

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0466S.02I
 Bill No.: SB 100
 Subject: State Treasurer; Taxation and Revenue - Income; Property, Real and Personal
 Type: Original
 Date: January 24, 2023

Bill Summary: This proposal creates and modifies provisions relating to gold and silver.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2024	FY 2025	FY 2026
General Revenue*	(Unknown)	(Unknown)	(Unknown)
Total Estimated Net Effect on General Revenue	Unknown to (Unknown)	Unknown to (Unknown)	Unknown to (Unknown)

*Oversight assumes the negative unknown (from the deduction of capital gains from sale of gold and/or silver from MAGI, the establishment of the Missouri Bullion Depository within the Office of the State Treasurer, and the removal of gold and silver from being seized) would exceed the \$250,000 threshold.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2024	FY 2025	FY 2026
Budget Reserve Fund (0100)	Unknown to (Unknown)	Unknown to (Unknown)	Unknown to (Unknown)
Total Estimated Net Effect on <u>Other</u> State Funds	Unknown to (Unknown)	Unknown to (Unknown)	Unknown to (Unknown)

*Oversight assumes the positive or negative unknown (from the requirement of investing 1% of the Budget Reserve Fund in gold and/or silver) could reach the \$250,000 threshold

Numbers within parentheses: () indicate costs or losses.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2024	FY 2025	FY 2026
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2024	FY 2025	FY 2026
Total Estimated Net Effect on FTE	0	0	0

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 2024	FY 2025	FY 2026
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Section 30.266 – STO Budget Reserve Fund Investment

Officials from **the Office of the State Treasurer (STO)** state investments made by the Missouri State Treasurer’s Office are determined by the state constitution, not by statute. The fiscal impact to the State Treasurer’s Office would be unknown.

Officials from the **Office of Administration - Budget and Planning (B&P)** state this section requires the State Treasurer’s Office to invest at least 1% of the Budget Reserve Fund in gold or silver. B&P defers to STO for the potential impact of this provision.

Officials from the **Department of Revenue (DOR)** state this allows the STO to invest in gold or silver. This will not fiscally impact DOR.

Depending on how the market for gold and/or silver performs, **Oversight** will assume an unknown gain or an unknown loss of funding to the General Revenue Fund for the new requirement of one percent of the Budget Reserve Fund (0100) to be invested in gold or silver. The balance of the Budget Reserve Fund at fiscal year-end (June 30, 2022) was \$772,139,203. The balance of the fund at December 31, 2022 was \$880,194,125. Therefore, for example, a 1% difference in the return on investment for the year between current investments vehicles used by the STO and other options such as gold and silver would be roughly \$88,000 ($\$880,194,125 \times 1\%$ of the funds to be invested in gold or silver \times 1% difference in the rate of return for example), positive or negative. For fiscal note purposes, Oversight will reflect an unknown gain or an unknown loss of investment principal and income. According to Article IV Section 27(a) of the Missouri Constitution, interest earned on funds in the Budget Reserve Fund shall be credited back to the Budget Reserve Fund.

Oversight notes, as of December 31, 2022, the STO reported having roughly \$16.5 billion in cash and investments.

Section 143.121 Capital Gains and MAGI

DOR notes this requires that a taxpayer subtract the amount of capital gain on the sale or exchange of gold or silver from their Missouri adjusted gross income if it was reported in their federal adjusted gross income. The Department is unable to determine how many people report capital gains on gold or silver or how much would be subtracted from their Missouri adjusted gross income. Should subtracting this capital gain decrease a taxpayer’s adjusted gross income,

then this could result in a loss of revenue to the state. The impact is unknown but could be significant, over \$1 million.

This will require an additional line be added to the MO-A form, information would need to be added to their website and this would need to be added to their individual income tax computer system. These costs are estimated at \$7,193.

B&P notes this section would allow Missouri taxpayers to subtract any capital gains from the sale or exchange of gold and/or silver from the taxpayer's Missouri Adjusted Gross Income (MAGI), if such capital gains were included in the taxpayer's Federal Adjusted Gross Income (FAGI), beginning with tax year 2024.

