

1999 DRAFTING REQUEST

Assembly Amendment (AA-AB133)

Received: **05/26/99**

Received By: **olsenje**

Wanted: **Soon**

Identical to LRB:

For: **Legislative Fiscal Bureau**

By/Representing: **Zabawa (DS)**

This file may be shown to any legislator: **NO**

Drafter: **olsenje**

May Contact:

Alt. Drafters: **nelsorp1**

Subject: **Criminal Law - miscellaneous**

Extra Copies:

Pre Topic:

LFB:.....Zabawa (DS) -

Topic:

Indian gaming revenue: justice-related programs

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	olsenje 05/27/99	gilfokm 05/28/99	kfollet 05/30/99	_____	lrb_docadmin 06/1/99		
/2	olsenje 06/4/99	gilfokm 06/4/99	martykr 06/6/99	_____	lrb_docadmin 06/7/99		

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/1	olsenje 05/27/99	gilfokm 05/28/99	kfollet 05/30/99	_____	lrb_docadmin 06/1/99		

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/1	olsenje	1-5-28-99 tmg	Kjf 5/30	Kf/ch 5/30			

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Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

Date: 5-21-99

DELIVER TO: Tefron Olsen

Addressee Fax #: 264-8522 Addressee Phone #: _____

of Pages, Including Cover: _____ Sender's Initials: BZ

From: Barbara Zabawa, LFB

Message:

Changes are circled. Thanks!

BZ

MO#	2/	
Burka	X	N
Dacker	X	N
Jauch	X	N
Moore	X	N
Shibilski	X	N
Plache	X	N
Cowles	X	N
Panzer	X	N
Gard	X	N
Porter	X	N
Kaufert	X	N
Albert	X	N
Duff	X	N
Ward	X	N
Huber	X	N
Riley	X	N

16-0

Representative Gard
Senator Jauch

TRIBAL GAMING REVENUE ALLOCATIONS

Motion:

Move to approve the Governor's recommendations contained in Fiscal Bureau Papers # 157 through #175, with the following modifications:

a. LFB Paper #158, Alt 2H. Delete \$10,000 PR annually from tribal gaming revenue allocations for spearfishing enforcement aids. Also, maintain the current GPR appropriation for the aids, with no funding appropriated in the 1999-01 biennium and lapse any balance to the general fund (estimated at \$37,000).

b. LFB Paper #159, Alt. C2. Delete \$81,100 PR in 1999-00 and \$93,700 PR in 2000-01 and 2.0 PR positions annually and associated appropriation language relating to an Indian law unit in the Department of Justice.

c. LFB Paper #159, Alt. D2. Delete \$1,000,000 PR annually for nonpoint cost-share grants to landowners.

d. LFB Paper #160. In addition to Alt. 1, provide \$175,000 PR annually to the Stockbridge-Munsee tribe for a public safety initiative, and \$150,000 PR annually to the St. Croix Chippewa tribe to develop law enforcement capacity on reservation lands to be administered by the Office of Justice Assistance under the newly-created tribal law enforcement assistance grant program. In addition, modify the Governor's recommendation by also exempting the procedures for administering the tribal law enforcement program from the administrative rule process (Alt. B2).

e. LFB Paper #161. Make the following modifications to the gaming economic development and diversification grant and loan programs:

1. Provide an additional \$2,000,000 PR in 1999-00 for economic development grants and loans.

2. Require Commerce to make annual grants of \$1 million to the City of Milwaukee for a matching grant program administered by the Milwaukee Economic Development Corporation for remediation and economic redevelopment activities in the Menomonee Valley.

3. Require Commerce to make annual grants of \$150,000 to the Northwest Regional Planning Commission to match federal or private funds to establish a community-based venture fund. Require Commerce to release \$1 of state funding for each \$2 of federal or private matching funds.

4. Require that businesses in all counties be eligible for gaming economic development and diversification grants and loans.

5. Create program revenue repayments appropriations as annual.

6. Specify that Native American businesses are eligible for grants and loans.

f. LFB Paper #163. Modify the Governor's recommendations relating to Indian health program funding as follows: (a) provide \$183,700 PR in 1999-00 and \$245,000 PR in 2000-01 to be used as the state match to support MA-funded tribal outreach activities; (b) provide \$300,000 PR in 1999-00 and \$400,000 PR in 2000-01 in the Committee's supplemental appropriation as a contingency fund for BadgerCare premiums and require DHFS to submit a request for the release of these funds, under a 14-day passive review process once DHFS receives a written decision from HCFA on whether Native Americans would be required to pay premiums under the BadgerCare program; and (c) provide \$825,000 PR annually as the state match for MA services provided by tribal federally qualified health centers (FQHCs) and delete a corresponding amount from the GPR MA benefits appropriation.

