

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 1312S.02I  
 Bill No.: SB 453  
 Subject: Business and Commerce; Cities, Towns and Villages; Counties; Liability; State  
 Departments; Tax Credits; Taxation and Revenue - General; Taxation and  
 Revenue - Sales and Use  
 Type: Original  
 Date: March 1, 2021

Bill Summary: This proposal establishes the Stop Socialism Act which creates a cause of action against a public body that offers a competitive service to the economic detriment of a person offering the same competitive service.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
General Revenue	(Unknown)	(Unknown)	(Unknown)
<b>Total Estimated Net Effect on General Revenue</b>	<b>(Unknown)</b>	<b>(Unknown)</b>	<b>(Unknown)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Multiple State Funds	(Unknown)	(Unknown)	(Unknown)
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>(Unknown)</b>	<b>(Unknown)</b>	<b>(Unknown)</b>

\*Oversight assumes the potential loss to the state could exceed \$250,000, depending upon action taken by competitive service businesses and rulings by the courts.

Numbers within parentheses: () indicate costs or losses.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
<b>FUND AFFECTED</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>
<b>Total Estimated Net Effect on FTE</b>	<b>0</b>	<b>0</b>	<b>0</b>

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.

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>
<b>Local Government</b>	<b>(Unknown)</b>	<b>(Unknown)</b>	<b>(Unknown)</b>

## FISCAL ANALYSIS

### ASSUMPTION

The following agencies defer to the Office of Administration's Division of Budget and Planning for a response: **Department of Commerce and Insurance**, the **Department of Elementary and Secondary Education**, the **Department of Higher Education and Workforce Development**, the **Department of Mental Health**, the **Department of Natural Resources**, the **Department of Corrections**, the **Department of Labor and Industrial Relations**, the **Department of Public Safety**, the **Department of Social Services**, the **Missouri Department of Agriculture**, the **Missouri Department of Conservation**, the **Missouri Department of Transportation** and the **Office of Administration**.

Officials at the **Office of Administration's Division of Budget and Planning** assume the bill restricts bringing an action against public bodies if the plaintiff began providing a competitive service after the public body began providing the service or if the public body demonstrates there is an overriding or compelling public interest served by the competitive service. An overriding or compelling public interest includes, but is not limited to, criminal justice system activities and educational institution provided services.

Until actual litigation begins, this proposal has no impact. Through litigation, the proposal may impact public entities to the extent that revenues from currently provided public services decrease or cease as the result of an injunction.

This proposal's impact could be far reaching in that courts could enjoin public entities from beginning to provide services even if the private resources are insufficient or less efficient in meeting the public need. This could impact the public provision of utilities, healthcare (including public hospitals), public safety services, mental healthcare services, and public transportation programs. The bill also provides no specific carve-outs for sanitation, recycling, conference room and park rentals, etc.

The bill does not define the potential public entity defense of an "overriding or compelling public interest". Generally, courts look for a compelling state or government interest when examining limitations on constitutional rights such as speech or religion.

The courts examine these restrictions under a standard of "strict scrutiny" to see if they are narrowly-tailored to effectively further an overriding or compelling governmental interest. The government would then have to show that its actions are the least intrusive means of achieving the asserted compelling state interest. Consequently, this undefined term raises the likelihood of future state costs.

It is also unknown when a court may find that a change in currently provided services may be considered a new entry into the marketplace and thus subject to injunction.

If a court finds in the plaintiff's favor, the plaintiff may apply for credit or refunds from DOR related to taxes paid by the plaintiff for the sale of any competitive service. The bill also provides a similar ability to exempt the plaintiff from local sales tax laws. These provisions could reduce Total State Revenue by an unknown amount.

Officials at the **Office of the State Treasurer (STO)** assume a cost of \$0 to unknown for this proposal. The proposal is unclear as the passage of the bill would encourage lawsuits that directly impact the STO.

Officials from the **Department of Revenue** assume this proposal establishes a proposal that allows private individuals or businesses ("competitive services") to sue in court if a government provides a competitive service, unless there is an overriding compelling interest for the government to do so. If the private individual or business wins a judgement against the government then the judgment would be exempt from the computation of the tax levied, assessed or payable under the local sales tax law. An impact from this proposal is unknown. There would be no anticipated impact administratively.

#### 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** notes many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The Secretary of State's office 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 Secretary of State's office for Administrative Rules is less than \$5,000. The Secretary of State's office recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, they also recognize 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 our office can sustain with our core budget. Therefore, they reserve 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.

**Oversight** assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process.

**Oversight** assumes certain state agencies could be impacted if private entities would take over the work that was done by the state agency causing a decrease not only to the General Revenue Fund, but also multiple state funds depending on what cause of action lawsuit is filed. Therefore, Oversight will reflect a potential negative unknown cost to the General Revenue Fund and to multiple state agency funds for this proposal.

