

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4530S.08P
 Bill No.: Perfected SS No. 2 for SCS for SB 968
 Subject: Business and Commerce; Contracts and Contractors; Charities; Cooperatives;
 Emergencies; Employees - Employers; Department of Public Safety; Utilities
 Type: Original
 Date: April 14, 2022

Bill Summary: This proposal modifies provisions relating to business entities.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
General Revenue	Could exceed (\$3,312,762)	Could exceed (\$3,339,263)	Could exceed (\$3,342,458)
Total Estimated Net Effect on General Revenue	Could exceed (\$3,312,762)	Could exceed (\$3,339,263)	Could exceed (\$3,342,458)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
Missouri Disaster Fund *	\$0	\$0	\$0
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

* §44.032 Transfer-in and expenses net to zero.

Numbers within parentheses: () indicate costs or losses.

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	Could exceed 4.4 FTE	Could exceed 4.4 FTE	Could exceed 4.4 FTE
General Revenue – DOR	Could exceed 6.6 FTE	Could exceed 6.6 FTE	Could exceed 6.6 FTE
Total Estimated Net Effect on FTE	Could exceed 11 FTE	Could exceed 11 FTE	Could exceed 11 FTE

- 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	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Due to time constraints, **Oversight** was unable to receive some agency responses in a timely manner and performed limited analysis. Oversight has presented this fiscal note on the best current information that we have or on information regarding a similar bill(s). Upon the receipt of agency responses, Oversight will review to determine if an updated fiscal note should be prepared and seek approval to publish a new fiscal note.

Section 44.032 Emergency management for Rural Electric Cooperatives:

Officials from the **Department of Public Safety - State Emergency Management Agency (SEMA)** assume this provision will have a fiscal impact on SEMA and could require a substantial amount of general revenue. SEMA notes while there has been ongoing discussion regarding obligation of funds for the "Missouri Disaster Fund", there is currently no general revenue obligated to the fund.

As an example of a potential fiscal impact on SEMA, Missouri recently received a new Major Presidential Disaster Declaration, FEMA-4636-DR-MO, for severe storms and tornadoes that occurred on December 10, 2021. The Major Presidential Disaster Declaration is designated for seven (7) counties and has eight (8) eligible applicants under the FEMA Public Assistance Program. Seven (7) of the eight (8) eligible applicants are Rural Electric Coops. FEMA has estimated the disaster damages for FEMA-4636-DR-MO at \$27.3 million. All of the \$27.3 million in estimated damages belong to the Rural Electric Coops with the exception of \$63,000, which is road and debris damages in Reynolds County.

In response to similar legislation (HCS for HB 2328), officials from **Office of Administration - Budget and Planning (B&P)** noted this section would allow rural electric cooperatives to access disaster and emergency related funding. B&P defers to SEMA for an impact from this provision.

Oversight assumes, based on SEMA's response, that General Revenue funds will be used to cover expenses under §44.032. Oversight will reflect a \$0 to (Unknown, Greater than \$250,000) impact to General Revenue and will assume that expenses to the Missouri Disaster Fund will equal the amount transferred in from General Revenue and net to zero. Oversight notes as of February 2022, the balance in the Missouri Disaster Fund is \$638,477.

In response to similar legislation (HCS for HB 2328), officials from the **Department of Commerce and Insurance, the Department of Economic Development, the Department of Natural Resources, the Missouri Department of Conservation, the Missouri Department of Transportation, the Office of Administration, the Hughesville Water/Wastewater, the Little Blue Valley Sewer District, the Metropolitan St. Louis Sewer District, the South River**

Drainage District, the **Wayne County PWS #2**, and the **Hancock Street Light District** each assume the provision will have no fiscal impact on their respective organizations.

Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies for this section.

Section 407.475 Charitable Organization Requirements

In response to a previous version, officials from the **Attorney General's Office, Office of Administration - Budget and Planning, Department of Economic Development, Department of Natural Resources, Department of Corrections, Department of Labor and Industrial Relations, Department of Elementary and Secondary Education, Department of Higher Education and Workforce Development, Department of Health and Senior Services, Department of Mental Health, Department of Public Safety, Department of Social Services, Missouri Department of Agriculture, Missouri Department of Conservation, Department of Transportation, Department of Commerce and Insurance, Department of Economic Development, Department of Social Services**, and the **Office of the State Courts Administrator** each assumed the provision would not fiscally impact their respective agencies.

In response to similar legislation (SB 968), officials from the **Department of Labor and Industrial Relations** assumed the provision would not fiscally impact their agency.

Oversight notes that the above mentioned agencies have stated the provision would not have a direct fiscal impact on their organization. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact on the fiscal note for these agencies for this section.

In response to a previous version, officials from the **Office of Administration - Budget and Planning (B&P)** noted this section would prohibit a state agency from requiring a charitable organization to provide annual filing or reporting beyond those required under section 407.462 and federal law.

B&P notes that some charitable organizations may be required to file annual state tax returns, which are not one of the allowable filing or reporting requirements under section 407.462 or federal law. B&P defers to DOR for more information.

Therefore, this section may reduce GR and TSR by an unknown amount. This section may impact the calculation under Article X, Section 18(e).

Officials from the **Department of Revenue** note this provision would prohibit a state agency or official from imposing an annual filing/reporting requirement on an organization regulated or specifically exempted from regulation under sections 407.450 to 407.478, if those annual filing/reporting requirements are more stringent, restrictive, or expansive than the requirements

of section 407.462. This does exempt filing/reporting requirements specifically required or authorized by federal law.

Depending on whether this proposal applies to state tax filing and tax reporting requirements, this proposal may impact DOR as it pertains to tax administration. If they could no longer require tax returns of certain organizations this could result in a significant but unknown loss to general revenue and total state revenue.

Oversight will reflect the possible scenario described by B&P if charitable organizations are no longer required to report and file tax returns on unrelated business taxable income as a result of this provision. Therefore, the state may see a reduction in tax revenue of an unknown amount. Oversight will show the impact as a \$0 or (Unknown) potential loss of general revenue funds.

Sections 431.201 & 431.202 - Business Covenants

In response to a similar proposal (SB 833) officials from the **Administrative Hearing Commission** assumed this provision will have no fiscal impact on their agency.

