



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #167

Tribal Gaming Revenue Allocations

Reversion of Unencumbered Tribal Gaming Revenue (DOA -- Division of Gaming)

[LFB 2001-03 Budget Summary: Page 82, #2]

CURRENT LAW

Indian gaming receipts are statutorily defined as moneys received by the state from any of the following: (a) tribal reimbursement for state costs of regulation of Indian gaming under Indian gaming compacts; (b) payments by Indian gaming vendors and persons proposing to be Indian gaming vendors as reimbursement for state costs of certification and background investigations; (c) tribal reimbursement for state costs of gaming services and assistance provided by the state at the request of a tribe; and (d) tribal payments pursuant to an Indian gaming compact.

The Indian gaming receipts program revenue appropriation in the Department of Administration (DOA) receives all Indian gaming receipts, less the amounts appropriated to DOA for general program operations relating to Indian gaming and the Department of Justice (DOJ) for Indian gaming law enforcement. It is from the Indian gaming receipts appropriation that the allocations are made to various state agencies. In 2000-01, \$22,735,200 is allocated to 12 agencies and 38 program areas. In all but two instances, these allocations are statutorily credited to program revenue appropriations; any unexpended or unencumbered revenue at the end of each fiscal year is retained in that appropriation.

GOVERNOR

Provide that, for annual appropriations under the bill (with one exception) receiving tribal gaming revenue from the Indian gaming receipts appropriation, any unencumbered balance on

June 30 of each year would revert to the Indian gaming receipts appropriation. Provide that, for biennial and continuing appropriations under the bill (with two exceptions) receiving tribal gaming revenue, any unencumbered balance on June 30 of each odd-numbered year would revert to the Indian gaming receipts appropriation from which tribal gaming revenue is transferred. Appropriation language relating to one of the continuing appropriations exempted from the provision requires a technical correction.

DISCUSSION POINTS

1. Except for a transfer to the fish and wildlife account of the conservation fund and an allocation to the Committee's program supplemental PR appropriation for Badger Care, the tribal gaming revenue allocations, under current law, are made to program revenue appropriations as follows: (a) 33 allocations are made to annual appropriations; (b) two allocations to biennial appropriations; and (c) three allocations to continuing appropriations. Once credited to a program revenue appropriation, unencumbered balances at the end of a fiscal year are retained in that appropriation. However, the appropriation types differ, as follows:

a. *Annual appropriations.* Annual appropriations are expendable only up to the amount shown in the schedule and only for the fiscal year for which made. Any unencumbered balances at the end of either year of the biennium remain in the respective appropriations, but may not be expended in a subsequent year unless expenditure authority is provided. This may be done through the passage of an appropriation bill or by the Secretary of DOA with the approval of the Joint Committee on Finance under s. 16.515 of the statutes. The Legislature, or the Joint Committee on Finance under certain conditions, could also transfer such funds to address other purposes.

b. *Biennial appropriations.* Under a biennial appropriation, the dollar amounts shown in the appropriation schedule represent the most reliable estimates of the amounts which will be expended in each fiscal year. However, the total or combined amount for both years constitute a biennial appropriation, from which an agency may expend, in the second year of the biennium, the unencumbered balance remaining at the close of the first year. At the end of the biennium any unencumbered balance is retained in the appropriation account. However, an agency cannot expend these remaining funds in future years unless provided the necessary expenditure authority in subsequent budget deliberations. It is also possible for the Legislature to transfer any unencumbered balances at the end of the biennium to other appropriations for other purposes.

c. *Continuing appropriations.* Under a continuing appropriation, an agency may make authorized expenditures until the available revenues credited to the appropriation are fully depleted or the appropriation is repealed by subsequent action of the Legislature. Thus, agencies may utilize the unexpended revenue at the end of a fiscal year in a subsequent year. The dollar amounts shown in the appropriation schedule for a continuing appropriation from program revenues represent the most reliable estimates of the amounts which will be expended during any fiscal year.

2. The Governor's provisions, with three exceptions, would return unencumbered balances to the Indian gaming receipts appropriation in DOA, thus making this revenue available for other allocations. An argument could be made that unencumbered balances should be retained in some or all of the various appropriations receiving tribal gaming revenue because future needs relating to these approved purposes may arise that could be addressed by the unobligated revenue retained in the appropriations. With the exception of the continuing appropriations, the necessary authority for making such additional expenditures in subsequent years would require the approval of the Committee or the Legislature.

3. On the other hand, if unencumbered balances are reverted, future needs in both existing and new program areas could be addressed by the Legislature in its biennial budget deliberations. It could be argued, then, that the reversion provisions under the bill provide the Legislature with greater flexibility in addressing changing needs.

