

**(Gov) Agency:** DOA -- Tribal Gaming Revenue Allocations  
Supplanting Provisions

**Recommendations:**

**Paper #158:** 2 (eliminate H, do not restore GPR) ✓

**Comments:** The governor proposes using tribal gaming revenue to supplant GPR for the 10 existing programs covered in this paper. The tribes argue that this is improper use of tribal gaming, clear evidence that the state is actually taxing the tribe -- something the feds prohibit.

The AG's office and Legislative Council do not believe the gov's proposal would violate the Indian Gaming Regulatory Act. The tribes say "we'll see you in court."

Under Alternative 2, the committee is presented with a list of the 10 programs. The most egregious, and the easiest to fix, is to eliminate the spearfishing enforcement aids (item H). No expenditures were expected for the current year, so there is no real need to restore the GPR.

Other items, such as the snowmobile enforcement program, are almost as unpopular with the tribes, but much costlier to change.

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## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #158

### *Tribal Gaming Revenue Allocations*

## **Tribal Gaming Revenue Allocations -- Supplanting Provisions (Administration -- Division of Gaming)**

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

This paper will address 10 of the 31 allocations of tribal gaming revenue made under the budget bill. The allocations would provide tribal gaming revenue to supplant current law funding and positions. The 10 provisions affect five agencies: (a) Department of Commerce; (b) Department of Health and Family Services; (c) Higher Education Aids Board; (d) Historical Society; and (e) Department of Natural Resources. A summary of current law and the Governor's provision for each item follows.

### **A. Commerce**

**Physician and Health Care Provider Loan Assistance Programs** [LFB 1999-01 Budget Summary: Page 133, #5]

#### **Current Law**

The Physician Loan Assistance Program (PLAP) and the Health Care Provider Loan Assistance Program (HCPLAP) programs provide loan repayments for physicians and certain health care professionals who practice in areas in the state which have a shortage of physicians or health care professionals. Commerce is also required to contract with the University of Wisconsin Office of Rural Health. Annual funding of \$388,700 GPR is provided through a single appropriation.

## **Governor**

Convert \$388,700 annually from GPR to PR (tribal gaming revenue) for the Physician Loan Assistance Program (PLAP) and Health Care Provider Loan Assistance Program (HCPLAP) and a related contract with the UW Office of Rural Health. The current appropriation used to fund the programs would be converted from GPR to PR.

## **B. Health and Family Services**

### **1. Indian Health Programs [LFB 1999-01 Budget Summary: Page 287, #8]**

#### **Current Law**

*Tribal Medical Relief Block Grants.* The Department of Health and Family Services (DHFS) distributes \$800,000 GPR annually as grants to participating tribes under the tribal medical relief block grant program. Tribal governing bodies may use block grant funds to provide health care services to persons who meet specified eligibility criteria. Tribes may also use these funds to support alcohol and other drug abuse (AODA) services.

*Cooperative American Indian Health Projects.* DHFS is budgeted \$120,000 GPR annually to support cooperative American Indian health projects. These funds are available to tribes as grants to promote cooperation among tribes, tribal agencies, inter-tribal organizations and other agencies and organizations in addressing specific American Indian health problems. Grants awarded for these projects may not exceed 50% of the total costs of the project. However, grantees may use in-kind contributions to provide all or part of the match.

Tribes, tribal agencies and inter-tribal organizations can apply for grants up to \$10,000 to conduct projects that meet all of the following requirements: (a) the project involves the cooperation of two or more tribes, tribal agencies, inter-tribal organizations or other agencies or organizations; and (b) the project is designed to do at least one of the following: (1) develop, test or demonstrate solutions for specific American Indian health problems which, if proven effective, may be applied by other tribes, tribal agencies, inter-tribal organizations or other agencies or organizations; (2) fund start-up costs of cooperative programs to deliver health care services for American Indians; or (3) conduct health care needs assessments and studies related to health care issues of concern to American Indians.

## **Governor**

*Tribal Medical Relief Block Grants.* Delete \$800,000 GPR annually and provide \$800,000 PR annually to transfer support of the tribal medical relief block grant from GPR to Indian gaming receipts. Convert the annual GPR appropriation currently used to support this program to a PR appropriation and direct the transfer of funding from DOA tribal gaming

revenue to this new appropriation in an amount equal to the amounts budgeted for tribal medical relief block grants.