In response to a similar proposal (SB 833) officials from the **City of Kansas** and **City of Springfield** both assumed this provision will have no fiscal impact on their respective organizations.

In response to a similar proposal (SB 833) officials from the **Missouri State University** and **University of Missouri System** both assumed this provision will have no fiscal impact on their respective organizations.

Oversight notes the above mentioned agencies, universities, and local political organization have stated the provision would not have a direct fiscal impact on their organization. Oversight does not have any information to the contrary. Therefore, **Oversight** will reflect a zero impact on the fiscal note for this section.

In response to similar legislation (SB 833), officials from the **Department of Labor and Industrial Relations, Missouri Department of Conservation, Missouri Department of Transportation, Attorney General's Office, Office of Administration**, and the **Administrative Hearing Commission** each assume this provision will have no fiscal impact on their respective agencies.

In response to similar legislation (SB 833), officials from the **City of Kansas** and **City of Springfield** both assume this provision will have no fiscal impact on their respective organizations.

In response to similar legislation (SB 833), officials from the **Missouri State University** and **University of Missouri System** both assume this provision will have no fiscal impact on their respective organizations.

Oversight notes the above mention agencies, universities, and local political organization have stated the provision would not have a direct fiscal impact on their organization. Oversight does not have any information to the contrary. Therefore, **Oversight** will reflect a zero impact on the fiscal note for this section.

Section 650.570 – Grants for physical security measures;

In response to a similar proposal (SB 1151), officials from the **Office of Administration - Budget and Planning (B&P)** stated Section 650.570 of this bill creates the "Faith Without Fear Act" which provides that the Department of Public Safety shall distribute to any not-for-profit organization a one-time grant for the purpose of enhancing physical security. Each not-for-profit organization shall receive no more than one grant pursuant to this act and grants shall not exceed 75% of the total cost of the security enhancement. Additionally, no more than \$25 million shall be distributed pursuant to this act and no more than \$2.5 million per any fiscal year. Finally, no more than \$50,000 shall be distributed to any one not-for-profit organization annually. B&P will show a cost to the state of \$0 to \$2.5 million annually.

Oversight does not have any information contrary to that provided by B&P. Therefore, Oversight will reflect B&P's impact for fiscal note purposes.

Officials from the **Department of Public Safety - Office of the Director (DPS)** state this proposal creates a new requirement for the DPS to distribute grants to not-for-profit agencies. Due to the size of the new grant program, the DPS requests one (1) FTE Grants Officer to administer the grant program at an annual salary of \$42,953.

Oversight assumes DPS will not require an additional FTE until monies are appropriated for the Faith Without Fear Act. Therefore, Oversight will reflect a range of up to the estimated provided by DPS for fiscal note purposes.

Section 454.1005 – Hearing provision for suspension of license for delinquent child support (Senate Amendment 1):

In response to a similar proposal (SB 685), officials from the **Department of Social Services (DSS)** stated the proposed legislation will have fiscal impact on the **Division of Legal Services (DLS)**. This proposal adds additional factors that will have to be considered in a hearing on license suspension. These new factors are related to the obligors' ability to pay and whether the suspension would cause significant hardship. The consideration of these additional factors means that more obligors will be able to successfully challenge license suspension as an enforcement remedy.

The **DSS Family Support Division (FSD)** suspended issuing notices of intent to suspend on driver's licenses in response to the COVID pandemic and this suspension remains in place. Because FSD is not currently issuing Notices of Intent to Suspend Licenses, the most recent

fiscal year to give an accurate representation of the number of notices issued and hearings held is FY 2020. In FY 2020, 5,473 Notices of Intent to Suspend License were successfully served on obligors for failure to pay child support. In FY 2020, FSD received 139 hearing requests. Under the proposed legislation, a hearing is much more likely to be successful than under the current version of these statutes which only allow a challenge to be made on the issues of identity of the obligor, whether the arrearage was greater than or equal to three months of support payments or two thousand five hundred dollars, whichever is less, and whether the obligor had entered into a payment plan. The additional factors regarding financial hardship and ability to pay are much more subjective and are more likely to lead to the denial of a license suspension.

DLS would expect that since there are more factors (and more subjective factors) on which to successfully challenge the license suspension, that more obligors would request a hearing. Under this proposed legislation, FSD anticipates receiving new license suspension hearing requests on 25% to 75% of the 5,334 (5,473 minus 139) Notice of Intent to Suspend licenses served upon obligors for 1,334 to 4,000 potential additional hearings. To handle the additional cases, **DLS** would need **3 to 7 hearing officers** handling 588 cases each.

Oversight does not have information to the contrary and therefore, Oversight will reflect the FTE estimates as provided by **DLS**.

FSD Child Support (CS) states proposed §454.1005.3 requires hearing requests to be processed timely. FSD child support already has policies and procedures in place to process hearing requests and processing of the requests will be handled by the additional staff requested below. Division of Legal Services (**DLS**) or the court, rather than FSD, will schedule the hearing that complies with due process to determine if suspension of the obligor's license is appropriate considering all relevant factors.

The FSD CS program stopped all license suspension activities in April, 2020 due to the COVID-19 pandemic. Therefore, the FY 2020 license suspension actions taken by FSD CS are used in determining the impact of this legislation.

If the FSD CS program resumed license suspension activities, the CS program assumes the data from FY 2020 would be applicable.

The Notice of Intent to Suspend Licenses notifies the obligor of the right to request an administrative hearing. There is no requirement in this proposed legislation for the FSD CS program to amend the Notice of Intent to Suspend License to include the additional factors the court or director are to consider when determining if license suspension is appropriate as stated in proposed 454.1005.4. However, FSD child support assumes more obligors will request a hearing as a result of the additional factors in proposed §454.1005.4. During FY 2020, there were 5,473 Notice of Intent to Suspend Licenses successfully served on obligors. In FY 2020, FSD received 139 license suspension hearing requests. Under this proposed legislation, FSD anticipates receiving new license suspension hearing requests on 25% to 75% of the 5,334 (5,473 minus 139) Notice of Intent to Suspend licenses served upon obligors for 1,334 to 4,001

potential additional hearings. In December, 2020, 65 FSD staff spent approximately 20% of their time handling enforcement hearings which converts to 13 (65 x 20%) full time staff working enforcement hearing requests. In FY 2020, FSD staff handled 2,569 enforcement hearings. 2,569 hearings/13 staff equals 198 (rounded up) hearings/cases handled by each existing staff. FSD would need **7-20 new FTE BPT (Benefit Program Technicians)** staff to handle the 1,334 to 4,001 potential additional license suspension hearing actions under this proposed legislation (1334/198 and 4,001/198).