4. The Governor's provision for reverting unencumbered balances from annual appropriations would not include a Department of Commerce annual appropriation that would be created under the bill for Forward Wisconsin, Inc., business recruitment. Forward Wisconsin is required by statute to have its marketing expenditures approved by the Secretary of Commerce. When the Governor's budget bill was being prepared, there was concern that the reversion provision, if applied to the Forward Wisconsin appropriation, would require funds to be lapsed before expenditures were approved. Forward Wisconsin staff now indicate that the reversion requirement would not affect their activities. The Committee could, therefore, apply the reversion requirement to this appropriation.

5. The two exceptions to the reversion provision relating to continuing appropriations that receive tribal gaming revenue are: (a) a continuing appropriation for the Department of Health and Family Services (DHFS) interagency and intra-agency aids that receives tribal gaming revenue for medical assistance state-match purposes; and (b) a continuing appropriation, created under the bill, for the Department of Transportation for West Canal street reconstruction, service funds (which would receive tribal gaming funds in the 2001-03 biennium only). [A third continuing appropriation under current law relates to farmland tax relief payments from gaming revenue paid to the state by any tribe operating a casino located at certain pari-mutuel racetracks would also not contain the reversion provision. However, this appropriation is not currently active (no tribe operates a casino in association with a pari-mutuel racetrack) and, if active, would not produce an unencumbered balance.]

6. DOA officials indicate that the DHFS appropriation was excluded from being subject to the reversion provision under the bill because it is an interagency/intra-agency appropriation receiving funds from more than one source. This fact prevents the application of the reversion provision to this appropriation. It should also be noted that the appropriation language under the Indian gaming receipts appropriation, which allocates the funding to this DHFS appropriation, requires a technical correction relating to the specification of fiscal years and the amounts to be transferred.

7. Some modifications of the Governor's provisions could be considered. With regards to the two continuing appropriations that would be subject to the reversion provision (Commerce Physician Loan Assistance Program and Tourism marketing), the reversion of unencumbered balances on June 30 of each odd-numbered year would, in its practical effect, treat these appropriations as biennial appropriations. Given this effect, an alternative to the Governor's treatment of these continuing appropriations would be to adopt the reversion provision, but convert the appropriations to biennial appropriations. This would more accurately reflect the type of appropriation that would result if the reversion provision is approved.

8. As noted above, the Governor's recommendation would exclude applying the reversion requirement to a DHFS continuing appropriation for medical assistance state-match purposes because the funding is allocated to an interagency/intra-agency appropriation that receives funds from more than one source. However, tribal gaming revenue for this purpose would not need to be made to this appropriation. A separate program revenue, biennial appropriation specifically for these medical assistance state-match purposes could be created with the reversion provision included. This would be consistent other tribal gaming revenue allocations and would allow any unencumbered balances to be utilized for other purposes, if the Legislature chooses to do so.

9. The Governor estimates that the unencumbered balances in appropriations receiving tribal gaming revenue would total \$2.5 million annually in 1999-00, 2000-01 and 2001-02. By assuming these reversion amounts, the Governor estimates a closing balance in the Indian gaming receipts appropriation of \$49,500 on June 30, 2003. No breakdown of these estimated annual totals is provided in terms of which appropriations would provide the estimated balances.

10. The Governor also assumes that: (a) the 1999-00 and 2000-01 estimated balances (totaling \$5.0 million, under the bill) would revert to the Indian gaming receipts appropriation in 2001-02; and (b) the 2001-02 estimated unencumbered balances (\$2.5 million, under the bill) would revert to the appropriation in 2002-03. However, the effective date of these provisions, which would be after July 1, 2001, would not immediately affect the unencumbered balances in these appropriations on June 30, 2001. These balances would remain in the respective annual appropriations until June 30, 2002, before reverting to the Indian gaming receipts appropriation in 2002-03. In addition, unencumbered balances in biennial and continuing appropriations would remain in the respective appropriations until June 30, 2003, before reverting to the Indian gaming receipts appropriation in 2003-04. In order to effectuate a more timely reversion of unencumbered balances, a nonstatutory provision would need to be included in the bill specifying that these unencumbered balances in 1999-00 and 2000-01 would revert to the Indian gaming receipts appropriation on the effective date of the bill.

