SB 20-168

Legislative Council Staff
Nonpartisan Services for Colorado's Legislature

REVISED FISCAL NOTE

(replaces fiscal note dated February 26, 2020)

Drafting Number:	LLS 20-0494	**Date:**	March 9, 2020
Prime Sponsors:	Sen. Hansen; Pettersen Rep. Valdez A.	**Bill Status:**	Senate Finance
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Bill Topic: **SUSTAINABLE SEVERANCE & PROPERTY TAX POLICIES**

Summary of Fiscal Impact:

- ☒ State Revenue
- ☒ State Expenditure
- ☒ State Transfer
- ☒ TABOR Refund
- ☒ Local Government
- ☐ Statutory Public Entity

This bill extends and expands a property tax exemption for community solar gardens, and increases coal severance tax collections to reimburse local governments for the reduction in local property tax revenue under the bill and for transfer to the Just Transition Fund. The reimbursement is a new TABOR refund mechanism. The bill will increase state revenue on an ongoing basis beginning in FY 2020-21 and increase state expenditures and transfers starting in FY 2021-22.

Appropriation Summary: For FY 2020-21, the bill requires an appropriation of $49,376 to the Department of Revenue.

Fiscal Note Status: This fiscal note reflects the bill as amended by the Senate Transportation and Energy Committee. This fiscal note also includes new information on property taxes received after publication of the initial fiscal note.

Table 1
State Fiscal Impacts Under SB 20-168

		FY 2020-21	FY 2021-22	FY 2022-23
Revenue	Cash Funds	$2.9 million	$5.7 million	$5.7 million
	Total	**$2.9 million**	**$5.7 million**	**$5.7 million**
Expenditures	General Fund - DOR	$49,376	-	-
	General Fund - TABOR refund*	-	$0.7 million	$3.2 million
	Cash Fund - TABOR refund*	-	$2.2 million	$2.5 million
	TABOR Refund Total	-	**$2.9 million**	**$5.7 million**
	Total	**$49,376**	**$2.9 million**	**$5.7 million**
Transfers	Cash Fund	-	($0.7 million)	($3.2 million)
	Cash Fund	-	$0.7 million	$3.2 million
	Total	-	**$0**	**$0**
TABOR Refund Obligation		**$2.9 million**	**$5.7 million**	**Not estimated**

**TABOR refunds are set aside in the year they are collected, as shown in the TABOR Refund Obligation, and refunded in future years as shown in the expenditure lines. See the state expenditure section for more information.*

Summary of Legislation

This bill extends and expands a property tax exemption for community solar gardens (CSGs), increases coal severance tax collections, reimburses local governments for the reduction in local property tax revenue, creates an new TABOR refund mechanism, and transfers money into the Just Transition Cash Fund, as described below.

Property tax exemption for community solar gardens. The bill extends the existing property tax exemption for CSG property used to generate electricity for residential, governmental, and non-profit customers by five years until 2026 and expands the CSG exemption to state-assessed property. The bill also specifies that CSG property be valued based on the 30-year income of the property rather than the cost basis.

Increase coal severance tax collections. Under current law, the first 300,000 tons of coal produced each quarter by each mine is exempt from the coal severance tax. The bill discontinues this severance tax exemption effective January 1, 2021.

Coal severance taxpayers are allowed to take a credit equal to 50 percent of severance taxes paid on underground coal. The bill eliminates this credit effective January 1, 2021.

Sustainable Energy Tax Policy Fund and new TABOR refund mechanism. The bill creates the Sustainable Energy Tax Policy Fund (fund), which will receive the additional coal severance tax revenue generated under the bill. The fund will be used to reimburse local governments for the reduction in property tax revenue from the bill. Expenditures from the fund are accounted for as a TABOR refund mechanism. When there is insufficient revenue in the fund, the bill requires a General Fund expenditure to reimburse local governments for reduced property taxes.