Oversight does not have information to the contrary and therefore, Oversight will reflect the FTE estimates as provided by FSD.

FSD will comply with 454.1005.5 as it is not appropriate for FSD to suspend an obligor's license if the court or director, after hearing, determines that for good cause the obligor has failed to comply with the monthly support obligation and/or has an arrearage in excess of two thousand five hundred dollars.

Oversight notes DSS officials indicated that the proposed legislation does not require FSD to include information regarding the additional factors to be considered when making a decision whether to suspend a license for non-payment of child support. Oversight contacted DSS officials regarding the range (25% to 75%) of cases where the obligor might request a hearing.

DSS officials indicated this is an assumption based on past experience. As "obligors" will not be informed of the additional factors to be considered in suspension hearings, **Oversight** assumes, for fiscal note purposes, costs for DLS and FSD could exceed the lower limit of the range 10 (3 hearings officers + 7 Benefit Program Technicians) to 27 (7 Hearings Officers + 20 Benefit Program Technicians) provided above.

Oversight will reflect a range of DLS FTE as "could exceed" 3 FTE. Therefore, Oversight assumes DLS FTE costs (salary + fringe) could exceed \$227,775 in FY 2023; could exceed \$275,642 in FY 2024; and could exceed \$277,976 in FY 2025 (split 34% GR; 66% Federal). Oversight will also reflect a range of FSD FTE as "could exceed" 7 FTE. Therefore, Oversight assumes FSD FTE costs could exceed \$356,833 in FY 2023; could exceed \$431,497 in FY 2024; and could exceed \$434,829 in FY 2025 (split 34% GR; 66% Federal).

In response to a similar proposal (SB 685), officials from the **Office of Administration (OA), Information Technology Services Division (ITSD)/DSS** stated updates to the Missouri Automated Child Support System (MACSS) would be required.

OA, ITSD/DSS assumes every new IT project/system will be bid out because all ITSD resources are at full capacity. IT contract rates for MACSS are estimated at \$95/hour. It is assumed changes to hearings screens and applications, changes to hearings forms and correspondence modifications will require 261.36 hours for a cost of \$24,829 (261.36 * \$95), split 34% GR; 66% Federal.

Therefore, the total MACSS upgrades will cost \$24,829 (\$8,442 GR; \$16,387 Federal) in FY 2023 exclusively.

Oversight does not have any information to the contrary. Therefore, Oversight will reflect the costs provided by ITSD/DSS for fiscal note purposes.

Section 431.203 - Covenant Not To Compete (Senate Amendment 2)

In response to a similar proposal (SB 789), officials from the **Attorney General's Office, Department of Commerce and Insurance, Department of Economic Development, Department of Elementary and Secondary Education, Department of Higher Education and Workforce Development, Department of Health and Senior Services, Department of Mental Health, Department of Natural Resources, Department of Corrections, Department of Labor and Industrial Relations, Department of Revenue, Department of Public Safety, Missouri Department of Agriculture, Office of Administration, the City of Kansas City and the City of Springfield** each assume the proposal would not fiscally impact their respective entities.

Oversight notes that the above mentioned agencies have stated the proposal would not have a direct fiscal impact on their organization. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact on the fiscal note for this section.

Section 130.029 Limited Liability Companies may make contributions (Senate Amendment 3):

In response to similar language in Perfected SB 931, officials from **Office of Administration - Budget and Planning (B&P)** noted this section would allow limited liability companies (LLCs) to make political contributions. Section 130.029.4(2) requires LLCs be operational for at least one year prior any contributions and to file a form with the Missouri Ethics Commission.

B&P notes that SA 3 removes all references to S-Corporations and the definition of "corporation" under Section 130.029.4(3).

This provision will not impact TSR or the calculation under Article X, Section 18(e).

In response to similar language in Perfected SB 931, officials from the **Department of Revenue (DOR)** note this provision allows a limited liability company that is not classified as a corporation, to make contributions to any candidate committee. This will not have a fiscal impact on the Department.

Oversight notes officials from the Department of Revenue and the Office of Administration - Budget and Planning both assume this provision will have no fiscal impact on state and local funds. Oversight does not have any information to the contrary.

Section 143.081 Tax Credit for S-Corporation (Senate Amendment 3)

In response to similar language in Perfected SB 931, officials from **Office of Administration - Budget and Planning (B&P)** noted this provision would grant a tax credit for S-Corporation shareholders for income earned outside of Missouri, if the income earned out of state is not subject to income taxes in the state in which it was earned. The tax credit shall be equal to the shareholders proportion of Missouri income tax owed on such out of state S-Corporation income. This credit would begin on August 28, 2022. Since this is before the end of the 2022 tax year, B&P assumes that the credit would be available for taxpayers filing their annual 2022 tax returns.

B&P notes that shareholders are already allowed a resident income tax credit if income earned out of state is subject to another state's income tax. B&P further notes that this would essentially eliminate the Missouri tax on all out of state income earned by any S-Corporation, if that income is not subject to any other state's income tax.

Based on information provided by DOR, for tax year 2018 fewer than 1% of S-Corporations claimed out-of-state income. However, B&P was unable to determine how much of such S-Corporations income was derived from out-state-sources and how much of that income came from other states that do not levy an income tax. Therefore, B&P estimates that this provision will have an unknown negative impact on TSR and GR beginning in FY23.

Officials from the **Department of Revenue (DOR)** note this provision would allow a resident shareholder in an S-Corp to be eligible for a credit issued pursuant to this section in an amount equal to the shareholder's pro rata share of any income tax imposed pursuant to Chapter 143 on income derived from sources in another state of the United States, or a political subdivision thereof, or the District of Columbia, and which is subject to tax pursuant to Chapter 143 but is not subject to tax in such other jurisdiction.

