39-29-110. Local government severance tax fund - creation - administration - definitions.

(1) (a) (I) There is hereby created in the department of local affairs a local government severance tax fund. In accordance with section 39-29-108, portions of the state severance tax receipts shall be credited to the local government severance tax fund. Except as otherwise provided in section 39-29-109.5, all income derived from the deposit and investment of the moneys in the local government severance tax fund shall be credited to the local government severance tax fund.

(II) On or before December 31 in the calendar year in which the state treasurer receives notification of the election by the county pursuant to section 34-63-102 (3) (c) (II) (A), C.R.S., the executive director of the department of local affairs shall distribute to each county making such election an amount equal to the amount attributable to that county that was transferred to the local government mineral impact fund pursuant to section 34-63-102 (3) (c) (II) (B), C.R.S.

(III) After making any distributions pursuant to subparagraph (II) of this paragraph (a), the executive director of the department of local affairs shall distribute any remaining moneys and make loans from such fund in accordance with the purposes and priorities provided in paragraph (b) of this subsection (1). The executive director shall not distribute any moneys or make any loans from such fund unless sufficient moneys remain in the fund to be distributed to each county pursuant to subparagraph (II) of this paragraph (a).

(b) (I) Seventy percent of the funds from the local government severance tax fund shall be distributed to those political subdivisions socially or economically impacted by the development, processing, or energy conversion of minerals and mineral fuels subject to taxation under this article and used for the planning, construction, and maintenance of public facilities and for the provision of public services. Such funds shall also be distributed to political subdivisions to compensate them for loss of property tax revenue resulting from the deduction of severance taxes paid in the determination of the valuation for assessment of producing mines. The executive director of the department of local affairs shall consider the economic needs of a political subdivision for purposes of making distributions pursuant to this subparagraph (I).

(II) (A) In addition to the distribution of moneys authorized under subparagraph (I) of this paragraph (b), the executive director may distribute moneys or make loans, or any combination thereof, to such political subdivisions for the planning, design, construction, erection, building, acquisition, alteration, modernization, reconstruction, improvement, or expansion of domestic wastewater treatment works or potable water treatment facilities. Any loan made by the executive director under the authority of this section shall only be made under such terms as will insure repayment of the loan with interest assessed and collected at an interest rate of not less than five percent.

(B) As used in this subparagraph (II), "domestic wastewater treatment works" means a system or facility of a political subdivision for treating, neutralizing, stabilizing, collecting, or disposing of domestic wastewater, which system or facility has a designed capacity to receive more than two thousand gallons of domestic wastewater per day, and "domestic wastewater treatment works" includes appurtenances to such system or facility, such as outfall sewers, pumping stations, and collection and interceptor lines, and the equipment related to such appurtenances.

(C) As used in this subparagraph (II), "potable water treatment facilities" means a system or facility of a political subdivision for treating water to be supplied to the public for domestic use, and "potable water treatment facilities" includes water treatment plants, treated water storage facilities, water mains, water distribution lines, pumps, and appurtenances.

(III) In addition to the distribution of moneys authorized under subparagraphs (I) and (II) of this paragraph (b), the executive director shall distribute:

(A) Moneys to the uranium mill tailings remedial action program fund in accordance with the provisions of section 39-29-116 (3);

(B) Moneys to the department of public health and environment for any direct and indirect costs associated with the monitoring, notification, and handling of designated uranium mill tailings that are authorized in section 25-11-303, C.R.S., and the amount of the distribution made pursuant to this sub-subparagraph (B) shall be equal to the amount appropriated to the department of public health and environment by the general assembly for such direct and indirect costs; and

(C) Up to fifty thousand dollars each state fiscal year to political subdivisions that include mill sites designated for cleanup pursuant to federal Public Law 95-604 for reimbursement of actual, documented costs related to the cleanup of uranium mill tailings.