Although the bill would delete GPR funding for this program beginning in 1999-00, the effective date for the change in the appropriation and the transfer of funds from DOA is July 1, 2000. Consequently, a technical change to this effective date is required to meet the Governor's intent.

*Cooperative American Indian Health Projects.* Delete \$120,000 GPR annually and provide \$120,000 PR annually to transfer support of cooperative American Indian health projects from GPR to Indian gaming receipts. Convert the annual GPR appropriation currently used to support this program to a PR appropriation and direct the transfer of funding from DOA tribal gaming revenue to this new appropriation in an amount equal to the amounts budgeted for cooperative American Indian health projects.

Although the bill would delete GPR funding for these projects beginning in 1999-00, the effective date for the change in the appropriation and the transfer of funds from DOA is July 1, 2000. Consequently, a technical change to this effective date is required to meet the Governor's intent.

**2. Indian Social Services Programs** [LFB 1999-01 Budget Summary: Page 328, #9]

**Current Law**

*Indian Aids and Indian Substance Abuse Prevention and Education.* DHFS provides \$271,600 GPR annually to federally recognized tribes and bands to facilitate the delivery of accessible, available and culturally appropriate social services and mental hygiene services, including mental health services for the developmentally disabled and substance abuse services. In addition, DHFS provides \$500,000 GPR annually to support the Indian substance abuse prevention, education and treatment program. DHFS distributes these funds to tribes and bands through the consolidated family services project for the development and expansion of substance abuse prevention, education and treatment programs.

**Governor**

Delete \$771,600 GPR annually and increase PR funding by a corresponding amount to support these programs with tribal gaming revenue, rather than GPR. Convert and renumber the two current GPR appropriations to PR appropriations.

## **C. Higher Education Aids Board**

**Indian Student Assistance Grant Program** [LFB 1999-01 Budget Summary: Page 357, #7]

### **Current Law**

Under the Indian student assistance grant program, funds are awarded to resident Native Americans who have at least one-quarter Indian blood or are recognized as a member of a tribe by the appropriate tribal government. Full- and part-time graduate or undergraduate students who attend accredited institutions of higher education in the state are eligible for financial assistance. Grants are based on financial need and may be received for a total of five years. A provision in 1995 Act 27 reduced the maximum grant amount from the state from \$2,200 to \$1,100. While the Act also allowed GPR grants to be matched by a contribution from a federally recognized Indian tribe or band, tribal governments had been providing matching funds for most grants prior to the change in the law. In 1997-98, UW institutions enrolled 289 students who received \$274,718; Wisconsin Technical Colleges enrolled 231 students who received \$216,446; and there were 282 students enrolled in private institutions or proprietary schools who received \$253,172. Statewide, the average grant was \$928. Funding for the grants is currently provided in a biennial appropriation under HEAB. Base level funding for the program totals \$779,800 GPR in 1998-99.

### **Governor**

Delete \$779,800 GPR of annual funding and the related GPR appropriation for the Indian student assistance grant program. Instead, provide \$779,800 PR of annual funding in a new, biennial appropriation for the program. The PR funding would be derived from tribal gaming revenue and would be transferred to the new PR appropriation from an appropriation established for this purpose under DOA.

## **D. Historical Society**

**Northern Great Lakes Center** [LFB 1999-01 Budget Summary: Page 361, #2]

### **Current Law**

Under 1995 Act 60, \$3.5 million of general fund supported borrowing and \$3.5 million of federal funding was authorized for the construction of the Northern Great Lakes Center. The Center, which is jointly funded and operated by the Society, the National Forest and Park Services and several local public and private agencies, is intended to be a regional visitors center for the Northern Great Lakes region, including portions of Wisconsin, Minnesota and Michigan. The Center provides informational and educational resources about the area, its attractions, history and natural resources.

## **Governor**

Delete \$170,100 GPR and 3.0 GPR positions annually from the Historical Society's general program operations for archives and research services. Provide \$170,100 PR and 3.0 PR positions annually in a new, annual appropriation under the Society's historic sites program for the operation of the Northern Great Lakes Center. Funding for the new program would be derived from tribal gaming revenue and would be transferred to the new appropriation under the Historical Society from an appropriation created for this purpose under the Department of Administration.

