



Legislative Fiscal Bureau

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April 19, 2010

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Senate Bill 630: Reimbursement to Indian Tribes and Counties for Unusually High-Cost Mental Health Placements by Tribal Courts

Senate Bill 630 would provide \$250,000 PR from tribal gaming revenues to the Department of Health Services (DHS) to reimburse Indian tribes and county departments for unexpected or unusually high-cost placement by a tribal court of a member of the Indian tribe or band in a state treatment facility. Although not specified in the bill, the legislation is intended to address costs of providing behavioral health services that are currently provided under a three-party agreement between the Menominee Indian Tribe, the Menominee County Board, and DHS.

The bill was introduced on March 18, 2010, and referred to the Committee on Ethics Reform and Government Operations. On April 6, the Committee held a public hearing on the bill. On April 14, the bill was re-referred to the Joint Committee on Finance.

CURRENT LAW

By statute, all counties, including Menominee County, are responsible for providing their county residents with certain behavioral health services, including mental health and substance abuse services. Counties support these services by using state funds, such as community aids, and local tax levy. The statutes do not require the state's tribes, including the Menominee Nation, to provide these services to their tribal members. Further, only the Menominee Tribal Court may order a tribal member to receive involuntary behavioral health services, such as inpatient mental health services, as the circuit courts have no jurisdiction in these cases.

There are unique circumstances regarding human services funding in Menominee County. DHS indicates that, of the county's 4,571 residents, approximately 93% are enrolled tribal members of descendants of the tribe. Further, approximately 1% of the land in the county is taxable.

Following a 1981 Attorney General opinion, which discussed some of the legal issues regarding county and tribal responsibilities with respect to these services, Menominee County, the Menominee Tribe and the DHS (and its predecessor agencies) entered into a series of agreements regarding mental health commitments, guardianships, and protective placements in the county, as provided under Chapters 51, 54 and 55 of the statutes. Under the current agreement, for the period January 1, 2010, through June 30, 2010, Menominee Tribe will pay the county \$75,000 for these services.

Preliminary information from DHS indicates that, in 2009, Menominee County expended approximately \$655,700 on mental health and substance abuse services under Chapter 51, including approximately \$374,400 for mental health services provided in community-based residential facilities, \$117,700 for inpatient mental health services, \$97,200 for emergency detentions, and the balance (\$66,400) for psychiatric evaluations, substance abuse screenings, and substance abuse inpatient services.

State Assistance Provided in the 2007-09 and 2009-11 Biennia. The appropriation in SB 630 resembles a similar transfer of tribal gaming funds that was implemented in the 2007-09 biennial budget. 2007 Act 20 appropriated \$500,000 in tribal gaming funds in each year of the 2007-09 biennium to support the cost of unexpected or unusually high-cost out-of-home placements of Native American children by tribal courts. The Act split this expenditure authority between the Department of Health and Family Services (in 2007-08) and the newly created Department of Children and Families (in 2008-09). Although the budget authorized the expenditure of \$500,000 in each year of the biennium, Act 20 included a statutory restriction that effectively capped the total biennial expenditure at \$500,000

2009 Act 28 authorized the expenditure in the Department of Children and Families (DCF) of \$395,000 in tribal gaming funds in each year of the 2009-11 biennium to support the cost of unexpected or unusually high-cost out-of-home placements of Native American children by tribal courts. In addition, Act 28 further defined "unusually high-cost out-of-home care" as a cost to a tribe or county department for out-of-home placement that exceeds \$50,000 in a fiscal year.

SUMMARY OF BILL

The bill would provide \$250,000 PR from tribal gaming revenue annually, beginning in 2009-10, for DHS to reimburse an Indian tribe or a county department for unexpected or unusually high-cost placement by a tribal court of a member of the Indian tribe or band in a state treatment facility. The bill defines "unusually high-cost" to mean the amount by which the cost to an Indian tribe or to a county department exceeds \$50,000.

A "state treatment facility" is currently defined in Chapter 51 of the statutes as any of the institutions operated by DHS for the purpose of providing diagnosis, care, or treatment for mental or emotional disturbance, developmental disability, alcoholism or drug dependency, and includes but is not limited to the state mental health institutes (the Mendota Mental Health Institute in Madison and the Winnebago Mental Health Institute near Oshkosh).

The bill would create a continuing PR appropriation to DHS for this purpose, which would be funded from tribal gaming revenues. [While the appropriation account would be created in the Chapter 20 schedule as a continuing appropriation, the Chapter 20 appropriation language creates an annual appropriation. The Legislative Reference Bureau (LRB) indicates that the appropriation schedule contains a typographical error. The LRB will make a Chief Clerk's correction to show the appropriation account in the schedule as an annual appropriation.]

FISCAL EFFECT

The bill would provide \$250,000 PR annually to DHS for Indian mental health placements from tribal gaming revenues paid to the state. Tribal gaming revenue is allocated to a number of state agencies for a variety of purposes; any unallocated tribal gaming revenue is credited to the general fund. Under the 2009-11 biennial budget (2009 Wisconsin Act 28), \$19,476,600 in 2009-10 and \$22,580,300 is estimated as general fund revenue relating to tribal gaming payments. Additional allocations of tribal gaming revenue to state agencies would reduce these amounts; therefore, the provision of tribal gaming revenue under SB 630 would reduce general fund revenue by \$250,000 annually in the 2009-11 biennium.

The closing balance of the general fund as of June 30, 2011, was projected at \$55.7 million in this office's memorandum relating to revenue estimates dated January 27, 2010, which is less than the statutory reserve of \$65 million. Because SB 630 would reduce estimated general fund revenues, the Committee may wish to adopt an amendment that would specify that the requirement for a \$65 million statutory reserve does not apply to the provisions of the bill.

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