(IV) In addition to the distribution of moneys authorized under subparagraphs (I), (II), and (III) of this paragraph (b), the executive director may distribute moneys to those privately organized volunteer fire departments serving areas socially or economically impacted by the development, processing, or energy conversion of minerals and mineral fuels subject to taxation under this article, for the purpose of purchasing equipment to fight fires.

(c) (I) For state fiscal years commencing prior to July 1, 2008, an amount equal to thirty percent of said gross receipts credited to the local government severance tax fund shall be distributed to counties or municipalities on the basis of the proportion of employees of the mine or related facility or crude oil, natural gas, or oil and gas operation who reside in any such county's unincorporated area or in any such municipality to the total number of employees of the mine or related facility or crude oil, natural gas, or oil and gas operation. Such distribution shall be made on the basis of the report required in paragraph (d) of this subsection (1). For state fiscal years commencing on or after July 1, 2008, thirty percent of said gross receipts credited to the local government severance tax fund shall be allocated to counties based upon the following factors:

(A) On the basis of the report required in paragraph (d) of this subsection (1), the proportion of employees of mines or related facilities or crude oil, natural gas, or oil and gas operations who reside in a county to the total number of employees of mines or related facilities or crude oil, natural gas, or oil and gas operations who reside in the state;

(B) The proportion of the mine and well permits issued in a county to the total number of such permits issued in the state; and

(C) The proportion of the overall quantity of mineral production within a county to the total overall quantity of production within the state.

(II) (A) For the state fiscal year commencing on July 1, 2008, the factor set forth in sub-subparagraph (A) of subparagraph (I) of this paragraph (c) shall be weighted fifty percent and the factors set forth in sub-subparagraphs (B) and (C) of subparagraph (I) of this paragraph (c) shall be weighted twenty-five percent each.

(B) For state fiscal years commencing on or after July 1, 2009, each of the three factors set forth in subparagraph (I) of this paragraph (c) shall be weighted thirty percent, and the executive director of the department of local affairs, in consultation with the energy impact assistance advisory committee established pursuant to section 34-63-102 (5) (b) (I), C.R.S., shall establish guidelines that set forth the factor or factors under which the remaining ten percent shall be weighted.

(III) Except as otherwise set forth in subparagraph (IV) of this paragraph (c), the moneys allocated to each county pursuant to this paragraph (c) shall be further distributed to the county and to each municipality within the county based upon the following factors:

(A) The proportion of employees reported as residents under paragraph (d) of this subsection (1) in any such county's unincorporated area or in any such municipality within the county to the total number of employees reported as residents in the county as a whole under paragraph (d) of this subsection (1);

(B) The proportion of the population in any such county's unincorporated area or in any such municipality within the county to the total population in the county, as such population is reported in the most recently published population estimate from the state demographer appointed by the executive director of the department of local affairs; and

(C) The proportion of road miles in any such county's unincorporated area or in any such municipality within the county to the total road miles in the county, as such miles are certified by the department of transportation to the state treasurer pursuant to sections 43-4-207 (2) (d) and 43-4-208 (3), C.R.S.

(IV) With respect to the distribution made pursuant to subparagraph (III) of this paragraph (c), the executive director of the department of local affairs, in consultation with the energy impact assistance advisory committee established pursuant to section 34-63-102 (5) (b) (I), C.R.S., shall establish guidelines that set forth the weight that each of the factors in sub-subparagraphs (A) to (C) of subparagraph (III) of this paragraph (c) shall be given. These guidelines shall apply uniformly across the state; except that the executive director may:

(A) Accept a memorandum of understanding from a county and all municipalities contained therein that establishes an alternative distribution that shall be effective within such county; and

(B) After consultation with the energy impact advisory committee established pursuant to section 34-63-102 (5) (b) (I), C.R.S., vary the weight that each of the factors in sub-subparagraphs (A) to (C) of subparagraph (III) of this paragraph (c) receives in an individual county, in order to more fairly distribute the gross receipts among the county and all municipalities contained therein.

(V) Moneys distributed from the local government severance tax fund pursuant to this paragraph (c) shall be distributed no later than August 31 of each year. Counties and municipalities shall utilize revenues received under this subsection (1) only for the purposes of capital expenses and general operating expenses.

