

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 5725-01
Bill No.: HB 1943
Subject: Taxation and Revenue - Sales and Use, Utilities, Food
Type: Original
Date: February 9, 2018

Bill Summary: This proposal authorizes a sales tax exemption for utilities used for commercial food preparation.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
General Revenue	(\$30,433,182)	(\$36,446,049)	(\$36,446,414)
Total Estimated Net Effect on General Revenue	(\$30,433,182)	(\$36,446,049)	(\$36,446,414)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
Conservation Commission	(\$1,300,000)	(\$1,500,000)	(\$1,500,000)
Parks, Soil & Water	(\$1,000,000)	(\$1,200,000)	(\$1,200,000)
School District Trust	(\$10,100,000)	(\$12,100,000)	(\$12,100,000)
Total Estimated Net Effect on Other State Funds	(\$12,400,000)	(\$14,800,000)	(\$14,800,000)

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 10 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
General Revenue	1 FTE	1 FTE	1 FTE
Total Estimated Net Effect on FTE	1 FTE	1 FTE	1 FTE

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

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
Local Government	(\$75,900,000)	(\$91,000,000)	(\$91,000,000)

FISCAL ANALYSIS

ASSUMPTION

Officials at the **Office of Administration Division of Budget and Planning (B&P)** assume this proposal exempts from sales tax the utilities used in food preparation by restaurants and other food preparers. The DOR estimates that 25,000 different establishments may qualify for this exemption.

Based on information from the National Restaurant Association, the monthly utility cost for restaurants is about \$2,500. Using this estimate suggests this exemption could reduce Total State Revenue by \$31.7 million, of which \$22.5 million would be General Revenue.

Energy Star reports the average monthly restaurant utility cost per square foot is \$2.79. The National Restaurant Association estimates an average eatery is about 2000 sq. ft. Using these estimates suggests this exemption could reduce Total State Revenue by \$70.7 million, of which \$50.2 million would be General Revenue.

This language may include food manufacturing as well as food preparation. By including the language in the manufacturing exemptions, such as "manufacturing," "processing," "producing," and language related to research and development, this language could be construed to provide an additional exemption for the manufacturing of food and food products. Because of the broad nature of the language, this provision could be construed to exempt all utilities from any restaurant, cafeteria, fast food restaurant, delicatessen, bakery, grocery store, convenience store, or other similar facility.

The language in §144.055.5 states that "the exemption shall not apply to any tax whose revenue is considered local tax revenues and is deposited into the school district trust fund". It appears as if the intent of this subsection is to exempt both local sales and use taxes as well as the school district trust fund (Prop C) sales and use tax from this exemption. However, B&P notes as no local funds are deposited into the school district trust fund (which is a state fund) as would be required by the "and", no current funding meets the exemption in this subsection. Therefore, for the purposes of this fiscal note, B&P will reflect the effect of the exemption in this proposal on both local funds and funds deposited into the school district trust fund.

B&P estimates that the impact would be between the two estimates of \$31.7 million and \$70.7 million. Using the average of these two estimates Total State Revenue would decrease by approximately \$51.2 million, of which \$36.4 million would be General Revenue once fully implemented. In addition, this proposal would decrease local funds by approximately \$91.0 million once fully implemented.

ASSUMPTION (continued)

B&P Estimate

	FY 2019	FY 2020	FY 2021
General Revenue	(\$30,300,000)	(\$36,400,000)	(\$36,400,000)
Conservation Commission	(\$1,300,000)	(\$1,500,000)	(\$1,500,000)
Parks, Soil & Water	(\$1,000,000)	(\$1,200,000)	(\$1,200,000)
School District Trust	(\$10,100,000)	(\$12,100,000)	(\$12,100,000)
Local Political Subdivisions	(\$75,900,000)	(\$91,000,000)	(\$91,000,000)

Officials at the **Department of Revenue (DOR)** assume this proposed legislation exempts from sales tax electrical energy or gas (natural or artificial), or propane, water, coal, and energy forces or other utilities which are purchased by a restaurant, cafeteria, fast food restaurant, delicatessen, bakery, grocery store, convenience store, or other similar facility engaged in selling prepared food for consumption on or off the premises of such establishment and ultimately consumed or used in the manufacturing, processing, preparing, furnishing, compounding, or producing of food, or used in research and development related to the manufacturing, processing, preparing, furnishing, compounding, or producing of food that is ultimately sold to customers at a restaurant, cafeteria, fast food restaurant, delicatessen, bakery, grocery store, convenience store, or other similar facility engaged in selling prepared food for consumption on or off the premises of the establishment.