## **E. Natural Resources**

### **1. Lac du Flambeau Tribal Licensing Payments [LFB 1999-01 Budget Summary: Page 420, #5]**

#### **Current Law**

There is a sum sufficient appropriation in the fish and wildlife account to make payments to the Lac du Flambeau band of the Lake Superior Chippewa for those fishing and sports licenses sold by agents other than the band at locations within the band's reservation. While no base funding is provided for this purpose, when this provision was created in 1997 Act 27 estimated expenditures were \$100,000 annually upon full implementation.

#### **Governor**

Provide \$100,000 annually from tribal gaming revenue allocations to make payments to the Lac du Flambeau band of the Lake Superior Chippewa. Specify that any payments to the band be made first from the tribal gaming program revenue appropriation, with any additional amounts needed beyond that to be paid from the existing fish and wildlife account appropriation for this purpose. (The effect of the provision is to reduce fish and wildlife account expenditures on a dollar-for-dollar basis up to \$100,000 annually.) Current estimates would indicate \$100,000 will be sufficient to fund payments to the tribe in the 1999-01 biennium.

### **2. Treaty Fisheries [LFB 1999-01 Budget Summary: Page 420, #7]**

#### **Current Law**

GPR funding of approximately \$395,000 annually is provided to the Bureau of Law Enforcement and the Bureau of Fisheries Management and Habitat Protection for the management of the state's fishery resources in the area where federally-recognized American Indian tribes or bands hold treaty-based, off-reservation rights to fish.

**Governor**

Convert \$109,700 and 2.0 positions annually from GPR to PR from tribal gaming revenue allocations for treaty fisheries work.

3. **Spearfishing Enforcement Aids** [LFB 1999-01 Budget Summary: Page 424, #21]

**Current Law**

DNR provides aids (\$10,000 GPR appropriated annually) to counties and municipalities to reimburse them for certain law enforcement costs associated with spearfishing. (No expenditures are expected in 1998-99).

**Governor**

Delete \$10,000 GPR annually and provide \$10,000 PR annually from tribal gaming revenue allocations for spearfishing enforcement aids. In addition, require the Department to lapse to the general fund an amount equal to the unencumbered balance in the GPR spearfishing aids appropriation on the day before the effective date of the bill. While not included in the bill, the lapse is estimated to be approximately \$37,000.

4. **Snowmobile Program Funding** [LFB 1999-01 Budget Summary: Page 427, #4]

**Current Law**

A total of 6.0 warden positions (5.0 GPR and 1.0 snowmobile SEG) are budgeted for snowmobile enforcement.

**Governor**

Delete \$500,000 GPR and 5.0 GPR positions annually, delete \$169,000 SEG in 1999-00 and \$119,000 SEG in 2000-01 and 1.0 SEG position from the snowmobile account and provide \$669,000 PR in 1999-00 and \$619,000 PR in 2000-01 and 6.0 PR positions annually to shift the costs of snowmobile enforcement from GPR and snowmobile SEG to tribal gaming revenue allocations. In addition, create a program revenue appropriation within DNR for snowmobile enforcement operations from the tribal gaming revenue. (Under the bill, \$1,500 in 1999-00 and \$63,800 in 2000-01 would continue to be provided from the snowmobile account for enforcement purposes.)

5. **Oneida Nation Nonpoint Grants** [LFB 1999-01 Budget Summary: Page 450, #14]

**Current Law**

The Oneida Nation receives grants for nonpoint source pollution abatement projects in two priority watersheds. Grants are provided for local staff and supplies to administer the program and for landowner cost-shares to implement pollution prevention practices. Grant funding is comprised of GPR, bonding and SEG from the nonpoint account of the environmental fund.

**Governor**

Provide \$120,000 PR annually from tribal gaming revenue in a new, annual appropriation to fund nonpoint grants and local assistance to the Oneida Nation of Chippewa. Nonpoint GPR funding would be decreased by the same amount.

**DISCUSSION POINTS**

1. For each of these programmatic areas, the Governor's provisions would convert current GPR and SEG funding and, in some cases positions, to program revenue funding and positions funded from tribal gaming revenues. The programs' purposes and operations would not otherwise be affected under the bill.

