



## Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

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Joint Committee on Finance

Paper #134

### *Tribal Gaming Revenue Allocations*

## **County, County-Tribal and Tribal Law Enforcement Grant Programs (Administration -- Office of Justice Assistance and Justice)**

[LFB 2003-05 Budget Summary: Page 40, #1 and Page 289, #10]

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### **CURRENT LAW**

The Department of Justice (DOJ) is responsible for administration of a cooperative county-tribal law enforcement grant program. In order to receive funding under the program, a county with one or more federally-recognized Indian reservations within or partially within its boundaries must enter into an agreement with an Indian tribe located in the county to establish a cooperative county-tribal law enforcement program. The county and tribe must also develop and annually submit to DOJ a joint program plan and report on the performance of law enforcement activities on the reservation in the previous fiscal year. The adjusted base for the DOJ program is \$778,000 PR annually (\$708,400 PR for grant awards and \$69,600 PR and 1.0 PR position for program administration), provided from tribal gaming revenues.

The Department of Administration's Office of Justice Assistance (OJA) is responsible for administering both a county law enforcement services grant program and a tribal law enforcement assistance grant program.

Under the county grant program, a county is eligible to participate if: (1) the county borders one or more federally-recognized Indian reservations; (2) the county has not established a cooperative county-tribal law enforcement program under DOJ's grant program; (3) the county demonstrates a need for the law enforcement services to be funded with the grant; and (4) the county submits a grant application and a plan showing how it will use the grant money to fund law enforcement services. Grants are limited by statute to no more than \$50,000 annually to any county. The adjusted base for county law enforcement services grant awards is \$250,000 PR annually, provided from tribal gaming revenues.

OJA also administers the tribal law enforcement assistance grant program which OJA provides grants directly to tribes for tribal law enforcement operations. To be eligible for a grant, a tribe must submit an application that includes a proposed plan for expenditure of the grant moneys. OJA is required to develop criteria and procedures in administering this program. The adjusted base for the tribal law enforcement assistance grant program is \$1,050,000 PR annually, provided from tribal gaming revenues.

## **GOVERNOR**

Make the following changes to the current county, county-tribal and tribal law enforcement grant programs:

*Program Transfers from DOJ.* Provide \$778,000 PR and 1.0 PR position annually under OJA to reflect the transfer of the cooperative county-tribal law enforcement grant program and associated staff support from DOJ.

*Program Consolidation under OJA.* Delete OJA's existing county law enforcement services grant program. Combine the total funding associated with DOJ's transferred cooperative county-tribal law enforcement grant program and administrative function [\$778,000 PR annually] with OJA's existing county law enforcement services grant program [funded at \$250,000 PR annually] and make the statutory program modifications described below. Retitle OJA's county law enforcement services appropriation as the county and tribal law enforcement assistance appropriation. [A technical correction is necessary to permit OJA to fund the transferred position and associated supplies and services from this appropriation.]

Repeal OJA's existing tribal law enforcement assistance appropriation [funded at \$1,050,000 PR annually] and consolidate this base level funding into the modified county and tribal law enforcement assistance appropriation. Repeal various tribal gaming appropriations and make necessary statutory cross-reference changes to reflect these consolidations. The combined funding in the consolidated OJA appropriation from the two remaining grant programs would total \$2,078,000 PR annually. Under the bill, OJA would have discretion as to the distribution of funds between the modified county-tribal and tribal grant programs.

*Proposed Statutory Modifications.* Specify that a county would be eligible to participate in the modified county and tribal law enforcement grant program if: (1) the county has one or more federally-recognized American Indian reservations within or partially within its boundaries or the county borders on one or more federally recognized reservations; (2) the county board adopts a resolution entering into an agreement with such a reservation to establish a cooperative county-tribal law enforcement program; and (3) the county submits to OJA a proposal for expenditure of grant funds.

Authorize OJA to require counties to include the following in any grant application: (1) a description of cooperative county-tribal law enforcement programs or law enforcement services for which the county requests funding; (2) a description of the population and geographic area

that the county proposes to serve; (3) the county's need for grant funding and the amount of funding requested; (4) identification of the county unit that would administer the grant funds and a description of how such funds would be disbursed; and (5) any other information deemed relevant by OJA or by the county submitting the application. Direct OJA to develop criteria and procedures for use in administering the program, and specify that such criteria and procedures would not have to be promulgated as administrative rules.

No statutory changes would be made to the operation of the current tribal law enforcement assistance grant program.

*Transition Provisions.* On the effective date of the bill, transfer the assets and liabilities, tangible personal property, and contracts of DOJ primarily related to its county-tribal law enforcement grant program, as determined by the Secretary of DOA, to OJA. Specify that all incumbent employees of DOJ having duties primarily related to its county-tribal law enforcement grant program, as determined by the Secretary of DOA, would be transferred to OJA and would retain their civil service rights and status and would not have to serve a new probationary period. Specify that the pending matters, and rules and orders of DOJ primarily related to its county-tribal law enforcement grant program, as determined by the Secretary of DOA, would become the pending matters, rules and orders of OJA.

