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(Gov) Agency: DOA -- Overview of Tribal Gaming Revenue Allocations

Recommendations:

Paper #157: An overview, no options presented for action

Comments: Outlines the revenue gained through new compacts, the memorandums of understanding between tribes and state, and the governors proposal for spending the money.

Prepared by: Bob



Legislative Fiscal Bureau

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

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Joint Committee on Finance

Paper #157

Tribal Gaming Revenue Allocations

Overview of Tribal Gaming Revenue Allocations (DOA -- Division of Gaming)

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

CURRENT LAW

The Division of Gaming coordinates the state's regulatory activities under the state-tribal gaming compacts relating to tribal casino operations. Adjusted base funding for general program operations for Indian gaming regulation is \$913,100 PR with 10.0 PR positions, with funding provided from: (a) monies received by the state from Indian tribes as reimbursement for state costs of regulation of Indian gaming under Indian gaming compacts (established under the original compacts at \$350,000 annually); (b) monies received by the state from Indian gaming vendors and from persons proposing to be Indian gaming vendors as reimbursement for state costs of certification and background investigations; and (c) monies received by the state from Indian tribes as reimbursement for state costs of gaming services and assistance provided by the state that are requested by an Indian tribe. The Department of Justice (DOJ) has adjusted base funding of \$82,300 PR from this revenue for Indian gaming law enforcement activities.

GOVERNOR

Create a program revenue appropriation to receive all state receipts relating to Indian gaming, less the amounts appropriated to DOA for general program operations relating to Indian gaming and DOJ for Indian gaming law enforcement. Modify the statutory definition of "Indian gaming receipts" to include monies received by the state from Indian tribes pursuant to an Indian gaming compact, except monies received as direct reimbursements to DOJ. Allocate, from the newly-created appropriation, \$20.6 million in 1999-00 and \$22.1 million in 2000-01 to 14 state agencies in 31 program areas (not including regulation and enforcement), as shown in the following table. In some areas, the tribal gaming revenue would supplant or otherwise affect, in whole or in part, existing funding. These instances are explained in the footnotes to the table.

<u>Department</u>	<u>Program Revenue</u>		<u>Purpose</u>
	<u>1999-00</u>	<u>2000-01</u>	
1. Administration -- Office of Justice Assistance	\$200,000	\$600,000	Tribal law enforcement assistance grant program.
2. Arts Board	25,200	25,200	Grants-in-aid to, or contracts with, American Indian individuals or groups for services furthering the development of the arts and humanities.
3. Commerce	2,500,000	3,000,000	Gaming economic development grants and loans, including grants to Brown County to support construction of a new arena.
4. Commerce	0	2,500,000	Gaming economic diversification grants and loans
5. Commerce ¹	388,700	388,700	Physician Loan Assistance Program (PLAP), Health Care Provider Loan Assistance Program (HCPLAP) and a related contract.
6. Commerce ¹	100,700	100,700	Native American liaison, economic development liaison and technical assistance grants.
7. Health and Family Services	2,055,000	2,115,000	Tribal MA outreach positions, matching funds for federally qualified health centers and a contingency fund for BadgerCare premiums of Native American Families.
8. Health and Family Services ¹	920,000	920,000	Health services: Tribal medical relief block grants (\$800,000 PR annually) and cooperative American Indian health projects (\$120,000 PR annually).
9. Health and Family Services ¹	\$771,600	\$771,600	Social services: Indian substance abuse prevention education (\$500,000 PR annually) and Indian Aids (\$271,600 PR annually).
10. Health and Family Services ²	250,000	250,000	Compulsive gambling awareness campaign grants.
11. Higher Education Aids Board ¹	779,800	779,800	Indian student assistance grant program for Native American undergraduate or graduate students.
12. Higher Education Aids Board	\$400,000	\$400,000	Wisconsin Higher Education Grant (WHEG) program for tribal college students.
13. Historical Society ¹	170,100	170,100	Operation of Northern Great Lakes Center as an historic site.
14. Justice ³	758,900	758,900	County-tribal law enforcement programs: local assistance (\$708,400 annually) and state operations (\$50,500 annually).

