



TESTIMONY

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HOUSE JOINT RESOLUTION 126: COMMERCIAL SURCHARGES AND HANCOCK AMENDMENT REFORM

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Testimony Before the Missouri House Special Committee on Tax Reform

TO THE HONORABLE MEMBERS OF THE COMMITTEE

Thank you for the opportunity to testify today. My name is Elias Tsapelas, and I am the Director of State Budget and Fiscal Policy at the Show-Me Institute, a nonprofit, nonpartisan Missouri-based think tank that supports free-market solutions for state policy. The ideas presented here are my own. This testimony is intended to summarize research that the Show-Me Institute has conducted and reviewed regarding Missouri's Hancock Amendment and also its local commercial property tax surcharge (also known as the surtax).

COMMERCIAL SURCHARGE

In 1985, Missouri eliminated the merchants' and manufacturers' inventory tax, replacing it with a surcharge on commercial property. At

the time, it was a good idea to base the tax on the more predictable and easily forecasted value of land and property, rather than ever-changing inventory. However, when this change to the constitution was enacted, some systemic quirks were also born. The law stated that the new commercial surcharge rate, which every county calculated individually at a rate that would replace the lost inventory taxes, would not roll back as assessments increased, like most other property tax rates do. Furthermore, although that original surcharge rate could never be increased, it could also only be lowered through a vote of the people—not by the local officials that people elect to make decisions like this. The result is that these commercial surcharge rates had never been lowered in any county until Clay County voters approved a slight reduction in 2022. This is despite the dramatic increase in assessed valuations statewide since 1985. Total

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Missouri assessed valuation (all classes) has gone from \$28 billion in 1985 to \$135 billion in 2022. For commercial property alone, the assessed valuation has gone from \$17 billion in 2005 (the earliest year for which the total commercial subclass breakdown was available) to over \$27 billion now.

The commercial surcharge itself, especially in the absence of any type of a rollback, constitutes a disincentive for property owners to make improvements to their holdings in the counties that have larger surcharges, because those very improvements would be disproportionately punished with higher taxation. That does not mean there has been no investment in those counties. Obviously, there has been. But on the margins there is an incentive to invest outside of our major urban cities and counties.

This inflexible surcharge rate has hit our urban counties particularly hard. Saint Louis, Jackson, and other counties with significant industry set much higher surcharge rates in 1985 than did Missouri's rural and suburban counties. There are many reasons that the automobile manufacturing industry has declined both in Missouri and nationwide, but it is probably not entirely a coincidence that the two automotive plants in Saint Louis County—which has a \$1.70 surcharge per \$100 of assessed valuation—have closed, while the one plant in Saint Charles—which has a \$0.53 surcharge—remains open.

HANCOCK AMENDMENT

In 1980, and again in 1996, Missouri voters approved amendments to the state's constitution that placed important restrictions on the government's ability to raise and spend tax dollars. These amendments have since been referred to collectively as "the Hancock Amendment."

At the time of its passage, the Hancock Amendment was considered one of the strongest tax and expenditure limits in the country. But in the years since, serious weaknesses in the amendment's taxpayer protections have been exposed.

Out-of-Date

One of the key pieces of the 1980 amendment was the promise that the state government would refund money to income taxpayers if state revenues grew faster than the income of Missourians. To deliver on this promise, the amendment established a revenue ceiling that tied the

total state revenues collected in 1980–1981 to the personal income of Missourians in 1979. Then, if state revenues ever exceeded this ratio by more than 1%, the excess would be returned to taxpayers.

The problem is that both the definition of "total state revenues" and the formula for tying them to the personal incomes of Missourians have fallen behind the times. Missouri taxpayers haven't received refunds since the 1990s and likely never will again unless the ceiling formula is updated.¹

Today, total state revenue sits nearly \$4 billion below the Hancock ceiling,² in part because of how personal incomes have scaled over the past four decades. Another reason is that Missouri's government looks much different today than it did in 1980. If the refund formula had been updated in 2022 in a manner similar to what House Joint Resolution (HJR) 126 proposes, Missourians would have qualified for refunds that year.

Incomplete

The revenue sources included in the definition of "total state revenues" are also out of date. Total state revenues, as defined, are based on the revenue sources listed in the Governor's budget recommendation for the 1980–1981 fiscal year. It should not be surprising that over the past 40 years, as the size of government has grown, this list of revenue sources has grown less and less comprehensive. Additionally, as a result of several court cases, multiple funding sources have been carved out of the calculation. For the revenue ceiling to provide taxpayer protection similar to what it provided when the amendment was originally approved, the definition of "total state revenues" will need to provide a complete view of the state's revenue sources.