S-Corps are required to file a MO-1120S (S-Corporation Income Tax Return) with the Department of Revenue annually. One of the questions on the form requires S-Corps to disclose if any of the income they receive is from sources other than those located in Missouri. Of the 87,907 S-Corps that completed the 2018 MO-1120S form less than 1% indicated income outside Missouri.

The Department is unable to estimate the amount of the income that was reported as out of the state. Additionally, the Department cannot determine if any of that income is from jurisdictions that do not tax. The Department assumes an unknown impact that could exceed \$250,000 annually.

No administrative fiscal impact is expected to the Department from this provision.

Oversight is unable to estimate the amount of out of state income reported. Therefore, **Oversight** will show a negative unknown impact that could exceed \$250,000 annually for this section.

Section 143.436 "SALT Parity Act" (Senate Amendment 3)

In response to similar language in Perfected SB 931, officials from **Office of Administration - Budget and Planning (B&P)** noted this provision would allow pass-through businesses (LLCs, partnerships, sole proprietorships, and S-corporations) to file their Missouri income tax at the entity level, rather than the individual level starting with tax year 2023. B&P notes that the election to complete an entity level tax return shall be made on a voluntary year-by-year basis.

B&P notes that the purpose of this bill is to allow businesses to fully deduct their state and local taxes (SALT) at the federal level, while minimizing the impact to states that pass this or similar language. Under the Tax Cut and Jobs Act (TCJA, 2017) individuals cannot claim a SALT deduction greater than \$10,000, while businesses can claim their full SALT expenses. This has created a significant federal tax increase for pass-through businesses whose SALT deduction is greater than the \$10,000 cap x the number of pass-through members. For example:

- Business A consists of 4 members and has a total SALT liability of \$20,000
 - Business A would not be impacted by the individual SALT limitation as the combined SALT limit for the 4 members would be \$40,000 (4 members x \$10,000 per member cap).
 - Business A would likely not choose to file taxes at the entity level under this provision.
- Business B consists of 4 members and has a total SALT liability of \$80,000
 - Business B would be impacted by the individual SALT limitations as the combined SALT limit of \$40,000 (4 members x \$10,000 per member cap) is less than the \$80,000 entity SALT liability.
 - Business B would likely chose to file taxes at the entity level under this provision.

B&P further notes that as of the creation of this fiscal note, the IRS is allowing this particular SALT cap work around. If the IRS disallows this work around, B&P assumes that entities would no longer choose to file a Missouri return at the entity level.

Currently each member of a pass-through business must file their own Missouri income tax return showing their portion of business income and deductions. The individual is then responsible for their portion of the Missouri income tax. Individuals are also granted a tax credit for taxes paid in other states, for businesses that operate in multiple states.

Under this provision, the entity itself could elect to file a Missouri income tax return. The business is to include the same income, deductions, and credits granted at the federal level. If the calculations result in a net loss, the loss is not refundable, but the business may carry the loss forward until fully used. B&P notes that individuals are not granted a similar net operating loss credit. Therefore, this provision may have an unknown impact on TSR and GR.

B&P notes that businesses would be required to use the corporate income allocation method, as opposed to the current individual allocation method, when determining the amount of income to allocate to Missouri and other states. Therefore, this provision may have an unknown positive or negative impact to TSR and GR depending on the composition of a business's income.

In exchange for filing at the entity level, the entity must calculate their tax due using the highest individual income tax under Section 143.011 in a given tax year. Currently individuals calculate their tax due using the graduated brackets and rates under Section 143.011. This may have minimal impact to TSR and GR.

This provision would allow non-Missouri residents, with no other Missouri source income other than the income now reflected at the entity level, to not file a Missouri income tax return.

This provision would further grant Missouri residents, and non-residents with other Missouri source income, a 95% tax credit for their pro-rata share of the taxes paid to other states at the entity level. B&P notes that this provision would allow a 100% credit for S-corporations. This credit would only be granted for the taxes paid at the entity level to other states. This may have an unknown impact to TSR and GR. B&P notes that the impact would depend on the impacts created by changing how business income is allocated between states. The credit is non-refundable, but may be carried forward until fully used.

B&P does not know how many businesses would elect to pay Missouri taxes at the entity level. Further, B&P does not know the income composition of such businesses or the current tax liability of members and thus cannot estimate how this provision may impact their Missouri tax liability. Therefore, B&P estimates that this provision may have an unknown positive or negative impact on TSR and GR beginning with FY24.

Officials from the **Department of Revenue (DOR)** note under the Tax Cut and Jobs Act (2017) the federal government limited the amount of state and local taxes (SALT) an individual could deduct for federal income tax purposes to no more than \$10,000 (\$5,000 for those married filed separately) annually. However, there were no changes to the limitations on the amount of a deduction connected with a business entity directly.

Capping the amount of the SALT deduction at the federal level resulted in fewer taxpayers being able to reduce their federal tax liability.

Under current law a pass-through entity's (S Corporations or Partnership) shareholders pay income tax on the shareholder's pro rata share of the entity's income attributable to Missouri. They file their share on their individual income tax return rather than the business entity filing a corporate income tax return. Therefore, each member reports their proportion of the entity's whole income. Therefore, each of the individual members is subject to the \$10,000 SALT limit on their return.

This provision creates the SALT Parity Act. The purpose of the act is to help companies increase the amount of itemized deductions they can claim at the federal level by finding a work-around of the \$10,000 SALT deduction. Increasing their itemized amount would result in a savings to taxpayers, as their federal tax liability would decrease.

A business entity is not bound by the \$10,000 limit. So a plan was created in several states and appears to be allowed by the federal government that would allow the business entity to report the group's income and pay the taxes of the group as a whole. The business entity then receives the greater itemized deduction on their federal return and lowers their overall tax liability. This results in a savings to the business entities.

This provision is setting up this work around at the state level for Missouri businesses. This provision in Section 143.436.3 & 143.436.4 would allow partnerships and S Corporations to pay as a whole. The partnership or S Corp would report income for the whole business and file a return on behalf of the entire group. For tax years beginning on or after January 1, 2023, this act would allow the pass-through business entity to elect to pay a company tax. The tax is to equal the sum of each member's income and loss items, as described in federal law, reduced by a deduction allowed for qualified business income, as described in federal law, and modified by current provisions of state law relating to the taxation of pass-through entities, with such sum multiplied by the highest rate of tax in effect for the state personal income tax rate.