Transfers to the Just Transition Cash Fund. The bill transfers any revenue in excess of the reimbursement to local governments into the Just Transition Cash Fund. The Just Transition Cash Fund was created in HB 19-1314 to assist communities and workers whose coal-related industries and jobs are subject to significant economic transition.

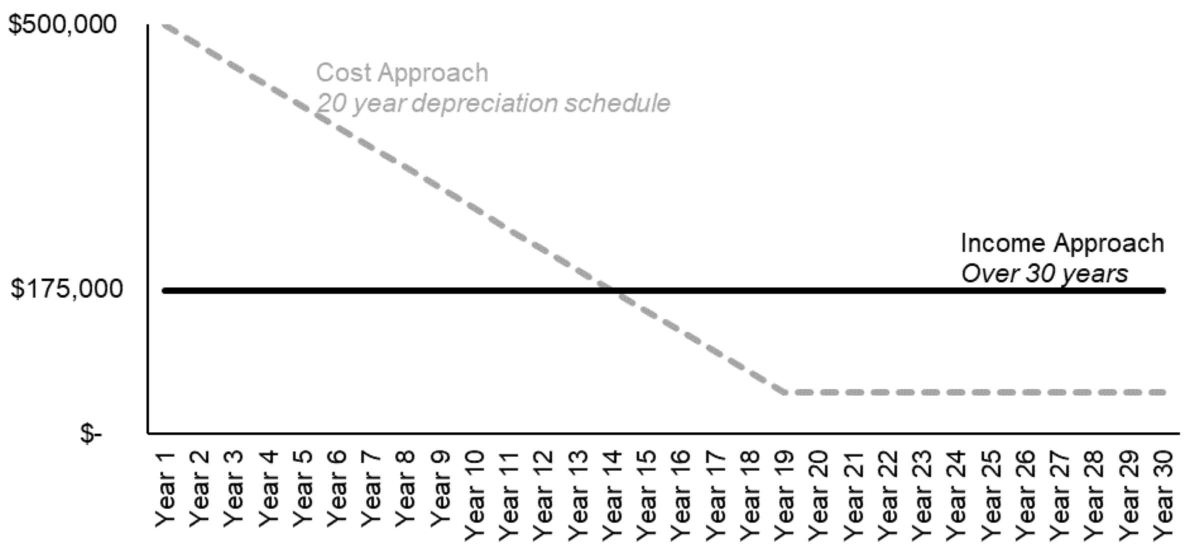
Background and Assumptions

Community solar gardens. As of January 2019, CSGs capable of producing 231 megawatts of power had been contracted to be distributed by Xcel Energy and Black Hills Energy. CSGs producing about 62 megawatts were actually in operation as of 2019, the most recent data available. These CSG properties are operated independently, and the power is sold for distribution to the utilities. Currently, every CSG in the state is under 2 megawatts and county assessors, rather than the Division of Property Taxation, will be responsible for valuing the property when the exemption expires.

Valuation for property taxes. CSGs are currently assessed based on the cost method of valuation. The actual value is determined based on the cost to install the property and then the value of the property is depreciated over an expected 20-year life cycle. The bill requires CSGs to be valued based on the expected income of the property over a 30-year cycle. The change in valuation methods will result in stable taxes over a 30-year period, rather than a declining value of a 20-year period.

Figure 1 compares methods of valuation of a $500,000 property for 30 years. Under the cost approach, the value of the property is $500,000 in year 1 and declines to a residual value of about 10 percent of the original value in year 19. Under the income method, the value is $175,000 each year for 30 years. Compared with current law, the bill will reduce the valuation for property taxes early in the life of the CSG and increase the valuation later in the life of the CSG.