B&P is unable to determine how the amount of capital gains claimed by Missouri taxpayers. However, the total amount of capital gains claimed during tax year 2020, the most recent complete year available, was \$6,397,177,469. If even 1% of the capital gains resulted from the sale or exchange of gold and/or silver, B&P estimates that the loss to GR would have been \$3,166,603 ($\$6,397,177,469 \times 1\% \times 4.95\%$). Therefore, B&P estimates that this provision may have an unknown, but significant, loss to TSR and GR beginning with FY25 (for tax year 2024 capital gains).

Oversight will reflect an unknown loss, potentially significant, to the General Revenue Fund from this section.

Section 408.010 Legal Tender and Section 408.012 Making Coins

DOR notes Section 408.101 allows gold and silver coins to serve as legal tender of the U.S. for payment of debts. It should be noted that they are already considered legal tender, though not widely used in financial transactions.

This requires that any costs to determine the weight or purity of any gold or silver received would be borne by DOR when a taxpayer uses it as payment. This could result in additional costs to DOR. Since DOR is unable to predict how common payment with gold or silver would occur it is unable to estimate a fiscal impact. DOR assumes an unknown negative impact.

DOR notes Section 408.012 would allow taxpayers to produce gold and silver coins. While it is currently legal to produce your own coins those coins cannot be used as currency. Under 18 U.S. § 486, it's a criminal offense to make or pass any metal coins "intended for use as current money, whether in the resemblance of coins of the United States or of foreign countries, or of original design." An offense is punishable with up to 5 years in prison, a fine, or both.

If the intention of this proposal is to allow people to produce coins they can use as legal tender, it appears that intention is in direct conflict with federal law. DOR assumes no fiscal impact from this proposal.

B&P notes Section 408.010 would allow gold and silver coinage to be legal tender in Missouri. Section 407.012 would allow individuals and businesses to produce and sell their own gold and/or silver coins.

B&P notes that certain gold and silver coins are already considered legal tender under Federal law. However, Federal law prohibits the use of privately created gold and/or silver coins from being used as currency. Therefore, it is unclear how the changes to these two sections would work together.

Oversight will reflect a potential cost to various state agencies that accept payments – if they are required to verify the weight and purity of any gold or silver coinage used as currency. For simplicity, Oversight will only reflect this potential cost in the General Revenue Fund

Section 408.014 STO & Missouri Bullion Depository

DOR notes this provision creates the Missouri Bullion Depository with the STO office. DOR defers to them for fiscal impact.

B&P state this section would create the Missouri Bullion Depository within the State Treasurer's Office (STO). B&P defers to STO for the potential impact of this provision.

Oversight notes the STO did not address this section in their response to the bill and have not responded to our subsequent request to do so. Oversight will assume an unknown amount of costs to the STO for establishing and maintaining the Missouri Bullion Depository.

Section 513.090 Gold & Silver not seized

DOR notes this provision removes gold and silver from being seized by the courts. If a taxpayer owes DOR back taxes, they would have the opportunity to move all their income to gold or silver and prohibit DOR from being able to collect the back taxes owed. DOR is unable to determine how this will impede collection efforts. The impact is negative but unknown.

B&P notes this section would prohibit the seizure of gold and silver coins by any court. B&P notes that this would allow individuals and businesses to store or move assets into gold and/or silver in order to avoid having assets seized. This would allow taxpayers to move their assets to gold and/or silver coins in order to avoid paying back taxes to the state. Therefore, this provision may have a negative unknown impact to TSR, GR, as well as other state and local funds.

Bill as a whole:

Officials from the **Office of Administration** assume the proposal would not fiscally impact their agency.

Rule Promulgation

Officials from the **Joint Committee on Administrative Rules** assume this proposal is not anticipated to cause a fiscal impact beyond its current appropriation.

