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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/27/06

SPONSOR Pinto LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Navajo Nation Electric Generation Tax Credit SB 464

ANALYST Schardin

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY06	FY07	FY08		
		(2,517.0)	Recurring	General Fund
		(315.0)	Recurring	Small Cities Assistance Fund
		(315.0)	Recurring	Small Counties Assistance Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates HB 82.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Indian Affairs Department (IAD)

Energy Minerals and Natural Resources Department (EMRND)

Taxation and Revenue Department (TRD)

### SUMMARY

#### Synopsis of Bill

Senate Bill 464 creates the intergovernmental compensating tax credit, which may be claimed by a taxpayer who has a compensating tax liability from construction or operation of a coal-fired electric generating facility on Navajo Nation land, so long as construction of the facility commences before December 31, 2007.

The amount of the credit shall be determined annually and be the lesser of 1) the total amount of possessory interest tax, business activity tax and ad valorem tax paid to the Navajo Nation for the coal facility, or 2) the amount paid to the Navajo Nation pursuant to an agreement under which the Navajo Nation grants a tax exemption for the coal facility in exchange for a fixed annual tax payment, or 3) 85 percent of compensating tax liability from the construction or operation of the

coal facility. The total amount of the credit for each coal facility is capped at \$60 million (See Technical Issues below).

The effective date of these provisions is July 1, 2006.

## **FISCAL IMPLICATIONS**

Navajo Nation's Diné Power Authority has selected Sithe Global Power to develop, finance, construct and operate two 750 megawatt coal-fired generating facilities called "Desert Rock" 30 miles southwest of Farmington. The total cost of this facility is estimated at \$2.2 billion.

Sithe is currently negotiating an agreement with the Navajo Nation in which Sithe would pay the Navajo Nation \$12.6 million over four years of construction (\$3.1 million per year in FY08-FY11), \$164.5 million over the first ten years of operation (\$16.5 million per year in FY12 to FY21), and \$354.3 million over the 11<sup>th</sup> to 26<sup>th</sup> years of operation (\$20.8 million per year in FY22 to FY37) in lieu of Navajo Nation taxes.

Assuming that the \$3.1 million per year Sithe pays to the Navajo Nation during the construction phase will be less than 85 percent of compensating tax liability in FY08-FY11, but that 85 percent of compensating tax liability will be less in later years when the facility is in operation, the amount of the credit will total about \$3.1 million per year in FY08- FY11 and about 1 million per year for decades thereafter until the total credit reaches the \$60 million cap.

Eighty percent of the compensating tax revenue loss will accrue to the state general fund, while 10 percent will accrue to each the small cities and small counties assistance funds.

## **SIGNIFICANT ISSUES**

Businesses that choose to locate on Navajo Nation land are subject to both Navajo Nation and New Mexico taxes. This dual taxation increases the cost of locating businesses on Navajo Nation land.

Sithe states that the purposes of the Desert Rock project are to improve the existing southwestern states power system, deliver competitively priced and reliable power, generate electricity from Navajo Nation coal resources, reduce dependence on natural gas-fired facilities, and support Navajo Nation economic development.

Water use and emissions from any coal facility must be considered, since the southwest faces severe water concerns and coal facilities are known to emit mercury, greenhouse gases and other toxins into the surrounding environment. According to Sithe, by using air cooling instead of water cooling, the Desert Rock facility will use about 25 percent as much water as a conventional coal facility. Sithe expects the facility to use about 4,500 acre feet of water per year, which is enough to supply a city of roughly 4 million people. This water is expected to be obtained from Navajo groundwater sources.

Sithe reports that Desert Rock will also have a "high-efficiency super-critical boiler" that will make it 10 times cleaner than older coal facilities. Although two other coal plants in northwestern New Mexico currently emit a combined 40,000 tons of sulfur-dioxide (SO<sub>2</sub>) per year, the Desert Rock project is expected to emit about 3,500 tons of SO<sub>2</sub> per year when operations begin

in 2010. The nationwide average SO<sub>2</sub> emissions for coal-fired generators were 0.94 pounds of SO<sub>2</sub> per million Btu in 2004; Desert Rock expects to emit only 0.06 pounds per million Btu. This is well below the Clean Air Act limit of 0.26 pounds per million Btu that will take effect in 2015.

Construction of Desert Rock is expected to create an average of 1,000 jobs per year for four years, with total construction wages of about \$400 million. Once Desert Rock operations begin in 2009 or 2010, the facility is expected to create 200 permanent power plant jobs and 200 permanent mining jobs.

## **TECHNICAL ISSUES**

Section D caps the aggregate credit that that may be claimed for each coal facility at \$60 million. Although representatives of Sithe believe the bill is meant to cap the credit at \$60 million over the lifespan of a facility, it is technically unclear if the \$60 million is an annual cap or an aggregate cap on the entire lifespan of a facility. Amend Section D to clarify the time period to which this \$60 million cap applies.

Although the bill states that construction of a coal facility must commence by December 31, 2007 for a facility to qualify for the credit, it puts no limit on how long ago construction could have commenced. This means any existing coal facilities on Navajo Nation land, such as the Four Corners Power Plant, will be able to claim the credit for their operations or any improvements to existing facilities.

EMNRD notes that the bill does not define commencement of construction, which could be interpreted to include activities such as assessment studies or other planning. The bill should be amended to define commencement of construction as the building of a permanent structure of a power plant that has been planned, evaluated, designed, and permitted in accordance with all requirements of agencies having jurisdiction.

The definition of “Navajo land” makes it unclear whether individual or tribal trust allotments outside the reservation’s exterior boundaries are included. There are also fee lands owned by non-Indians that fit the description found in this bill. TRD suggests defining Navajo land as “tribal trust land or land reserved for the Navajos pursuant to executive order.”

TRD suggests adding the word “compensating” before the word “tax” in page 1, line 24 of the bill to clarify that the credit applies against compensating tax liability.

TRD also notes that the bill does not clearly indicate how the credit may be claimed once it is approved. It looks as though TRD would approve and track the credit but the bill should state this explicitly.

## **POSSIBLE QUESTIONS**

### Economic Questions:

What shares of the 1,000 jobs generated by construction of Desert Rock are expected to be filled with Navajo Nation or New Mexico residents?

What market would electricity produced at Desert Rock reach? Would new infrastructure be necessary to bring that electricity onto the grid?

Environmental and Cultural Questions:

How will the Desert Rock project affect visibility in the region surrounding the facility?

The Desert Rock project will use 4,500 acre feet of water per year from Navajo groundwater sources. How will other users of Navajo groundwater be impacted by Desert Rock's useage?

Will the planned Desert rock project impact cultural sites on Navajo Nation land?

SS/yr