11. The estimated unencumbered balances under the bill (\$2.5 million annually) require revision. There are 13 annual appropriations receiving tribal gaming revenue that had unencumbered balances at the end of 1999-00 or are projected to have unencumbered balances at the end of 2000-01, as shown in the following table:

<u>Department</u>	<u>Unencumbered Balances</u>	
	<u>1999-00</u>	<u>2000-01</u>
Administration (OJA): County Law Enforcement Services	\$50,000	\$61,300
Administration (OJA): Tribal Law Enforcement Services	0	879,600
Commerce: American Indian Economic Development Liaison Program	28,635	0
Commerce: Economic Development Grants and Loans	2,017,783	500,000
DHFS: Cooperative American Indian Health Projects	3,996	5,400
DHFS: Medical Relief Block Grants to Tribes	36,648	81,000
Historical Society: Northern Great Lakes Center	2,013	0
Natural Resources: Lac du Flambeau Payments	100,000	98,500
Natural Resources: Management of Fishery Resources	31,386	24,800
Natural Resources: Wild Crane Management	13,225	0
Tourism: Tourist Information Assistant	23,500	3,500
Veterans Affairs: Grants to Assist American Indian Veterans	15,000	2,500
Veterans Affairs: Indian Services Coordinator	<u>46,364</u>	<u>11,800</u>
Total	\$2,368,550	\$1,668,400

12. The unencumbered balances in 1999-00 in these appropriations may reflect, in part, the fact that many of these tribal gaming revenue allocations represented new funding and agencies were not yet prepared to take full advantage of the funding. The major share (\$2.0 million or 85%) of the 1999-00 unencumbered balances was related to the Commerce economic development grants and loans appropriation. In 2000-01, however, the appropriation is projected to have a balance of only \$500,000. In addition, five of the appropriations had unencumbered balances at the end of 1999-00 primarily on the salary and fringe benefit lines. This may reflect the fact that staff were only in place for part of the fiscal year (1999-00 was the first year tribal gaming revenue was allocated to agencies).

13. The two allocations made to biennial appropriations are for the Higher Educational Aids Board (HEAB): (a) an Indian student assistance grant program for Native American undergraduate or graduate students; and (b) a Wisconsin Higher Education Grant (WHEG) program for tribal college students. Both appropriations had small unencumbered balances at the end of 1999-00. HEAB is authorized to expend the balance of these funds over the two years of the 1999-01 biennium and no unencumbered balances are projected in these biennial appropriations on June 30, 2001.

14. Of the three continuing appropriations receiving tribal gaming revenue, only one is estimated to have unencumbered funding on June 30, 2001: the DHFS appropriation for state match of certain medical assistance-funded activities and services, with \$18,300 remaining. As noted above, this DHFS appropriation would not be required to revert unencumbered balances under the bill.

15. One other allocation bears on the issue of unspent revenue. A DHFS allocation for

Badger Care premiums (\$300,000 in 1999-00 and \$400,000 in 2000-01) was placed in the Joint Committee on Finance supplemental appropriation for program revenue. Under certain circumstances, DHFS may request this funding, under a 14-day passive review, to supplement a GPR continuing appropriation under DHFS for the Badger Care program. DHFS did not request this funding in 1999-00; however, because the Committee's supplemental appropriation is a sum sufficient appropriation, it would be possible for the Department to request the entire \$700,000 tribal gaming allocation in 2000-01. If DHFS does not request the Committee to release the funding in 2000-01, this allocation would remain credited to the Indian gaming receipts appropriation in DOA because it was not transferred to a DHFS appropriation. DHFS officials indicate that the Department does not plan to request these funds in 2000-01. Therefore, the \$700,000 is reflected in the 2001-02 estimated opening balance for the Indian gaming receipts appropriation.

16. In total, the difference between the 1999-00 unencumbered balances (\$2,368,600) and the projected balances the end of 2000-01 (\$1,668,400) is \$700,200, which represents a 29.6% decline between 1999-00 and 2000-01. It is likely this steep decline in the amount of unencumbered balances will continue in the 2001-03 biennium.

17. As a budget practice, allocating tribal gaming revenue on the basis of assumed reversions of future unencumbered balances could be viewed as questionable. If the estimated unencumbered balances are not realized, the available revenue would be insufficient to fully fund the allocations. It could be argued that the principle of reverting unencumbered balances to the Indian gaming receipts appropriation is sound; however, these moneys should not be allocated until they materialize. The unencumbered balances relating to 1999-00 are known and could be reverted and allocated to agencies in the 2001-03 biennium. It could also be argued that the estimated unencumbered balances relating to 2000-01 should be fairly accurate given that ten months of data for the fiscal year are available. It would be reasonable, therefore, to also allocate this estimated amount.