(VI) On or before January 1, 2010, and every second January 1 thereafter, the executive director of the department of local affairs shall submit to each member of the general assembly a report that evaluates the effectiveness of the allocation and distribution of moneys pursuant to this paragraph (c) to counties and municipalities impacted by the development, processing, or energy conversion of minerals and mineral fuels subject to taxation under this article, and, if appropriate, that proposes changes to the allocation and distribution. The provisions of section 24-1-136 (11) (a) (I), C.R.S., shall not apply to the report.

(c.5) (Deleted by amendment, L. 2008, p. 1680, § 6, effective August 5, 2008.)

(d) (I) (A) Ninety days prior to the end of each fiscal year, for each taxable year to which this sub-subparagraph (A) applies, the executive director of the department of revenue shall send every producer who is subject to the severance tax and whose payment is subject to the distribution formula provided in this subsection (1) a form on which the producer shall submit a report to the department of revenue indicating the following: The name and address of the producer, the name of the mine, related facility, or operation, the names of the municipalities or counties in which its employees maintain their actual residences as given by the employees, giving the number of employees for each such municipality or unincorporated area of each such county, and the total number of employees of the mine or related facility or crude oil, natural gas, or oil and gas operation. The producer may use and submit any other report form in lieu of the state form sent by the executive director of the department of revenue that contains the same information as prescribed in the state form. The report shall be due April 30 of each year. The executive director of the department of revenue shall submit a copy of the report required by this paragraph (d) to the executive director of the department of local affairs. In the case of failure of any producer to submit the report on or before the date required by this paragraph (d) to the department of revenue, a written notice shall be sent to the producer by the department of revenue by first-class mail as set forth in section 39-21-105.5 stating that the producer has failed to submit a copy of the report required by this paragraph (d) and informing the producer of the penalty provision contained in this paragraph (d). If the producer fails within forty-five days after receipt of the written notice to submit the required report, there shall be levied and collected a penalty for the failure in the amount of fifty dollars for each day, or portion thereof, during which the failure continues. Any moneys and interest collected under this paragraph (d) shall be added to the fifteen percent of gross receipts from the local government severance tax fund and distributed to counties or municipalities in the manner prescribed by paragraph (c) of this subsection (1). Moneys distributed from the local government severance tax fund pursuant to paragraph (c) of this subsection (1) shall be distributed no later than August 31 of each year. Any producer not liable for severance tax under this section shall not be required to submit a report under this subsection (1). This sub-subparagraph (A) shall apply to any report for a taxable year commencing prior to January 1, 2008.

(B) Every party that registers exempt production with the department of revenue, withholds income pursuant to section 39-29-111 (1), or files a declaration pursuant to

section 39-29-104 (2) or 39-29-112 (2) shall submit a report to the department of local affairs in a format specified by the executive director of the department indicating the following: The name and address of the party; the name of the mine, related facility, or operation; the names of the municipalities or counties in which the party's employees maintain their actual residences as given by the employees, giving the number of the employees for each such municipality or unincorporated area of each such county; and the total number of the employees of the mine or related facility or crude oil, natural gas, or oil and gas operation. The report shall be due April 30 of each year. This sub-subparagraph (B) shall apply to any report for a taxable year commencing on or after January 1, 2008.

(II) (A) (Deleted by amendment, L. 2008, p. 1680, § 6, effective August 5, 2008.)

(B) For purposes of this paragraph (d), an "employee of a crude oil, natural gas, or oil and gas operation" means any individual who is employed and compensated for at least five hundred hours of work in any six months during the calendar year preceding the due date of the report by a producer, interest owner, or party who contracts with a producer or interest owner for the purposes of extracting such crude oil, natural gas, or oil and gas out of the ground and at point of first sale.