Per this provision they would be required to use the highest individual income tax rate for the tax rate. That rate is currently 5.3% for TY 2022. Currently, if members of the business entity pay taxes, the amount paid depends on their income and which tax bracket they are assessed at. Having these business entities pay the state the highest individual income tax rate could potentially result in an increase in revenue to the state as opposed to each member filing separately.

Upon filing the business entity tax return, the business entity notifies the Department of its election to file as a group and provides a report to the Department of the proportional share of income earned and tax paid of each member. The individual members of the business entity are then required to file an individual income tax return. They must report the amount of the pro rata share that was paid by the business entity. They are then allowed a credit against the tax already paid by the business entity.

The credit is equal to their pro rata share of the tax paid. This provision states these credits are not refundable but can be carried over until fully taken. The lack of refundability of the credits could result in some members not being able to use their credits. If credits are never redeemed this results in revenue to the state.

This provision is Section 143.436.11 requires these business entities to annually elect whether or not to participate in this business entity tax program. This program is strictly voluntary. Due to the voluntary nature of this program, the Department is not able to determine how many potential S Corps or partnerships would chose to participate each year.

The Department assumes that business entities would chose to participate based on what is best for the majority of its members. While a business entity may choose what is best for the majority of its members, some members may not see a benefit under this program. Individual income tax returns are specific to each taxpayer's life situation. Two people with the same job and same income may have very different life situations that can impact the amount of tax liability they will have. One may be married with kids while the other may be single with no kids but an illness that requires extensive medical payments. Their final tax liability may be different.

Is it possible that due to an individual's life situation they end up owing less in taxes to the State than they otherwise would have if their business reported under current law? It is possible. It is also possible they could owe more. Depending on which happened, additional or less revenue to the state is possible.

The Department notes it is unable to estimate the actual fiscal impact of this provision. The Department cannot predict the number of business entities that would chose to participate in this voluntary program. Nor is the department able to predict how many of the individual taxpaying business entity members would benefit or be hurt by this provision. The Department notes that business entity members would benefit from the increased federal deduction and receive a savings on their federal return. However, based on the taxes paid by the business entity as a whole and the credits provided the members this provision would not result in more than a minimal impact to the state.

The Department notes this provision would ease an administrative burden on the Department. Under current law, in order to audit the Department spends a lot of time trying to identify all the members of a business entity to ensure all the tax is paid. With the business entities filing the taxes and reporting the number of partners and pro rata share of the income, this would allow the Department to more easily audit these businesses, saving time and resources. This provision with the previous partnership audit reporting laws that passed in 2020 will ease some of the time consuming tracking of these business entities. The amount of the impact can't be determined due to the voluntary nature of the program.

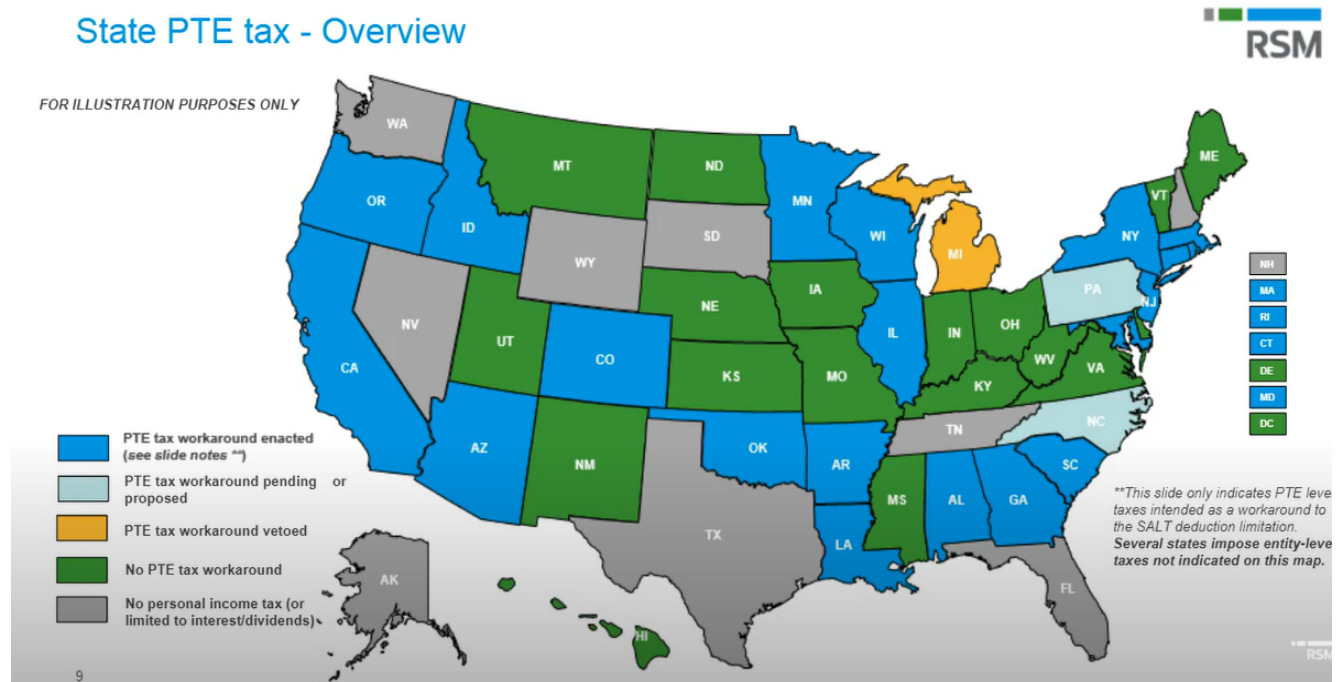
The Department notes this will require making changes to the existing tax reporting forms and potentially the creation of a new form for identifying the business entity members and their pro rata share. These changes are estimated to cost \$5,000. Additional programming and other website updates would result in \$3,596 in costs.

