

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 970

SPONSOR: Fiscal Resource Committee and Senator Myers

SUBJECT: Sales Tax/Private Equity Clubs

DATE: April 14, 1999                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Keating</u>	<u>Wood</u>	<u>FR</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>CM</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

**I. Summary:**

The committee substitute provides a sales tax exemption for moneys paid for the privilege of joining certain private equity club. The bill also exempts capital contributions or assessments for capital expenditures levied by private clubs, regardless of whether such capital contributions or assessments are recurring or nonrecurring.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 212.04(2)(a)

**II. Present Situation:**

Chapter 212, F.S., provides for the tax on sales, use and other transactions. Section 212.04, F.S., provides that every person is exercising a taxable privilege who sells or receives anything of value by way of admissions. For the exercise of such privilege, a tax is levied at the rate of 6 percent of sales price, or actual value received from admissions. Section 212.02(1), F.S., defines “admissions” to include “... all dues and fees paid to private clubs and membership clubs providing recreational or physical fitness facilities, including, but not limited to, golf, tennis, swimming, yachting, boating, athletic, exercise, and fitness facilities, except physical fitness facilities owned or operated by a hospital licensed under chapter 395.”

In Rule 12A-1.005(5)(d)2.c., F.A.C., the Department of Revenue has stated that purchases of equitable ownership in a private club or membership club are not “fees” that are subject to the sales tax on admissions. However, the department takes the position that nonrefundable joining fees are not purchases of equitable ownership, because the purchaser has no ability to sell or recoup his or her investment. Therefore, nonrefundable joining fees are subject to the sales tax on admissions.

### **III. Effect of Proposed Changes:**

The bill amends s. 212.04(2)(a), F.S., providing an exemption from the sales and use tax for moneys paid on a one-time-only basis for the privilege of joining and acquiring ownership interest in private clubs, regardless of whether such moneys are refundable and regardless of the purpose for which such moneys are used. The term "ownership interest" is defined to mean the acquisition by a member of an equitable residual right to the net assets of the club upon its dissolution, regardless of whether the interest is refundable or whether the member acquires voting rights.

The bill also provides an exemption from sales and use tax for capital contributions or assessments for capital expenditures levied by private clubs, regardless of whether such capital contributions or assessments are recurring or nonrecurring, however, such assessments may not result in a reduction of dues or fees. The term "capital expenditures" is defined to mean the acquisition of capital assets and payments for capital improvements, including repairs or maintenance to existing capital assets which add to the value of or prolong the useful life of the capital asset.

The bill shall take effect July 1, 1999.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

This bill initially falls under subsection (b) of section 18 of Article VII, Florida Constitution. Subsection (b) requires a two-thirds vote of the membership of each house in order to enact a general law reducing the authority that municipalities and counties had on February 1, 1989 to raise revenues in the aggregate. By adding an exemption to the state sales tax, the bill has the effect of adding an exemption to the local option county sales surtax. Since the annual local revenue loss is estimated to be less than \$1.4 million, the bill will be exempt from the requirements of subsection (b) due to the insignificant negative fiscal impact as permitted under subsection (d) of section 18 of Article VII. (See subsection (d) of s. 18, Art. VII, Florida Constitution, for various types of general laws, including those with insignificant fiscal impact.)

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:**

**A. Tax/Fee Issues:**

The Revenue Estimating Conference estimated the revenue loss from the exemption for private equity clubs to be a recurring loss to the General Revenue Fund of \$0.9 million with a recurring loss to local governments of \$0.2 million.

Issue/Fund	General Revenue		Trust		Local		Total	
	1st Year \$	Recurring \$	1st Year \$	Recurring \$	1st Year \$	Recurring \$	1st Year \$	Recurring \$
Private Equity Clubs	(0.8)	(0.9)	(*)	(*)	(0.2)	(0.2)	(1.0)	(1.1)

\* Insignificant  
 \*\* Indeterminate

**B. Private Sector Impact:**

An individual who becomes a member of a private equity membership club, if payment also gives the individual an ownership interest in the club, will be exempt from the sales tax on such payment. The exemption will apply to many golf, yacht and country clubs.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

HB 1119 is identical to SB 970.

**VIII. Amendments:**

None.