*Recreate the County Law Enforcement Services Grant Program.* DOA staff have subsequently advised that it was not the Governor's intent to delete the county law enforcement services grant program, but rather to centralize the administration of all three grant programs at OJA. In order to effectuate this intent, a modification to the bill would be needed to recreate the statutory language governing the county law enforcement services grant program.

## **DISCUSSION POINTS**

1. In 1955, legislation was enacted to provide funds to counties that had law enforcement responsibilities on reservations within their boundaries. Counties could apply annually to DOJ to receive \$2,500 per year. The law required a county applying for funds to "show that a problem exists." The \$2,500 per year funding limit was not increased for nearly 30 years.

2. In 1982-83, the Legislature's American Indian Study Committee undertook an examination of the provision of county law enforcement services on Indian reservations. In response to the study, the Legislature increased the amount of law enforcement aid available to counties from \$2,500 to \$7,500 per year and also created a three-year pilot program to fund two cooperative law enforcement efforts between counties and tribes. Each of the two pilot programs could receive up to \$20,000 per year for a period of three years and was required to provide \$5,000 per year in nonstate matching funds. Funding for the pilot projects terminated on July 1, 1986, but the two pilot county-tribal programs continued to operate.

3. In 1988, legislation was enacted to recreate the county-tribal cooperative law enforcement program in DOJ as an ongoing program. The legislation expanded the program to

include counties and tribes in addition to those that participated in the original pilot.

4. Under 1999 Wisconsin Act 9 (the 1999-01 biennial budget act), the funding source for DOJ's cooperative county-tribal law enforcement program was shifted from penalty assessment revenues and GPR funding to tribal gaming revenue. Act 9 also created two new tribal-related law enforcement grant programs: OJA's county law enforcement services grant program and tribal law enforcement assistance grant program, both funded with tribal gaming revenue.

5. While the provisions of SB 44 would delete the county law enforcement services grant program, the Governor would retain both the county law enforcement services grant program and the tribal law enforcement assistance grant program in OJA. In addition, the Governor would transfer the cooperative county-tribal law enforcement grant program from DOJ and make the programmatic changes as identified above.

6. Some might question the need for three separate law enforcement grant programs related to addressing tribe related law enforcement needs.

7. DOJ's cooperative county-tribal law enforcement grant program requires counties and tribes to work together to address law enforcement issues on tribal reservations. Under DOJ's program, while funds are awarded for the benefit of both the county and the tribe, the county is the administrative entity that receives the funds, which may be passed to the tribe.

8. Under OJA's tribal law enforcement assistance grant program, the Office provides grants directly to tribes for law enforcement operations. Finally, OJA's county law enforcement services grant program provides grant funding directly to counties, for counties that have not established a cooperative county-tribal law enforcement program under DOJ's grant program with each federally recognized Indian tribe or band that has a reservation bordering the county.

9. In an effort to encourage cooperation between counties and tribes regarding law enforcement, the Committee could consider deleting one or both of the OJA programs, but add the base funding from the deleted program(s) to the cooperative county-tribal law enforcement grant program. Such a change could provide significant increased funding to the cooperative county-tribal law enforcement grant program to encourage coordinated law enforcement efforts.

10. Alternatively, given the limited resources available to the state, the Committee could consider prioritizing its support for county/tribal law enforcement efforts by maintaining the cooperative county-tribal law enforcement program, but deleting one or both of the OJA programs, along with the associated base funding. Such a change could result in obligating tribal revenue amounts, ranging from \$500,000 PR to \$2,600,000 PR over the biennium. The funds would then be available for other uses of the Committee's choosing.

11. However, in the past, the Special Committee on State-Tribal Relations has expressed concern about insufficient funding to meet tribal law enforcement needs. Consequently, deleting base funding for one or both OJA programs could exacerbate this identified funding shortfall.

12. It could be argued that deleting one or both OJA programs would have a detrimental impact on county/tribal law enforcement. There are law enforcement issues that can be addressed solely by Wisconsin's tribes without the assistance of county law enforcement. There are also law enforcement issues that can be addressed solely by county law enforcement. Deleting either OJA program could limit the ability of counties and tribes to independently pursue and address county/tribal law enforcement issues.

13. In addition, counties and tribes may not always agree on how best to address common law enforcement issues. Deleting both OJA programs could leave some counties and tribes: (a) in agreement as to common law enforcement issues; (b) in disagreement as to how to address these issues; and (c) with no law enforcement grant funding to assist them in making progress separately.

14. On the other hand, when the Legislature established permanent county/tribal grant programs in the 1980s, it created a DOJ program that requires counties and tribes to cooperate in order to receive grant funding. Counties and tribes also have separate law enforcement funding that may be applied to addressing law enforcement issues. The Committee could conclude that it wishes to encourage maximum cooperation between counties and tribes on mutually significant law enforcement issues by providing funding only for joint programs.