In addition, provide \$450,000 PR annually in the Committee's supplemental appropriation to support a new tribal FQHC grant program. Direct DHFS to establish criteria for distributing grants to tribal FQHCs and to take into account each tribe's financial need, available resources and other demographic health status indicators in developing a distribution formula. Specify that these grants would support health care services of tribal members that are purchased or provided by tribal FQHCs. Require DHFS to submit a request for the release of this funding that specifies the distribution formula that would be used for awarding these grants, under 14-day passive review, by September 1, 1999.

g. LFB Paper #165, Alt. 2. Transfer 100% of the unencumbered balance of the county-tribal programs -- surcharge receipts appropriation to a newly-created penalty assessment appropriation under OJA.

h. LFB Paper #166, Alt. 4. Delete the increases in hunting and fishing licenses recommended by the Governor. Transfer an additional \$500,000 PR annually (\$2.5 million total) to the fish and wildlife account of the conservation fund.

i. Provide \$50,000 SEG annually from the fish and wildlife account for walleye surveys in the ceded territories.

j. LFB Paper #167. Modify the Governor's recommendation by providing \$50,000 PR in 1999-00 and \$200,000 PR in 2000-01 and 1.0 PR wildlife biologist position annually from tribal

gaming revenue allocations for the management of the elk reintroduction program by DNR.

k. Provide \$55,000 PR in 1999-00 and \$60,000 PR in 2000-01 from tribal gaming revenue allocations to DNR as one-time funding for a study of crop damage caused by cranes to be done by the University of Wisconsin and the International Crane Foundation. Also, provide \$75,300 PR in 1999-00 and \$87,000 PR in 2000-01 and 1.0 PR wildlife biologist position from tribal gaming revenue allocations related to the reintroduction of whooping cranes in Wisconsin.

L. LFB Paper #169, Alt. 2. Provide \$100,000 PR in 1999-00 in addition to the \$300,000 PR in 2000-01. Further, require the Town of Swiss and the St. Croix Band to submit a report of the findings of the drinking water and water quality study to DNR and DOA no later than January 1, 2001, instead of January 1, 2003.

m. LFB Paper #171. Require that at least \$900,000 annually be spent for Joint Effort Marketing (JEM) grants and specify that any tribal government or not-for-profit tribal entity is eligible to receive JEM grants. Further, delete \$750,000 GPR each year from Tourism's marketing appropriation. Allocate \$200,000 annually from the tribal gaming tourism marketing appropriation for grants to the Milwaukee Public Museum for Native American exhibits and activities.

Further, provide 1.0 PR position and transfer \$23,500 in 1999-2000 and \$30,500 in 2000-01 from the tribal gaming tourism marketing appropriation to a new, annual appropriation funded by tribal gaming revenue for a tourist information assistant. Require that program revenue from the tribal gaming tourism marketing appropriation annually be transferred to match the amount in the schedule for the tourist information assistant position. Delete \$35,700 PR annually and 1.0 vacant tourism special assistant position in the surplus property appropriation for tourism promotion.

Specify that Tourism maintain proportionate balances in each marketing appropriation. Maintain the GPR tourism marketing appropriation as an annual appropriation (Alternatives B2 and B3).

n. LFB Paper #172, Alt. 2. Modify the Governor's recommendation by requiring the Board of Regents to submit to the Joint Committee on Finance for its approval under s. 13.10 of the statutes, a plan for the construction and operation of the proposed aquaculture facility including: (a) a description of the physical characteristics of the facility; (b) the functions to be performed by the center; (c) how, and by whom, those functions would be carried out; (d) staffing levels; and (e) estimated operational costs. Specify that the program revenue bonding for construction of the facility could not be issued until the Committee has approved the University's plan.

o. LFB Paper #173, Alts. 2A(2) and 2B(2). Modify the Governor's recommendation as follows: (a) provide the additional American Indian veterans services coordinator position (funded from the tribal gaming revenues) as a permanent position rather than a four-year project position; and (b) provide additional funding of \$12,500 PR in 1999-00 and \$17,500 PR in 2000-01 (from tribal gaming revenues) to establish a \$2,500 per tribe grant program for those Wisconsin Indian tribes which designate a tribal veterans service officer and which have had a tribal veterans services officer plan approved by DVA.

p. LFB Paper #174. Delete the Governor's recommendation regarding: (a) provide a one-time transfer of \$2,500,000 from tribal gaming revenues to the WDRF specifically for a loan guarantee program to provide up to \$200,000 or 100% guarantee of loans for small businesses located in a county or adjacent to a Wisconsin county with a casino; and (b) allow WHEDA to provide interest subsidies by paying the lender an annual amount of up to 3.5% of the outstanding loan balance.

q. Move to create a management assistance grant program, administered by DOA, to provide financial assistance to counties to fund public safety, public health, public infrastructure, public employee training and economic development expenditures. Provide that grants be provided, subject to the availability of funds, to counties that meet the following criteria: (1) the county does not contain any incorporated municipalities; (2) the county has a geographic area of less than 400 square miles; (3) the county submits a detailed expenditure plan that identifies how the funds are proposed to be expended and how those expenditures meet the program's goals; and (4) the county maintains its financial records in accordance with accounting procedures established by DOR. Establish the grant amount for each eligible county at \$500,000, annually. Create an appropriation to make grants under the program. Place \$1,000,000 in tribal gaming revenues in the PR appropriation of the Joint Committee on Finance to be transferred under s. 13.10 to the management assistance grant program appropriation upon request by DOA and a finding that a county has met the eligibility criteria of the grant program.

r. Provide \$250,000 PR annually and create a county law enforcement grant program, to be administered by the Office of Justice Assistance (OJA) under which counties may receive no more than \$50,000 annually. Provide that counties that fulfill all of the following requirements would be eligible to receive funds: (a) the county borders a federally-recognized Indian reservation in Wisconsin; (b) the county does not receive a grant from the Department of Justice's cooperative county-tribal law enforcement program for each of the tribes that border the county; (c) the county demonstrates a need for law enforcement services; and (d) the county submits a plan to OJA that shows how the county would use the grant monies for law enforcement services.