<u>Department</u>	<u>Program Revenue</u>		<u>Purpose</u>
	<u>1999-00</u>	<u>2000-01</u>	
15. Justice	81,100	93,700	Operate an Indian law unit for Indian-related litigation.
16. Natural Resources ⁴	2,000,000	2,000,000	Transfer to the fish and wildlife account of the conservation fund.
17. Natural Resources	1,000,000	1,000,000	Nonpoint program cost-share grants to landowners.
18. Natural Resources ⁵	669,000	619,000	Snowmobile enforcement program.
19. Natural Resources ¹	120,000	120,000	Nonpoint grants and local assistance to the Oneida Nation.
20. Natural Resources ¹	109,700	109,700	Management of state fishery resources in off-reservation areas where tribes have treaty-based rights to fish.
21. Natural Resources	0	250,000	Management of an elk reintroduction program.
22. Natural Resources ⁶	100,000	100,000	Payment to Lac du Flambeau Band relating to certain fishing and sports licenses.
23. Natural Resources ¹	10,000	10,000	Spearfishing enforcement aids.
24. Natural Resources	81,000	131,000	Mandatory snowmobile education program.
25. Natural Resources	0	300,000	One-time grant to the Town of Swiss in Burnett County and the St. Croix Band for a drinking water study.
26. Public Instruction ⁷	198,000	203,000	Alternative schools operating American Indian language and culture education programs.
27. Tourism	4,000,000	4,000,000	Tourism marketing, including grants to nonprofit tourism promotion organizations.
28. University of Wisconsin System	0	0	Ashland full-scale aquaculture demonstration facility: debt service payments and operational costs.
29. Veterans Affairs	66,900	68,000	American Indian services coordinator project position and grants to assist American Indians in obtaining federal and state veterans benefits.
30. Wisconsin Housing and Economic Development Auth.	2,500,000	0	One-time funding to guarantee loans to small businesses located in, or adjacent to, counties with tribal casinos.

<u>Department</u>	<u>Program Revenue</u>		<u>Purpose</u>
	<u>1999-00</u>	<u>2000-01</u>	
31. Workforce Development	\$350,000	\$350,000	Vocational rehabilitation services for Native American individuals and tribes or bands.
Total	\$20,605,700	\$22,134,400	

- ¹ Would eliminate GPR funding and provide an identical amount of gaming revenue for the same purpose.
- ² Would eliminate PR lottery and racing revenue funding and provide tribal gaming revenue in a greater amount for the same purpose.
- ³ Would eliminate GPR and PR penalty assessment funding and provide gaming revenue in an amount greater than adjusted base funding for the same purpose (the additional funding reflects a s. 16.515 request for increased expenditure authority in penalty assessment approved by the Committee in April, 1998, but not reflected in the Department's adjusted base. Therefore, the Governor's recommendation actually provides an identical amount of gaming revenue for the same purpose.)
- ⁴ Would increase revenue for fish and wildlife account, possibly holding down fee increases or preventing certain program reductions.
- ⁵ Would eliminate GPR and SEG funding and provide an identical amount of gaming revenue for the same purpose.
- ⁶ Would supplant SEG funding (fish and wildlife account) currently used for this purpose.
- ⁷ Would eliminate GPR funding and provide gaming revenue in a greater amount for the same purpose.

DISCUSSION POINTS

1. The transferred revenue derives primarily from tribal gaming revenue provided to the state under state-tribal gaming compact amendments. Under the recently signed compact amendments, each tribe will make additional annual payments to the state, not required under the original compacts, over a five-year period. The amounts vary by tribe and reflect the variation in total net revenue among the tribes.

2. Additional compact revenue provided to the state is estimated to total \$21.5 million in 1999-00 and \$24.0 million in 2000-01. The following table shows the additional state revenue from tribal gaming for fiscal years 1998-99 through 2003-04.

Tribe or Band	1998-99	1999-00	2000-01	2001-02	2002-03	2003-04
Bad River ¹	\$172,500	\$230,000	\$230,000	\$230,000	\$230,000	\$57,500
Ho-Chunk	0	6,500,000	7,500,000	7,500,000	8,000,000	8,000,000
Lac Courte Oreilles ²	0	420,000	420,000	420,000	420,000	420,000
Lac du Flambeau ³	0	0	738,900	738,900	738,900	738,900
Menominee ^{2,3}	0	0	747,371	747,371	747,371	747,371
Oneida ⁴	0	4,850,000	4,850,000	4,850,000	4,850,000	4,850,000
Potawatomi	0	6,375,000	6,375,000	6,375,000	6,375,000	6,375,000
Red Cliff ⁵	0	64,685	64,685	64,685	64,685	64,685
Sokaogon ²	0	258,000	258,000	258,000	258,000	258,000
St. Croix	0	2,191,000	2,191,000	2,191,000	2,191,000	2,191,000
Stockbridge-Munsee	0	650,000	650,000	650,000	650,000	650,000
Total	\$172,500	\$21,538,685	\$24,024,956	\$24,024,956	\$24,524,956	\$24,352,456

¹ Bad River Band makes quarterly payments instead of annual payments; based on the compact's term, three quarterly payments will be made in 1998-99 and one quarterly payment will be made in 2003-04.