The Department determined that 25,000 facilities would qualify for this exemption. Information from the National Restaurant Association stated the average monthly utility cost for restaurants is \$2,500. For 12 months, at a rate of 4.225 percent, this exemption may reduce Total State Revenue by \$31.7 million annually. Other publications noted that 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 \$73.5 million. Averaging these two estimates, the Department estimates the annual loss to Total State Revenue could be as much as \$51.2 million.

The language in §144.055.5 states that "the exemption shall not apply to any tax whose revenue is considered local tax revenues and is deposited into the school district trust fund". However,

ASSUMPTION (continued)

the department notes that no such funding exists, as no local funds are deposited into the school district trust fund (which is a state fund) as would be required by the "and".

The Sales Tax Section requires one additional Revenue Processing Technician I (\$26,340) for every 500 new refund claims. The Department will need to create forms and guidance documents needed to submit a claim. The Integrated Tax System would incur additional costs of \$87,329 (672 hours x \$75 hour) to implement the provisions of this legislation.

Officials at the **University of Missouri's Economic and Policy Analysis Research Center** assume this bill would allow a sales tax exemption for utilities paid by food establishments in preparation of food. The exemptions granted shall not apply to any tax whose revenue is considered local tax revenue and is deposited into the school district trust fund.

We estimate the amount of receipts that food preparation establishments in Missouri pay sales tax upon to be \$11.543 billion dollars. Therefore, at the current 3% sales tax rate we estimate food preparation establishments remit approximately \$346.290 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 \$249.328 million and \$415.547 million. Based on this range of costs, we approximate the sales tax to be credited or refunded to food preparation establishments to be as shown in the table below:

Fund	Sales Tax Rate	Minimum (Aggregate Utilities = \$249.328 million)	Maximum (Aggregate Utilities = \$415.547 million)
General Revenue	3.000%	\$ 7,479,854	\$12,466,424
Conservation Commission	0.0125%	\$ 311,661	\$ 519,434
Parks, Soil & Water	0.100%	\$ 249,328	\$ 415,547
TOTAL	3.225%	\$8,040,843	\$13,401,405

ASSUMPTION (continued)

Conclusion: We estimate the sales tax exemption for utilities used or consumed in preparation of food will reduce Net General Revenue between \$7.479 million and \$12.466 million, reduce the Conservation fund between \$311,661 and \$519,434, and reduce the Parks, Soil and Water fund between \$249,328 and \$415,547.

Officials at the **Department of Conservation** assume an unknown negative fiscal impact, but greater than \$100,000. The Conservation Sales Tax funds are derived from one-eighth of one percent sales and use tax pursuant to Article IV Section 43(a) of the Missouri Constitution. The Department assumes the Department of Revenue would be better able to estimate the anticipated fiscal impact that would result from this proposal.

Officials at the **Department of Natural Resources (DNR)** assume the Department's Parks and Soils Sales Tax Funds are derived from one-tenth of one percent sales and use tax pursuant to Article IV Section 47(a) of the Missouri Constitution. Therefore, any additional sales and use tax exemption could be a loss to the Parks and Soils Sales Tax Funds. Providing state and local sales and use tax exemptions as stated in this proposal could decrease the amount of funding available in the Parks and Soils Sales Tax Funds. These funds have been used for the acquisition and development, maintenance and operation of state parks and historic sites, and to assist agricultural landowners through voluntary programs.

The Department assumes the Department of Revenue and Office of Administration-Budget and Planning will provide a more detailed account of the fiscal impact.

Officials at the **Kirksville R-III, Wellsville-Middletown R-I and the Summersville R-II School Districts** each assume any time a tax exemption is given it negatively impacts the district.

Officials at the **West Plains School District** assume this would have a negative impact on revenues received from the state, but they are unable to estimate the impact.

Officials at the **City of Kansas City, St. Louis County, Platte County Board of Election Commission and Macon County R-V School District** each assume there is no fiscal impact from this proposal.