Note:

[Change to Bill: -\$3,150,000 GPR, \$37,000 GPR-Lapse, \$100,000 SEG, \$1,000,000 SEG-REV and \$4,468,000 PR and -0.5 PR positions]



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

May 21, 1999

Joint Committee on Finance

Paper #159

Tribal Gaming Revenue Allocations

Selected Tribal Gaming Revenue Allocations for New Funding (DOA– Division of Gaming)

[LFB 1999-01 Budget Summary: Page 67, #1]

This paper will address four of the 31 allocations of tribal gaming revenue made under the bill. The provisions would provide tribal gaming revenue to four agencies, as follows: (a) Arts Board; (b) Higher Education Aids Board; (c) Department of Justice; and (d) Department of Natural Resources. These recommended allocations represent new funding for programming that can be described succinctly and may be approved or denied with little or no effect on agency budgets or programs under current law. The items will be discussed separately with alternatives provided for each provision.

A. American Indian Arts (Arts Board) [LFB 1999-01 Budget Summary: Page 107, #3]

Current Law

The state aid for the arts program supports a variety of contracts with, or grants to, groups, individuals and organizations concerned with or involved in artistic activities. A grantee must provide monies or in-kind contributions equal to at least 50% of the total cost of the project. The program is primarily GPR-funded, with base level funding of \$1,240,500 GPR in 1998-99.

Governor

Provide \$25,200 PR annually in a new, annual appropriation for grants-in-aid to, or contracts with, American Indian groups, individuals, organizations and institutions. Permit the Board to enter into contracts with American Indian individuals, organizations and institutions

and American Indian tribal governments for services furthering the development of the arts and humanities. In addition, require the Board to conduct a grant program identical to the Board's state aid for the arts program, but only for American Indian individuals and groups. Funding for the new program would be derived from tribal gaming revenue transferred to the new appropriation under the Arts Board from the Department of Administration.

Discussion Points

1. The Arts Board's state aid for the arts program currently consists of nine separate grant categories, which are not established statutorily, but by Board policy. Native American organizations and individuals are currently eligible to receive funding under many of these categories. According to Board staff, over the last three years, the Board has awarded the following amounts specifically to Native American organizations or individuals under the state aid for the arts program:

<u>Year</u>	<u>Total Awarded</u>	<u>Number of Awards</u>
1996-97	\$12,000	2
1997-98	9,975	2
1998-99	11,856	3

2. As shown in the table, the total amount of grants awarded to American Indian organizations and individuals during the past three years has not exceeded \$12,000 in any one year. The Governor's proposal would more than double the amount provided to American Indians through the state aid for the arts program. According to Arts Board staff, the Board has received applications for projects by and for Native Americans totaling approximately \$70,200 for 1999-00. While Arts Board grants may support up to 50% of the total project cost (\$35,100), Board staff indicate that due to the limited amount of funding available, only about \$20,000 will be awarded for these projects. The proposed funding would directly benefit American Indian artists and groups. To the extent that this could be considered an economic development initiative to benefit tribes, the proposed program would be consistent with one of the purposes identified in the state-tribal memorandum of understanding (MOU).

Alternatives

- A1. Approve the Governor's recommendation.
- A2. Maintain current law.

Alternative A2	PR
1999-01 FUNDING (Change to Bill)	- \$50,400

B. WHEG Program For Tribal College Students (HEAB) [LFB 1999-01 Budget Summary: Page 357, #5]

Current Law

Students enrolled at tribal colleges are eligible to receive awards under the tuition grant (TG) program. Tuition grants are need-based and are awarded to resident undergraduates enrolled at private, nonprofit postsecondary institutions and tribal colleges in Wisconsin.

The Wisconsin higher education grant (WHEG) program provides need-based grants to resident undergraduates enrolled at UW campuses and Wisconsin Technical College System (WTCS) institutions. Students enrolled at least half-time are eligible for grants ranging from \$250 to \$1,800 per year for no more than 10 consecutive semesters. Funding for WHEG awards is provided in two separate appropriations within HEAB, one for UW students and one for WTCS students.

Governor

Eliminate current law specifying that students enrolled at tribal colleges are eligible to receive awards under the TG program. Instead, \$400,000 PR of annual funding would be provided in a new, biennial appropriation under HEAB for WHEG awards for tribal college students. Funding for the grants would be derived from tribal gaming revenue transferred to the new appropriation under HEAB from the Department of Administration.

Discussion Points

1. A provision in 1997 Act 27 expanded eligibility for TG awards, beginning in 1997-98, to students enrolled at least half-time at tribal colleges in the state. In 1997-98, 161 tribal college students received a total of \$158,700 in tuition grant awards averaging \$985. For 1998-99, it is estimated that approximately \$300,000 in TG funding will be awarded to tribal college students. The bill would not reduce funding for the TG program to reflect the proposed reduction in the number of eligible students. However, Act 27 did not increase funding for the TG program to account for these students.

