HB 19-1003

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

REVISED FISCAL NOTE

(replaces fiscal note dated February 6, 2019)

Drafting Number:	LLS 19-0692	**Date:**	March 1, 2019
Prime Sponsors:	Rep. Hansen	**Bill Status:**	House Second Reading
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Bill Topic: COMMUNITY SOLAR GARDENS MODERNIZATION ACT

Summary of Fiscal Impact:

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

This bill extends a property tax exemption for community solar gardens for 5 years beginning in 2021; removes the existing severance tax exemption for the first 300,000 tons of coal produced quarterly; increases the maximum size of a community solar garden from 2 to 5 megawatts; modifies requirements related to subscriber location; and requires electrical supervision and inspection for community solar gardens producing over 2 megawatts. Beginning in FY 2019-20, the bill increases state and local government revenue and expenditures.

Appropriation Summary: No appropriation is required as the cash funds in this bill are continuously appropriated.

Fiscal Note Status: The fiscal note reflects the introduced bill, as amended by the House Energy and Environment Committee and the House Appropriations Committee.

Table 1
State Fiscal Impacts Under HB 19-1003

		FY 2019-20	FY 2020-21	FY 2021-22
Revenue	General Fund	-	-	$37,974
	Cash Funds	$2.7 million	$2.6 million	$2.4 million
	Total	**$2.7 million**	**$2.6 million**	**$2.4 million**
Expenditures	General Fund	-	-	$1.6 million
	Cash Funds	$2.7 million	$2.6 million	$2.4 million
	Total	**$2.7 million**	**$2.6 million**	**$4.0 million**
Transfers		-	-	-
TABOR Refund	General Fund	$2.7 million	-	not estimated

Summary of Legislation

This bill modifies the definition of "community solar garden" (CSG) to mean a solar electric generation facility with a nameplate rating of 5 megawatts; under current law, the limit is 2 megawatts. The bill also modifies the definition of "subscriber" so that customers no longer need to be in the same or adjacent county as the CSG, but only the service territory of the qualifying retail utility. The bill requires any CSG exceeding 2 megawatts to have an electrician's on-site supervision for any photovoltaic electrical work and for initial installation to be subject to final electrical inspection.

The bill also postpones the expiration of an existing property tax exemption for CSGs by 5 years, from 2021 to 2026. The exemption applies to the share of CSG property used to generate electricity for residential, governmental, or tax-exempt customers. Assessors value this property by determining the generating capacity of the CSG and multiplying by the cost per kilowatt of alternating current electricity as published by the Division of Property Taxation in the Department of Local Affairs (DOLA).

Finally, the bill discontinues the severance tax exemption on the first 300,000 tons of coal produced each quarter effective July 1, 2019.

Background

As of January 2019, there are 231 megawatts at Xcel Energy and about 13 megawatts at Black Hills Energy of CSGs that are operational or committed through 2019. Under current law, CSGs (defined as generating less than 2 megawatts of electricity) are valued by the county assessor, while solar energy facilities (defined as generating more than 2 megawatts of electricity) are valued by the State Assessed Properties section of the Division of Property Taxation in the DOLA because these facilities are considered public utilities.

State Revenue

The bill is expected to increase state cash fund revenue by $2.7 million in FY 2019-20, $2.6 million in FY 2020-21, and $2.4 million in FY 2021-22 based on the December 2018 Legislative Council Staff (LCS) forecast. This impact is shown in Table 2 below. The bill will also increase state General Fund revenue from income tax collections by $37,974 in FY 2021-22 and $75,947 in FY 2022-23.

Removal of the severance tax exemption for certain quantities of coal. Under current law, the first 300,000 tons of coal produced each quarter by each mine is exempt from the coal severance tax. In FY 2017-18, approximately 45.1 percent of coal produced in Colorado was exempt from severance taxation; therefore, repealing the exemption is estimated to increase the amount of coal subject to severance taxes by the same percentage. Coal severance tax revenue is subject to TABOR and deposited in equal amounts in the Local Government Severance Tax Fund in DOLA, which is distributed to local governments, and the State Severance Tax Trust Fund in the Department of Natural Resources (DNR).

