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FISCAL IMPACT REPORT

SPONSOR: Begaye DATE TYPED: 02/16/01 HB 616
 SHORT TITLE: Navajo Special Fuels Cooperative Agreements SB _____
 ANALYST: Williams

REVENUE

| Estimated Revenue | | Subsequent Years Impact | Recurring or Non-Rec | Fund Affected |
|-------------------|------|-------------------------|----------------------|-----------------------------|
| FY01 | FY02 | | | |
| | | \$ (960.0) | Recurring | State Road Fund |
| | | \$ (120.0) | Recurring | Local Governments Road Fund |

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files
 Taxation and Revenue Department (TRD)
 State Highway and Transportation Department (SHTD)
 Office of Indian Affairs analysis not submitted

SUMMARY

Synopsis of Bill

The bill authorizes the secretary to enter into cooperative agreements with the Navajo Nation regarding special fuel excise taxes imposed by the state and the Navajo Nation and to promulgate rules and procedures associated with that agreement. The agreement could address enforcement, administration, collection, remittance and audit of these revenues. Any revenue collected by the state would be disbursed according to the agreement.

A new special fuel excise tax credit is authorized for certain transactions. These transactions are defined as those “taking place on land owned by or for the benefit of the Navajo Nation and located within the exterior boundaries of the Navajo Nation”. If a Navajo Nation tax has been imposed on that transaction, then that amount would be credited against tax due to the state or local governments. The effective date of the bill is July 1, 2001.

Significant Issues

House Bill 616 -- Page 2

According to the bill, the similar Navajo Nation tax must be substantially similar to New Mexico special fuels supplier tax; however, the ability to set that tax is held with a sovereign government and would be set accordingly.

The definition of Navajo land is important to the fiscal impact of this bill. There are lands along and near I-40 which are considered tribal lands; however, these lands may not be included in the definition included in the bill. The exterior boundary language of the bill does not contain a date; there is the possibility the boundary may move over time and change the fiscal impact.

TRD notes the International Fuel Tax Agreement (IFTA) could not recognize the Navajo Nation as a state for purposes of revenue allocation. The cooperative agreement may not address the issue of revenue sharing of the net special fuel tax revenues (suppliers tax plus International Fuel Tax Agreement). Additional authority and direction from the legislature are needed.

SHTD notes that IFTA New Mexico purchases in excess of use generate a liability to other states. If tribal diesel is sold at a price lower than other New Mexico competitors, the IFTA provisions could cost the state a greater amount than the amount of special fuels collected.

TRD notes it currently has an information sharing agreement with the Navajo Nation to assist monitoring and compliance of fuel tax activity.

FISCAL IMPLICATIONS

TRD indicates the bill would reduce state road fund revenue by \$960.0 in FY03 and local government revenues by \$120.0 in FY03. TRD assumes the agreement affects 6 million gallons of diesel sold within the “heart” of the Navajo reservation. The timing of the fiscal impact reflects the cooperative agreement must be developed between TRD and the Navajo Nation after the effective date once the bill is enacted.

SHTD indicates the “impact of HB 616 on this \$82 million revenue is open ended”, and reflects that potential revenue loss is substantial for the state road fund and local government road funds.

ADMINISTRATIVE IMPLICATIONS

TRD notes the administrative implications would depend on the terms of the cooperative agreement.

OTHER SUBSTANTIVE ISSUES

SHTD notes special fuel tax revenues are pledged for fifteen years as part of the revenue stream for highway bonds and expresses concerns about bondholder lawsuits. Article IX, Section of the New Mexico Constitution provides:

“The Legislature shall not enact any law which will decrease the amount of the annual revenues pledged for the payment of state highway debentures or will divert any such revenues to any other purpose so long as any of said debentures issued to anticipate the collection thereof remain unpaid.”

POSSIBLE QUESTIONS

House Bill 616 -- Page 3

1. How would this agreement compare with others between TRD and tribes and pueblos in the state regarding dual taxation issues?
2. Could a cap be placed in the bill to limit the state's exposure to revenue loss?
3. How could bondholders be held harmless from the impacts of this bill?

AW/ar