2. TG awards are determined using a statutory formula that relies in part on the amount by which a student's tuition exceeds UW-Madison tuition. Since tuition at a tribal college is typically lower than that charged at UW-Madison, the tuition for tribal college students was artificially inflated in order to determine grant amounts under the TG formula. The Governor's proposal addresses this issue by expanding the WHEG program to include tribal college students and providing a separate appropriation for WHEG awards to these students.

3. Under the WHEG program, grant amounts are determined by a formula approved by

HEAB in the academic year prior to the year in which the grants will be awarded. While the amount provided in the new appropriation under the bill would be considerably greater than the total estimated tuition grants awarded to tribal college students in 1998-99, the WHEG formula is designed to expend all of the funding available for the program. This is achieved by modifying the various formula factors to determine the number of students who will receive awards and the average amount of each award.

4. While the use of tribal gaming revenue in this manner would benefit tribal college students, it does not appear that this use is consistent with the purposes specified in the state-tribal MOU.

Alternatives

B1. Approve the Governor's recommendation to provide \$400,000 PR of annual funding.

B2. Maintain current law.

Alternative B2	PR
1999-01 FUNDING (Change to Bill)	-\$800,000

C. Indian Litigation (Justice) [LFB 1999-01 Budget Summary: Page 385, #15]

Current Law

The Division of Legal Services in the Department of Justice (DOJ) provides legal representation and advice to the Governor, Legislature, other state officers and state agencies, and renders legal opinions to county corporation counsel, district attorneys, the Legislature and state agencies. In addition, it has primary responsibility to take court action to enforce certain state laws, including environmental, antitrust, consumer protection and Medicaid fraud laws, and limited jurisdiction to enforce certain criminal laws. The Division also represents the state's interests in state and federal appellate courts and in all felony cases on appeal, and defends state employes, state officers and state agencies in certain civil actions.

Governor

Provide \$81,100 PR in 1999-00 and \$93,700 PR in 2000-01 and 2.0 PR positions annually (1.0 attorney and 1.0 legal secretary) in a new, annual appropriation for Indian law legal services to create an Indian law unit in the Division of Legal Services. Funding for the positions would be provided from tribal gaming revenue.

Discussion Points

1. The Division represents the state in litigation involving the state and Indian tribes. Cases have included issues related to trust land applications, environmental law, boundary disputes and jurisdiction, spearing and netting, gaming and other Indian sovereignty issues.

2. There has been a significant increase in litigation involving the state and Indian tribes. As a result, the Legislature, in 1997 Enrolled Assembly Bill 100 (the biennial budget bill), provided 1.0 two-year project attorney position to DOJ to litigate cases involving Indian laws and to coordinate Indian law litigation. The Governor, in 1997 Act 27, vetoed the position and associated funding.

3. There appears to be sufficient workload regarding Indian litigation to support the creation of the positions. Questions could be raised, however, in terms of whether the use of tribal gaming revenues for these positions is appropriate or consistent with the purposes specified in the state-tribal MOU. According to the testimony of Ms. Debbie Doxtator, Chairwoman of the Oneida Tribe on Indians of Wisconsin, before the Joint Committee on Finance on April 15, 1999, the funding of an Indian law attorney to focus solely on Indian-related litigation is controversial. She stated that "This position is not in the best interest of the Tribes, however we are expected to finance the position."

4. In a letter to Department of Administration Secretary Mark Bugher dated March 4, 1999, the Great Lakes Inter-Tribal Council stated that the "tribal chairs were unanimous in their dissent against creating an Indian Law Unit that would focus on Indian-related litigation. They felt the position would be adversarial to tribal disputes and sovereignty issues and wanted no part in having to support it."

5. In a March 17, 1999 letter responding to those concerns, Secretary Bugher stated that "While I understand that the tribes are not enthusiastic about funding a new Indian law attorney with gaming compact revenues, I believe it is a good compromise given past history. At the request of the tribes, the Governor vetoed an earlier legislative provision for an entire Indian litigation unit—a veto that many members of the Legislature were unhappy with. The Governor felt that recommending one attorney position for the Department of Justice may quell the legislative desire to create a much larger Indian litigation unit."

Alternatives

C1. Approve the Governor's recommendation to provide \$81,100 in 1999-00 and \$93,700 in 2000-01 and 2.0 positions annually for Indian law legal services.

C2. Maintain current law.

Alternative C2	PR
1999-01 FUNDING (Change to Bill)	-\$174,800
2000-01 POSITIONS (Change to Bill)	- 2.00

D. Tribal Gaming Revenue For Nonpoint Grants (DNR -- Water Quality)
[LFB 1999-01 Budget Summary: Page 449, #13]

Current Law

In 1997-98, the state provided \$10.8 million in cost-share grants to landowners for priority watershed nonpoint source pollution abatement projects. Grants are provided to designated management agencies (primarily counties and municipalities) that, in turn, provide cost-sharing grants to individual landowners to install water pollution abatement practices and structures. Cost share grants are generally provided for up to 70% of the implementation costs.

Governor

Provide \$1,000,000 PR annually from tribal gaming program revenues each year in a new, annual appropriation to fund nonpoint program cost-share grants to landowners.

