

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 0357-01  
Bill No.: Perfected HB 101  
Subject: Taxation and Revenue - Sales and Use; Utilities  
Type: Original  
Date: April 22, 2015

Bill Summary: This proposal would provide an exemption from state sales and use tax for utilities used or consumed in the preparation of food.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
General Revenue	(\$5,489,114 to \$9,091,614)	(\$6,519,308 to \$10,842,308)	(\$6,519,679 to \$10,842,679)
<b>Total Estimated Net Effect on General Revenue</b>	<b>(\$5,489,114 to \$9,091,614)</b>	<b>(\$6,519,308 to \$10,842,308)</b>	<b>(\$6,519,679 to \$10,842,679)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
School District Trust	(\$1,800,800 to \$3,001,700)	(\$2,161,000 to \$3,602,000)	(\$2,161,000 to \$3,602,000)
Conservation Commission	(\$225,100 to \$375,200)	(\$270,100 to \$450,200)	(\$270,100 to \$450,200)
Parks, and Soil and Water	(\$180,100 to \$300,200)	(\$216,100 to \$360,200)	(\$216,100 to \$360,200)
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>(\$2,206,000 to \$3,677,100)</b>	<b>(\$2,647,200 to \$4,412,400)</b>	<b>(\$2,647,200 to \$4,412,400)</b>

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 10 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
<b>FUND AFFECTED</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>
General Revenue	1 FTE	1 FTE	1 FTE
<b>Total Estimated Net Effect on FTE</b>	<b>1 FTE</b>	<b>1 FTE</b>	<b>1 FTE</b>

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## FISCAL ANALYSIS

### ASSUMPTION

Officials from the **Department of Conservation (MDC)** assume this proposal would have an unknown negative fiscal impact to their organization, but greater than \$100,000. MDC officials noted that Conservation Sales Tax funds are derived from one-eighth of one percent sales and use tax pursuant to the Missouri Constitution, and assume the Department of Revenue would be better able to estimate the anticipated fiscal impact that would result from this proposal.

Officials from the **Department of Natural Resources (DNR)** assume this proposal would exempt utilities used or consumed in the preparation of food from the sales and use tax. DNR officials noted that Parks and Soils Sales Tax Funds are derived from one-tenth of one percent sales and use tax pursuant to the Missouri Constitution. Therefore, any additional sales and use tax exemption would result in reduced revenue to the Parks and Soils Sales Tax Funds.

Officials from the **Office of Administration - Division of Budget and Planning (BAP)** assume this proposal would exempt from sales and use tax the utilities used in food preparation by restaurants and other food preparation businesses, and would therefore reduce Total State Revenues by \$51.2 million annually.

BAP officials referred to information provided by the Department of Revenue in the calculation of their estimate of fiscal impact for this proposal, and provided the following estimate of fiscal impact for this proposal.

<u>Fund</u>	<u>First year impact (Ten months)</u>	<u>Full year impact</u>
General Revenue	(\$30,300,000)	(\$36,400,000)
School District Trust	(\$10,100,000)	(\$12,100,000)
Conservation Commission	(\$1,300,000)	(\$1,500,000)
Parks, and Soil and Water	(\$1,000,000)	(\$1,200,000)
Total	(\$42,700,000)	(\$51,200,000)

ASSUMPTION (continued)

**BAP** officials also noted the proposal could potentially be interpreted to provide a sales and use tax exemption for more businesses involved in food preparation than would appear to be the intent of the proposal.

Officials from the **Department of Revenue (DOR)** noted this proposal would exempt from sales tax electrical energy or gas, water, or other utilities purchased by a restaurant, cafeteria, fast food restaurant, delicatessen, bakery, grocery store, et al used in the preparation of food sold to customers at a restaurant, cafeteria, fast food restaurant, bakery, grocery store, convenience store, or other similar facility engaged in selling prepared food for consumption on or off the premises. The exemption would not apply to local sales tax

Fiscal impact

DOR officials determined that 25,000 facilities would qualify for this exemption and estimated the impact to Total State Revenue to be as much as \$51.2 million annually.

DOR officials provided information from the National Restaurant Association which indicated the monthly utility cost for restaurants is \$2,500. For twelve months, at a rate of 4.225 percent, this exemption could reduce Total State Revenue by  $(25,000 \text{ restaurants} \times \$2,500 \text{ per month} \times \text{twelve months} \times .04225) = \$31.7 \text{ million annually}$ .

