

2795

(Gov) Agency: DOA -- Tribal Gaming Allocations for New Funding

Recommendations:

Paper #159: Alternatives A1, B1, C1*

Comments: Three new uses of money that all seem OK, except that nothing angers the tribes more than C1, which is new (gaming) money for DOJ Indian Law legal services.

The tribes view this as using their own money to hire somebody to sue them.

DOJ really wants this position and claims to have plenty of work for the lucky new hire.

If you want to do something to sooth the tribes, vote for C2. ✓ No single item would send a stronger signal or be viewed more favorably.

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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.

<u>Alternative A2</u>	<u>PR</u>
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.

<u>Alternative B2</u>	<u>PR</u>
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 employees, 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.

<u>Alternative C2</u>	<u>PR</u>
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