Discussion Points

1. A total of \$43.1 million would be provided under the bill for nonpoint program grants to local governments and landowners in the 1999-2001 biennium, compared to the \$34.8 million provided in the 1997-99 budget act. DNR officials indicate that the \$1,000,000 annually from tribal gaming revenues would be used for anticipated cost-share reimbursement amounts (ACRA) to landowners for the installation of projects in priority watersheds.

2. Approximately 17 of the state's 62 active priority watershed projects are located in counties in which tribal casinos are located. Nonpoint cost-share grants support county and municipal programs to improve water quality through pollution abatement grants to landowners. One purpose specified in the state-tribal MOU is support of programs and services of the county in which a tribe is located. To the extent that tribal gaming revenue is used to fund watershed projects in counties in which tribes are located, the use of these funds may be viewed as consistent with the MOU.

Alternatives

D1. Approve the Governor's recommendation to provide \$1,000,000 annually for nonpoint grants.

D2. Maintain current law.

Alternative D2	PR
1999-01 FUNDING (Change to Bill)	-\$2,000,000

Prepared by: Merry Larsen, David Schug and Barbara Zabawa



Legislative Fiscal Bureau

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May 21, 1999

Joint Committee on Finance

Paper #160

Tribal Gaming Revenue Allocations

Tribal Law Enforcement Assistance (DOA -- Office of Justice Assistance)

[LFB 1999-01 Budget Summary: Page 82, #6]

CURRENT LAW

No provision.

GOVERNOR

Provide \$200,000 PR in 1999-00 and \$600,000 PR in 2000-01 in a new, annual appropriation to create a tribal law enforcement assistance grant program. Program funding would come from tribal gaming revenue provided to the state under the recently completed state-tribal gaming compact amendments. Under the bill, the Office of Justice Assistance (OJA) would provide grants to tribes for law enforcement operations and would be required to develop criteria and procedures for administering the grant program. The criteria used by OJA would be exempt from the administrative rule process. To be eligible, a tribe would be required to submit an application and plan for expenditure of the grant monies to OJA. OJA would be required to review the application and plan to determine whether they meet the OJA criteria. OJA would also be required to review the use of the grant money once awarded to ensure that the money is used according to the approved plan. A technical correction to the bill is needed to correct a statutory reference.

DISCUSSION POINTS

1. The bill would create a tribal law enforcement grant program that would be administered by OJA. OJA would be responsible for developing criteria and procedures for awarding the grants. The bill would exempt the criteria used by OJA to administer the grant program from the administrative rule process. The bill does not, however, explicitly exempt the

procedures OJA must develop for administering the program from the administrative rule process.

2. OJA officials indicate that the grants would likely be awarded on a competitive basis. However, because the criteria and procedures have not as yet been developed, there is little information concerning how eligibility would be determined or how the program would operate. It could be argued that, because of the lack of specificity concerning the grant program, the administrative rule process would provide the Legislature with the opportunity to review and comment on the details of the proposed program before implementation.

3. However, OJA indicates that its current grant programs do not require administrative rules. Instead, OJA presents its policies and procedures concerning grant awards to the Governor's Commission on Law Enforcement and Crime for its approval. This Commission was created by executive order in 1987 to serve as the primary body for law enforcement planning and policy development. It could be argued that the Commission's review of the criteria and procedures developed by OJA for the tribal grant program would provide sufficient oversight of OJA's proposed implementation of the grant program.

4. As a result, the Committee may wish to either: (a) exempt both the criteria and procedures that OJA develops for the tribal law enforcement program from the administrative rule process; or (b) require both the criteria and procedures that OJA develops to be subject to the administrative rule process.

5. Under the Governor's proposal, tribal gaming revenues would be used to fund the tribal law enforcement program. The intended use of the tribal gaming revenue is specified in most of the amended compact agreements. Eight of the agreements contain a government to government memorandum of understanding (MOU) relating to the use of the additional payments. Four of the MOU specify an additional area of spending: (a) the Bad River, Red Cliff and St. Croix agreements include expenditures for law enforcement initiatives on reservations; and (b) the Stockbridge-Munsee agreement includes spending for public safety initiatives on the Stockbridge-Munsee reservation.

6. The most important element common to the MOU is the provision that the Governor must undertake his best efforts within the scope of his authority to assure that monies paid to the state under the agreements are expended for specific purposes. According to one tribe (St. Croix), the MOU to provide monies for tribal law enforcement programs was intended to be allocated only to those tribes that specifically requested tribal law enforcement programs. Depending upon the eligibility criteria developed by OJA under the Governor's proposal, the tribal law enforcement grant program could be open to any tribe or band in the state, not just the four tribes that negotiated some form of tribal law enforcement program in their MOU.

7. As an alternative, the Committee may wish, therefore, to specify that the OJA tribal law enforcement grant program would only be available to those tribes or bands that specifically requested tribal law enforcement programs or public safety initiatives in their MOU with the state.

8. Currently, the Department of Justice (DOJ) administers a program that provides payments to counties for cooperative county-tribal law enforcement programs. To receive payment, a county and tribe must develop and annually submit a joint program plan and a report on the performance of law enforcement activities on the reservation in the previous fiscal year. Base funding for the program is \$60,000 GPR and \$597,700 PR (derived from 4.54% of penalty assessment revenues). Under AB 133, the Governor would convert funding for the DOJ program to tribal gaming revenues.

