

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 1177-01  
Bill No.: HB 614  
Subject: Taxation and Revenue - General; Taxation and Revenue - Sales and Use; Business and Commerce; Food  
Type: Original  
Date: March 12, 2019

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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 2020	FY 2021	FY 2022
General Revenue	(Could exceed \$53,517,393)	(Could exceed \$64,107,542)	(Could exceed \$64,107,875)
<b>Total Estimated Net Effect on General Revenue</b>	<b>(Could exceed \$53,517,393)</b>	<b>(Could exceed \$64,107,542)</b>	<b>(Could exceed \$64,107,875)</b>

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
School District Trust (0688)	(Could exceed \$17,795,093)	(Could exceed \$21,354,112)	(Could exceed \$21,354,112)
Conservation Commission (0609)	(Could exceed \$2,224,387)	(Could exceed \$2,669,264)	(Could exceed \$2,669,264)
Parks, Soil & Water (0613 & 0614)	(Could exceed \$1,779,509)	(Could exceed \$2,135,411)	(Could exceed \$2,135,411)
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>(Could exceed \$21,798,989)</b>	<b>(Could exceed \$26,158,787)</b>	<b>(Could exceed \$26,158,787)</b>

Numbers within parentheses: ( ) indicate costs or losses. This fiscal note contains 13 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
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.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## **FISCAL ANALYSIS**

### **ASSUMPTION**

Officials at the **Office of Administration Division of Budget and Planning (B&P)** and the **Department of Revenue (DOR)** each assume this section states that in addition to all other exemptions granted under this chapter, there are hereby specifically exempt from the provisions of Chapter 144; electrical energy; gas, whether natural, artificial or propane; water; coal; and energy sources 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.

This section states that each person making purchases of utilities used in food preparation exempt from sales tax and use tax under this section, between the first day of the first month and the fifteenth day of the fourth month following the year of purchase, apply for a credit or refund to the director of revenue and the director shall give a credit or make a refund for taxes paid on the qualified use portion of the utility purchase.

After looking up and using any and all NAICS codes that the Department felt would qualify under the provisions laid in this proposed legislation, the Department estimates that 14,222 entities with a total of 36,944 sales tax locations could be impacted.

The NAICS codes used are reported below. If it is believed additional NAICS codes should be used or NAICS codes that were used should not be, the Department is available to provide the updated information.

ASSUMPTION (continued)

NAICS	TYPE	NUM-LOCATIONS
311811	Retail Bakeries	417
311812	Commercial Bakeries	171
424490	Other Grocery & Related Products Merchant Wholesalers	2761
445110	Supermarkets & Other Grocery Stores (Except Convenience)	1073
445120	Convenience Stores	472
445210	Meat Markets - Delicatessen	209
445291	Baked Goods Stores	345
445292	Confectionery & Nut Stores	504
445299	All Other Specially Food Stores	1071
447110	Gasoline Stations with Convenience Store	3491
452311	Warehouse Clubs & Supercenters	54
722310	Drive In Restaurants- Delicatessen Restaurants - Carry Out Food Service - Cafeteria	614
722320	Caterers	2740
722330	Mobile Food Services	8853
722511	Full Service Restaurants	8335
722513	Limited - Service Restaurants	4375
722514	Cafeterias, Grill Buffets, and Buffets	249
722515	Snack & Nonalcoholic Beverage Bar	1210

Based on research conducted, **B&P** and **DOR** found that the average annual cost of electricity for restaurants is \$2.90 per sq. .ft. and the average annual cost of gas for restaurants is \$0.85 per sq. ft. In addition, the average kitchen size for restaurants is 1,051 sq. ft. Therefore, B&P estimates

ASSUMPTION (continued)

that the average utility cost for qualifying establishments would be approximately \$3,941  $[(1,051 \times \$2.90) + (1,051 \times \$0.85)]$  per year.

B&P notes 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.

B&P further notes 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.

**B&P** estimates that this proposal could reduce Total State Revenue by at least \$6.2 million  $(\$3,941 \times 36,944 \text{ establishments} \times 4.225\% \text{ total state sales tax})$  and General Revenue by at least \$4.4 million once fully implemented in FY 2021. B&P notes that based on the broad language this proposal could apply to more establishments than those listed here. B&P further notes that the actual loss from this proposal may vary significantly based on fluctuations in energy prices.

Section 144.055.4 states that this exemption shall not apply to local sales tax law as defined in Section 32.085.

Section 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 funds deposited into the school district trust fund.

**ASSUMPTION** (continued)

<b>Impact to State Funds</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>
General Revenue	(at least \$2,184,000)	(at least \$4,368,000)	(at least \$4,368,000)
School District Trust	(at least \$728,000)	(at least \$1,456,000)	(at least \$1,456,000)
Conservation Commission	(at least \$91,000)	(at least \$182,000)	(at least \$182,000)
Parks, Soil & Water	(at least \$73,000)	(at least \$146,000)	(at least \$146,000)

**B&P** estimates this proposal will reduce Total State Revenue by at least \$6.2 million annually once fully implemented. This will impact the calculation under Article X, Section 18(e).

