

Legislative Fiscal Bureau Presentation to Wisconsin Legislative Council Special Committee on State-Tribal Relations -- November 14, 2006

Introduction –

Chairman Musser, members of the committee, good morning.

We were invited to provide to you with a brief description of how tribal gaming revenue paid to the state is utilized and how this use is determined. We are pleased to have the opportunity to do this.

I'd like to provide you with some historical background to the tribes' state gaming payments, a very brief overview of the state's budget process, and some comments on certain budgeting constraints that now affect the use of these revenues. Following this, we are available for any questions you may have.

Background

First, let me mention that the Legislative Fiscal Bureau publishes an information paper entitled Tribal Gaming in Wisconsin and we have copies of the 2005 edition available for you today, if you would like a copy. This paper provides detailed background information on the development of tribal gaming in the state and statistical information on tribal gaming through 2004. A new edition of the paper will be published by the Bureau in January, 2007. These papers are available on the Fiscal Bureau's website.

The amount of tribal payments to the state has evolved through the years, beginning with the original compact agreements signed in 1991/1992, and continuing with the compact amendments negotiated in 1998/1999 and again in 2003.

(1) You'll recall that relatively minor tribal payments (a combined total of \$350,000 annually) were first required of the tribes under the 1991 and 1992 original compacts. This payment was for the purpose of reimbursing the state for the costs relating to the regulation of Class III gaming activities. This annual payment continues to be required.

(2) Under the 1998/1999 amendments, additional tribal payments (averaging \$23.7 million annually) were agreed to for the five-year period 1999-00 through 2003-04. These payments were initially allocated to a number of state agencies to support various programs in 1999-00 and 2000-01. Subsequent biennial budget acts have continued these agency allocations, with some modifications, to the current fiscal year.

(3) Finally, under the 2003 amendments, the tribes agreed to make significantly higher payments beginning in state fiscal year 2003-04. Under the 2003 agreements, significant lump-sum payments were required of certain tribes in 2003-04 and 2004-05. At this point in time (2006-07) and in the future, state payments will be based on a percentage of net casino win; the percentage to be used in the calculation varies by tribe.

Following the 2003 amendments, allocations of tribal gaming revenue to specific agency programs continued to be made each year with the balance of the tribal payments being deposited in the general fund.

The additional tribal payments in 2003-04 totaled about \$69 million, but declined to \$27 million in 2004-05. This decline reflected the interruption in state payments caused by the *Panzer v. Doyle* Wisconsin Supreme Court decision. The following year, 2005-06, there was a corresponding increase in state payments to \$118 million. In 2006-07, the tribal payments are estimated to be about \$82 million, plus any unpaid amounts that may be due from the tribes relating to prior years.

Agency allocations totaled about \$23 million in 2003-04 and 2004-05, increased to \$30 million in 2005-06 and are budgeted at just over \$28 million in 2006-07.

Given these state payments and expenditures, general fund revenue from tribal gaming totaled \$48 million in 2003-04, \$3.8 million in 2004-05, and \$88.9 million in 2005-06. In 2006-07, general fund revenue is estimated to be about \$86 million.

This use of tribal gaming revenue is determined for each two-year period under the state's biennial budget process.

Budget Process

To provide a context for today's discussion, I'll outline, very briefly, the state's budget process. If you're interested, we have copies of a Fiscal Bureau publication describing the budget process in some detail: Informational Paper #67, entitled State Budget Process. This paper will also be republished in January, 2007, with updated statistics, but its description of the budget process itself is still accurate.

The biennial budget process begins in each even-numbered year. The process includes the following stages:

- (1) State agency budget requests are prepared and submitted in September of the even-numbered year;
- (2) The Department of Administration (DOA) analyses the agency budget requests and assists the Governor in reviewing the requests;
- (3) The Governor submits his or her recommended budget to the Legislature generally around the end of January of the odd numbered year;
- (4) The Joint Committee of Finance reviews and modifies the Governor's budget recommendations;
- (5) The Senate and Assembly each review and modify the budget; a conference committee may be required to resolve differences between the houses.

- (6) Final passage of the bill by the Legislature and submission to the Governor, generally in July;
- (7) The Governor may make partial vetoes of provisions he disagrees with and signs the bill into law, generally within a month of receiving the bill;
- (8) The Legislature may override any partial veto.

As the biennial budget bill proceeds through the Legislature, the Legislative Fiscal Bureau prepares summary documents at each stage in the process that detail the action taken on the bill.