Figure 1
Comparison of Cost and Income Method of Valuation
Original Cost = $500,000



Property tax exemption. It is anticipated that 68.6 percent of contracted CSGs will be operational in 2021 and 82.8 percent will be operational in 2022. Based on the valuation method described in the bill, it is estimated that the bill will reduce the taxable value by $25.8 million for property tax year 2021 and $28.5 million in 2022. Using average mills for each county in 2018, the most recent data available, this reduction in assessed value will reduce local property tax revenue, to be backfilled by severance tax revenue under the bill, by an estimated $2.2 million in FY 2021-22 and $2.5 million in FY 2022-23. The amount will increase as more CSGs are constructed.

State Revenue

The bill increases coal severance tax revenue by $2.9 million in FY 2020-21 (half-year impact) and $5.7 million in FY 2021-22. Revenue generated by the bill is deposited into a the newly created Sustainable Energy Tax Policy Fund, which is subject to TABOR.

Removal of the severance tax exemption for initial quantity of coal. In FY 2018-19, approximately 46.6 percent of coal produced in Colorado was exempt from severance taxation. Repealing the exemption is estimated to increase the amount of coal subject to severance taxes by the same percentage.

Removal of credit for underground coal. In FY 2018-19, 10.4 million tons of underground coal was mined. The credit for underground coal reduced coal severance taxes by $0.42 for each ton mined.

Forecast for coal severance tax revenue. Table 2 shows the current law forecast for coal severance tax revenue, and the additional revenue from eliminating the exemption for the first 300,000 tons mined per quarter and the tax credit for underground coal for FY 2019-20 through FY 2021-22, the end of the forecast period. The revenue impact for FY 2020-21 represents a partial year impact to account for accrual accounting.

Table 2
Coal Severance Tax Revenue Under SB 20-168

	FY 2020-21	FY 2021-22	FY 2022-23*
December 2019 Forecast	$3.0 million	$2.7 million	$2.7 million
First 300,000 Ton Exemption	$0.7 million	$1.3 million	$1.3 million
Underground Coal Credit	$2.2 million	$4.4 million	$4.4 million
Total Coal Severance Tax	$5.9 million	$8.4 million	$8.4 million
Revenue Increase Under SB 20-168	**$2.9 million**	**$5.7 million**	**$5.7 million**

* *A forecast for coal severance tax revenue is not available for FY 2022-23. For illustrative purposes, the fiscal note assumes revenue from FY 2021-22 will be unchanged for FY 2022-23.*

State Transfers

As amended in the Senate Transportation and Energy Committee, the bill transfers any money remaining in the Sustainable Energy Tax Policy Fund after reimbursing local governments to the Just Transition Cash Fund. Table 4 shows the transfer amounts into the Just Transition Cash Fund which correspond the amounts in Table 4.

Table 3
Transfers Under SB 20-168

	FY 2020-21	FY 2021-22	FY 2022-23
Sustainable Energy Tax Policy Fund	-	($0.7 million)	($3.2 million)
Just Transition Cash Fund	-	$0.7 million	$3.2 million
Total	**-**	**$0**	**$0**

Starting in FY 2026-27 after the CSG property tax exemption expires, the entire amount of coal severance tax revenue under the bill will be transferred from the Sustainable Energy Tax Policy Fund to the Just Transition Cash Fund.

State Expenditures

This bill will increase state General Fund expenditures by $49,376 in FY 2020-21. Starting in FY 2021-22, the bill will require the state to reimburse local governments for reduced property tax revenue for taxes levied starting in 2021. This will total $2.2 million in FY 2021-22 and $2.5 million in FY 2022-23. The bill also and modifies TABOR refund mechanisms and creates a transfer. These impacts shown in Table 4 are discussed below.

Reimbursement for local governments – Office of the State Treasurer. The bill requires the Office of the State Treasurer to reimburse local governments for the reduction in property tax revenue. The first source of local government reimbursements is from the Sustainable Energy Tax Policy Fund, with any remaining reimbursements made from the General Fund. Table 3 shows the reduction in property tax revenue discussed in the Background and Assumptions section of the note, the revenue available in the Sustainable Energy Tax Policy Fund, and the amount remaining in the fund which will be transferred to the Just Transition Fund. In any year in which the reduction in local property tax revenue exceeds the increase in coal severance tax revenue, there will be a General Fund obligation to reimburse local governments. The state also has the obligation to reimburse local governments when there is not a TABOR surplus. The office will administer reimbursements from the fund within existing resources.