Oversight assumes the Department of Revenue is provided with core funding to handle a certain amount of activity each year. Oversight assumes DOR could absorb the form and programming (administrative) costs related to this provision. If multiple bills pass which require additional staffing and duties at substantial costs, DOR could request funding through the appropriation process. Officials from the DOR assume the provision will have minimal fiscal impact on their organization.

Oversight notes that **DOR** and **B&P** both note the deductions for purpose of the state and local taxes (SALT) paid by pass-through business owners are currently capped at \$10,000. Conversely, C corporations are allowed to fully deduct these same expenses. In states that tax pass-through firms at the owner level, the disparate treatment puts their firms at a significant disadvantage compared to C corporations. As such, restoring the federal SALT deduction in its entirety for pass-through entities has been a key priority for [S-CORP](#) and the [Main Street Employers coalition](#) since the cap was implemented back in 2017.

Oversight notes, that according to the [taxpolicycenter.org](#), a joint project from the Urban Institute and the Brookings Institution, in 2017, 16 percent of tax filers with income between \$20,000 and \$50,000, 76 percent of tax filers with income between \$100,000 and \$200,000, and over 90 percent of tax filers with income above \$200,000 claimed SALT.

Oversight notes since 2018, the Main Street Employers coalition has led advocacy efforts to restore the State and Local Tax (SALT) deduction for pass-through businesses. More than a half dozen states have enacted various version of such a legislation to date and, following the 2020 Treasury Department announcement, IRS Notice 2020-75 (11/2020), validating this legislative approach, SALT Parity measures are being actively considered in more than a dozen states this year.



<https://news.bloombergtax.com/tax-insights-and-commentary/salt-cap-workaround-pass-through-entity-tax-update-part-ii>

Oversight notes that under this provision, a small business may elect to pay tax at the entity level, and a corresponding credit is allowed at the partner, member, or shareholder level. There are four main categories of businesses, which would qualify for such a deduction as shown below:

- a) General Partnerships
- b) Limited Partnerships
- c) Limited Liability Companies
- d) Sub-Chapter S Corporations

Additionally, there are no restrictions as to Multi-tier Partnerships or Trusts that are entity partner members.

Oversight notes that officials from the DOR and SOS added, via additional e-mails, that there are currently at least 81,000 S-Corporations in Missouri. The Department of Revenue is not able to discern how many partnerships are currently in Missouri. Officials from the SOS note that a partnership can exist and function as a business without any kind of document setting out the rights or responsibilities of the partners. These partnerships function similarly to a sole proprietorship, but have two or more owners (partners). The only partnerships which have to register with the SOS are those which intend to limit the liability of the individual partners or the partner company, and in this regard, function similarly to a corporation. Therefore, neither DOR nor SOS can estimate the collective number of partnerships which operate in Missouri at any given time, as they are not all required to register.

Oversight notes that by paying tax at the entity level, members of the PTE are deducting expenses and taxes incurred by the trade or business (i.e., an above-the-line deduction) versus a conventional below-the-line deduction at an individual level that would be subject to the SALT limitation of \$10,000. Moreover, according to estimates from the U.S. Congress' Joint Committee on Taxation, less than 15% of taxpayers currently qualify to itemize their deductible amounts while filing taxes with average AGI of \$60,981 and an average SALT amount of \$9,958.

As provided in the provision, companies file their income tax at the individual level while using the 95% credit for filing at the entity level as a deduction. For the purpose of this provision, **Oversight** will assume that the company election process will happen throughout FY 2023 due to various companies' filing tax schedules. (I.e. some filing monthly, quarterly, annually, etc.)

For information purpose, **Oversight** will show the various impact of the provision below:

Table 1

Proposed - *assuming \$200,000 deductible without SALT cap		
Entity Level	ABC LLP - 2 Members 50/50 Partners	
Net Income	800,000	
Tax liability paid	32,000	
Member level	A - 50%	B-50%
Net Income	\$ 400,000.00	\$ 400,000.00
Tax	\$ 21,200.00	\$ 21,200.00
Tax Credit at 95%	(\$32,000/2)*.95	(\$32,000/2)*.95
Tax credit amount awarded	\$ 15,200.00	\$ 15,200.00
Tax liability amount at members level	\$ 6,000.00	\$ 6,000.00
Total tax paid	\$ 22,000.00	\$ 22,000.00
		\$ 44,000.00

Oversight notes the example in Table 1 shows how the 95% tax credits would work against the personal income taxes at the individual member level from the current law.

Table 2

Current Law		
Entity Level	ABC LLP - 2 Members 50/50 Partners	
Net Income	1,000,000	
Tax liability paid	0	
Member level	A - 50%	B-50%
Net Income (entity + other income)	\$ 600,000.00	\$ 600,000.00
Tax	\$ 31,800.00	\$ 31,800.00
Tax Credit at 95%		
Tax credit amount awarded		
Tax liability amount at members level		
Total tax paid to the State	\$ 31,800.00	\$ 31,800.00
		\$ 63,600.00

Oversight notes in Table 2, the current law provides lesser tax deductions beyond SALT allowable deductions. However, Table 3 also shows that due to the personal income of each member within the partnership, the overall collected tax in Missouri would not be lesser or higher, but minimally higher or lesser depending on the individual company and each member's personal tax consequence.

Table 3.

Entity Level	ABC LLP - 2 Members 50/50 Partners	
Net Income	800,000	
Tax liability paid	32,000	
Member level	A - 50%	B-50%
Net Income (entity + other income)	\$ 600,000.00	\$ 600,000.00
Tax	\$ 31,800.00	\$ 31,800.00
Tax Credit at 95%	(\$32,000/2)*.95	(\$32,000/2)*.95
Tax credit amount awarded	\$ 15,200.00	\$ 15,200.00
Tax liability amount at members level	\$ 16,600.00	\$ 16,600.00
	(31,800-15,200)	
Total tax paid	\$ 32,600.00	\$ 32,600.00
	partner 1+ partner 2 tax totals	\$ 65,200.00

Oversight is not able to discern the level of gain or loss to general revenue in any given year because there is currently no data showing the amount of individual income levels or tax rate for each affected company specified within the provision. (I.e. LLP, LP, S-Corp. etc.)

Oversight notes the provision shall be apply to tax years ending on or after December 31, 2022. The taxpayers will not be filing their 2022 income taxes until January 1, 2023 (FY 2023).

