

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3579S.01I
 Bill No.: SB 945
 Subject: Taxation And Revenue - Sales And Use; Utilities
 Type: #Updated
 Date: February 23, 2022

#This fiscal note has been updated based on additional information provided by Department of Revenue and Office of Administration - Budget and Planning for HCS for HB 2382.

Bill Summary: This proposal modifies the definition of "sale at retail" for the purposes of sales taxes on certain purchases of utilities.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
#General Revenue *	*(Could exceed \$16,073,532)	(Could exceed \$7,468,881)	(Could exceed \$7,468,881)
#Total Estimated Net Effect on General Revenue	*(Could exceed \$16,073,532)	(Could exceed \$7,980,324)	(Could exceed \$7,468,881)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
#School District Trust Fund (0688)	*(Could exceed \$5,186,723)	(Could exceed \$2,489,627)	(Could exceed \$2,489,627)
#Parks and Soils State Sales Tax Funds (0613 & 0614)	*(could exceed \$518,673)	(could exceed \$248,963)	(could exceed \$248,963)
#Conservation Commission Fund (0609)	*(could exceed \$648,340)	(could exceed \$311,203)	(could exceed \$311,203)
#Total Estimated Net Effect on <u>Other</u> State Funds	*(could exceed \$6,353,736)	(could exceed \$3,049,793)	(could exceed \$3,049,793)

Numbers within parentheses: () indicate costs or losses.

*The proposal allows for refunds on certain taxes remitted. Current statutes allow for 10 years of amended returns; however, court decisions limit the refund period to 15 months. Therefore, FY 2023 represents 15 months' worth of refunds plus 10 months of current impact from the sales tax exemption allowed by this proposal. DOR notes prior to April 30, 2021, hotels were able to request a refund of their utility tax, but based on a decision in a recent lawsuit, they became subject to the tax. Therefore, if passed DOR notes this would only allow a refund back to May 1, 2021.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
General Revenue			
DOR	10 FTE	0 FTE	0 FTE
Total Estimated Net Effect on FTE	10 FTE	0 FTE	0 FTE

#*Oversight assumes all of the refunds would be processed in FY 2023 – therefore, DOR would not require the additional FTE beyond FY 2023.

- Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.
- Estimated Net Effect (savings or increased revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
#Local Government	*(Could exceed \$20,902,494)	(Could exceed \$10,033,197)	(Could exceed \$10,033,197)

#This proposal also adds language that allows any person who would be exempt from paying the sales tax on hotel utilities starting August 28, 2022, to request a refund of the utilities they paid prior to that date. Prior to April 30, 2021, hotels were able to request a refund of their utility tax but based on a decision in a recent lawsuit, they became subject to the tax. Therefore, if passed DOR notes this would only allow a refund back to May 1, 2021.

FISCAL ANALYSIS

ASSUMPTION

Section 144.010 and 144.011 Utility Exemption for Transient Guests

Officials from the **Department of Revenue (DOR)** state this proposal modifies the definition of “sale at retail” found in section 144.010, and adds a sales tax exemption to section to 144.011, regarding the purchases of utilities by transient guest accommodations. The utilities exempt include electricity, electrical current, water and gas used to heat or cool a guest’s accommodations. Utilities purchased by hotels, motels, and transient accommodation establishments are currently subject to sales tax, but this proposal would make these utilities an exemption.

DOR notes this proposal allows this exemption for the sleeping rooms, meeting and banquet rooms as well as customer space rented by guests. It should be noted this applies to hotels, motels, bed-and-breakfasts as they are classified as transient. It is unclear if this exemption would be allowed to short-term rentals, such as VRBO or Airbnb. If these types of properties are allowed the exemption, the calculated estimate would be expected to be higher.

DOR found research that indicates the average utility cost for a hotel room is \$2,196 per room per year. The Department was unable to determine the current number of sleeping rooms or conference/banquet rooms in the state but DOR was able to find information on the number of sleeping rooms (113,371) in the 12 largest cities in the state.

City	# Hotel Rooms
St. Louis	40,000
Springfield	6,395
Columbia	3,600
Jefferson City	1,270
Lake of the Ozarks	1,304
Joplin	1,497
St. Joseph	827
Cape Girardeau	801
Kirksville	415
Warrensburg	412
Kansas City	34,000
Branson	22,850
	113,371

Using these 113,731 rooms DOR was able to calculate the estimated total utility costs per year of \$248,962,716.

