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FISCAL IMPACT REPORT

SPONSOR: Whitaker DATE TYPED: 03/16/01 HB 293/aHTRC
 SHORT TITLE: Navajo Coal Sales Gross Receipts Tax Credit SB _____
 ANALYST: Dotson/Williams

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY01	FY02			
	\$ (1,800.0)	\$ (3,600.0)	Recurring	General Fund
	\$ (4,400.0)	\$ (4,400.0)	Recurring	Severance Tax Bonding Fund
	\$ (190.0)	\$ (390.0)	Recurring	San Juan County
	\$ (90.0)	\$ (160.0)	Recurring	McKinley County
	\$ (2,200.0)	\$ (2,200.0)		Severance Tax Permanent Fund (corpus)
	\$ (2,200.0)	\$ (2,200.0)	Recurring	Approximate impact on STB Bonding Capacity

(Parenthesis () Indicate Revenue Decreases)

Duplicates/Conflicts with/Companion to/Relates to HB 219

SOURCES OF INFORMATION

Taxation and Revenue Department (TRD)
 Energy, Mineral and Natural Resources Department (EMNRD)

SUMMARY

Synopsis of HTRC Amendment

The amendment phases in the gross receipts tax credit on coal produced on Navajo land subject to Navajo Nation taxes. The credit is reduced by half in the first year. Note the state's resources excise, property and conservation taxes are not significantly affected by this proposal.

Synopsis of Original Bill

Establishes two intergovernmental tax credits that decreases revenue to the general fund and the severance tax bonding fund.

According to the Taxation and Revenue Department, this bill proposes that the state and the Navajo Nation share the proceeds of taxes imposed on the production (severance) of coal extracted from Navajo Nation lands. The state imposes five taxes on coal severance and sale: property tax, resources excise tax, severance tax, gross receipts tax and conservation tax. The Navajo Nation imposes two taxes: possessory interest tax (PIT) and business activities tax (BAT). This bill proposes that the Navajo Nation recede from their two taxes by providing a 25% credit against taxes otherwise due. The state would reciprocally provide a credit of 75% of the lower of the state tax or Navajo Nation tax. Thus, BAT is matched with gross receipts tax and PIT is matched with severance tax, with the state and county governments receiving about ¼ of the previous level of tax and the Navajo Nation receiving about ¾ of the previous level of state tax. The state's resources excise, property and conservation taxes are largely unaffected by this proposal. Taxes on production from two mines are affected by this proposal: Navajo mine in San Juan County which feeds Four Corner's power plant; and McKinley Mine in McKinley County which feeds San Juan Generating Station. Because of the specifics of the lease and tax waiver provisions between the companies and the Nation, this proposal affects the two companies quite a bit differently. Both coal producers have contracts with the power plants. These contracts apparently have pass-through features, such that the netback to the producer is maintained in the face of changes in royalty and taxes. Thus, the economic benefits of this bill are passed to the power plants. The benefits under this bill almost offset the additional tax cost of the expiration of the Navajo Nation tax waivers.

Significant Issues

The coal companies located on the Navajo Nation have been operating under a Navajo Nation tax waiver for thirty years. The wavier expires on July 1, 2001. With the expiration of the wavier the coal companies are exposed to the full taxing authorities of the Navajo Nation and the State of New Mexico. This bill is an attempt to address the concerns expressed by the coal companies and power plants that the level of taxation after July 1,2001 is unreasonable.

FISCAL IMPLICATIONS

Synopsis of HTRC Amendment

The amendment results in revenue losses as shown in the table above. General fund, severance tax bonding fund and local government revenues would be reduced. In addition, the corpus of the severance tax permanent fund and severance tax bonding capacity would be slightly reduced.

OTHER SUBSTANTIVE ISSUES

A 20% total tax burden would exist, which is very high in the industry, if the intergovernmental tax credits are not adopted. Future expansion of coal fired generating power plants depending on Navajo Nation coal would be unlikely.

During the winter session, the Navajo Nation Council approve a resolution supporting the necessary reciprocal credit.