9. The proposed grant program to be administered by OJA would differ from the current county-tribal cooperative law enforcement program operated by DOJ in that grants would be provided to tribes rather than counties. According to some tribal officials, escalating crime rates on some reservations drive the need for a tribal law enforcement program on the reservation. There is no information available on how the proposed OJA grant program would relate to the DOJ cooperative law enforcement program. One could argue that since DOJ already administers a similar program, DOJ has more expertise in the area of tribal law enforcement and that administration by DOJ could best assure coordination between the two programs. In addition, DOJ, through its Training and Standards Bureau, could guide tribal law enforcement officers with law enforcement standards and training issues. An alternative the Committee may wish to consider, therefore, is to specify that DOJ, rather than OJA, administer the tribal law enforcement program

ALTERNATIVES

A. Grant Program

1. Approve the Governor's recommendation to: (a) provide \$200,000 in 1999-00 and \$600,000 in 2000-01 in a new, annual appropriation funded with tribal gaming revenues, to create a tribal law enforcement assistance grant program under which any federally recognized American Indian tribe or band in this state would be eligible to apply; (b) specify that to be eligible for funding, a tribe would be required to submit an application and plan for expenditure of the grant monies to OJA; (c) require OJA to review the application and plan to determine whether they meet the OJA criteria and to review the use of the grant money once awarded to ensure that the money is used according to the approved plan. In addition, correct a statutory reference.

2. Modify the Governor's recommendation by specifying that only those tribes or bands that specifically requested tribal law enforcement programs or public safety initiatives in their MOU with the state be eligible for the grant program.

3. Delete the Governor's recommendation.

Alternative A3	PR
1999-01 FUNDING (Change to Bill)	- \$800,000

B. Administrative Rule Process Exemption *[to be considered if Alternatives A1 or A2 are adopted]*

1. Approve the Governor's recommendation to exempt the criteria for administering the tribal law enforcement grant program from the administrative rule process.

2. Modify the Governor's recommendation by also exempting the procedures for administering the tribal law enforcement program from the administrative rule process.

3. Modify the Governor's recommendation by requiring that the criteria for administering the tribal law enforcement grant program be subject to the administrative rule process. In addition, require that the procedures for administering the program also be subject to the administrative rule process.

C. Administrative Agency *[to be considered if Alternatives A1 or A2 are adopted]*

1. In addition to any of the above alternatives, modify the Governor's request by specifying that DOJ, rather than OJA, administer the tribal law enforcement program.

Prepared by: Barbara Zabawa



Legislative Fiscal Bureau

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May 21, 1999

Joint Committee on Finance

Paper #165

Tribal Gaming Revenue Allocations

County-Tribal Law Enforcement (DOJ)

[LFB 1999-01 Budget Summary: Page 384, #14]

CURRENT LAW

Under current law, the Department of Justice (DOJ) provides payments to counties for cooperative county-tribal law enforcement programs. To receive payment, the county and tribe must annually submit to DOJ a joint program plan and a report on the performance of law enforcement activities on the reservation in the previous fiscal year. Adjusted base funding for the program is \$60,000 GPR and \$597,700 PR and 1.0 PR position. DOJ's county-tribal programs -- surcharge receipts appropriation receives 4.55% of penalty assessment revenue to help fund the program.

GOVERNOR

Delete \$60,000 GPR and provide \$161,200 PR annually for the county-tribal law enforcement program. Change the funding source for the program from general purpose revenues and 4.55% of penalty assessment revenues to the appropriated amounts of Indian gaming receipts. Repeal the GPR county-tribal law enforcement programs and the county-tribal programs -- surcharge receipts (penalty assessment) appropriations, and modify the local and state county-tribal programs program revenue appropriations to accept tribal gaming revenue, rather than penalty assessment revenue. Provide that 90% of the unencumbered balance of the county-tribal programs -- surcharge receipts appropriation on the effective date of the bill be transferred to a newly-created penalty assessment appropriation under the Office of Justice Assistance (OJA). The Governor estimates that this would result in \$71,900 of unencumbered penalty assessment program revenue being transferred to OJA. Transfer the 10% balance remaining in the county-tribal law enforcement -- surcharge receipts appropriation (which would be repealed) to the county-tribal programs -- state operations appropriation.

DISCUSSION POINTS

1. Under the bill, \$758,900 PR annually would be provided for the county-tribal programs (\$708,400 for local assistance and \$50,500 for state operations). Funding would be provided from tribal gaming revenue provided to the state under the recently completed state-tribal gaming compact amendments.

2. The increased funding provided under the bill does not reflect an expansion of the current program. Rather, the additional funding reflects a s. 16.515 request for increased program revenue expenditure authority approved by the Committee in April, 1998, but not reflected in the Department's adjusted base.

3. The intended use of the tribal gaming revenue is specified in most of the amended compact agreements. Eight of the agreements contain a government-to-government memorandum of understanding (MOU) relating to the use of the additional payments. Generally, the MOU specify the following purposes for the use of the revenue: (a) economic development initiatives to benefit tribes and/or American Indians within Wisconsin; (b) economic development initiatives in regions around casinos; (c) promotion of tourism within the state; and (d) support of programs and services of the county in which the tribe is located. The Potawatomi MOU specifies these four purposes for spending, but would limit this spending to Milwaukee and Forest Counties. The Red Cliff agreement also restricts several of the purposes to the Red Cliff tribe or the area around Red Cliff.