The current state sales tax rate is 4.225% and is distributed with 3% to General Revenue, 1% to the School District Trust fund, 0.125% to the Conservation Commission and the 0.1% to the Park, Soil & Water fund. When calculating the local impact, DOR uses a 4.03% weighted average. This proposal is expected to result in a loss of both the state and local sales tax on hotel utilities.

DOR notes this proposal has an effective date of August 28, 2022 and therefore DOR estimates only a 10 month impact in FY 2023 from the exemption. DOR calculated the following loss per fiscal year.

Fund	Tax Rate	FY 2023 (10 month)	FY 2024 +
GR	0.03	(\$6,224,068)	(\$7,468,881)
Education	0.01	(\$2,074,689)	(\$2,489,627)
Conservation	0.00125	(\$259,336)	(\$311,203)
DNR	0.001	(\$207,469)	(\$248,963)
Local	0.0403	(\$8,360,998)	(\$10,033,197)

#This proposal also adds language that allows any person who would be exempt from paying the sales tax on hotel utilities starting August 28, 2022, to request a refund of the utilities they paid prior to that date. Prior to April 30, 2021, hotels were able to request a refund of their utility tax but based on a decision in a recent lawsuit, they became subject to the tax. Therefore, if passed DOR notes this would only allow a refund back to May 1, 2021.

Therefore, these qualifying establishments could seek a refund from May 1, 2021 to August 28, 2022 (15 months). This refund is projected to be a loss to the following funds:

Fund	Tax Rate	FY 2023 (refunds)
GR	0.03	(\$9,336,101)
Education	0.01	(\$3,112,034)
Conservation	0.00125	(\$389,004)
DNR	0.001	(\$311,204)
Local	0.0403	(\$12,541,496)

While this proposal does not limit when a person could apply for the refund, for the simplicity of the fiscal note DOR shows all the refund impact in FY 2023.

As noted previously, the projected impact is expected to exceed the estimated amounts due to the limited number of hotel rooms DOR used in the calculations. Additionally, if short-term rentals are allowed to receive the exemption, DOR would expect an even greater loss of revenue. The impact is projected:

#Estimated Impact by Fund

	FY 2023*		FY 2024 +	
General Revenue	could exceed	(\$15,560,169)	could exceed	(\$7,468,881)
Education (SDTF)	could exceed	(\$5,186,723)	could exceed	(\$2,489,627)
Conservation	could exceed	(\$648,340)	could exceed	(\$311,203)
DNR	could exceed	(\$518,673)	could exceed	(\$248,963)
Total State Loss	could exceed	(\$21,913,905)	could exceed	(\$10,518,674)
Local Sales Tax Loss	could exceed	(\$20,902,494)	could exceed	(\$10,033,197)

*Assumes all refund claims are received during FY23.

DOR notes this refund will be claimed on the existing sales tax refund form. DOR notes that they would need 1 FTE for every 1,100 refund claims received a year. Due to the expected volume of refund requests estimated, DOR would start with hiring 10 FTE and add additional FTE as the number of refund claims increases.

#Oversight assumes refunds would be processed in FY 2023 – therefore, DOR would not require the additional FTE beyond FY23. Oversight will show the abovementioned (10) FTE for purposes of this fiscal note for FY23 only. If multiple bills pass which require additional staffing and duties at substantial costs, DOR could request funding through the appropriation process.

Officials from the **Office of Administration - Budget and Planning (B&P)** note this proposal would exempt the utilities for transient accommodation establishments from state and local sales tax. Utilities include electricity, electrical current, water, and gas. Qualifying uses include all guest accommodations, including sleeping rooms, meeting and banquet rooms, and any other space rented by guests and are included in the charges made for accommodations.

B&P notes that the last use “included in the charges made for accommodations” could include any service offered by establishments. Including pools, restaurants, bars, lobby/congregation areas etc. as long as the cost of the item is included in the price paid by a guest.

B&P further notes that this exemption would apply to hotels, motels, bed-and-breakfasts, as well as other accommodations classified as transient. It is unclear if this would also apply to Airbnb or other short-term rentals.

Based on research, B&P determined that the average utility cost for a hotel is \$2,196 per room per year. B&P was unable to determine the total number of hotel rooms in Missouri. However

based on additional research, B&P found that there are more than 113,371 hotel rooms located in 12 largest areas of the state. Table 1 lists the number of hotel rooms for portions of Missouri.