DOR officials also provided information from other publications which indicated the average utilities for food service in this zone are about \$2.79 per square foot per month. According to one survey from the Restaurant Association, a medium sized restaurant is about 2,000 to 3,000 square feet. This would result in a loss of Total State Revenue by as much as  $(25,000 \text{ restaurants} \times \$2.79 \text{ per square foot per month} \times ((2,000+3,000)/2) = 2,500 \text{ average square feet} \times 12 \text{ months}) = \$73.5 \text{ million}$ . Averaging these two estimates, the Department estimated the annual loss to Total State Revenue could be as much as \$51.2 million.

ASSUMPTION (continued)

Administrative Impact

**DOR** officials assume the Department would need to create forms and guidance documents needed to submit a refund claim, and Sales Tax would require one additional Revenue Processing Technician I for every 500 new refund claims.

In total, the DOR response included one additional employee; the estimated cost to implement this proposal including the additional employee and related benefits, equipment and expense was \$40,501 for FY 2016, \$41,632 for FY 2017, and \$42,064 for FY 2018.

**Oversight** has, for fiscal note purposes only, changed the starting salary for the additional employee to correspond to the second step above minimum for comparable positions in the state's merit system pay grid. This decision reflects a study of actual starting salaries for new state employees and policy of the Oversight Subcommittee of the Joint Committee on Legislative Research. Oversight has also adjusted the DOR estimate of equipment and expense in accordance with OA budget guidelines. Finally, Oversight assumes a limited number of additional employees could be accommodated in existing office space.

**Oversight** also assumes the DOR estimate of expense and equipment cost for the new FTE could be overstated. If DOR is able to use existing desks, file cabinets, chairs, etc., the estimate for equipment could be reduced by roughly \$6,000 per new employee.

IT impact

DOR officials provided an estimate of the IT cost to implement this proposal of \$50,382 for 671.6 hours of programming to make changes to DOR systems.

**Oversight** will include the DOR estimate of IT impact in this fiscal note.

ASSUMPTION (continued)

Officials from the **University of Missouri - Economic and Policy Analysis Research Center (EPARC)** assume this proposal would allow a sales and use tax exemption for utilities used or consumed by food establishments in the preparation of food.

EPARC officials estimated the amount of receipts that food preparation establishments in Missouri pay sales and use tax upon to be \$10.005 billion dollars. Therefore, at the current 3% sales tax rate we estimate food preparation establishments remit approximately \$300.160 million in sales tax. According to IRS corporate return data, within the food preparation service industry the cost of goods sold is approximately 72% of receipts and research of the industry standard yielded the cost of utilities as 3 to 5 percent of cost of goods sold. Using these statistics, we approximate the aggregate cost of utilities for Missouri’s food preparation establishments between \$216.115 million and \$360.192 million. Based on this range of costs, we approximate the 3% sales and use tax to be retained by food preparation establishments to be between \$6.483 million and \$10.806 million.

**Oversight** will assume for fiscal note purposes the EPARC estimate of revenue reduction is the best available estimate and will use the EPARC estimate of amounts exempted from sales tax. The Oversight calculation of sales tax which would be lost as a result of this exemption is shown in the following table. Amounts are rounded for convenience.

Fund	Sales Tax Rate	Ten months		Twelve months	
		From	To	From	To
General Revenue	3.000%	\$5,402,500	\$9,005,000	\$6,483,000	\$10,806,000
School District Trust	1.000%	\$1,800,800	\$3,001,700	\$2,161,000	\$3,602,000
Conservation Commission	0.125%	\$225,100	\$375,200	\$270,100	\$450,200
Parks, and Soil and Water	0.010%	\$180,100	\$300,200	\$216,100	\$360,200

ASSUMPTION (continued)

**Oversight** notes the reduced revenue in the School District Trust Fund would result in reduced transfers to school districts; however, Oversight will not include the reduced transfers in this fiscal note.

Bill as a whole responses

Officials from the **Office of the Secretary of State** and the **Joint Committee on Administrative Rules** assume this proposal would have no impact on their organizations.

