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FISCAL IMPACT REPORT

SPONSOR: Tsosie DATE TYPED: 03/10/01 HB _____
 SHORT TITLE: Power Projects on Navajo Land Exemption SB 809
 ANALYST: Williams

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY01	FY02			
	Loss of Uncertain Magnitude	Loss of Uncertain Magnitude	Recurring	General Fund
	Loss of Uncertain Magnitude	Loss of Uncertain Magnitude	Recurring	Local Governments

(Parenthesis () Indicate Revenue Decreases)

Duplicates/Conflicts with/Companion to/Relates to HB 293, SB 739

SOURCES OF INFORMATION

LFC Files
 Taxation and Revenue Department
 New Mexico Finance Authority (NMFA)
 Energy, Minerals and Natural Resources Department

SUMMARY

Synopsis of Bill

The bill would exempt businesses constructing or operating a generation, transmission or distribution power plant on the Navajo Reservation from corporate income or franchise taxes. The bill would also exempt these projects from gross receipts and compensating tax. The New Mexico Finance Authority is directed to work with the Navajo Nation to provide funding for power projects wholly owned by the Navajo Nation. The effective date is July 1, 2001.

Significant Issues

If the Navajo Nation owns the proposed power project, then there is no general fund or local government impact. A project of any size owned by any other entity would create a potentially large revenue loss for the general fund and all local governments, not just those located near the proposed power plant.

FISCAL IMPLICATIONS

The fiscal impact could be a very large revenue loss to the general fund and local governments because the bill completely exempts the non-tribal entity from *any* corporate income taxes, gross receipts taxes or compensating tax liability for the state or any local government.

ADMINISTRATIVE IMPLICATIONS

TRD notes significant impact on legal staff.

OTHER SUBSTANTIVE ISSUES

TRD notes recent changes in case law, statute and interpretation would result in construction of power projects on Navajo trust or reservation land would be deductible from gross receipts tax, if the power projects are owned by the Navajo Nation. Also, 2000 legislation authorized contractors building on tribal land to issue non-taxable transaction certificates for materials and sub-contracted services, even if the project is not taxable.

New Mexico Finance Authority notes that Indian nations, tribes or pueblos located wholly or partially in New Mexico, including their wholly owned enterprises, are qualified entities for purposes of NMFA financing. Thus, the requirement in SB 809 is duplicative.

The NMFA is not designed to take on risks normally associated with business project financing. The NMFA typically takes a specific revenue pledge to protect the NMFA and its bondholders in the event that a project fails to achieve its forecasted project revenues. The bill directs the NMFA to “work with the Navajo Nation to provide funding for development of power project...”. The NMFA has never been directed to provide funding to any qualified entity, on authorized to make a loan that the NMFA Board determines can be repaid. In light of the credit uncertainty, NMFA notes this mandate may be unworkable and counter to current law.

AW/njw