Table 1: Hotel Rooms
by City

St. Louis	40,000
Kansas City	34,000
Branson	22,850
Springfield	6,395
Columbia	3,600
Jefferson City	1,270
Lake of the Ozarks	1,304
Joplin	1,497
St. Joseph	827
Cape Girardeau	801
Kirksville	415
Warrensburg	412
	<hr/>
	113,371

B&P further notes that this number does not include banquet and conference rooms, nor other services areas that would be exempted under this proposal.

Based on the information above, B&P estimates that this proposal could exempt at least \$248,962,716 (113,371 hotel rooms x \$2,196 avg. utility cost) from state and local sales tax. B&P notes that the state sales tax rate is 4.225% and the population weighted local sales tax rate for 2021 was 4.03%. Therefore, B&P estimates that this proposal could reduce TSR by an amount that could exceed \$10,518,675 annually.

#In addition, this proposal would allow qualifying establishments to request a refund for any sales taxes paid prior to August 28, 2022. B&P notes that businesses were notified that this sales tax was due beginning April 30, 2021. Therefore, there could be up to 15 months (April 30, 2021 through August 28, 2022) of refunds allowable under this proposal. For the purpose of this fiscal note, B&P will reflect all refund claims as occurring in FY23. However, it is possible that refund claims could occur over multiple fiscal years. Therefore, B&P estimates that qualifying establishments could request more than \$13,148,343 in refunds.

#B&P further notes that the exemption would begin August 28, 2022. Therefore, FY23 will see a reduction for 10 months, in addition to the refund claims for the prior ten years. Based on the information above, B&P estimates that this proposal could reduce GR by an amount that could exceed \$15,560,170 and TSR by an amount that could exceed \$21,913,905 in FY23. In addition, this proposal could reduce local revenues by an amount that could exceed \$20,902,495 in FY23.

Once refund claims have been paid, this proposal could reduce GR by an amount that could exceed \$7,468,881 and TSR by an amount that could exceed \$10,518,674. This proposal could also reduce local revenues by an amount that could exceed \$10,033,197 once refund claims have been paid. Table 2 shows the estimated impact by fund.

#Table 2: Estimated Impact by Fund

	FY 2023*	FY 2024 +
General Revenue	could exceed (\$15,560,170)	could exceed (\$7,468,881)
Education (SDTF)	could exceed (\$5,186,723)	could exceed (\$2,489,627)
Conservation	could exceed (\$648,340)	could exceed (\$311,203)
DNR	could exceed (\$518,672)	could exceed (\$248,963)
Total State Loss	could exceed (\$21,913,905)	could exceed (\$10,518,674)
Local Sales Tax		
Loss	could exceed (\$20,902,495)	could exceed (\$10,033,197)

*Assumes all refund claims are received during FY23.

Officials from the **City of Kansas City** and the **City of Springfield** assume this proposal would have a negative fiscal impact on their respective cities of an indeterminate amount.

Oversight notes the above local political subdivisions stated this proposal would have a negative fiscal impact on their local subdivisions of an indeterminate amount. Therefore, Oversight will note B&P and DOR’s estimates for local political subdivisions on the fiscal note.

Officials from the **City of Kirksville** note if passed, this proposal will reduce sales tax revenues for the City by approximately \$10,000-\$15,000 annually. Currently, hotels, motels, and transient lodging facilities have the benefit of exempting long-term rentals from sales tax assessment, even though those guests utilize utility services. For that usage, no sales tax would levied if SB 945 were to pass. In addition, there are several areas in those facilities that are not related to accommodation charges, such as business offices, laundry facilities, kitchens, and plant facilities. Utility usage in those areas would not be subject to any sales tax levy, but are directly related to the benefit of the hotel.

Officials from the **Missouri Department of Conservation** assume the proposal will have an unknown fiscal impact but greater than \$250,000. 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. Any decrease in sales and use tax collected would increase revenue to the Conservation Sales Tax funds. However, the initiative is very complex and may require adjustments to Missouri sales tax law which could cause some downside risk to the Conservation Sales Tax. The Department assumes the Department of Revenue would be better able to estimate the anticipated fiscal impact that would result from this proposal.

Oversight notes that 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; thus,

MDC=s sales taxes are constitutional mandates. Therefore, Oversight will reflect the B&P's and DOR's estimates of impact on the fiscal note.

Officials from the **Department of Natural Resources** defer to the **Department of Revenue** for the potential fiscal impact of this proposal.