Officials from the **City of Kansas City** assume this proposal could have a large negative fiscal impact on Kansas City because Kansas City provides water services to its citizens. The legislation in 537.048.3 does say that the section does not apply if the public body was providing the service first, or if the public body demonstrates an overriding or compelling public interest served by its providing the service, however, this appears to shift the burden of proof to the public body which means costly litigation, administration, and staff time. The legislation specifically says that services associated with the criminal justice system and educational institutions meet the overriding compelling interest threshold but does not specifically address municipal utilities. If a more definite exemption were provided, such as “Utility services provided by municipalities are exempt from this provision”, then this would avoid a negative fiscal impact for Kansas City.

The damages component to the legislation could be very high for a municipal water service such as provided by Kansas City if a business made a successful case against a municipal utility. The legislation equates the damages to “revenue” without reference to any qualifiers/modifiers such as “gross” or “net” or any other.

Officials from the **City of Springfield** anticipate a negative fiscal impact of an unknown amount from this bill, since the City would face additional costs of litigation and the loss of fees, such as fees paid to the Parks Department.

Officials from the **Crawford County 911 Board** assume this proposal could cause a financial impact for any central emergency dispatch center if a private company wanted to start a 911 dispatch company.

Officials from the **Hurley R-I School District** assume this proposal would have a major fiscal impact on public school districts as noted in the proposal.

Officials at the **University of Central Missouri (UCM)** estimate a negative impact from lost revenue from this proposal. As it is written, very broadly, the amount is indeterminate at this time.

In response to similar legislation from 2019, (SB 122), officials at the **City of Fulton** assumed this proposal would have a devastating effect on the city of Fulton. The City supplies utilities to our community, which would mean the City could not compete with AMEREN UE for gas and electricity. Also the City provides trash pick-up for citizens and the City could not compete with any private trash provider. The City’s Parks and Recreation Department will not be able to provide work out equipment that is also provided by a private firm within the community and that Fulton would have to close its golf course as it would compete with private courses. The City would not be able to provide Wastewater treatment if a private firm wants to compete. It is estimated that the City’s Utilities departments and golf course generate approximately 28 to 30 Million Dollars annually. The City of Fulton has been in the Utility business since 1895, and has in excess of 80 Million Dollars in investment in these services.

In response to similar legislation from 2019, (SB 122), officials at the **Joplin Police Department** assumed a negative unknown costs from this proposal. This proposal could mean more lawsuits that the Department would have to defend and could significantly impact some of the services that the Department currently provides.

Officials at the **Office of the State Courts Administrator**, the **Office of the Governor**, the **Office of the Lieutenant Governor**, the **State Auditor's Office**, the **Missouri House of Representatives**, the **Joint Committee on Education**, the **Oversight Division**, the **EPARC**, the **Missouri Higher Education Loan Authority**, the **Missouri Ethics Commission**, **Capitol Police**, the **Office of the State Public Defender**, the **Missouri National Guard**, the **Missouri State Employee Retirement System**, the **Joint Committee on Public Employee Retirement**, the **Missouri Gaming Commission**, the **Missouri Division of Alcohol and Tobacco Control**, the **State Tax Commission**, the **State Emergency Management Agency**, the **Office of Administration's Administrative Hearing Commission**, the **Missouri Senate**, the **Missouri Consolidated Health Care Plan**, the **Office of Prosecution Services**, the **Department of Public Safety's Division of Fire Safety**, **Joint Committee on Legislative Research**, the **Missouri Lottery**, the **Attorney General's Office**, the **Department of Economic Development**, the **Department of Health and Senior Services**, the **Missouri Highway Patrol**, the **MoDOT & Patrol Employees' Retirement System**, the **Petroleum Storage Tank Insurance Fund**, the **University of Missouri System** and the **Missouri Veterans Commission** each assume no fiscal impact to their respective agencies from this proposal. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact on the fiscal note for these agencies.

Officials from the **City of Claycomo**, the **City of Corder**, the **City of Hughesville**, the **City of St. Louis**, the **Ellisville Police Department**, the **Kansas City Police Department**, the **St. Joseph Police Department**, the **St. Louis County Police Department**, **Missouri State University** and the **State Technical College of Missouri** each assume the proposal 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.

In response to similar legislation from 2019, (SB 122), officials at the **St. Louis County Board of Election Commissioners**, the **Jackson County Board of Election Commissioners**, the **Platte County Board of Election Commissioners**, the **Jackson County Sheriff's Office**, the **Springfield Police Department**, the **St. Louis County Department of Justice Services** and **Springfield Public Schools** each assumed no fiscal impact to their respective entities from this proposal.

**Oversight** only reflects the responses that we have received from state agencies and political subdivisions; however, other cities, counties, colleges, universities, schools, local law enforcement agencies, fire protection districts and ambulance districts were requested to respond to this proposed legislation but did not. A general listing of political subdivisions included in our database is available upon request.

