

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 4140-02  
Bill No.: Perfected HCS for HB 1448  
Subject: Taxation and Revenue - Sales and Use; Utilities  
Type: Original  
Date: April 18, 2016

Bill Summary: This proposal changes the laws regarding sales and use tax exemptions for utilities used or consumed in the preparation of food.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
General Revenue	(\$5,647,614 to \$9,354,614)	(\$6,709,308 to \$11,158,308)	(\$6,709,679 to \$11,158,679)
<b>Total Estimated Net Effect on General Revenue</b>	<b>(\$5,647,614 to \$9,354,614)</b>	<b>(\$6,709,308 to \$11,158,308)</b>	<b>(\$6,709,679 to \$11,158,679)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
School District Trust	(\$1,854,000 to \$3,089,000)	(\$2,224,000 to \$3,707,000)	(\$2,224,000 to \$3,707,000)
Conservation Commission Fund	(\$232,000 to \$386,000)	(\$278,000 to \$463,000)	(\$278,000 to \$463,000)
Parks, and Soil and Water	(\$185,000 to \$309,000)	(\$222,000 to \$371,000)	(\$222,000 to \$371,000)
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>(\$2,271,000 to \$3,784,000)</b>	<b>(\$2,724,000 to \$4,541,000)</b>	<b>(\$2,724,000 to \$4,541,000)</b>

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 9 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2017</b>	<b>FY 2018</b>	<b>FY 2019</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 2017</b>	<b>FY 2018</b>	<b>FY 2019</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 2017</b>	<b>FY 2018</b>	<b>FY 2019</b>
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**FISCAL ANALYSIS**

**ASSUMPTION**

In response to a prior version of the proposal officials from the **Department of Conservation (MDC)** assumed 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.

In response to a prior version of the proposal, officials from the **Department of Natural Resources (DNR)** assumed the 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. DNR officials assumed the Department of Revenue and Office of Administration-Budget and Planning would provide a more detailed account of the fiscal impact.

Officials from the **Office of Administration - Division of Budget and Planning (B&P)** 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.

B&P 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)

B&P 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  $(25,000 \text{ restaurants} \times \$2,500 \text{ per month} \times 12 \text{ months} \times 0.04225) = \$31.7 \text{ million annually}$ .

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.

### 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 \$130,932 for FY 2017, \$45,497 for FY 2018, and \$45,867 for FY 2019.

ASSUMPTION (continued)

**Oversight** 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 \$6,400 per new employee.

IT impact

DOR officials provided an estimate of the IT cost to implement this proposal of \$87,329 for 672 hours of programming to make changes to DOR systems.

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

In response to a prior version of this proposal, officials from the **University of Missouri - Economic and Policy Analysis Research Center (EPARC)** assumed the 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 \$10.298 billion dollars. Therefore, at the current 3% sales tax rate EPARC estimated food preparation establishments remit approximately \$308.934 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, EPARC approximated the aggregate cost of utilities for Missouri's food preparation establishments between \$222.433 million and \$370.721 million. Based on this range of costs, EPARC approximated the 3% sales and use tax to be retained by food preparation establishments to be between \$6.673 million and \$11.122 million.

ASSUMPTION (continued)

**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%	\$5,561,000	\$9,268,000	\$6,673,000	\$11,122,000
School District Trust	1.000%	\$1,854,000	\$3,089,000	\$2,224,000	\$3,707,000
Conservation Commission	0.125%	\$232,000	\$386,000	\$278,000	\$463,000
Parks, and Soil and Water	0.010%	\$185,000	\$309,000	\$222,000	\$371,000

**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

In response to a prior version of the proposal, officials from the **Office of the Secretary of State** and the **Joint Committee on Administrative Rules** assumed 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>
<u>Total cost - Department of Revenue</u>	<u>(\$86,614)</u>	<u>(\$36,308)</u>	<u>(\$36,679)</u>
 FTE change for the DOR	 1 FTE	 1 FTE	 1 FTE
 <u>Revenue reduction</u>	 (\$5,561,000 to	 (\$6,673,000 to	 (\$6,673,000 to
Sales tax exemption	<u>\$9,268,000</u>	<u>\$11,122,000)</u>	<u>\$11,122,000)</u>
 <b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>	 <b>(\$5,647,614 to <u>\$9,354,614)</u></b>	 <b>(\$6,709,308 to <u>\$11,158,308)</u></b>	 <b>(\$6,709,679 to <u>\$11,158,679)</u></b>
 Estimated Net FTE Change for the General Revenue Fund	 1 FTE	 1 FTE	 1 FTE
 <b>SCHOOL DISTRICT TRUST FUND</b>			
 <u>Revenue reduction</u>	 (\$1,854,000 to	 (\$2,224,000 to	 (\$2,224,000 to
Sales tax exemption	<u>\$3,089,000)</u>	<u>\$3,707,000)</u>	<u>\$3,707,000)</u>
 <b>ESTIMATED NET EFFECT ON SCHOOL DISTRICT TRUST FUND</b>	 <b>(\$1,854,000 to <u>\$3,089,000)</u></b>	 <b>(\$2,224,000 to <u>\$3,707,000)</u></b>	 <b>(\$2,224,000 to <u>\$3,707,000)</u></b>
 <b>CONSERVATION COMMISSION FUND</b>			
 <u>Revenue reduction</u>	 (\$232,000 to	 (\$278,000 to	 (\$278,000 to
Sales tax exemption	<u>\$386,000)</u>	<u>\$463,000)</u>	<u>\$463,000)</u>
 <b>ESTIMATED NET EFFECT ON CONSERVATION FUND</b>	 <b>(\$232,000 to <u>\$386,000)</u></b>	 <b>(\$278,000 to <u>\$463,000)</u></b>	 <b>(\$278,000 to <u>\$463,000)</u></b>

<u>FISCAL IMPACT - State Government</u> (continued)	FY 2016 (10 Mo.)	FY 2017	FY 2018
<b>PARKS, AND SOIL AND WATER FUND</b>			
<u>Revenue reduction</u> Sales tax exemption	(\$185,000 to <u>\$309,000</u> )	(\$222,000 to <u>\$371,000</u> )	(\$222,000 to <u>\$371,000</u> )
<b>ESTIMATED NET EFFECT ON PARKS, AND SOIL AND WATER FUND</b>	<b>(\$185,000 to <u>\$309,000</u>)</b>	<b>(\$222,000 to <u>\$371,000</u>)</b>	<b>(\$222,000 to <u>\$371,000</u>)</b>
<u>FISCAL IMPACT - Local Government</u>	FY 2017 (10 Mo.)	FY 2018	FY 2019
	<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

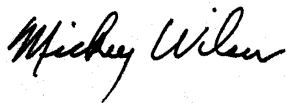
The proposal authorizes a state sales and use tax exemption for electricity, water, gas, coal, other energy sources or other utilities used or consumed in the manufacturing, processing, preparing, furnishing, compounding, or producing of food that is ultimately sold to customers for consumption on or 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

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



Mickey Wilson, CPA  
Director  
April 18, 2016

Ross Strobe  
Assistant Director  
April 18, 2016