP. NO. 100-222, at 49 (1988), *reprinted in* 1988 U.S.C.C.A.N. 150. Property taxes, sales taxes, and personal income taxes traditionally account for a large portion of the average school district's budget. However, children of military families adversely affect a school district's financial base because their parents: (1) often pay no state income or vehicle taxes because they are domiciled in a different state; (2) live on non-taxable federal property; and (3) shop at installation stores that do not generate state sales taxes. See NATIONAL ASSOCIATION OF FEDERALLY IMPACTED SCHOOLS' IMPACT AID BLUE BOOK 9 (Pauline L. Proulx ed., 1996-1997) [hereinafter IMPACT AID BLUE BOOK]. "Impact aid funds are mailed directly from the Department of Education to local school districts rather than to states." S. REP. NO. 100-222, at 50 (1988).

30. See 20 U.S.C.A. § 236(a) (West 1997). See also S. REP. NO. 81-2489, at 2 (1950), *reprinted in* 1950 U.S.C.C.A.N. 4015. The Equal Protection Clause of the United States Constitution forbids a state from refusing to educate a child of a military member because that member does not contribute to the funding of the educational system. When a state has undertaken to provide public education, it must make it available to all on equal terms. See Plyer v. Doe, 457 U.S. 202, 221-23 (1982) (holding that denial of education to some isolated group of children poses an affront to the Equal Protection Clause); Brown v. Board of Educ., 347 U.S. 483, 493 (1953). Furthermore, some state constitutions explicitly mandate that free public education be open to all children. See, e.g., IND. CONST. art. VIII, § 1; ARIZ. CONST. art. XI, § 6.

31. S. REP. NO. 81-2489, at 1-2 (1950), *reprinted in* 1950 U.S.C.C.A.N. 4014-15.

32. See S. REP. NO. 100-222, at 49 (1988), *reprinted in* 1988 U.S.C.C.A.N. 150.

33. IMPACT AID BLUE BOOK, *supra* note 29, at 19.

34. See Improving America's School Act of 1994, Pub. L. No. 103-382, § 331(b), 108 Stat. 4057 (1994) (codified at 20 U.S.C. §§ 7701-14).

35. See H.R. REP. NO. 103-425, at 3, 38 (1994).

36. Compare 20 U.S.C.A. § 236 (West 1997) with *id.* § 7701.

37. The impact aid statute provides two broad categories of financial support—payments for property and basic support payments. The first type, payments relating to the federal acquisition of real property, reimburses school districts for the loss of taxable land when it is acquired by the federal government. This payment is in lieu of the taxes that would normally be paid by the private landowner, and it is not based on the presence of children residing on the property. *Id.* § 7702. Although this component of impact aid is important, it is not likely to be involved in a military housing privatization project as basic support payments would.

38. *Id.* § 7703.

39. *Id.* To be eligible to receive impact aid basic support, the school district must educate at least 400 federally-connected children, or these students must comprise at least three percent of the average daily attendance. *Id.* § 7703(b)(1)(B). Although the term "federally-connected child" also covers children whose parents are employed on federal property, reside in low-rent housing, reside on Indian lands, or reside on federal property, this note addresses the statute's affect on military members only.

40. *Id.* § 7703.

41. See *Hearing on Impact Aid Before the Subcommittee on Early Childhood, Youth, and Families of the House of Representatives Committee on Economic and Educational Opportunities*, 104th Cong. 11 (1996). The rationale for this distinction is that private property on which military children live generates property tax for the local community which can be used to support education. *Id.*

In determining the amount of impact aid that a school district is entitled to receive, the Secretary of Education must first determine the number of federally-connected children who were in average daily attendance in the schools within the district during the preceding school year.<sup>42</sup> After calculating and classifying the number of federally-connected children, the total number from each group of federally-connected children is multiplied by a different weighted unit which depends on whether the child resided on federal or private land during the preceding school year.<sup>43</sup> For example, the total number of children who had parents on active duty during the preceding school year and who resided on federal property is multiplied by a weighted unit of 1.0.<sup>44</sup> If the same children did not reside on federal property, their total is multiplied by a weighted unit of .10.<sup>45</sup> In this case, whether military children resided on federal or private property during the preceding school year could cause a school district to lose ninety percent of its impact aid money.