Therefore, Oversight will note a minimum Unknown positive to Unknown negative impact beginning in FY 2023 in the fiscal note.

Oversight notes that while the Tax Cuts and Jobs Act placed a \$10,000 cap on the SALT deduction, it's only temporary. The cap applies to taxable years 2018 through 2025. After tax year 2025, the cap will end, and taxpayers will once again be able to deduct 100 percent of their eligible state and local taxes, unless other tax code changes are passed before then.

<u>FISCAL IMPACT – State Government</u>	FY 2023 (10 Mo.)	FY 2024	FY 2025
GENERAL REVENUE FUND			
Transfer Out – \$44.032 - Missouri Disaster Fund to now cover rural electric cooperatives p. 3-4	\$0 to (Unknown, Greater than \$250,000)	\$0 to (Unknown, Greater than - \$250,000)	\$0 to (Unknown, Greater than \$250,000)
<u>Cost – DPS (\$650.570) Distribution of grant monies p. 6</u>	Up to (\$2,500,000)	Up to (\$2,500,000)	Up to (\$2,500,000)
<u>Cost – DPS (\$650.570) Administer new grant program to enhance physical security p. 6</u>	Up to...	Up to...	Up to...
Personal services	(\$35,794)	(\$43,383)	(\$43,816)
Fringe benefits	(\$23,488)	(\$28,341)	(\$28,499)
Equipment and expense	(\$3,348)	(\$871)	(\$893)
<u>Total cost – DPS</u>	<u>\$0 to (\$62,630)</u>	<u>\$0 to (\$72,595)</u>	<u>\$0 to (\$73,208)</u>
FTE Change – DPS	1 FTE	1 FTE	1 FTE
<u>Costs - DSS (\$454.1005) (SA1)</u>	Could exceed...	Could exceed...	Could exceed...
Personal service (DLS)	(\$49,206)	(\$59,637)	(\$60,234)
Personal service (FSD)	(\$70,208)	(\$85,092)	(\$85,943)
Fringe benefits	(\$79,353)	(\$95,698)	(\$96,177)
Equipment and expense	(\$42,923)	(\$26,241)	(\$26,896)
<u>Total Costs – DSS</u>	<u>(\$241,690)</u>	<u>(\$266,668)</u>	<u>(\$269,250)</u>
FTE Change – DSS p. 6-9	Could exceed 3.4 FTE	Could exceed 3.4 FTE	Could exceed 3.4 FTE
<u>Costs – OA, ITSD/DSS (SA1) (\$454.1005) MACSS changes p. 6-9</u>	(\$8,442)	\$0	\$0
<u>Revenue Loss - \$143.081 Tax Credit for S-Corporation p. 9-11</u>	(Unknown – could exceed \$250,000)	(Unknown – could exceed \$250,000)	(Unknown – could exceed \$250,000)

<u>FISCAL IMPACT – State Government (continued)</u>	FY 2023 (10 Mo.)	FY 2024	FY 2025
<u>Revenue Loss or Gain - §143.436 SALT Parity Act: Entity And Individual Tax Liability Paid</u> p. 11-18	Minimum Unknown to Minimum (Unknown)	Minimum Unknown to Minimum (Unknown)	Minimum Unknown to Minimum (Unknown)
<u>Loss – §407.475 DOR – if, with this bill, charitable organizations are no longer required to file certain tax returns</u> p. 4-5	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
ESTIMATED NET EFFECT ON GENERAL REVENUE	<u>Could exceed (\$3,312,762)</u>	<u>Could exceed (\$3,339,263)</u>	<u>Could exceed (\$3,342,458)</u>
Estimated Net FTE Change on General Revenue	Could exceed 4.4 FTE	Could exceed 4.4 FTE	Could exceed 4.4 FTE
MISSOURI DISASTER FUND (0663)			
<u>Transfer In – §44.032 - from General Revenue</u> p. (3-4)	\$0 to Unknown, Greater than \$250,000	\$0 to Unknown, Greater than \$250,000	\$0 to Unknown, Greater than \$250,000
<u>Cost – §44.032 SEMA - Disaster damages</u> p. (3-4)	<u>\$0 to (Unknown, Greater than \$250,000)</u>	<u>\$0 to (Unknown, Greater than \$250,000)</u>	<u>\$0 to (Unknown, Greater than \$250,000)</u>
ESTIMATED NET EFFECT ON THE MISSOURI DISASTER FUND	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

<u>FISCAL IMPACT – State Government (continued)</u>	FY 2023 (10 Mo.)	FY 2024	FY 2025
FEDERAL FUNDS			
<u>Income - DSS (§454.1005) (SA1)</u>	Could exceed...	Could exceed...	Could exceed...
Increase in program reimbursements	\$469,163	\$517,649	\$522,662
<u>Income - OA, ITSD/DSS (SA1) (§454.1005) MACSS changes</u>	\$16,387	\$0	\$0
<u>Costs - DSS (§454.1005) (SA1)</u>			
Personal service (DLS)	(\$95,517)	(\$115,767)	(\$116,924)
Personal service (FSD)	(\$136,287)	(\$165,179)	(\$166,831)
Fringe benefits	(\$154,037)	(\$185,766)	(\$186,696)
Equipment and expense	(\$83,322)	(\$50,937)	(\$52,211)
Total Costs - DSS	(\$469,163)	(\$517,649)	(\$522,662)
FTE Change – DSS p. 6-9	Could exceed 6.6 FTE	Could exceed 6.6 FTE	Could exceed 6.6 FTE
<u>Costs – OA, ITSD/DSS (SA1) (§454.1005) MACSS changes p. 6-9</u>	(\$16,387)	\$0	\$0
ESTIMATED NET EFFECT ON FEDERAL FUNDS	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Estimated Net FTE Change on Federal Funds	Could exceed 6.6 FTE	Could exceed 6.6 FTE	Could exceed 6.6 FTE

<u>FISCAL IMPACT – Local Government</u>	FY 2023 (10 Mo.)	FY 2024	FY 2025
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT – Small Business

Certain small businesses may be impacted by this proposal.

FISCAL DESCRIPTION

This act modifies provisions relating to business entities.