4. Four of the MOU also specify an additional area of spending: (a) the Bad River, Red Cliff and St. Croix agreements include law enforcement initiatives on reservations; and (b) the Stockbridge-Munsee agreement includes public safety initiatives on the Stockbridge-Munsee reservation.

5. As a result, one could argue that the county-tribal law enforcement program administered by DOJ is an appropriate use of the tribal gaming revenue, since it would support programs and services of the county in which the tribe is located, and would help with law enforcement or public safety initiatives.

6. The Governor would repeal the appropriation that currently receives 4.55% of all penalty assessment revenue and would transfer 90% of the unencumbered 1998-99 closing balance to the new OJA appropriation (which would receive all penalty assessment revenue) and the remaining 10% to DOJ's county-tribal programs -- state operations appropriation, which would receive tribal gaming revenue. According to revised penalty assessment revenue estimates, the 10% amount would equal \$6,000.

7. Under the Governor's recommendation, DOJ's county-tribal programs -- state operations appropriation would be authorized to receive only monies transferred from the Indian gaming receipts appropriation under the Department of Administration's Division of Gaming. If the Committee wishes to approve the Governor's recommended 10% transfer to DOJ's county-tribal

programs -- state operations appropriation, a technical correction would be required to reflect the receipt of penalty assessment revenue into the appropriation.

8. The bill would retain the current funding level for the county-tribal law enforcement program. Since the newly created county-tribal programs -- state operations appropriation is authorized to receive tribal gaming revenue exclusively, the Committee may wish to transfer 100% of the unencumbered 1998-99 closing balance of the county-tribal law enforcement -- surcharge receipts appropriation to the new OJA penalty assessment surcharge receipts appropriation. Under this alternative, it is estimated that \$60,100 would be transferred to the OJA appropriation. As a result, an additional \$6,000 in penalty assessment revenue would be available for other purposes.

ALTERNATIVES

1. Approve the Governor's recommendation to delete \$60,000 GPR and provide \$161,200 PR annually for the county-tribal law enforcement program. Change the funding source for the program from general purpose revenues and 4.55% of penalty assessment revenue to the appropriated amounts of tribal gaming revenue. Repeal the GPR county-tribal law enforcement programs and the county-tribal programs -- surcharge receipts (penalty assessment) appropriations, and modify the local and state county-tribal programs appropriations to accept tribal gaming revenue. Provide that 90% of the unencumbered balance of the county-tribal programs -- surcharge receipts appropriation on the effective date of the bill be transferred to a newly-created penalty assessment appropriation under OJA. Transfer the 10% balance remaining in the county-tribal programs -- penalty assessment surcharge receipts appropriation (which would be repealed) to the county-tribal programs -- state operations appropriation. In addition, modify the appropriation language to enable the county-tribal programs -- state operations appropriation to receive penalty assessment revenue. It is estimated that \$54,100 would be transferred to the OJA appropriation from DOJ's county-tribal programs -- surcharge receipts appropriation and \$6,000 would be transferred to the county-tribal state operations appropriation.

Alternative 1	PR
1999-01 REVENUE (Change to Bill)	\$17,800

2. Modify the Governor's recommendation by transferring 100% of the unencumbered balance of the county-tribal programs -- surcharge receipts appropriation to a newly-created penalty assessment appropriation under OJA. It is estimated that this would result in a transfer of \$60,100 to the new OJA appropriation.

Alternative 2	PR
1999-01 REVENUE (Change to Bill)	\$11,800

3. Delete the Governor's recommendation to provide \$758,900 PR annually in tribal gaming revenue for the county-tribal law enforcement program. Instead, provide \$60,000 GPR annually and \$698,900 PR annually from penalty assessment revenue to restore current funding for the program. Provide that the penalty assessment funding be the appropriated amounts rather than 4.55% of penalty assessment revenue, and transfer 90% of the unencumbered balance of the county-tribal programs -- surcharge receipts appropriation to the OJA appropriation on the effective date of the bill.

<u>Alternative 3</u>	<u>GPR</u>	<u>PR</u>	<u>TOTAL</u>
1999-01 REVENUE (Change to Bill)	\$0	\$17,800	\$17,800
1999-01 FUNDING (Change to Bill)	\$120,000	-\$120,000	\$0

Prepared by: Barbara Zabawa

165.83(1)(e)

(e) "Tribal law enforcement agency" means an agency of a **tribe** that is established for the purpose of preventing and detecting crime on the reservation or trust lands of the tribe and enforcing the tribe's laws or ordinances, that employs full time one or more persons who are granted law enforcement and arrest powers under s. 165.92 (2) (a) and that was created by a **tribe** that agrees that its law enforcement agency will perform the duties required of the agency under this section and s. 165.84.



State of Wisconsin
1999 - 2000 LEGISLATURE

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LFB:.....Zabawa (DS) – Indian gaming revenue: justice-related programs

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

LFB AMENDMENT

TO 1999 ASSEMBLY BILL 133 AND 1999 SENATE BILL 45

1 At the locations indicated, amend the bill as follows:

2 ✓ 1. Page 156, line 3: delete “(b)” and substitute “(c)”.