The reimbursement to local governments will no longer be required after the CSG exemption expires in 2026, eliminating that expenditure starting in FY 2026-27.

Table 4
Local Government Reimbursement Under SB 20-168

	FY 2020-21	FY 2021-22	FY 2022-23
Coal Severance Tax Revenue from Prior Year	-	$2.9 million	$5.7 million
Reimbursement to Local Governments	-	($2.2 million)	($2.5 million)
Amount Remaining in Sustainable Energy Tax Policy Fund for Transfer to Just Transition Fund	**-**	**$0.7 million**	**$3.2 million**

Department of Revenue. The bill will increase Department of Revenue expenditures by $49,376 in FY 2020-21 only to program, test, and update database fields in the department's GenTax software system and redesign the coal severance tax form. Programming costs are estimated at $33,750, representing 150 hours of contract programming at a rate of $225 per hour. Costs for testing at the department are estimated at $15,360, representing 640 hours of contract testing at a rate of $24 per hour. The redesign of the coal severance tax form, so that taxpayers cannot claim the exemption or the credit, is estimated to cost $266.

Division of Property Taxation — DOLA. The division will develop new valuation templates for locally assessed renewable energy facilities for use by county assessors, amend existing property statement forms for renewable energy properties, and develop procedures for assessing CSGs for state assessed utilities in FY 2020-21. These workload increases can be accomplished within existing resources.

TABOR refunds. The bill is expected to increase state obligations for TABOR refunds by $2.9 million in FY 2020-21 and $5.7 million in FY 2021-22. TABOR refunds are set aside in the year which the surplus is collected and paid in the following year.

The bill treats the reimbursement to local governments for the loss of property taxes under the bill as a new TABOR refund mechanism. This mechanism refunds revenue in excess of the amount required to pay for homestead exemptions and before the temporary income tax rate reduction and six-tier sales tax refund mechanisms in current law are triggered. A forecast of TABOR refund is unavailable beyond FY 2021-22.

- *FY 2021-22 Refund for FY 2020-21 Surplus.* The additional coal severance tax revenue in FY 2020-21 will exceed the amount required to reimburse local governments for the reduction in property tax in revenue in FY 2021-22 by $0.7 million. This $0.7 million TABOR obligation will be paid from the General Fund via the six-tier sales tax refund mechanism under the December 2019 Legislative Council Staff forecast.

- *FY 2022-23 Refund for FY 2021-22 Surplus.* The additional coal severance tax revenue in FY 2021-22 will exceed the amount required to reimburse local governments for the reduction in property tax revenue in FY 2022-23 by $3.2 million. The $3.2 million TABOR obligation will be paid from the General Fund via the six-tier sales tax refund mechanism under the December 2019 Legislative Council Staff forecast.

Local Government

This bill results in no net impact to local government revenue. As shown in Table 3, this bill is anticipated to reduce local property tax revenue by $2.2 million in FY 2020-21 and $2.5 million in FY 2021-22 and increase local revenue from state reimbursments by the same amount.

Workload for county assessors and county treasurers will increase to estimate the reduced property tax revenue from the bill, and provide that information to the State Treasurer for reimbursement. Workload will vary depending on the number of community solar gardens in each county.

Effective Date

The bill takes effect August 5, 2020, if the General Assembly adjourns on May 6, 2020, as scheduled, and no referendum petition is filed.

State Appropriations

For FY 2020-21, the bill requires a General Fund appropriation of $49,376 to the Department of Revenue.

State and Local Government Contacts

Colorado Energy Office	Counties	County Assessors
Information Technology	Local Affairs	Municipalities
Natural Resources	Revenue	Property Tax Division - Local Affairs
Special Districts	Treasury	