² The Lac Courte Oreilles, Menominee and Sokaogon agreements contain an escalator payment clause that provides for an additional 1% payment to the state (\$4,200 for the Lac Courte Oreilles, \$7,473 for the Menominee and \$2,580 for the Sokaogon) for each 1% increase in net win in the base year for which the payment applies as compared to the net win in the immediately preceding base year.

³ The Lac du Flambeau and Menominee make their final annual payments under the current compact amendments in 2004-05.

⁴ The Oneida agreement specifies a total annual payment to the state of \$5,400,000, adjusted by a reduction of \$550,000 in direct recognition of existing municipal service agreements (for a net payment of \$4,850,000)

⁵ The Red Cliff agreement includes a provision that, if net revenue is less than \$3,000,000 for any one-year period, the tribe may petition the state to reduce its payment.

3. Eight of the 11 amended agreements contain government-to-government memoranda of understanding (MOU) relating to the use of the additional payments. While the MOU have some significant differences, their most important common element is a 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. In most of the MOU, the specified purposes include: (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. Several of the MOU add a fifth purpose relating to either law enforcement or public safety initiatives on the reservations.

4. Two of the amended compact agreements, those of the Ho-Chunk and the Lac du Flambeau, do not include MOU on government-to-government matters and are silent on the issue of how the state utilizes the new tribal gaming revenue. Payments from these two tribes total \$6.5 million in 1999-00 and \$8.2 million in 2000-01. It could be argued that these revenues are unrestricted and may be used for any purpose.

5. Under two of the MOU, the purposes for spending are geographically specific. Under the Red Cliff Band MOU, one purpose specifies economic development initiatives in Red Cliff and regions around Red Cliff, rather than in regions around casinos. In addition, the Red Cliff tourism provision specifies promotion of tourism within the northwest region of the state. The Red Cliff payments total \$64,685 annually. Under the Potawatomi MOU, the Governor agrees to undertake his best efforts to assure that the Potawatomi monies paid to the state are expended in Milwaukee and Forest Counties, for the purposes specified. The Potawatomi payments total \$6,375,000 annually.

6. The allocations proposed under the bill represent the Governor's effort to address the agreements made in the MOU described above. These allocations do not specifically target funds to the Red Cliff area or to Forest or Milwaukee Counties and, in other respects, do not appear to be consistent with the purposes specified in the MOU. In testimony before the Committee, the Secretary of Administration stated his belief that all counties in the state would benefit as a result of the allocation package.

7. In testimony and written correspondence to the Committee from tribal officials, the tribes have been critical of the Governor's provisions relating to tribal gaming revenue. Tribes have expressed dissatisfaction with the lack of tribal input in the development of the Governor's provisions. However, only three of the eight MOU (Potawatomi, St. Croix and Stockbridge-Munsee) require the state to consult, with these three tribes only, regarding the content of the proposals for the distribution of the monies paid to the state. Tribes have also testified that the use of the tribal gaming revenue to supplant state spending for many tribal-related programs under current law is inappropriate. Tribes indicate opposition to many of the provisions under the bill as being inconsistent with the purposes specified in the MOU. In particular, tribes appear to be unanimous in opposing the use of tribal gaming revenue to fund an attorney in the Department of Justice to work on tribal litigation. In the case of tourism funding, tribes object to the fact that the funding is not targeted to areas with casinos. Further, some tribes, as well as some counties, believe the provisions under the bill do not in any way address the MOU purpose relating to support of programs and services of the county in which the tribe is located. Finally, some tribal officials have argued that using tribal gaming revenue in the manner proposed under the bill may in some way violate the federal Indian Gaming Regulatory Act (IGRA).

8. In a May 13, 1999, letter to the Governor, the Oneida Tribe reiterates many of these concerns and suggests a meeting with state officials to discuss the use of state gaming revenues in a manner consistent with the MOU. The tribe also indicates that, if the gaming revenue is not allocated for purposes consistent with the MOU, it may pursue other options. These could include, but are not limited to, "...dispute resolution, the withholding of payments to the state, the termination of the gaming compact amendments due to the State of Wisconsin's breach, and/or litigation."

9. Attorneys with the Legislative Council and the Department of Justice have reviewed the compact amendments and the MOU and do not believe that a court would hold that there would be a violation of IGRA if the Governor's provisions or an alternative package was adopted by the

Legislature. The MOU specify that the Governor will undertake his best efforts, within the scope of his authority, to assure that tribal gaming revenue is expended for the purposes specified in the MOU. This language correctly implies that the Legislature, subject to the Governor's veto authority, will determine how the revenue will be utilized by the state. The Governor's efforts, as reflected in the budget provisions, may be debated. However, neither the general spending purposes specified in the MOU nor the particular allocations made under the bill are binding on the Legislature and may be modified accordingly.