18. However, concerns could be raised in projecting a 9.5% lapse from 2001-02 appropriations. This amount is larger than what would typically be anticipated through normal budget practice. The reversion provision could be viewed as giving the Governor the responsibility to lapse a certain amount of funds from any of over 40 appropriations, which in effect, provides authorization for the Governor to adjust legislatively-established funding levels without legislative oversight. This appears to have occurred already in that 53% of the estimated unencumbered balance in 2000-01 (\$879,600) is attributable to one appropriation, the OJA tribal law enforcement services grant program. According to OJA, the unencumbered balance resulted because DOA informed OJA that those funds were needed for reprogramming under the Governor's budget bill. As a result, tribes were not provided with law enforcement grants in 2000-01 in the amounts provided by the Legislature.

19. If one was to assume that the unencumbered balances in 2001-02, which would revert to the Indian gaming receipts appropriation in 2002-03, would be an amount equal to 2% of the total allocations in 2001-02, the estimated lapse amount would be \$552,000 under the bill. The 2% assumption one that is generally used to estimate annual lapses from state operations

appropriations.

20. Assuming that a nonstatutory provision to clarify the timing of the reversions is adopted, the 2001-02 reverting amount would total approximately \$4.0 million (\$2.4 million relating to unencumbered balances in 1999-00 and \$1.7 million in 2000-01). The 2002-03 reversion amount is estimated at \$552,000 (relating to the 2001-02 unencumbered balances) assuming an amount equal to 2% of the allocations in that year under the bill. These revised estimates and the allocation of tribal gaming revenue to agencies under the bill would result in a deficit totaling \$2.1 million on June 30, 2003. This is shown in the following condition statement:

**Indian Gaming Receipts Appropriation Condition Statement
Reestimated**

	<u>2001-02</u>	<u>2002-03</u>
Opening Balance	\$1,178,500	\$1,746,900
Revenue		
Compacts -- original	\$350,000	\$350,000
Compacts -- amended	24,025,000	24,525,000
Vendor certifications	175,000	125,000
Reversion of unencumbered balances	<u>4,037,000</u>	<u>552,000</u>
Total Revenue	\$28,587,000	\$25,552,000
Total Available	\$29,765,500	\$27,298,900
Expenditures/Transfers		
DOA general operations for Indian gaming	\$1,616,500	\$1,616,500
DOJ law enforcement for Indian gaming	103,900	105,600
Allocations to other agencies	<u>26,268,800</u>	<u>27,598,500</u>
Total Expenditures	\$27,989,200	\$29,320,600
Total Reserves (DOA and DOJ)	\$29,400	\$61,800
Closing Balance	\$1,746,900	-\$2,083,500

21. In summary, the Governor's allocation of tribal gaming revenue under the bill would result in a projected deficit of \$2,083,500 on June 30, 2003, assuming reestimated reverting amounts of \$4.0 million in 2001-02 and \$552,000 in 2002-03. If the Governor's recommendation to revert the unencumbered balances is not approved, the allocations under the bill would result in a projected deficit of \$6,672,500 on June 30, 2003.

ALTERNATIVES TO BILL

1. Approve the Governor's recommendation to provide that, for annual appropriations (with one exception) receiving tribal gaming revenue from the Indian gaming receipts appropriation, any unencumbered balance on June 30 of each year would revert to the Indian gaming receipts appropriation. Provide that, for biennial and continuing appropriations (with two exceptions) receiving tribal gaming revenue, any unencumbered balance on June 30 of each odd-numbered year would revert to the Indian gaming receipts appropriation from which tribal gaming revenue is transferred. Correct the appropriation language in the Indian gaming receipts appropriation to reflect the correct fiscal years and amounts transferred to the DHFS continuing interagency, intra-agency aids appropriation for the purpose of state match of certain medical assistance-funded activities.

2. Modify the Governor's recommendation, as corrected, in one or more of the following ways:

a. Provide nonstatutory language clarifying that the unencumbered balances in the applicable appropriations on June 30, 2001, would revert to the Indian gaming receipts appropriation in 2001-02 on the effective date of the bill.

b. Provide that any unencumbered balance on June 30 of each year in the annual appropriation for Forward Wisconsin, Inc., business recruitment, be required to revert to the Indian gaming receipts appropriation.

c. Convert the following two continuing appropriations to biennial appropriations, subject to the reversion of unencumbered balances provision for biennial appropriations under the bill: (1) the Commerce appropriation for the Physician Loan Assistance Program; and (2) the Tourism marketing appropriation.

d. Provide that the DHFS allocation for state match of certain medical assistance-funded activities be transferred to a new biennial appropriation for this purpose, subject to the reversion of unencumbered balances provision for biennial appropriations under the bill. Modify the Indian gaming receipts appropriation language that allocates this funding to DHFS to reflect this change.

3. Maintain current law.

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