

**Gov Agency:** DOA (Office of Justice Assistance) – Tribal Law Enforcement Assistance

**Recommendations:**

**Paper No.** 160      **Alternative:** A2, B3, C1

**Comments:**

*Alternative A2*

The Governor proposes creating a tribal law enforcement assistance grant program administered by OJA and funded from tribal gaming revenue provided to the state under the recently completed state tribal gaming compact amendments.

This alternative modifies the governor’s recommendation by specifying only those tribes specifically requesting tribal law enforcement programs or public safety initiatives in their MOU with the state by eligible for the program. This recognizes the Governor’s obligation to undertake his best efforts to assure the tribal gaming revenue paid to the state are expended for the specific purposes included in the MOU with the tribes.

*Alternative B3*

Requires the criteria and procedures for administering the program be subject to the administrative rule process.

Since the governor’s proposed grant program does not contain any details, the administrative rule process would provide the Legislature with the opportunity to review and comment on the details of the program before implementation.

*Alternative C1*

Specifies that DOJ, rather than OJA, administer the tribal law enforcement program. Since DOJ already administers a similar program, DOJ has more expertise in the area of tribal law enforcement and administration by DOJ can best assure coordination between the two programs.

**Prepared by:** Deb



## 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 #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.

<b>Alternative A3</b>	<b>PR</b>
<b>1999-01 FUNDING</b> (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