15. The Committee could also address where these grant programs should be administered. County/tribal law enforcement grant programs have historically been administered by DOJ. It was only with the passage of 1999 Wisconsin Act 9 (the 1999-01 biennial budget act) that OJA became involved in the administration of its two county/tribal law enforcement grant programs.

16. The Committee could consider providing that all county/tribal grant funding be administered by DOJ and transfer all funding and program(s) to DOJ. On the other hand, OJA is an agency experienced in grant administration and has administered its county/tribal law enforcement grant programs since 1999-01. The Committee could consider adopting the Governor's recommendation to have OJA administer all county/tribal grant funding. Finally, the Committee could consider deleting the Governor's recommendation and return to current law. This action would leave the administration of the cooperative county-tribal grant program with DOJ and the administration of the other programs with OJA.

17. The amended cooperative county-tribal law enforcement grant program under the budget bill would not have certain program elements that are a part of DOJ's current county-tribal law enforcement program. These program elements include: (a) a requirement that the county and tribe develop and annually submit a joint program plan; (b) a requirement that the county and tribe submit an annual report to the office regarding the performance of law enforcement activities on the reservation in the previous year; (c) a requirement that the office annually report on the performance of the grant programs to the Chief Clerk of each house of the Legislature, the Governor and the Special Committee on State-Tribal Relations; and (d) specified statutory factors that must be considered in determining how much aid an approved plan should receive.

18. In order to encourage cooperation between counties and tribes and to maintain current accountability provisions, the Committee could consider maintaining DOJ's current law cooperative county-tribal grant program. Alternatively, the Committee could consider permitting greater programmatic flexibility and approve the Governor's recommended changes to the program.

## **ALTERNATIVES**

1. Approve the Governor's recommendation, as technically corrected, to: (a) provide \$778,000 PR and 1.0 PR position annually to OJA's county law enforcement services appropriation to reflect the transfer of the cooperative county-tribal law enforcement grant program and associated staff support from DOJ; (b) retitle OJA's county law enforcement services appropriation as the county and tribal law enforcement assistance appropriation (and include a corrective amendment to permit OJA to fund the transferred position and associated supplies and services from this appropriation); (c) repeal OJA's existing tribal law enforcement assistance appropriation and consolidate base funding or \$1,050,000 PR annually into the modified county and tribal law enforcement assistance appropriation; (d) repeal various tribal gaming appropriations and make necessary statutory cross-reference changes to reflect these consolidations; (e) recreate the county law enforcement services grant program statutory language; and (f) include standard program and staffing transitional provisions.

2. *If the Committee adopts Alternative 1*, include the following grant requirements that applied to the DOJ county-tribal law enforcement grant program to the new county and tribal law enforcement assistance grant program established under OJA: (a) require the county and tribe to develop and annually submit a joint program plan; (b) require the county and tribe to submit an annual report to OJA regarding the performance of law enforcement activities on the reservation in the previous year; (c) require OJA to report annually on the performance of the programs to the Legislature, the Governor and the Special Committee on State-Tribal Relations; and (d) retain current law statutory factors that must be considered in determining how much aid an approved plan should receive.

3. Adopt Alternative 1, but retain each current law county/tribal law enforcement program as a separate program under OJA to implement the Governor's original intent. {This Alternative has the effect of locating all three current law county/tribal law enforcement programs in OJA.]

4. Delete the Governor's recommendation and provide that DOJ administer the cooperative county-tribal law enforcement grant program, the county law enforcement services grant program and the tribal law enforcement assistance program. Transfer the county law enforcement services grant program and the tribal law enforcement assistance program, associated appropriations, and base level funding to DOJ to accomplish this purpose.

5. *In addition to Alternative 1 or 4*, repeal the county law enforcement services grant program and reallocate \$250,000 PR annually of base level funding to the cooperative county-tribal

law enforcement grant program.

6. *In addition to Alternative 1 or 4*, delete \$250,000 PR annually associated with the county law enforcement services grant program and repeal the program.

<b>Alternative 6</b>	<b>PR</b>
<b>2003-05 FUNDING</b> (Change to Bill)	- \$500,000

7. *In addition to Alternative 1 or 4*, repeal the tribal law enforcement assistance program and reallocate \$1,050,000 PR annually of base level funding to the cooperative county-tribal law enforcement grant program.

8. *In addition to Alternative 1 or 4*, delete \$1,050,000 PR annually associated with the tribal law enforcement assistance program and repeal the program.

<b>Alternative 8</b>	<b>PR</b>
<b>2003-05 FUNDING</b> (Change to Bill)	- \$2,100,000

9. *In addition to Alternative 1 or 4*, repeal the county law enforcement services grant program and the tribal law enforcement assistance program and reallocate \$1,300,000 PR annually of base level funding to the cooperative county-tribal law enforcement grant program.

10. *In addition to Alternative 1 or 4*, delete \$1,300,000 PR annually associated with the county law enforcement services grant program and the tribal law enforcement assistance program and repeal the programs.

<b>Alternative 10</b>	<b>PR</b>
<b>2003-05 FUNDING</b> (Change to Bill)	- \$2,600,000

11. Delete provision.

Prepared by: Paul Onsager