(C) In the case of failure of any party to submit the report required pursuant to sub-subparagraph (B) of subparagraph (I) of this paragraph (d) on or before the required date to the department of local affairs, a written notice shall be sent to the party by the department by first-class mail stating that the party has failed to submit a copy of the report required by sub-subparagraph (B) of subparagraph (I) of this paragraph (d) and informing the party of the penalty provision contained in this sub-subparagraph (C). If the party fails within forty-five days after receipt of the written notice to submit the required report, there shall be levied and collected a penalty for the failure in the amount of fifty dollars for each day, or portion thereof, during which the failure continues. Any moneys and interest collected under this sub-subparagraph (C) shall be added to the thirty percent of gross receipts from the local government severance tax fund distributed to counties or municipalities in the manner prescribed by paragraph (c) of this subsection (1). The notice required pursuant to this sub-subparagraph (C) shall be sent in accordance with the provisions of section 39-21-105.5, and the provisions of that section shall otherwise apply to the notice.

(e) and (f) (Deleted by amendment, L. 2008, p. 1680, § 6, effective August 5, 2008.)

(2) Repealed.

(2.5) In accordance with the provisions of section 34-63-102 (5) (b) (I), C.R.S., the energy impact assistance advisory committee established pursuant to said section shall make recommendations to the executive director of the department of local affairs regarding the distribution of moneys authorized pursuant to this section.

(3) The executive director of the department of local affairs shall deliver to the state auditor and file with the general assembly annually before February 1 a detailed report accounting for the distribution of all funds for the previous year. The energy impact assistance advisory committee shall review the report prior to it being delivered and filed.

(4) Repealed.

(5) Notwithstanding any provision of this section to the contrary, on June 1, 2009, the state treasurer shall deduct seven million five hundred thousand dollars from the local government severance tax fund and transfer such sum to the general fund.

Source: L. 77: Entire article added, p. 1848, § 1, effective January 1, 1978. L. 81: (1)(c) and (1)(d) amended, p. 1903, § 3, effective June 19. L. 82: (1)(d) amended, p. 581, § 1, effective April 6. L. 85: (1)(a) and (1)(b) amended, p. 1290, § 1, effective May 31. L. 86: (2)(c) added, p. 426, § 65, effective March 26. L. 88: (2) repealed, p. 319, § 18, effective April 14. L. 93: (1)(b)(III) added, p. 448, § 5, effective April 19. L. 96: (1)(d)(I) amended, p. 168, § 12, effective July 1. L. 97: (1)(a) amended, p. 1147, § 2, effective May 28. L. 98: (1)(a)(II) amended, p. 829, § 54, effective August 5. L. 99: (1)(a)(I) amended, p. 927, § 6, effective May 24. L. 2002, 3rd Ex. Sess.: (1)(b)(IV) added, p. 39, § 8, effective July 17. L. 2005: (4) added, p. 414, § 3, effective April 28. L. 2007: (1)(b)(I) and (1)(c) amended and (1)(c.5) added, p. 1338, § 1, effective May 29; (1)(b)(III) amended, p. 1366, § 1, effective May 29; (1)(a)(I) amended, p. 1410, § 5, effective May 30. L. 2008: (1)(b)(I), (1)(c), (1)(c.5), (1)(d), (1)(e), (1)(f), and (3) amended and (2.5) added, p. 1680, § 6, effective August 5. L. 2009: (5) added, (SB 09-279), ch. 367, p. 1932, § 23, effective June 1; (1)(d)(II)(C) amended, (SB 09-292), ch. 369, p. 1980, § 116, effective August 5.

Editor's note: (1) Subsection (4)(b) provided for the repeal of subsection (4), effective July 1, 2007. (See L. 2005, p. 414.)

(2) Subsection (1)(d)(II)(C) was amended in a 2009 act that was passed without a safety clause. The act establishes an effective date of August 5, 2009, for this provision. The act, or portions thereof, may not take effect if the people exercise their right to petition under article V, section 1 (3) of the state constitution. For further explanation concerning the effective date, see page ix of this volume.

Cross references: For the legislative declaration contained in the 1999 act amending subsection (1)(a)(I), see section 1 of chapter 235, Session Laws of Colorado 1999.