Oversight has no way to test the estimates provided by B&P, DOR and EPARC. Oversight for fiscal note purposes, shows will generally default to the more conservative estimates. Given the apparently broad scope of this exemption, Oversight will use the estimates provided by B&P & DOR.

<u>FISCAL IMPACT - State Government</u>	FY 2019 (10 Mo.)	FY 2020	FY 2021
GENERAL REVENUE			
<u>Revenue Reduction</u> - sales tax exemption for utilities used for commercial food preparation	(\$30,300,000)	(\$36,400,000)	(\$36,400,000)
<u>Cost - DOR</u>			
Personal Service	(\$21,950)	(\$26,603)	(\$26,869)
Fringe Benefits	(\$15,509)	(\$18,689)	(\$18,768)
Equipment & Expenses	(\$8,395)	(\$757)	(\$777)
Integrated System upgrades	<u>(\$87,328)</u>	<u>\$0</u>	<u>\$0</u>
<u>Total Cost - DOR</u>	<u>(\$133,182)</u>	<u>(\$46,049)</u>	<u>(\$46,414)</u>
FTE Change - DOR	1 FTE	1 FTE	1 FTE
 ESTIMATED NET EFFECT ON GENERAL REVENUE	 <u>(\$30,433,182)</u>	 <u>(\$36,446,049)</u>	 <u>(\$36,446,414)</u>
 Estimated Net FTE Change on General Revenue	 1 FTE	 1 FTE	 1 FTE
 CONSERVATION COMMISSION FUND			
<u>Revenue Reduction</u> - sales tax exemption for utilities used for commercial food preparation	<u>(\$1,300,000)</u>	<u>(\$1,500,000)</u>	<u>(\$1,500,000)</u>
 ESTIMATED NET EFFECT ON THE CONSERVATION COMMISSION FUND	 <u>(\$1,300,000)</u>	 <u>(\$1,500,000)</u>	 <u>(\$1,500,000)</u>

<u>FISCAL IMPACT - State Government</u> (continued)	FY 2019 (10 Mo.)	FY 2020	FY 2021
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PARKS, SOIL & WATER FUND

<u>Revenue Reduction</u> - sales tax exemption for utilities used for commercial food preparation	<u>(\$1,000,000)</u>	<u>(\$1,200,000)</u>	<u>(\$1,200,000)</u>
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ESTIMATED NET EFFECT ON THE PARKS, SOIL & WATER FUND	<u>(\$1,000,000)</u>	<u>(\$1,200,000)</u>	<u>(\$1,200,000)</u>
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SCHOOL DISTRICT TRUST FUND

<u>Revenue Reduction</u> - sales tax exemption for utilities used for commercial food preparation	<u>(\$10,100,000)</u>	<u>(\$12,100,000)</u>	<u>(\$12,100,000)</u>
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ESTIMATED NET EFFECT ON THE SCHOOL DISTRICT TRUST FUND	<u>(\$10,100,000)</u>	<u>(\$12,100,000)</u>	<u>(\$12,100,000)</u>
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<u>FISCAL IMPACT - Local Government</u>	FY 2019 (10 Mo.)	FY 2020	FY 2021
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**LOCAL POLITICAL SUBDIVISION
FUNDS**

<u>Revenue Reduction</u> - sales tax exemption for utilities used for commercial food preparation	<u>(\$75,900,000)</u>	<u>(\$91,000,000)</u>	<u>(\$91,000,000)</u>
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ESTIMATED NET EFFECT ON LOCAL POLITICAL SUBDIVISION FUNDS	<u>(\$75,900,000)</u>	<u>(\$91,000,000)</u>	<u>(\$91,000,000)</u>
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FISCAL IMPACT - Small Business

Small business that prepare food could be fiscally impacted.

FISCAL DESCRIPTION

This bill 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.

The bill authorizes a taxpayer to receive a credit or refund for the taxes paid on the qualified use portion of the utility purchases for the prior year if requested by April 15 of the following year.

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

City of Kansas City
Department of Conservation
Department of Natural Resources
Department of Revenue
Kirksville R-III School District
Macon County R-V School District
Office of Administration Division of Budget and Planning
Platte County Board of Election Commission
St. Louis County
Summersville R-II School District
University of Missouri's Economic and Policy Analysis Research Center
Wellsville-Middletown R-I School District
West Plains School District

Ross Strobe



Acting Director
February 9, 2018