Officials from the **Missouri Department of Transportation** and the **Department of Elementary and Secondary Education** each assume the proposal will have no fiscal impact on their organization. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies.

Oversight only reflects the responses received from state agencies and political subdivisions; however, other cities and county officials were requested to respond to this proposed legislation but did not. A general listing of political subdivisions included in Oversight's database is available upon request.

<u>FISCAL IMPACT – State Government</u>	FY 2023 (10 Mo.)	FY 2024	FY 2025
GENERAL REVENUE			
Costs – DOR §144.011 p. 5			
Salaries	\$219,400	\$0	\$0
Fringe Benefits	\$196,851	\$0	\$0
Equipment and Expense	\$97,112	\$0	\$0
Total Costs - DOR	\$513,363	\$0	\$0
FTE Changes - DOR	10 FTE	0 FTE	0 FTE
#Revenue Reduction - §144.011 Sales tax exemption and refunds p. 3-7	<u>(Could exceed \$15,560,169)</u>	<u>(Could exceed \$7,468,881)</u>	<u>(Could exceed \$7,468,881)</u>
#ESTIMATED NET EFFECT ON GENERAL REVENUE	<u>(Could exceed \$16,073,532)</u>	<u>(Could exceed \$7,468,881)</u>	<u>(Could exceed \$7,468,881)</u>
SCHOOL DISTRICT TRUST FUND			
#Revenue Reduction - §144.011 Sales tax exemption and refunds p. 3-7	<u>(Could exceed \$5,186,723)</u>	<u>(Could exceed \$2,489,627)</u>	<u>(Could exceed \$2,489,627)</u>
#ESTIMATED NET EFFECT ON SCHOOL DISTRICT TRUST FUND (0688)	<u>(Could exceed \$5,186,723)</u>	<u>(Could exceed \$2,489,627)</u>	<u>(Could exceed \$2,489,627)</u>
PARKS AND SOILS STATE SALES TAX FUNDS (0613 & 0614)			

#Revenue Reduction - §144.011 Sales tax exemption and refunds p. 3-7	<u>(could exceed \$518,673)</u>	<u>(could exceed \$248,963)</u>	<u>(could exceed \$248,963)</u>
#ESTIMATED NET EFFECT ON PARKS AND SOILS STATE SALES TAX FUNDS (0613 & 0614)	<u>(could exceed \$518,673)</u>	<u>(could exceed \$248,963)</u>	<u>(could exceed \$248,963)</u>
CONSERVATION COMMISSION FUND (0609)			
#Revenue Reduction - §144.011 Sales tax exemption and refunds p. 3-7	<u>(could exceed \$648,340)</u>	<u>(could exceed \$311,203)</u>	<u>(could exceed \$311,203)</u>
#ESTIMATED NET EFFECT ON CONSERVATION COMMISSION FUND (0609)	<u>(could exceed \$648,340)</u>	<u>(could exceed \$311,203)</u>	<u>(could exceed \$311,203)</u>

<u>FISCAL IMPACT – Local Government</u>	FY 2023 (10 Mo.)	FY 2024	FY 2025
#ESTIMATED NET EFFECT ON LOCAL POLITICAL SUBDIVISIONS	<u>(Could exceed \$20,902,494)</u>	<u>(Could exceed \$10,033,197)</u>	<u>(Could exceed \$10,033,197)</u>

FISCAL IMPACT – Small Business

This proposal may impact hotels, motels, or other transient accommodation establishments that include utility costs in the charge made for such accommodations.

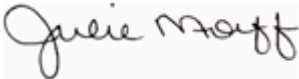
FISCAL DESCRIPTION

This act provides that, for the purposes of levying sales tax, the definition of "sale at retail" shall not include the purchase by persons operating hotels, motels, or other transient accommodation establishments of electricity, electrical current, water, and gas, whether natural or artificial, which are used to heat, cool, or provide water or power to the guests' accommodations of such establishments, including sleeping rooms, meeting and banquet rooms, and any other customer space rented by guests, and which are included in the charge made for such accommodations. Any person required to remit sales tax on such purchases prior to August 28, 2022, shall be entitled to a refund on such taxes remitted.

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

Missouri Department of Transportation
Department of Elementary and Secondary Education
Missouri Department of Conservation
Department of Natural Resources
Department of Revenue
Office of Administration - Budget and Planning
City of Springfield
City of Kansas City
City of Kirksville



Julie Morff
Director
February 23, 2022



Ross Strobe
Assistant Director
February 23, 2022