3 ✓ 2. Page 156, line 7: after “criteria” insert “and procedures”.

4 ✓ 3. Page 156, line 8: after that line insert:

5 “SECTION 110j. 16.964 (7) of the statutes is created to read:

6 16.964 (7) (a) From the appropriation under s. 20.505 (6) (kq), the office shall
7 provide grants to counties to fund county law enforcement services. The office may
8 make a grant to a county under this subsection only if all of the following apply:

9 1. The county borders one or more federally recognized Indian reservations.

1 2. The county has not established a cooperative county-tribal law enforcement
2 program under s. 165.90 with each federally recognized Indian tribe or band that has
3 a reservation bordering the county.

4 3. The county demonstrates a need for the law enforcement services to be
5 funded with the grant.

6 4. The county submits a proposed plan that shows how the county will use the
7 grant moneys to fund law enforcement services.

8 (b) The office shall review any application for a grant under this subsection and
9 the plan submitted under par. (a) 4. to determine if the application and plan meet the
10 requirements of par. (a) 1. to 3. and the criteria established under par. (c). The office
11 may not award an annual grant in excess of \$50,000 to any county under this
12 subsection.

13 (c) The office shall develop criteria and procedures for use in administering this
14 subsection. Notwithstanding s. 227.10 (1), the criteria and procedures need not be
15 promulgated as rules under ch. 227.

16 **SECTION 110k.** 16.964 (8) of the statutes is created to read:

17 16.964 (8) From the appropriation under s. 20.505 (6) (kr), the office shall make
18 the following grants:

19 (a) To the Stockbridge-Munsee Indian tribe, \$175,000 in each fiscal year for a
20 public safety initiative.

21 (b) To the St. Croix Chippewa Indian tribe, \$150,000 in each fiscal year to
22 develop law enforcement capabilities on the reservation and trust lands of the tribe.”.

23 ✓ **4.** Page 445, line 6: delete lines 6 to 9.

24 ✓ **5.** Page 459, line 19: after that line insert:

20
21
22
23
24

1 **SECTION 543x.** 20.505 (6) (kq) of the statutes is created to read:

2 20.505 (6) (kq) *County law enforcement services.* The amounts in the schedule
3 to provide grants to counties under s. 16.964 (7). All moneys transferred from the
4 appropriation account under ~~s. 20.505~~ (8) (hm) 15d. shall be credited to this
5 appropriation account. sub.

6 **SECTION 543y.** 20.505 (6) (kr) of the statutes is created to read:

7 20.505 (6) (kr) *Grants to Indian tribes.* The amounts in the schedule to provide
8 grants to the Stockbridge–Munsee and St. Croix Chippewa Indian tribes under s.
9 16.964 (8). All moneys transferred from the appropriation account under ~~s. 20.505~~
10 (8) (hm) 15e. shall be credited to this appropriation account.” sub.

11 ✓ **6.** Page 464, line 3: delete lines 3 to 5.

12 ✓ **7.** Page 464, line 10: delete “s. 20.505” and substitute “sub.”.

13 ✓ **8.** Page 464, line 11: delete “s. 20.505” and substitute “sub.”.

14 ✓ **9.** Page 464, line 12: before that line insert:

15 **SECTION 575L.** 20.505 (8) (hm) 15d. of the statutes is created to read:

16 20.505 (8) (hm) 15d. The amount transferred to sub. (6) (kq) shall be the
17 amount in the schedule under sub. (6) (kq).

18 **SECTION 575m.** 20.505 (8) (hm) 15e. of the statutes is created to read:

19 20.505 (8) (hm) 15e. The amount transferred to sub. (6) (kr) shall be the amount
20 in the schedule under sub. (6) (kr).”.

21 ✓ **10.** Page 1442, line 2: delete “Of the” and substitute “The”.

22 ✓ **11.** Page 1442, line 3: delete “90%”.

1 ✓**12.** Page 1442, line 5: delete lines 5 and 6 and substitute “as created by this
2 act.”.

3 **(END)**



State of Wisconsin
1999 - 2000 LEGISLATURE

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LFB:.....Zabawa (DS) – Indian gaming revenue: justice-related programs

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

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1 2. The county has not established a cooperative county-tribal law enforcement
2 program under s. 165.90 with each federally recognized Indian tribe or band that has
3 a reservation bordering the county.

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6 4. The county submits a proposed plan that shows how the county will use the
7 grant moneys to fund law enforcement services.

8 (b) The office shall review any application for a grant ~~under this subsection~~ and
9 ~~the~~ plan submitted under par. (a) 4. to determine if the application and plan meet the
10 requirements of par. (a) 1. to 3. and the criteria established under par. (c). The office
11 may not award an annual grant in excess of \$50,000 to any county under this
12 subsection.

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✓
INS
3-10

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1 **12.** Page 1442, line 5: delete lines 5 and 6 and substitute “as created by this
2 act.”.

3 (END)

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INSERT 3-10: ✓

#. Page 459, line 22: after

"(6)" insert "and ~~provide~~ grants

to Indian tribes under s. 16.964 (8) ✓".



State of Wisconsin
1999 - 2000 LEGISLATURE

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LFB:.....Zabawa (DS) – Indian gaming revenue: justice-related programs

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