2. Tribal gaming revenues provided to the state represent amounts agreed to under the recently completed amendments to the state-tribal gaming compacts, which extend the compacts for a period of five years. These revenues appear to be secure for the five-year period and could continue indefinitely. However, under the terms of the amended compacts, the tribes would be relieved of its obligations to pay these amounts, if the state permits the operation of electronic games of chance or other Class III games (casino games) by any person other than a federally recognized tribe.

3. The following table shows the GPR and SEG funding that is supplanted under the Governor's provisions that are dealt with in this paper.



<u>Department/Purpose</u>	<u>GPR</u>			<u>SEG</u>		
	<u>1999-00</u>	<u>2000-01</u>	<u>Positions</u>	<u>1999-00</u>	<u>2000-01</u>	<u>Positions</u>
<b>Commerce:</b> Physician Loan Assistance Program (PLAP), Health Care Provider Loan Assistance Program (HCPLAP) and a related contract.	\$388,700	\$388,700				
<b>DHFS Health Services:</b> Tribal medical relief block grants (\$800,000 GPR annually) and cooperative American Indian health projects (\$120,000 GPR annually).	920,000	920,000				
<b>DHFS Social Services:</b> Indian substance abuse prevention education (\$500,000 GPR annually) and Indian Aids (\$271,600 GPR annually).	771,600	771,600				
<b>HEAB:</b> Indian student assistance grant program for Native American undergraduate or graduate students.	779,800	779,800				
<b>Historical Society:</b> operate Northern Great Lakes Center as an historic site.	170,100	170,100	3.00			
<b>DNR:</b> payments to Lac du Flambeau Band relating to certain fishing and sports licenses. *				0*	0*	
<b>DNR:</b> management of state fishery resources in off-reservation areas where tribe's have treaty-based rights to fish.	109,700	109,700	2.00			
<b>DNR:</b> spearfishing enforcement aids.	10,000	10,000				
<b>DNR:</b> snowmobile enforcement program.	500,000	500,000	5.00	\$169,000	\$119,000	1.00
<b>DNR:</b> nonpoint grants and local assistance to the Oneida Nation.	<u>120,000</u>	<u>120,000</u>	_____	_____	_____	_____
<b>Total</b>	\$3,769,900	\$3,769,900	10.00	\$169,000	\$119,000	1.00

\*A sum sufficient with \$0 SEG of adjusted base funding; \$100,000 PR is appropriated annually for this purpose.

4. An issue the Committee must consider is the fiscal effect of not approving the Governor's recommendations. If the Committee maintains current law, the GPR and SEG funding and positions would be restored (\$3,769,900 GPR and 10.0 GPR positions annually and \$169,000 SEG in 1999-00 and \$119,000 SEG in 2000-01 and 1.0 SEG position). In addition, the sum sufficient appropriation for DNR payments to the Lac du Flambeau Band relating to certain fishing and sports licenses would be reestimated from \$0 to \$100,000 SEG annually.

5. Similarly, if current law is maintained in all these cases, tribal gaming revenue would be available for other purposes (\$4,038,900 PR in 1999-00 and \$3,988,900 PR in 2000-01). Under this alternative, the Committee could allocate this revenue for other purposes as part of the 1999-01 biennial budget bill or the revenue could remain unallocated, pending subsequent

legislation.

6. During public hearings on AB 133 conducted by the Joint Committee on Finance, some tribes have testified that the use of tribal gaming revenue to supplant currently funded state programs is not an appropriate use of this revenue. However, none of the amended compact agreements contain a provision disallowing the use of tribal revenue to replace funding for current programs.

7. The tribes have also testified that many of the purposes for which tribal revenue is proposed is not consistent with the purposes specified in the memoranda of understanding (MOU) associated with most of the amended compacts. Eight of the 11 amended compact agreements include government-to-government MOU relating to the use of the additional payments. While the intended use of the state revenue is specified in most of the agreements (with the exception of the HO-Chunk and Lac du Flambeau agreements), there are variations in the agreements regarding the use of these monies. These have some common elements and some important differences.

8. The most important element common to these eight 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. With the exception of the Potawatomi and Red Cliff, these purposes are:

- 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.

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.

9. The Potawatomi MOU specifies the four purposes for spending identified above, 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.