**DOR** estimates that, in totality, Total State Revenue could reduce by \$6,151,834 each year, which is itemized to show the impact amongst various state funds below.

Decrease to State Funds Fiscal Year 2020			
<b>General Revenue</b>	<b>Conservation</b>	<b>Education</b>	<b>Parks and Soils</b>
(\$2,183,901.07)	(\$92,277.51)	(\$738,220.08)	(\$61,518.34)

Decrease to State Funds Fiscal Year 2021 and Forward			
<b>General Revenue</b>	<b>Conservation</b>	<b>Education</b>	<b>Parks and Soils</b>
(\$4,367,802.14)	(\$184,555.02)	(\$1,476,440.16)	(\$123,036.68)

**DOR's** Sales Tax Processing Section requires 1 Revenue Processing Technician I (\$24,360) for every 500 new refund claims. The Department will need to create new forms and guidance documents needed for a taxpayer to submit for a refund. The Integrated Tax System would require \$87,329 to implement the new provisions of this legislation.

**Oversight** will show the DOR FTE in the fiscal note. Oversight will show the costs to update the Integrated Tax System which is under a current contract.

**Oversight** notes this proposal would exempt local tax revenue deposited into the School District Trust Fund. However, the School District Trust Fund only receives state sales tax and therefore, Oversight will show a loss of revenue to that School District Trust Fund.

ASSUMPTION (continued)

Officials at the **University of Missouri Economic & Policy Analysis Research Center (EPARC)** assume this proposal 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 \$11.689 billion dollars. Therefore, at the current 3% sales tax rate we estimate food preparation establishments remit approximately \$350.666 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 \$252.479 million and \$420.799 million. Based on this range of costs, we approximate the sales tax to be credited or refunded to food preparation establishments to be between \$8.142 million and \$13.571 million as shown in the table below.

Fund	Sales Tax Rate	Minimum (Aggregate Utilities \$252.479 million)	Maximum (Aggregate Utilities \$420.799 million)
General Revenue	3.000%	\$7,574,380	\$12,623,967
Conservation Commission	.0125%	\$315,599	\$525,999
Parks, Soil & Water	.100%	\$252,479	\$420,799
Total	3.225%	\$8,142,458	\$13,570,765

We estimate the sales tax exemption for utilities used or consumed in preparation of food will reduce Net General Revenue between \$7.574 million and \$12.624 million, reduce the Conservation fund between \$315,599 and \$525,999, and reduce the Parks, Soil and Water fund between \$252,479 and \$420,799.

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.

ASSUMPTION (continued)

Officials at the **Department of Natural Resources (DNR)** assume creating the sales tax exemption for utilities used for commercial food preparation could decrease the amount of funding available in the Parks and Soils Sales Tax Funds for long term operation of Missouri's state parks and historic sites and assistance to agricultural landowners through volunteer programs.

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, the sales tax exemption could result in an unknown loss to the Parks and Soils Sales Tax Funds.

**Oversight** notes that Article IV, Section 47 of the Missouri Constitution, allows revenue received from an additional sales tax of one-tenth (1/10) of percent (1%) to be used for the conservation and management of the soil and water resources of Missouri and for the proper management of the state parks. The Parks Sales Tax Fund (0613) and the Soil and Water Sales Tax Fund (0614) each are to receive 50% of this additional sales tax funding.

Officials at the **Greene County** assume this would result in decreased sales taxes for the County, but the County is unable to make a determination as to the loss.

Officials at the **City of Springfield** assume this would have a negative impact to the City estimated to be less than \$1,000,000.

Officials at the **Springfield Public Schools** and the **City of Clarence** each assume an unknown fiscal impact.

Officials at the **Wellsville-Middletown R-I School District** assume any potential tax reduction to the state will negatively impact the school districts.

Officials at the **City of Kansas City** and the **Monroe County Assessor's Office** each assume there is no fiscal impact from this proposal.

Officials at the **St. Francois County Assessor's Office** has no information to determine impact.

**Oversight** notes in §144.055.4 that this proposal exempts local sales tax from this sales tax exemption. Oversight notes that these food preparers will still be required to pay the local sales tax on their energy use.



ASSUMPTION (continued)

**Oversight** pulled data on the average square feet of companies in Missouri that appear to fit the NAICS codes identified by DOR. We found data that suggests the average size of some companies are as follows:

Warehouse Clubs & Supercenters - 135,000 square feet  
Convenience Stores - 5,000 square feet  
Supermarkets & Other Grocery Stores - 75,000 square feet  
Other Grocery & Related Products Merchant Wholesalers - 150,000 square feet.

Additionally, Oversight notes that B&P and DOR used the average size of a kitchen for restaurants while the proposal does not restrict to only the kitchen. It allows the utilities for a facility that engages in food preparation. Therefore, the entire restaurant or company may qualify. Oversight will use 2,000 sq ft for the NAICS codes not listed above.