Officials from the **Office of the Secretary of State (SOS)** note many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the SOS for Administrative Rules is less than \$5,000. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, the SOS also recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the office can sustain with its core budget. Therefore, the SOS reserves the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

<u>FISCAL IMPACT – State Government</u>	FY 2024 (10 Mo.)	FY 2025	FY 2026
GENERAL REVENUE			
<u>Loss</u> – DOR §143.121 – capital gains on the exchange of gold and silver now a deduction for MAGI calculation	(Unknown – potentially significant)	(Unknown – potentially significant)	(Unknown – potentially significant)
<u>Costs</u> – Various State Agencies - §408.010 – potential cost to verify the weight and purity of any gold or silver coinage received as payment	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
<u>Costs</u> – STO – §408.014 - develop and maintain the Missouri Bullion Depository (includes unknown FTE)	(Unknown)	(Unknown)	(Unknown)
<u>Loss</u> – DOR §513.090 – removal of gold and silver coins as seizable assets	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
ESTIMATED NET EFFECT TO GENERAL REVENUE	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>

<u>FISCAL IMPACT – State Government</u> (continued)	FY 2024 (10 Mo.)	FY 2025	FY 2026
BUDGET RESERVE FUND (0100)			
<u>Income/Loss</u> - \$30.266 – STO must invest at least 1% of Budget Reserve Fund in gold and/or silver	Unknown or <u>(Unknown)</u>	Unknown or <u>(Unknown)</u>	Unknown or <u>(Unknown)</u>
ESTIMATED NET EFFECT TO THE BUDGET RESERVE FUND (0100)	Unknown or <u>(Unknown)</u>	Unknown or <u>(Unknown)</u>	Unknown or <u>(Unknown)</u>

<u>FISCAL IMPACT – Local Government</u>	FY 2024 (10 Mo.)	FY 2025	FY 2026
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT – Small Business

Small businesses that invest in gold and silver could be impacted by this proposal.

FISCAL DESCRIPTION

This act modifies and creates new provisions relating to bullion, or gold and silver.

INVESTMENT OF PUBLIC FUNDS IN GOLD AND SILVER

(Section 30.266)

The act requires the State Treasurer to invest not less than 1% of the funds held in the Budget Reserve Fund in gold and silver.

INCOME TAXATION ON GOLD AND SILVER

(Section 143.121)

Current law exempts all purchases of bullion and investment coins from all state and local sales taxes. This act additionally exempts from state income tax the portion of capital gain on the sale or exchange of gold and silver that are otherwise included in the taxpayer's federal adjusted gross income.

GOLD AND SILVER AS LEGAL TENDER

(Section 408.010)

The act declares that gold and silver shall be accepted as legal tender, at their par value, and shall be receivable in payment of all debts, public and private, contracted for in the state of Missouri. Costs incurred in the course of verification of the weight and purity of any gold or silver during any such transaction shall be borne by the receiving entity. No person or entity shall be required to use gold or silver issued by the federal government in the payment of any debt. Nothing in this act shall prohibit the use of Federal Reserve notes in the payment of any debt. Except as otherwise provided in certain criminal cases, under no circumstance shall the state of Missouri or any department, agency, court, political subdivision, or instrumentality thereof seize from any person any bullion that is owned by such person.

PRODUCTION AND SALE OF GOLD AND SILVER COINS

(Section 408.012)

The act permits any person or entity to produce and sell gold or silver coins in this state, provided the coins are labeled in a clear and intelligible manner noting the weight and purity of the coin and provided further that the person or entity has complied with current provisions of law governing the sale of precious metals.

MISSOURI BULLION DEPOSITORY

(Section 408.014)

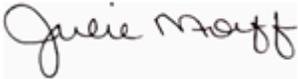
The act creates the Missouri Bullion Depository. The Depository is established as an agency within the office of the State Treasurer for the purpose of serving as the custodian, guardian, and administrator of certain bullion and specie that may be transferred to or otherwise acquired by this state or any department, agency, or political subdivision thereof.

The Depository is permitted to receive a deposit of bullion or specie, as such terms are defined in the act, from or on behalf of a person acting in the person's own right, as trustee, or in another fiduciary capacity, in accordance with rules adopted by the Treasurer, as outlined in the act. The Depository shall keep and maintain records of the bullion and specie that each person deposits. The Treasurer shall adopt standards by which the quantities of bullion and specie deposited are credited to a depositor's depository account by reference to the particular form in which the metals were deposited. The standards must conform to applicable national and international standards of weights and measures. The Treasurer may, if it is in the public interest, restrict the forms in which deposits may be made.

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

Office of Administration - Budget and Planning
Department of Revenue
Office of Administration
Office of the State Treasurer
Joint Committee on Administrative Rules
Office of the Secretary of State



Julie Morff
Director
January 24, 2023



Ross Strobe
Assistant Director
January 24, 2023