MISSOURI DISASTER FUND

This act allows rural electric cooperatives, as defined in the act, to receive funds from the Missouri Disaster Fund. (Section 44.032)

CHARITABLE ORGANIZATIONS

Under this act, the state shall not impose any additional annual filing or reporting requirements on a charitable organization that are more stringent, restrictive, or expansive than the report already required to be submitted to the Attorney General's office unless such filing or report is specifically required by federal law.

This act shall not apply to labor organizations, state grants or contracts, or investigations by the Attorney General of charitable organizations as set forth in state statute. (Section 407.475)

FAITH WITHOUT FEAR ACT

This act provides that the Department of Public Safety shall distribute to any not-for-profit organization a one-time grant for the purpose of enhancing physical security. Each not-for-profit organization shall receive no more than one grant pursuant to this act and grants shall not exceed 75% of the total cost of the security enhancement. Additionally, no more than \$25 million shall be distributed pursuant to this act and no more than \$2.5 million per any fiscal year. Finally, no more than \$50,000 shall be distributed to any one not-for-profit organization annually.

The Department of Public Safety shall create an on-line application form as part of its website which shall be the sole means of applying for grants under this act. The not-for-profit organization shall submit documents with its application showing how it plans to enhance security, including how it will cover the remaining 25% of the cost for its security not covered by the grant.

The Department shall supervise the processing of such applications, provided that applications shall be accepted beginning October 1, 2022. The Department shall select qualified recipients to receive grants and any not-for-profit organization who receives a grant shall submit documentation to the Department no later than one year after the distribution of the grant showing how the funds were spent. Grant funds shall only be used for locations in Missouri and employees residing in Missouri.

HEARINGS REGARDING SUSPENSION OF LICNESES FOR FAILURE TO PAY CHILD SUPPORT

This act provides that the hearings to determine whether the suspension of a business, occupational, professional, recreational, or other license is appropriate when an obligor is not in compliance with a child support order shall comply with due process and shall consider all relevant factors, including the obligor's current and past ability to pay the support, his or her need for transportation, and his or her need for the license for continued employment.

The court or the Director of the Family Support Division shall consider and issue written findings of fact and conclusions of law within 30 days of the hearing. If the court or the Director, after the hearing, determines that the obligor has not made the required payments for good cause, then the court or Director shall not issue an order suspending the license or, if an order is in place, shall stay such order (§454.1005).

S CORP TAX CREDIT

Current law authorizes a tax credit for the amount of income tax paid to another state for income that is also taxed in this state. This act allows such tax credit to be claimed by resident shareholders of an S corporation for the amount of tax imposed by this state on income earned in another state but not taxed by such state. (Section 143.081)

SALT PARITY ACT

This act establishes the "SALT Parity Act".

Current law provides that, in lieu of a corporate income tax on a pass-through entity, shareholders of such pass-through entity shall pay income tax on the shareholder's pro rata share of the entity's income attributable to Missouri. For tax years ending on or after December 31, 2022, this act allows the pass-through entity to elect to pay the tax, as described in the act. The tax shall be equal to the sum of each member's income and loss items, as described in federal law, reduced by a deduction allowed for qualified business income, as described in federal law, and modified by current provisions of state law relating to the taxation of pass-through entities, with such sum multiplied by the highest rate of tax in effect for the state personal income tax.

A nonresident who is a member, as defined in the act, shall not be required to file a tax return for a tax year if, for such tax year, the only income derived from this state for such member is from one or more affected business entities, as defined in the act, that has elected to pay the tax imposed under this act.

Each partnership and S Corporation shall report to each of its members, for each tax year, the member's pro rata share of the tax imposed by this act.

Each taxpayer, including part-year residents, that is subject to the state personal income tax shall be allowed a tax credit if such taxpayer is a member of an affected business entity that elects to pay the tax imposed by this act. The tax credit shall be equal to the taxpayer's pro rata share of the tax paid under this act. Such tax credit shall be nonrefundable, but may be carried forward to subsequent tax years, except that a tax credit authorized for taxes paid to other states shall not be carried forward.

Each corporation that is subject to the state corporate income tax shall be allowed a tax credit if such corporation is a member of an affected business entity that elects to pay the tax imposed by this act. The tax credit shall be equal to the corporation's pro rata share of the tax paid under this act. Such tax credit shall be nonrefundable, but may be carried forward to subsequent tax years.

Partnerships and S corporations may elect to pay the tax imposed under this act by submitting a form to be provided by the Department of Revenue. A separate election shall be made for each tax year. Such election shall be signed either by each member of the electing entity, or by any officer, manager, or member of the electing entity who is authorized to make such election and who attests to having such authorization under penalty of perjury.

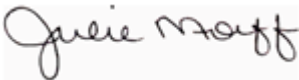
An affected business entity shall designate an affected business entity representative for the tax year to act on behalf of the affected business entity in any action required or permitted to be taken by an affected business entity pursuant to this act, a proceeding to protest taxes, an appeal to the Administrative Hearing Commission, or review by the judiciary with respect to such action, and the affected business entity's members shall be bound by those actions. (Section 143.436)

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

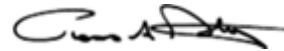
SOURCES OF INFORMATION

Department of Commerce and Insurance
Department of Economic Development
Department of Natural Resources
Department of Public Safety – State Emergency Management Agency
Department of Revenue
Joint Committee on Administrative Rules
Missouri Department of Conservation
Missouri Department of Transportation
Office of Administration
Office of Administration - Budget and Planning
Office of the Secretary of State
Attorney General's Office
Department of Corrections
Department of Labor and Industrial Relations

Department of Elementary and Secondary Education
Department of Higher Education and Workforce Development
Department of Health and Senior Services
Department of Mental Health
Department of Public Safety
Department of Social Services
Missouri Department of Agriculture
Office of the State Courts Administrator
Office of Administration - Administrative Hearing Commission
City of Kanas City
City of Springfield
Missouri State University
University of Missouri
Hughesville Water/Wastewater
Little Blue Valley Sewer District
Metropolitan St. Louis Sewer District
South River Drainage District
Wayne County PWSD #2
Hancock Street Light District



Julie Morff
Director
April 14, 2022



Ross Strobe
Assistant Director
April 14, 2022