Table 2
Impact of Severance Tax Exemption Repeal Under HB 19-1003*

	FY 2019-20	FY 2020-21	FY 2021-22
Collections Under Current Law**	$3.3 million	$3.1 million	$2.9 million
Increase Under Amendment L.005	$2.7 million	$2.6 million	$2.4 million
Total Collections	**$6.0 million**	**$5.7 million**	**$5.3 million**

* *Totals may not sum due to rounding.*
** *December 2018 LCS coal severance tax forecast. Because FY 2021-22 is out of the forecast period, the fiscal note assumes the prior year's -6.2 percent growth rate*

Federal taxable income. Property taxes are deducted from federal taxable income, which is the starting point for calculating Colorado income taxes. The reduction in property taxes from this bill reduces the deduction CSGs will be allowed to take, increasing their Colorado income tax liability. An estimated one-third of aggregate property tax liability is currently deducted from the taxable income of owners. The revenue impact is calculated by applying the state's 4.63 percent income tax rate to the reduced property tax liability. The smaller deduction will increase income tax revenue by $37,974 in FY 2021-22, and $75,947 in FY 2022-23. The FY 2021-22 revenue impact is based on a half-year property tax impact to account for the accrual accounting of income tax.

State Expenditures

As a result of the revenue increase discussed above, the bill will increase state expenditures in DOLA and the DNR by $2.7 million in FY 2019-20, $2.6 million in FY 2020-21, and $2.4 million in FY 2021-22. Beginning in FY 2021-22, the bill will increase state General Fund expenditures by an estimated $1.6 million per year through FY 2026-27 to backfill school finance. Workload will also increase for DOLA and the Department of Regulatory Agencies (DORA) to implement the bill.

Local Government Severance Tax Fund — DOLA. Half of the increase shown in Table 2 will be credited to the Local Government Severance Tax Fund in DOLA, resulting in an expenditure increase of $1.4 million in FY 2019-20, $1.3 million in FY 2020-21, and $1.2 million in FY 2021-22. These funds are distributed to local governments where the coal subject to the severance tax was extracted.

State Severance Tax Trust Fund — DNR. The other half of the increase shown in Table 2 will be credited to the State Severance Tax Trust Fund in DNR, resulting in an expenditure increase of $1.4 million in FY 2019-20, $1.3 million in FY 2020-21, and $1.2 million in FY 2021-22. These funds support the work of DNR.

General Fund backfill to school districts. Assuming the current school finance formula and the budget stablization factor renews at its current level, the bill will require a General Fund appropriation of approximately $1,623,677 from FY 2021-22 through FY 2026-27. This backfill amount is a result of exempting CSG-generated electricity from property tax, which will reduce the local share of school finance. The estimate was calculated using 2017 school mill levies applied to the FY 2019-20 assessed values of the state's CSG capacity as of January 2019, as discussed in the Background section. The amount may increase as more CSGs are constructed.

Division of Property Taxation — DOLA. The division will amend existing property statement forms for renewable energy properties and develop procedures for assessing CSGs above 2 megawatts in FY 2019-20. The division will have an ongoing minimal workload impact to maintain the personal property declaration schedule specific to CSGs and process appeals. Finally, the division will need to determine the eligibility of each CSG for the partial personal property exemption. These workload increases can be accomplished within existing resources.

Public Utilities Commission — DORA. The Public Utilities Commission in DORA will perform rulemaking to conform with the bill in FY 2019-20 within the normal course of the commission's business.

TABOR refunds. The bill is expected to increase state General Fund obligations for TABOR refunds by $2.7 million in FY 2019-20. Under current law and the December 2018 forecast, the bill will correspondingly increase the amount refunded to taxpayers via sales tax refunds on income tax returns for tax year 2020. The state is not expected to collect a TABOR surplus in FY 2020-21, and FY 2021-22 is out of the forecast period.

Local Government

The bill will increase severance tax revenue and resulting expenditures to local governments through direct distributions and discretionary grants by $1.4 million in FY 2019-20, $1.3 million in FY 2020-21, and $1.2 million in FY 2021-22.

Beginning in property tax year 2021, the bill decreases non-school finance property tax revenue in affected local governments by an estimated $3,347,020 per year beginning in FY 2021-22 by exempting the share of CSG property used to generate electricity for residential, governmental, and tax-exempt customers. This estimate is based on the level of 2017 non-school finance countywide average mills, which are subject to change. This revenue reduction will impact municipalities, counties, and special districts. School districts with mill levy overrides will also be impacted by the revenue reduction which is not backfilled with state General Fund.

School District Impact

This bill is estimated to reduce the local share of funding for public schools by approximately $1,623,677 per year from FY 2021-22 through FY 2026-27. This reduction will be replaced by General Fund backfill, as discussed in the State Expenditures section.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State and Local Government Contacts

Colorado Energy Office	Counties	Information Technology
Local Affairs	Regulatory Agencies	

The revenue and expenditure impacts in this fiscal note represent changes from current law under the bill for each fiscal year. For additional information about fiscal notes, please visit: **leg.colorado.gov/fiscalnotes**.