<u>FISCAL IMPACT – State Government</u>	FY 2022 (10 Mo.)	FY 2023	FY 2024
<b>GENERAL REVENUE FUND</b>			
<u>Cost – increase in litigation costs for lawsuits on Stop Socialism Act and credit/refunds paid</u>	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
<b>ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND</b>	<b><u>(Unknown)</u></b>	<b><u>(Unknown)</u></b>	<b><u>(Unknown)</u></b>
<b>MULTIPLE STATE FUNDS</b>			
<u>Cost – increase in litigation costs for lawsuits on Stop Socialism Act and credit/refunds paid</u>	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
<b>ESTIMATED NET EFFECT ON MULTIPLE STATE FUNDS</b>	<b><u>(Unknown)</u></b>	<b><u>(Unknown)</u></b>	<b><u>(Unknown)</u></b>

<u>FISCAL IMPACT – Local Government</u>	FY 2022 (10 Mo.)	FY 2023	FY 2024
<b>LOCAL POLITICAL SUBDIVISIONS</b>			
<u>Cost – public services discontinued which could lead to increased cost to citizens and litigation costs and credit/refunds paid</u>	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
<b>ESTIMATED NET EFFECT ON LOCAL POLITICAL SUBDIVISIONS</b>	<b><u>(Unknown)</u></b>	<b><u>(Unknown)</u></b>	<b><u>(Unknown)</u></b>

### FISCAL IMPACT – Small Business

If litigation costs, the threat of litigation costs, or judicial order end the provision of current public services, small businesses could be impacted:

- Small businesses that provide goods or services as part of the provision of the public services could see reduced revenue.
- Small businesses that compete against the public services could see a reduction in competition and possible increase in business and revenue.
- Small businesses who rely on the enjoined public services could face an increase in costs.

### FISCAL DESCRIPTION

This act establishes the Stop Socialism Act. The act creates a cause of action by any person against a state or local public body if the public body provides, or offers to provide, a competitive service that is also provided by the person within the jurisdiction of the public body. The public body shall not be liable for such a cause of action if the person offered the competitive service after the public body. Additionally, the public body shall not be liable if there is an overriding or compelling public interest in the competitive service, which includes services of the criminal justice system and educational institutions.

After obtaining a judgment rendered against the public body, the person shall be entitled to a refund of taxes paid to the public body and the sale of any competitive service made by the person shall be exempted from sales tax.

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 Elementary and Secondary Education  
Department of Higher Education and Workforce Development  
Department of Mental Health  
Department of Natural Resources  
Department of Corrections  
Department of Labor and Industrial Relations  
Department of Public Safety  
Department of Social Services  
Missouri Department of Agriculture  
Missouri Department of Conservation  
Missouri Department of Transportation  
Office of Administration



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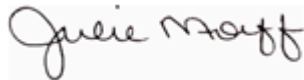
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Office of Administration - Budget and Planning  
Office of the State Treasurer  
Department of Revenue  
Joint Committee on Administrative Rules  
Office of the Secretary of State  
City of Kansas City  
City of Springfield  
Crawford County 911 Board  
Hurley R-I School  
University of Central Missouri  
City of Fulton  
Joplin Police Department  
Office of the State Courts Administrator  
Office of the Governor  
Office of the Lieutenant Governor  
State Auditor's Office  
Missouri House of Representatives  
Joint Committee on Education  
Oversight Division  
EPARC  
Missouri Higher Education Loan Authority  
Missouri Ethics Commission  
Capitol Police  
Office of the State Public Defender  
Missouri National Guard  
Missouri State Employee Retirement System  
Joint Committee on Public Employee Retirement  
Missouri Gaming Commission  
Missouri Division of Alcohol and Tobacco Control  
State Tax Commission  
State Emergency Management Agency  
Office of Administration's Administrative Hearing Commission  
Missouri Senate  
Missouri Consolidated Health Care Plan  
Office of Prosecution Services  
Department of Public Safety's Division of Fire Safety  
Joint Committee on Legislative Research  
Missouri Lottery  
Attorney General's Office  
Department of Economic Development  
Department of Health and Senior Services  
Missouri Highway Patrol  
MoDOT & Patrol Employees' Retirement System  
Petroleum Storage Tank Insurance Fund

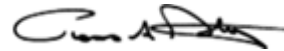
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University of Missouri System  
Missouri Veterans Commission  
City of Claycomo  
City of Corder  
City of Hughesville  
City of St. Louis  
Ellisville Police Department  
Kansas City Police Department  
St. Joseph Police Department  
St. Louis County Police Department  
Missouri State University  
State Technical College of Missouri  
St. Louis County Board of Election Commissioners  
Jackson County Board of Election Commissioners  
Platte County Board of Election Commissioners  
Jackson County Sheriff's Office  
Springfield Police Department  
St. Louis County Department of Justice Services  
Springfield Public Schools



Julie Morff  
Director  
March 1, 2021



Ross Strobe  
Assistant Director  
March 1, 2021