In passing the impact aid statute, Congress also determined that “there are a number of school districts that have high proportions of federally-connected children with disabilities because the adjacent military bases have very good medical facilities and reputations within the military communities for being ‘compassionate posts.’”<sup>46</sup> The statute adds another weighted unit calculation which results in additional assistance for school districts which educate these children.<sup>47</sup> The total number of children of military parents who are eligible to receive services under the Individuals with Disabilities Education Act<sup>48</sup> and who resided on federal property during the preceding school year is multiplied by a weighted factor of 1.0.<sup>49</sup>

However, if these same children resided on non-federal property during the preceding school year, their total would be multiplied by a weighted factor of .50.<sup>50</sup>

### **Balancing the Books: Education & Finance**

Impact aid payments per child vary widely from school district to school district due to each district’s controlling set of facts and how those facts relate to the various factors considered in the basic support payment formula.<sup>51</sup> The loss each school district would face if federal housing were privatized cannot be ascertained without examining each district’s specific set of facts, but it is unreasonable to believe that every school district could make up the loss of impact aid by taxing the private developer to whom federal property is deeded under the MHPI. The property taxes assessed against the developer would have to be equal to or greater than the reduction in impact aid caused by the reclassification of military children from “living on federal property” to “living on private property.”<sup>52</sup> In many cases, such a property tax assessment will not be possible.

For example, the Virginia Beach public school board passed a resolution concerning its potential losses in impact aid due to the privatization of military housing.<sup>53</sup> The school board stated that it could receive approximately \$2700 per student in impact aid for military children who live on federal land; the amount would be approximately \$270 per student for military children who live on private property. This means that Virginia Beach would have to make up in property taxes \$2430 in lost aid for

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42. 20 U.S.C.A. § 7703.

43. *Id.* § 7703(a)(2). Federal property is defined as “real property that is not subject to taxation by any state or political subdivision of a state due to federal agreement, law, or policy, and that is owned by the United States or leased by the United States from another entity. *Id.* § 7713(5)(A). The term “federal property” also includes any non-federal lease, or other such interest in federal property, not including any fee-simple interest, whether or not subject to taxation by a state or a political subdivision of a state. *Id.* § 7713(5)(C).

44. *Id.* § 7703(a)(2)(A).

45. *Id.* § 7703(a)(2)(D).

46. H.R. REP. NO. 103-425, at 38 (1994).

47. 20 U.S.C.A. § 7703(d)(1).

48. *Id.* §§ 1400-85.

49. *Id.* § 7703(d)(1)(A).

50. *Id.* § 7703(d)(1)(B).

51. See IMPACT AID BLUE BOOK, *supra* note 29, at 137-219 (breaking down each school district’s basic support payments for the 1996-97 school year). In determining each school district’s basic support, the statutory formula considers the number of federally-connected children whom the district educates, the district’s expenditures per pupil, the percentage of the per-pupil expenditures which are paid for by local and state taxes (local contribution rate), and the local tax rate in the district in relation to the average tax rate of comparable school districts. 20 U.S.C.A. § 7703(f)(3)(A).

52. *Hearing on Impact Aid Before the Subcommittee on Early Childhood, Youth, and Families of the House of Representatives Committee on Economic and Educational Opportunities*, 104th Cong. 37 (1996) (testimony of Deputy Controller Richard Knott of the San Diego Unified School District).

53. Virginia Beach City Public Schools’ Privatization of Military Housing Resolution (May 6, 1997) (copy on file with author).

each student who is reclassified due to the privatization of military housing.<sup>54</sup> Other school districts which support military activities have also voiced their concerns about the quality of education that they would be able to provide if impact aid is affected by privatization.<sup>55</sup>

To avoid seriously impacting the school districts which support military families, there are several options available to installation commanders as they prepare military housing privatization proposals. First, if the land is federally-owned and leased out to the developer, and only the improvements are conveyed to the developer, the military children would still be considered to reside on federal land for the purposes of calculating impact aid.<sup>56</sup> This type of arrangement was used at Fort Carson, Colorado, when it recently privatized its military family housing under the MHPI.<sup>57</sup> Another alternative is available if the commander wants to deed federal land to a developer in exchange for the construction of new housing on the installation. The installation can move the military children from the federally-owned parcel that will be conveyed to a federally-owned parcel where new housing has been constructed.<sup>58</sup>