Incompatible

In 1996, Missouri voters approved an expansion of the Hancock Amendment. Section 18(e) was designed to prevent the legislature from raising taxes above a certain amount without first asking for voter approval. The limit was set at \$50 million "new annual revenues" adjusted for inflation, which today sits at around \$110 million. The issue here is the definition of "new annual revenues."

As mentioned earlier, the revenue ceiling discussed in Section 18(a) defines and uses the term "total state

revenues,” but nowhere is it specified whether “new annual revenues” are the same as new “total state revenues.” This definitional problem has been highlighted multiple times in the Missouri State Auditor’s Office’s yearly analysis of the state’s compliance with the amendment.

“There does not appear to be sufficient guidance to evaluate compliance with Article X, Section 18(e). If the first test for compliance with this section, as OA-BP [Office of Administration–Budget and Planning] indicates, is whether there are any new annual revenues, the definition of new annual revenues must be consistent between the OA-BP and the constitutional language. Article X, Section 18 (e) says the term “new annual revenues” means the net increase in annual revenues produced by the total of all tax or fee increases enacted by the general assembly in a fiscal year, less applicable refunds and less all contemporaneously occurring tax or fee reductions in that same fiscal year. The OA-BP defined new annual revenues as total state revenues. However, there is no language within Article X, Sections 16 through 24 that makes a clear connection between “total state revenues” and “new annual revenues.” Absent such guidance, a definitive conclusion regarding the state’s compliance with Article X, Section 18 (e) cannot be determined.”

In 2003, the Auditor’s Office projected that the state actually exceeded the limit prescribed in Section 18(e), but since the definitions are unclear, a final determination wasn’t deemed possible.³

Indeterminable

In addition to the issues of determining compliance based on definitional issues, there’s also an issue of when such compliance should be measured. At one point, Section 18(e) states that “each individual tax or fee increase shall be measured by the estimated new annual revenues collected during the first fiscal year that it is fully effective.” But the section later states that “compliance with the limit in this section shall be measured by calculating the aggregate actual new annual revenues produced in the first fiscal year that each individual tax or fee change is fully effective.” And to be clear, these do not mean the same thing.

Without further clarity on how compliance should be measured, taxpayers aren’t truly protected from lawmakers exceeding the limit, particularly in the case of any bill that could raise or lower taxes over a period of years, like the current gas tax increase and the incrementally decreasing individual income tax.⁴

HJR 126 takes the important step of clarifying when and how such compliance should be measured.

CONCLUSION

The changes proposed in HJR 126 are important. They simplify the process whereby individual counties can lower their surcharge tax rates if they choose to do so. They improve the fairness of the tax system by requiring that rates roll back as assessments increase, as other property taxes in Missouri already do. These changes would help grow Missouri’s economy, and everyone would benefit from that.

After more than 40 years, it’s clear Missouri’s Hancock Amendment needs an update. Approximately 16 years after its initial passage, Missouri voters approved Section 18(e) to re-iterate the protections they expected from unchecked government growth. Twenty-eight more years have now passed, and many of the amendment’s restrictions have become obsolete and in need of further updating. By updating out-of-date formulas, fixing well-known definitional issues, and clarifying how compliance with the binding provisions should work, Missouri’s Hancock Amendment can begin delivering again on its original promise. As government grows at a faster pace than ever before, HJR 126 provides a commonsense approach for bringing the Hancock Amendment into 2024. At the very least, Missouri voters should get the opportunity to decide whether they want it to or not.

NOTES

1. Bridget Kevin-Myers, Russ Hembree. The Hancock Amendment: Missouri's Tax Limitation Measure. <https://truman.missouri.edu/sites/default/files/publication/17-2012-hancock-amendment.pdf>.
2. Missouri State Auditor. Conclusions in the review of Article X, Sections 16 through 24. September 2023. <https://auditor.mo.gov/AuditReport/ViewReport?report=2023062>.
3. Missouri State Auditor. Review of Article X, Sections 16 through 24 Constitution of Missouri Year Ended June 30, 2002. <https://auditor.mo.gov/press/2003-54.pdf>.
4. Elias Tsapelas. "Missouri's Hancock Amendment and the Gas Tax." Show-Me Institute. <https://showmeinstitute.org/blog/budget-and-spending/missouris-hancock-amendment-and-the-gas-tax>.



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