At the rate of \$2.90 per sq ft for electricity and \$.085 per sq ft for gas the basic rate for utilities is \$3.75 per sq ft. Oversight will use the \$3.75 per sq ft number, though notes that this proposal allows for all utilities including propane, coal, water and any other energy sources and therefore, this proposal could be higher than projected.

NAICS Groups		Utility Cost
Warehouse Clubs	135,000 sq ft x \$3.75 sq ft x 54 (bus.)	\$27,337,500
Convenience Stores	5,000 sq ft x \$3.75 sq ft x 472 (bus.)	\$8,850,000
Supermarkets	75,000 sq ft x \$3.75 sq ft x 1,073 (bus.)	\$301,781,250
Other Grocery	150,000 sq ft x \$3.75 sq ft x 2,761 (bus.)	\$1,553,062,500
Other NAICS Codes	2,000 sq ft x \$3.75 sq ft x 32,584 (bus.)	\$244,380,000
Total		\$2,135,411,250
State Sales Tax Rate		4.225%
Sales Tax		\$90,221,125

ASSUMPTION (continued)

**Oversight** only reflects the responses that we have received from state agencies and political subdivisions; however, other cities, counties and school districts were requested to respond to this proposed legislation but did not. For a general listing of political subdivisions included in our database, please refer to [www.legislativeoversight.mo.gov](http://www.legislativeoversight.mo.gov).

<u>FISCAL IMPACT - State Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022
<b>GENERAL REVENUE</b>			
<u>Revenue Reduction</u> - DOR §144.055 sales tax exemption for energy used in preparing food	(Could exceed \$53,385,282)	(Could exceed \$64,062,338)	(Could exceed \$64,062,338)
<u>Cost</u> - DOR §144.055			
Personal Service	(\$20,300)	(\$24,604)	(\$24,850)
Fringe Benefits	(\$16,695)	(\$20,109)	(\$20,184)
Equip & Exp	<u>(\$7,787)</u>	<u>(\$491)</u>	<u>(\$503)</u>
<u>Total Cost</u> - DOR	(\$44,782)	(\$45,204)	(\$45,537)
FTE Change	1 FTE	1 FTE	1 FTE
<u>Cost</u> - DOR §144.055 Integrated Tax System updates	<u>(\$87,329)</u>	<u>\$0</u>	<u>\$0</u>
<b>ESTIMATED NET EFFECT ON GENERAL REVENUE</b>	<b>(Could exceed <u>\$53,517,393</u>)</b>	<b>(Could exceed <u>\$64,107,542</u>)</b>	<b>(Could exceed <u>\$64,107,875</u>)</b>
Estimated Net FTE Change on General Revenue	1 FTE	1 FTE	1 FTE

FISCAL IMPACT - State Government  
 (continued)

FY 2020  
 (10 Mo.)

FY 2021

FY 2022

**SCHOOL DISTRICT TRUST FUND**

Revenue Reduction - DOR §144.055  
 sales tax exemption for energy used in  
 preparing food

(Could exceed  
\$17,795,093)

(Could exceed  
\$21,354,112)

(Could exceed  
\$21,354,112)

**ESTIMATED NET EFFECT ON THE  
 SCHOOL DISTRICT TRUST FUND**

**(Could exceed  
\$17,795,093)**

**(Could exceed  
\$21,354,112)**

**(Could exceed  
\$21,354,112)**

**CONSERVATION COMMISSION  
 FUNDS**

Revenue Reduction - DOR §144.055  
 sales tax exemption for energy used in  
 preparing food

(Could exceed  
\$2,224,387)

(Could exceed  
\$2,669,264)

(Could exceed  
\$2,669,264)

**ESTIMATED NET EFFECT ON THE  
 CONSERVATION COMMISSION  
 FUNDS**

**(Could exceed  
\$2,224,387)**

**(Could exceed  
\$2,669,264)**

**(Could exceed  
\$2,669,264)**

**PARKS, SOIL & WATER FUND**

Revenue Reduction - DOR §144.055  
 sales tax exemption for energy used in  
 preparing food

(Could exceed  
\$1,779,509)

(Could exceed  
\$2,135,411)

(Could exceed  
\$2,135,411)

**ESTIMATED NET EFFECT ON THE  
 PARKS, SOIL & WATER FUND**

**(Could exceed  
\$1,779,509)**

**(Could exceed  
\$2,135,411)**

**(Could exceed  
\$2,135,411)**

FISCAL IMPACT - Local Government

FY 2020  
(10 Mo.)

FY 2021

FY 2022

\$0

\$0

\$0

FISCAL IMPACT - Small Business

This proposal will impact small businesses that are currently assessed tax on utility usage for food preparation.

FISCAL DESCRIPTION

he 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 of 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

City of Clarence  
City of Kansas City  
Department of Conservation  
Department of Natural Resources  
Department of Revenue  
Greene County  
Monroe County Assessor  
Office of Administration Division of Budget and Planning  
Springfield Public Schools  
St. Francois County Assessor  
University of Missouri Economic & Policy Analysis Research Center  
Wellsville-Middletown R-I School District



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