

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0466S.05C
 Bill No.: SCS for SB 100
 Subject: Treasurer, State; Taxation and Revenue - Income; Property, Real and Personal
 Type: Original
 Date: February 6, 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*	(Could exceed \$219,639)	(Could substantially exceed \$101,074)	(Could substantially exceed \$102,784)
Total Estimated Net Effect on General Revenue	(Could exceed \$219,639)	(Could substantially exceed \$101,074)	(Could substantially exceed \$102,784)

*Oversight notes the stated amounts above (\$219,639 in FY 2024, and roughly \$101,000 per year thereafter) only reflect the additional FTE costs for the DOR to hire an assayer to verify “the weight and purity of any gold or silver coinage during any such transaction” as the state shall now accept gold and silver coins as payment. Any other state department that accepts payments may also incur similar costs. Oversight does not have enough information to estimate a loss to the state regarding §143.121 (deduction of capital gains from sale of gold and/or silver from MAGI); however estimates from the Department of Revenue and the Office of Administration - Budget note this loss is unknown but significant.

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 unknown impact from the requirement of investing 1% of the Budget Reserve Fund in gold and/or silver, could reach the \$250,000 threshold, positive or negative depending upon the market fluctuation of such metals.
 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
General Revenue*	Could exceed 1 FTE	Could exceed 1 FTE	Could exceed 1 FTE
Total Estimated Net Effect on FTE	Could exceed 1 FTE	Could exceed 1 FTE	Could exceed 1 FTE

*DOR assumed the need for an additional FTE Assayer to verify “the weight and purity of any gold or silver coinage during any such transaction” as the state shall now accept gold and silver coins as payment. Other state departments that accept payments may also find the need for additional 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 2024	FY 2025	FY 2026
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Section 30.266 – STO Budget Reserve Fund Investment

In response to a previous version, officials from **the Office of the State Treasurer (STO)** stated 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 January 31, 2023 was \$881,844,130. 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 ($\$881,844,130 \times 1\%$ 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

DOR notes this provision allows gold and silver coins to serve as legal tender of the U.S. for payment of debts. It should be noted that if they are minted by the U.S. Mint they are already considered legal tender, though not widely used in financial transactions. However, if a person makes the coinage themselves, that is not considered legal tender and would be a violation of 18 U.S. § 486.

This proposal will require DOR to accept gold and silver coinage as payment of all taxes or obligations. For purposes of the fiscal note, DOR will assume that it only must accept gold and silver coinage that is legal tender. This proposal would require the Department to bear the cost of the verification of the weight and purity of the gold or silver upon acceptance. It should be noted that verification of gold and silver is done by an Assayer. DOR does not currently have one on staff. Research indicates their average salary is around \$61,000 annually and currently there are only 4 working in Missouri at this time. DOR assumes they will need to have one full-time in their headquarters building where the majority of all payments are received.

It should be noted that gold and silver are commodities that change in value daily like stocks on the stock exchange. This proposal will require DOR to accept gold and silver coinage at its spot price plus market premium rather than at its par value (value printed on the coin). The market premium on gold adds an additional 2% to 3.75% to the spot price. The par value of gold today (2/2/2023) is \$44.22 per ounce while its spot price was trading for \$1,932. Once the price is determined by the time DOR is able to process the payments and get them to the bank to convert to dollars, the spot price could have changed again.

The Department is unable to determine how many people will want to pay with gold and silver rather than dollar bills. At a minimum, DOR will need coin counters with counterfeit detection devices, a larger safe to store the gold and silver until bank transfer and additional security features for their room where the money is accepted. Additionally, security services may be needed if a large volume of gold and silver is received. The impact from the equipment upgrades could exceed \$100,000 and the impact from the acceptance of gold or silver is unknown to general revenue, total state revenue and numerous other state and local funds.

This proposal in 408.010.4 prevents all state and local governmental bodies from seizing any gold or silver that is owned by a person. 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 negatively unknown.

B&P notes section 408.010 would allow gold and silver coinage to be legal tender in Missouri. 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.

In addition, state agencies would be required accept gold and silver at their spot price plus market premium, rather than at their par value. B&P notes that the spot price changes daily, which in turn impacts the market premium. B&P further notes that under current law the par value for gold is \$42.22 per ounce. While the spot price for gold on 2/2/2023 was \$1,932.00 and the spot price for silver was \$0.76 per gram. In addition, the market premium for gold is currently 2% - 3.75%. This proposal does not specify which rate the state should use when calculating a dollar value for the market premium. Therefore, on 2/2/2023 the state would have to accept an ounce of gold for \$ 1,070.64 to \$2,004.45 per ounce. B&P notes that because the spot price changes daily, it is possible that an agency could accept a certain dollar value of gold and/or silver one day, but receive a different amount when those assets were converted to dollars. Therefore, this provision may have an unknown impact on TSR, GR, and other state funds.

Subsection 408.010.4 prevents all state and local government bodies and courts from seizing any gold and silver held by a person. 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.

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 513.090 Gold & Silver not seized

DOR notes this provision removes gold and silver from being assets that can be seized by the courts. However, in Section 513.090.2 it states that DOR can seize gold and silver coin for payment of back taxes. This section is in conflict with Section 408.010.4 above that prohibits DOR from seizing gold and silver.

It appears this proposal is trying to prohibit DOR from seizing any gold or silver not held in a coin format (such as bars, jewelry, etc.). While it appears to allow DOR to seize any gold or silver coins. This proposal is unclear whether the seized coins could include privately minted coins, which if printed to be currency is a violation of 18 U.S. § 486 making it a federal crime. It is unclear the fiscal impact these two conflicting provisions would have on DOR.

B&P notes this section would also 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.

However, subsection 513.090.2 would allow the seizure of gold and silver to cover delinquent taxes. B&P notes that this language conflicts with the proposed language under Subsection 408.010.4, which would prevent the seizure of gold and silver for any reason. B&P is unsure how this conflict would be resolved.

Bill as a whole:

In response to a previous version, officials from the **Office of Administration** assumed the proposal would not fiscally impact their agency.

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

In response to a previous version, officials from the **Office of the Secretary of State (SOS)** noted 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	\$0	(Unknown – potentially significant)	(Unknown – potentially significant)
<u>Costs</u> – DOR §408.010			
Personal Service	(\$50,833)	(\$62,220)	(\$63,464)
Fringe Benefits	(\$31,532)	(\$38,284)	(\$38,738)
Expense & Equipment	(\$17,274)	(\$570)	(\$582)
Security items & materials	(\$120,000)	(\$0)	(\$0)
<u>Total Costs</u>	(\$219,639)	(\$101,074)	(\$102,784)
FTE Change	1 FTE	1 FTE	1 FTE
<u>Costs</u> – Various other 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>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>(Could exceed \$219,639)</u>	<u>(Could substantially exceed \$101,074)</u>	<u>(Could substantially exceed \$102,784)</u>
Estimated Net FTE Change on General Revenue	Could exceed 1 FTE	Could exceed 1 FTE	Could exceed 1 FTE

<u>FISCAL IMPACT – State Government</u> <u>(continued)</u>	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.

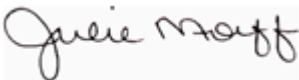
Production and Sale of Gold and Silver Coins (Section 408.012)

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.

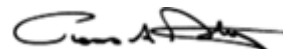
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

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



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February 6, 2023



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