10. Nine of the 10 funding provisions addressed in this paper do not clearly conform to all of the purposes identified in the MOU. The Commerce, DHFS and HEAB provisions appear to have health, social service and educational benefits for tribes. These benefits may, in some fashion, be conducive to economic development; however, the provisions do not, in themselves, constitute economic development initiatives to benefit tribes, American Indians or the regions around casinos.

Similarly, the DNR provisions may benefit tribes and the environment, but do not appear to constitute economic development initiatives or law enforcement or public safety initiatives relating to reservations (although it could be argued that the DNR snowmobile enforcement program benefits public safety in general and the DNR spearfishing enforcement aids relate to law enforcement activities that benefit tribes).

11. It can be argued, however, that the Historical Society provision for the Northern Great Lakes Center relates to the promotion of tourism in the state. None of the 10 provisions addressed in this paper relate to the support of programs and services of the counties in which the tribes are located.

12. On the other hand, 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, then, that these revenues are unrestricted and may be used for any purpose. The supplanting provisions could be viewed as utilizing a share of this unrestricted revenue.

13. In addition to the alternatives to approve the Governor's provisions or maintain current law with respect to all 10 items, the Committee may choose to select only some of the items for approval.

## **ALTERNATIVES**

1. Approve the Governor's recommendation to provide \$4,038,900 PR and 11.0 PR positions in 1999-00 and \$3,988,900 PR in 2000-01 in tribal gaming revenue to five agencies for the purposes enumerated above. Delete \$3,769,900 GPR and 10.0 GPR positions annually and \$169,000 SEG and \$119,000 SEG in 2000-01 and 1.0 SEG position from the five agencies relating to these purposes. In addition, modify the effective date of the Indian health program provisions so that the creation of the PR appropriation and the transfer of funding from the DOA Indian gaming receipts to the new PR appropriation would be effective on the general effective date of the act.

2. Do not approve the provision of tribal gaming revenue for any of the following purposes. Instead, restore base level funding and funding sources, as indicated.

<u>Department/Purpose</u>	<u>GPR</u>			<u>SEG</u>		
	<u>1999-00</u>	<u>2000-01</u>	<u>Positions</u>	<u>1999-00</u>	<u>2000-01</u>	<u>Positions</u>
A. <b>Commerce:</b> Physician Loan Assistance Program (PLAP), Health Care Provider Loan Assistance Program (HCPLAP) and a related contract.	\$388,700	\$388,700				
B. <b>DHFS Health Services:</b> Tribal medical relief block grants (\$800,000 GPR annually) and cooperative American Indian health projects (\$120,000 GPR annually).	920,000	920,000				
C. <b>DHFS Social Services:</b> Indian substance abuse prevention education (\$500,000 GPR annually) and Indian Aids (\$271,600 GPR annually).	771,600	771,600				
D. <b>HEAB:</b> Indian student assistance grant program for Native American undergraduate or graduate students.	779,800	779,800				
E. <b>Historical Society:</b> operate Northern Great Lakes Center as an historic site.	170,100	170,100	3.00			
F. <b>DNR:</b> payments to Lac du Flambeau Band relating to certain fishing and sports licenses. *				100,000	100,000	
G. <b>DNR:</b> management of state fishery resources in off-reservation areas where tribe's have treaty-based rights to fish.	109,700	109,700	2.00			
H. <b>DNR:</b> spearfishing enforcement aids.	10,000	10,000				
I. <b>DNR:</b> snowmobile enforcement program.	500,000	500,000	5.00	\$169,000	\$119,000	1.00
J. <b>DNR:</b> nonpoint grants and local assistance to the Oneida Nation.	120,000	120,000				

\* If tribal revenue is denied, the estimate for the sum sufficient appropriation for this item would be increased by \$100,000 SEG annually.

3. Maintain current law. In addition, reestimate the sum sufficient appropriation for DNR payments to the Lac du Flambeau Band relating to certain fishing and sports licenses by \$100,000 SEG annually.

<u>Alternative 3</u>	<u>GPR</u>	<u>PR</u>	<u>SEG</u>	<u>TOTAL</u>
1999-01 FUNDING (Change to Bill)	\$7,539,800	- \$8,027,800	\$488,000	\$0
2000-01 POSITIONS (Change to Bill)	10.00	- 11.00	1.00	0.00

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