SB16-218

JBC STAFF FISCAL ANALYSIS
HOUSE APPROPRIATIONS COMMITTEE

CONCERNING MATTERS RELATED TO STATE SEVERANCE TAX REFUNDS.

Prime Sponsors:	Sens. Lambert and Steadman Reps. Hamner and Rankin	JBC Analyst:	Carly Jacobs
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		Date Prepared:	May 10, 2016

Fiscal Impact of Bill as Amended to Date

The most recent Legislative Council Staff Revised Fiscal Note (attached) reflects the fiscal impact of the bill as of 05/10/16.

XXX	**No Change:** Attached LCS Fiscal Note accurately reflects the fiscal impact of the bill
	Update: Fiscal impact has changed due to *new information or technical issues*
	Update: Fiscal impact has changed due to *amendment adopted* after LCS Fiscal Note was prepared
	Non-Concurrence: JBC Staff and Legislative Council Staff disagree about the fiscal impact of the bill

Amendments in This Packet for Consideration by Appropriations Committee

Amendment	**Description**
None.	

Current Appropriations Clause in Bill

The bill neither requires nor contains an appropriation clause for FY 2016-17.

Points to Consider

General Fund Impact

1. The bill authorizes the diversion of an estimated $115.1 million in income tax revenue from the General Fund to a reserve used to pay all severance tax refunds, and adjusts the General Fund reserve requirement in FY 2015-16 to accommodate the resulting reduction in unrestricted General Fund revenue. This amount represents the estimated maximum amount for severance tax refunds required under the Supreme Court Decision (see page 2 of the attached LCS Fiscal Note).

   Please note, however, that the General Fund reserve requirement remains at 6.5 percent for FY 2016-17 in accordance with current law. The amount of income tax revenue diverted from the General Fund in FY 2015-16 reduces the starting balance for the upcoming fiscal year and will have to be replaced in order to meet General Fund appropriations and reserve requirements in FY 2016-17.

Future Fiscal Impact

2. As noted on page 2 of the attached LCS Fiscal Note, it is assumed that all refunds related to additional tax deductions will be accrued to FY 2015-16. However, this is contingent upon the timing of the submission of amended tax returns, and the processing and issuance of refunds by the Department of Revenue. If amended tax returns are submitted and processed after the FY 2015-16 comprehensive annual financial report is finalized, refunds for prior-year deductions will need to be issued in FY 2016-17 as well. Under a provision included in the bill, any refunds made in FY 2016-17 will also come from income tax revenue diverted from the General Fund.

3. The scope of this bill is limited to addressing the need to refund severance tax deductions that should have been allowed in prior years. However, under current law as interpreted by the Colorado Supreme Court, oil and gas producers can now claim larger deductions on future tax returns as well. The LCS Fiscal Note estimates that the deductions allowed under the decision will reduce severance tax revenue by 12.5 percent per year going forward (LCS Fiscal Note page 3). The bill does not include any provisions to address the future impact of the additional deductions now allowed under current law.

Related Budget Information

4. To address potential refunds related to the Supreme Court decision in FY 2016-17, the bill includes a provision to divert income tax revenue from the General Fund if the amount of required severance tax refunds exceeds 15 percent of gross monthly severance tax revenue collections. The bill does not distinguish between: (a) refunds for amended tax returns to capture deductions from prior years; or (b) typical refunds made by the Department of Revenue to align estimated severance tax payments with actual tax liability for accounting purposes. As a result, the General Fund may end up covering some "typical" refunds in FY 2016-17 that are not associated with the case if they exceed 15 percent of collections. However, Legislative Council Staff and the Department of Revenue determined that a 15 percent threshold was a reasonable approximation of typical refunds issued per month (LCS Fiscal Note page 3), which will help limit the impact to the General Fund in FY 2016-17 to case-related refunds.

5. The bill restricts a total of $77.4 million in severance tax cash funds administered by the Department of Natural Resources and the Department of Local Affairs, including the Severance Tax Perpetual Base Fund, the Severance Tax Operational Fund, and the Local Government Severance Tax Fund (LCS Fiscal Note page 3).

   - <u>Severance Tax Perpetual Base Fund and the Local Government Severance Tax Fund</u>
     The severance tax revenue in these funds supports a variety of loans and grants, as well as direct distribution payments to counties. The restrictions on money in these funds included in the bill–$19.1 million in the Perpetual Base Fund and $48.3 million in the Local Government Severance Tax Fund–will reduce the revenue available for

loans and grants until said amounts are released in whole or in part by a majority vote of the Joint Budget Committee. The bill includes a provision specifying that the restriction for the Local Government Severance Tax Fund shall not affect direct distribution payments to counties.

- Severance Tax Operational Fund
  Revenue in the Operational Fund is divided between salaries and ongoing program costs for agencies in the Department of Natural Resources, referred to as "Tier I" programs, and more flexible expenditures for "Tier II" programs including grants, loans, and construction projects. Tier II funding is subject to proportional reductions if there is insufficient revenue in the Operational Fund to meet authorized expenditures. By restricting or encumbering $10.0 million in the Operational Fund, the bill will eliminate all Tier II funding for FY 2016-17 and FY 2017-18 according to estimates by the Department of Natural Resources based on the March 2016 LCS Revenue Forecast. Tier I programs are projected to be fully funded through FY 2016-17. If the Joint Budget Committee votes to release the restricted revenue, it will be distributed to Tier I and Tier II programs according to Section 39-29-109.3, C.R.S.