## Conclusion: Caveat Vendor

“[M]ilitary personnel risk their lives defending their country, and their children should be ensured of the same high quality education as that provided to their non-military peers.”<sup>59</sup> To ensure that the children of service members receive a quality education as well as quality housing, installation commanders need to determine what impact privatization will have on local school districts. If a commander fails to take into account the effects that alienating federal land will have on impact aid, relations between the military installation and the local communities will suffer along with the quality of education in the local school districts. The best solution to military housing problems will vary from installation to installation. As long as installation commanders remain aware of the interplay between the MHPI and federal impact aid, however, they and their judge advocates can fashion solutions which provide their soldiers with quality family housing while maintaining quality education for their children.

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54. *Id.* Virginia Beach estimated that privatization of military housing could potentially cost it \$1.5 million annually in lost aid. In light of the potential loss of impact aid, the Virginia school board resolved to urge the DOD to ensure that all federal land remains under federal jurisdiction as it moves forward with the privatization of military housing.

55. These schools include the Travis Unified School District in Fairfield, California; the San Diego Unified School District; the Lawton Public Schools in Lawton, Oklahoma; and the Fountain-Fort Carson School District. *Hearing on Impact Aid Before the Subcommittee on Early Childhood, Youth, and Families of the House of Representatives Committee on Economic and Educational Opportunities*, 104th Cong. 24-26, 29-32, 37-38, 40-41, 43-44 (1996). Howard Kuchta, the business manager for Lawton Public Schools, stated:

We know that the committee is sensitive to the financial needs of the schools and is trying to prevent school districts from suffering a significant and unwarranted reduction in impact aid funding which supports the education of military dependents. If there was some “sure” way to make this transition at a full ad valorem tax level, then Lawton, as an example, would gain financially, and federal impact aid could be reduced. However, because of the uncertainties involved in placing such private property on the tax rolls, there appears to be a more likely possibility that something less than full property assessment would occur, resulting in districts receiving a major reduction in funds.

*Id.* at 41. “Impact aid has been absolutely crucial to the maintenance of our educational program because our tax base is so low . . . . If the related students no longer qualify for federal impact aid, we stand to lose in excess of \$5.5 million. Quite simply, this would bankrupt our school system.” *Id.* at 43 (testimony of Superintendent Dale Gasser of the Fountain-Fort Carson School District).

56. *See supra* note 43. If, however, both the land and the improvements are deeded to the developer, the property would not belong to the federal government. The property would then be taxable, and the local school district would count military students who lived on the property as living off federal property. *See Hearing on Impact Aid Before the Subcommittee on Early Childhood, Youth, and Families of the House of Representatives Committee on Economic and Educational Opportunities*, 104th Cong. 37 (1996).

57. The Fort Carson privatization project is not yet complete. It is merely used to illustrate a possible alternative.

58. The movement of personnel from one parcel of land to another is rarely completed contemporaneously with the construction or renovation of military housing. In many cases, military families have to move off-post during the construction or renovation period. As a result, prior to 1996, the Department of Education was not counting these children as living on federal property. The result was major reductions in impact aid to school districts with no corresponding reductions in the number of children whom the school districts had to educate. Given these facts, Congress wanted to ensure that the DOD’s construction and renovation of military housing did not deprive military children of the impact aid that their school districts required. In 1996, Congress amended the statute to make it clear that these children should be counted as living on federal property if a representative from the Secretary of Defense (such as the installation commander) certifies that those children would have resided on federal property if not for the housing renovation. *See* 20 U.S.C.A. § 7703(a)(4) (West 1997); *see also* H.R. REP. NO. 104-560, at 3 (1996), *reprinted in* 1996 U.S.C.C.A.N. 2896.

59. H.R. REP. NO. 104-560, at 4 (1996), *reprinted in* 1996 U.S.C.C.A.N. 2897.