10. On the other hand, disregarding the MOU could result in legal action and the delay of tribal payments. The Legislature could view the MOU as providing appropriate guidelines for the use of the revenue and may assess the Governor's provisions and alternative uses of the revenue in this light. To the extent the Legislature allocates tribal gaming revenue for purposes consistent with the MOU, future complications may be avoided.

11. Based upon this review of the compact amendments, the memoranda of understanding, the Governor's allocation provisions under the bill and the concerns raised by tribal and county officials, two procedural alternatives are offered, as follows.

PROCEDURAL ALTERNATIVES

1. Direct that all tribal gaming revenue, exclusive of the amounts required to conduct gaming regulation by the Department of Administration and gaming law enforcement by the Department of Justice, be placed in the Joint Committee on Finance's appropriation for release at a later date. Request that the Governor submit a tribal gaming revenue allocation proposal under s. 16.515 of the statutes or as separate legislation, following consultation with Wisconsin Native American tribes.

Adoption of this procedural alternative would require modifications of AB 133 to remove appropriation and other statutory language relating to the Governor's provisions. In addition, budgetary impacts on current programs in various agencies would need to be considered. If this direction is taken, an identification of these modifications and budget implications would be addressed in a subsequent paper.

2. Proceed with the issue papers that address the Governor's provisions. The papers are described as follows:

A. *Supplanting Current Funding [Paper #158]*. As noted in the table above, certain allocations under the bill would supplant current funding without modifying current law provisions on the programmatic use of the funds. With the exception of Items #6 and 14, which are handled in separate papers, these items are addressed in one issue paper, allowing the Committee to take action on these provisions as a group. The provisions included in this general supplanting paper include the following items:

1. Eight of the allocations (Items #5, 8, 9, 11, 13, 19, 20 and 23 in the table above) would eliminate current GPR funding and provide an identical amount of gaming revenue for the same purposes.

2. Item #18 would eliminate current GPR and SEG funding in DNR and provide an identical amount of gaming revenue for a snowmobile enforcement program.

3. Item #22 would provide tribal revenue for payments to the Lac du Flambeau Band relating to certain fishing and sports licenses. These payments would otherwise be made from the fish and wildlife account of the conservation fund in DNR.

B. New Funding – Selected Items [Paper #159]. Several of the 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. These include the following:

<u>Item</u>	<u>Subject</u>
2	Arts Board grants-in-aid
12	HEAB awards for tribal college students
15	DOJ legal unit for Indian litigation
17	DNR nonpoint cost-share grants

C. Separate Issue Papers. Finally, the other allocations under the bill represent funding with implications for current programming that requires more thorough deliberation. For these items, separate issue papers will be provided to the Committee, as follows:

<u>Item</u>	<u>Subject (Issue Paper #)</u>
1	OJA tribal law enforcement (Paper #160)
3&4	Commerce economic development and diversification grants and loans (Paper #161)
6	Commerce Native American liaison and grants (Paper #162)
7	DHFS Division of Public Health funds (Paper #163)
10	DHFS compulsive gambling awareness campaigns (Paper #164)
14	DOJ county-tribal law enforcement programs (Paper #165)
16	DNR fish and wildlife account funds (Paper #166)
21	DNR elk reintroduction program (Paper #167)
24	DNR snowmobile education program (Paper #168)
25	DNR St. Croix drinking water study (Paper #169)
26	DPI alternative schools for American Indians (Paper #170)
27	Tourism marketing and grants (Paper #171)
28	UW aquaculture demonstration facility (Paper #172)
29	Veteran Affairs coordinator and grants (Paper #173)
30	WHEDA small business loans (Paper #174)
31	DWD vocational rehabilitation services (Paper #175)

12. In its deliberations, the Committee will need to balance tribal gaming expenditures with projected revenues. The following table shows the projected 1999-01 revenues and expenses under the Governor's provisions.

**Tribal Gaming Revenue and Expenses
AB 133**

	<u>1999-00</u>	<u>2000-01</u>
Opening balance	\$673,200	-\$127,000
Revenue		
Compacts -- original	\$350,000	\$350,000
Compacts -- amended	21,538,700	24,025,000
Vendor certifications	<u>200,000</u>	<u>100,000</u>
Total revenue	\$22,088,700	\$24,475,000
Total available	\$22,761,900	\$24,348,000
Expenditures/transfers		
DOA Indian gaming oversight	\$2,164,400	\$1,418,300
DOJ gaming enforcement	99,300	99,700
Transfers to various agencies	<u>20,605,700</u>	<u>22,134,400</u>
Total Expenditures	\$22,869,400	\$23,652,400
Reserves	19,500	62,300
Annual net proceeds	-\$800,200	\$760,300
Closing balance	-\$127,000	\$633,300

Prepared by: Art Zimmerman