At the Joint Finance stage, our office prepares issue papers that provide background and analysis on many of the Governor's budget recommendations. (Our office produced 360 issue papers for Committee in the 2005-07 budget deliberations.) These papers provide a basis for the Committee's discussion and action on most budget issues.

The use of tribal gaming payments to the state is determined under this legislative process.

It should also be mentioned at this point that the state budgeting process is an incremental process that uses the existing budget levels (termed the "base" budget) as a starting point. This means that if a program has an approved level of funding (its base), this funding will continue to be provided in the future unless there is an affirmative decision to change this funding level. To illustrate this concept we can provide an example in the context of the tribal gaming revenue allocations. The Department of Natural Resources is currently provided \$100,000 annually in tribal gaming revenue for payments to the Lac du Flambeau Band relating to certain fishing and sports licenses. This amount will continue to be provided as part of the agency's base funding unless there is legislative action to increase or decrease this level of funding.

The tribal gaming revenue allocations made to agencies in 2006-07, approximately \$28 million, provide base funding for 42 programs in state government. We have provided you with a handout that details these agency allocations in the current biennium.

The Governor's recommendations for tribal gaming funding in the biennial budget are significant because these recommendations will reflect the Governor's desire to modify base funding for existing programs or to fund new programs. In addition, the Governor will provide estimates of total annual tribal gaming payments to the state expected in the next biennium. The difference between these revenue estimates and the amounts appropriated for various programs will be the amount available for the state's general fund.

Current Issues Affecting the Use of Tribal Gaming Revenue

With this background on the state's budgeting process, I'd like to make a few comments to illustrate some of the current issues affecting the tribal gaming payments to the state.

It is interesting at this point to note that nine of the 1998/1999 compact amendments included indications of the preferred use of the additional tribal payments being made to the state. This was done through ancillary memorandums of understanding (MOU) relating to government-to-government matters. [Only two tribes' amendments did not include MOUs on government-to-government matters and are silent on the issue of how the state utilizes the additional gaming revenue.]

The nine MOUs have a number of common elements relating to the use of the additional payments. The most important element common to eight of the nine MOUs 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 are expended for specific purposes.

In most cases, but with some variations, these purposes included: (1) economic development initiatives to benefit tribes and/or American Indians within Wisconsin; (2) economic development initiatives in regions around casinos; (3) promotion of tourism within the state; and (4) support of programs and services of the county in which the tribe is located.

In the 2003 amendments, at least two tribes reference the 1998 MOU and the requirement that the Governor use his best efforts within the scope of his authority to assure that monies paid to the state are allocated and expended in accordance with the specifications in the MOU.

In seven of the 2003 compact amendments, no explicit reference is made to the 1998 MOUs, but a provision is included that generally states that: (a) the state and the tribe agree to cooperate and to consult in the preparation of the budget of the State of Wisconsin to the extent it proposes the appropriation of the funds made available to the state by the tribe under the compact; and (b) the state and the tribe shall cooperate as is appropriate for governments that share their revenue to fund programs or activities to achieve goals of mutual interest.

In summary, the 1998 MOU and the 2003 amendments provide guidelines for the Governor in making his budget recommendations to the Legislature.

However, it should also be noted that the Legislature's decisions on the use of tribal gaming revenue are not necessarily constrained by the MOUs or the 2003 amendment language. For example, with respect to the MOUs, the provision is that the Governor make his best efforts *within the scope of his authority* to assure that monies paid to the state are expended for the specified purposes. However, while the Governor can recommend spending, he cannot appropriate funds; the appropriation of funds is the Legislature's responsibility.

It is also important to understand that certain constraints become operative over time that limit the state's ability to modify the uses of tribal gaming revenue paid to the state. In 1999, with about \$23 million annually in new revenue and a clean slate, the state had the ability to freely choose what to fund with these revenues. However, once these commitments are made, the clean slate no longer exists. Tribal money now provides base funding for many programs. These programs are generally long-standing initiatives.

Conclusion

In summary, the use of tribal gaming revenue is determined through the standard budgeting procedures of the state.

Approximately \$28 million a year in tribal payments are currently committed as base level funding for a variety of state programs. Under current law, monies in excess of the amounts allocated to state agencies are deposited in the general fund.

The next step in the current budget process is that the Governor, in his 2007-09 biennial budget bill, will propose changes to how the tribal gaming revenue is utilized by the state. He and the Legislature will need to determine:

- (1) whether to continue this funding for current programs;
- (2) what new initiatives are to be funded; and
- (3) the level of tribal gaming revenue to be provided the general fund in the next two years.

Thank you. If you have any questions at this point, we'd be happy to address them.

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