<u>FISCAL IMPACT - State Government</u>	FY 2016 (10 Mo.)	FY 2017	FY 2018
<b>GENERAL REVENUE FUND</b>			
<u>Cost - Department of Revenue</u>			
Salaries	(\$19,700)	(\$23,640)	(\$23,876)
Benefits	(\$10,048)	(\$12,058)	(\$12,178)
Expense and equipment	(\$6,484)	(\$610)	(\$625)
IT cost	<u>(\$50,382)</u>	<u>\$0</u>	<u>\$0</u>
Total cost - Department of Revenue	(\$86,614)	(\$36,308)	(\$36,679)
FTE change for the Department of Revenue	1 FTE	1 FTE	1 FTE
<u>Revenue reduction</u>	(\$5,402,500 to	(\$6,483,000 to	(\$6,483,000 to
Sales tax exemption	<u>\$9,005,000</u>	<u>\$10,806,000)</u>	<u>\$10,806,000)</u>
<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>	<b>(\$5,489,114 to</b>	<b>(\$6,519,308 to</b>	<b>(\$6,519,679 to</b>
	<b><u>\$9,091,614)</u></b>	<b><u>\$10,842,308)</u></b>	<b><u>\$10,842,679)</u></b>
Estimated Net FTE Change for the General Revenue Fund	1 FTE	1 FTE	1 FTE

<u>FISCAL IMPACT - State Government</u> (continued)	FY 2016 (10 Mo.)	FY 2017	FY 2018
<b>SCHOOL DISTRICT TRUST FUND</b>			
<u>Revenue reduction</u>	(\$1,800,800 to	(\$2,161,000 to	(\$2,161,000 to
Sales tax exemption	<u>\$3,001,700)</u>	<u>\$3,602,000)</u>	<u>\$3,602,000)</u>
<b>ESTIMATED NET EFFECT ON SCHOOL DISTRICT TRUST FUND</b>	<b>(\$1,800,800 to <u>\$3,001,700)</u></b>	<b>(\$2,161,000 to <u>\$3,602,000)</u></b>	<b>(\$2,161,000 to <u>\$3,602,000)</u></b>
<b>CONSERVATION COMMISSION FUND</b>			
<u>Revenue reduction</u>	(\$225,100 to	(\$270,100 to	(\$270,100 to
Sales tax exemption	<u>\$375,200)</u>	<u>\$450,200)</u>	<u>\$450,200)</u>
<b>ESTIMATED NET EFFECT ON CONSERVATION FUND</b>	<b>(\$225,100 to <u>\$375,200)</u></b>	<b>(\$270,100 to <u>\$450,200)</u></b>	<b>(\$270,100 to <u>\$450,200)</u></b>
<b>PARKS, AND SOIL AND WATER FUND</b>			
<u>Revenue reduction</u>	(\$180,100 to	(\$216,100 to	(\$216,100 to
Sales tax exemption	<u>\$300,200)</u>	<u>\$360,200)</u>	<u>\$360,200)</u>
<b>ESTIMATED NET EFFECT ON PARKS, AND SOIL AND WATER FUND</b>	<b>(\$180,100 to <u>\$300,200)</u></b>	<b>(\$216,100 to <u>\$360,200)</u></b>	<b>(\$216,100 to <u>\$360,200)</u></b>
<u>FISCAL IMPACT - Local Government</u>	FY 2016 (10 Mo.)	FY 2017	FY 2018
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>



FISCAL IMPACT - Small Business

This proposal would have a direct fiscal impact to small businesses which prepare food for human consumption.

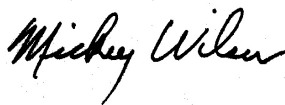
FISCAL DESCRIPTION

This proposal would authorize a state sales and use tax exemption for electricity, water, gas, coal, other energy sources or other utilities used or consumed in the manufacturing, processing, preparing, furnishing, compounding, or producing of food that is ultimately sold to customers for consumption on or off the premises at a restaurant, cafeteria, fast food restaurant, delicatessen, bakery, grocery store, convenience store, or other similar facility engaged in selling prepared food or that is used in research and development related to the activities.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of the Secretary of State  
Joint Committee on Administrative Rules  
Office of Administration  
    Division of Budget and Planning  
Department of Conservation  
Department of Natural Resources  
Department of Revenue  
University of Missouri  
    Economic and Policy Analysis Research Center



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