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FISCAL IMPACT REPORT

SPONSOR:	Russell	DATE TYPED:	02/19/01	HB	219/aHENRC
SHORT TITLE:	Use of Tax Revenues From Coal On Navajo Land			SB	
				ANALYST:	Williams

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY03	Our Years		
	$ 5,900.0	$ 7,900.0		Recurring	Navajo Nation Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY01	FY02			
	$ (7,900.0)	$ (7,900.0)	Recurring	General Fund
	$ 7,900.0	$ 7,900.0	Recurring	Navajo Nation Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Duplicates/Conflicts with/Companion to/Relates to HB 293, which authorizes a coal tax sharing agreement with the Navajo tribe and reduces state tax collections; HB219/a does not reduce taxes, but instead redirects a portion of state gross receipts taxes to a new fund.

SOURCES OF INFORMATION

LFC Files
Energy, Minerals and Natural Resources Department
Taxation & Revenue Department
Office of Indian Affairs

No Response
Department of Finance and Administration

SUMMARY

Synopsis of HENRC Amendment

The amendment clarifies that funding provided to Navajo chapters may be used for capital outlay purposes.

Synopsis of Bill

The bill authorizes 75 percent of the gross receipts tax from coal produced on Navajo land to be distributed to a new fund, the Navajo Nation fund. The bill creates a new, non-reverting fund to be administered by the Office of Indian Affairs. The effective date of the bill is July 1, 2001.

Monies in the fund would be distributed to New Mexico chapters of the Navajo Nation for use in programs, services and activities to benefit members. Distribution would be made to each qualifying New Mexico chapter based on the ratio of its population to the total chapter population in New Mexico using the latest census. To qualify for funding, a chapter must submit an annual request to use available funding for the "operation of one or more programs, services or activities to benefit members", and the request must be approved by the Office of Indian Affairs. Distributions are to be made to chapters quarterly on or before October 10, January 10, April 10 and July 10, beginning in October 2001, by applying the appropriate ratio to the prior month ending balance. In the event of a chapter having a request that is not approved or not needing the full amount of the distribution, unused money would revert to the Navajo Nation fund.

Significant Issues

Dual taxation by the State of New Mexico and the Navajo Nation for coal produced by mines on the New Mexico portion of the Navajo Nation continues to be a concern. This bill does not eliminate the gross receipts tax on coal, but instead shifts the revenue away from the general fund and authorizes appropriations from that fund.

The Office of Indian Affairs notes the bill would require negotiation of a Joint Powers Agreement with the Navajo Nation, requiring approval of the Navajo Nation central government.

PERFORMANCE IMPLICATIONS

Per the LFC Budget Recommendation, the committee recommends OIA begin to develop measures to evaluate the effectiveness of its programs in anticipation of performance-based budgeting in FY03 (see page 455). See technical issues below.

FISCAL IMPLICATIONS

New Mexico levies a gross receipts tax on the sale of coal within New Mexico. The industry has also expressed concerns that gross receipts taxes are "rolled up" on top of other taxes and royalties. In a 1999 report, gross receipts taxes paid on coal production were reported at $29.8 million in 1997, at a nominal tax rate of 5.6% and an effective tax rate of 5.3%. The report estimated roughly 97% of New Mexico coal is gross receipts taxable. Currently, two mines operating in New Mexico would be impacted by the change: Navajo and McKinley North. In 1998, 43% of the severance tax collections on coal production were derived from Indian lands.
TRD calculates the impact at $7,900.0 in general fund revenue loss for both FY02 & FY03 and a corresponding distribution to the Navajo Nation fund of $7,900.0 in both fiscal years. The distribu-

tion to Navajo chapters would be $5,900.0 in FY02 and $7,900.0 in FY03, due to timing of the distributions. This analysis relies on the interaction between state gross receipts taxes and Navajo business activity taxes and possessory interest tax as supplied to TRD by the taxpayers involved.

Continuing Appropriations

This bill creates a new fund and provides for continuing appropriations. The LFC objects to including continuing appropriation language in the statutory provisions for newly created funds. Earmarking reduces the ability of the legislature to establish spending priorities. Further, the fund is non-reverting.

ADMINISTRATIVE IMPLICATIONS

Workload of the OIA would increase.

TRD notes this would be a manual calculation, and would require a small amount of systems work to implement a new location code.

TECHNICAL ISSUES

TRD notes Article IV, Section 31 of the State Constitution prohibits giving state money to any entity not under the control of state.

A number of technical amendments would make this a more viable program. Technical issues include:

1. More specific program purpose and measures to evaluate its effectiveness.
2. Guidelines, process and criteria for applications and subsequent approval/rejection by OIA.
3. Timing of distributions to more closely reflect the timing of collection and processing of tax receipts.
4. Fund management issues, including investment provisions.
5. In Section E, a clearer process for avoiding unqualified distributions and avoiding potential difficulties with obtaining reversions from a sovereign government.

LFC staff could assist in clarifying these issues.

POSSIBLE QUESTIONS

1. Do all chapters have sufficient fiscal and program staff to effectively seek and utilize these funds to improve programs for chapter members?

2. How could the legislature determine if the program is successful?

AW/njw:ar
Attachment