



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #556

Tribal Gaming Revenue for Town of Swiss and St. Croix Chippewa Indians (DNR – Water Quality)

[LFB 2005-07 Budget Summary: Page 376, #13]

CURRENT LAW

Cumulative funding of \$1,900,000 has been granted from tribal gaming revenue to the Town of Swiss (Danbury) in Burnett County and the St. Croix Chippewa Indians of Wisconsin in 1999-00 through 2004-05 for design, engineering, and construction of wastewater and drinking water treatment facilities. No moneys may be encumbered from the appropriation after June 30, 2005. In each of 2003-04 and 2004-05, \$250,000 was awarded in grant funds. Base funding of \$250,000 PR is removed under standard budget adjustments.

GOVERNOR

Provide \$250,000 PR in tribal gaming revenue each year to continue the grant to the Town of Swiss (Danbury) in Burnett County and the St. Croix Chippewa Indians of Wisconsin for design, engineering, and construction of wastewater and drinking water treatment facilities. Change the date after which no moneys could be encumbered from the appropriation to June 30, 2007. Under the bill, a total of \$2,400,000 would be available from 1999-00 through 2006-07.

DISCUSSION POINTS

1. Under current law, state payments from the tribes are credited to: (a) a Department of Administration (DOA) appropriation for Indian gaming receipts in the amount necessary to make all the transfers specified under the appropriation to other state programs; (b) the Department of Justice (DOJ) Indian gaming law enforcement appropriation; and (c) the DOA general program operations appropriation relating to Indian gaming regulation under the compacts. These

appropriations constitute a "first-draw" on tribal payments and Indian gaming receipts not otherwise credited to these appropriation accounts are deposited in the general fund. Therefore, increasing tribal gaming allocations to agencies has the effect of decreasing revenue deposited in the general fund, and, conversely, decreasing or eliminating tribal gaming allocations has the effect of increasing general fund revenue.

2. When state-tribal gaming funding was first being considered in 1999, the St. Croix Chippewa Indians of Wisconsin had begun to study water quality conditions, and wastewater and drinking water needs in the Tribal and non-Tribal areas in the community of Danbury and the Town of Swiss in Burnett County. The Town of Swiss had a population of 724 in 1998, and depended almost completely on private onsite wastewater treatment systems and private drinking water wells. In 1999, the St. Croix Chippewa Indians were concerned that the drinking water in Danbury might be the most threatened of the St. Croix Tribal communities. There were concerns about potential nitrate contamination from private sewage systems that might fail and low levels of volatile organic compounds in area wells. The Tribe placed a high priority on planning for the construction of public drinking water and wastewater treatment facilities.

3. The Town borders a portion of the St. Croix River that is part of the National Wild and Scenic River system. This means that wastewater discharges to the river must meet more stringent water quality standards than most other waters of the state, and it would be very expensive to treat wastewater discharges to achieve pristine water quality background levels.

4. In 1999, the Governor's initial recommendation was to provide \$300,000 in one-time funds to the Town of Swiss and St. Croix Chippewa Indians for a drinking water and water quality study, and for engineering design and feasibility activities related to construction of wastewater and drinking water treatment facilities. At that time, the Tribe estimated the cost of the water quality study and construction of the wastewater and drinking water treatment facilities to be at least \$3,000,000. The 1999-01 biennial budget provided \$400,000 on a one-time basis. In the 2001-03 biennial budget, the appropriation was recreated, \$500,000 annually was provided for design, engineering and construction of wastewater and drinking water treatment facilities, and the funding end date of June 30, 2005, was established in order to provide cumulative funding of \$2,400,000 through June 30, 2005. The 2003-05 budget deleted \$500,000 (\$250,000 each year) during the 2003-05 biennium, for total state grant funding of \$1,900,000 through 2004-05.

5. A water quality report was prepared for the Joint Water Quality Commission of Danbury and St. Croix Chippewa Indians of Wisconsin by a private consultant in May, 2002. The report concluded that the aquifer underlying the area is slightly vulnerable to contamination, and that contaminant source concerns were classified as moderate to minimal risks in most areas. The report recommended that a soil boring program be developed to determine the presence or absence of favorable aquifers, and that a well testing program be developed to define the water production capabilities and to determine the groundwater quality.

6. Many private onsite wastewater systems in the Town are old, perhaps 30 years or older, and may have failed, which is especially noticeable when systems overflow to ditches in the

spring. Some new or replacement private wastewater systems are being constructed as holding tanks, which have to be pumped on a regular basis. The residential lots in the community of Danbury are relatively small and have private wastewater systems and shallow drinking water wells in close proximity to each other. These situations present public health concerns over the potential of contaminated drinking water supplies. In addition, several houses on the tribal lands are using bottled drinking water.

7. The Joint Water Quality Commission of Danbury and St. Croix Chippewa Indians of Wisconsin have been responsible for the study, planning and design. The Danbury Sanitary District Number 1 has also been formed with boundaries including the areas that would be served by the project. As of March 31, 2005, the Commission estimated project costs to total \$13.2 million, which includes \$7.2 million for a wastewater treatment plant and collection system and \$6.0 million for a drinking water facility and distribution system. This represents an increase of \$10.2 million from the 1999 estimate.

8. Joint Water Quality Commission representatives submitted information to DNR in December, 2004, that indicates the population to be served by the wastewater and drinking water facilities is currently approximately 461. They project the population will increase by approximately 100 in 20 years. The area served includes the unincorporated community of Danbury, and St. Croix Chippewa tribal lands that include residences, a tribal casino and hotel, and a tribal fish hatchery. The fish hatchery has its own water well, but would be connected to the wastewater treatment plant for disposal of domestic waste.

9. The Wisconsin Department of Revenue calculated that the equalized value of property in the Danbury Sanitary District was \$5,705,740 in 2004.

10. The project has very high costs compared to the population served and the equalized value. The current estimate for the combined cost of the wastewater and drinking water portions of the project is more than double the equalized value of the Danbury Sanitary District. The cost would be over \$28,000 per person, or over \$80,000 per household.

11. It is probable that the sewer and water residential charges could each total more than \$50 per household per month unless the project would receive grants in excess of 75% of project costs.

12. The Committee may wish to consider the question of whether this project will eventually need to receive state grants that total much more than the amounts provided in the bill in order to provide public drinking water and wastewater service to the Danbury Sanitary District. As described later in this paper, no public funds besides the \$1.9 million in state tribal gaming revenues have been committed to the project to date.

13. The Commission has allocated approximately half of the \$1.9 million in state grants awarded through 2004-05 to each of the wastewater and drinking water portions of the project. The \$1.9 million in current state grants equals 14% of the current estimated project costs. Under the bill,

the \$2.4 million in cumulative state grants would equal approximately 18% of the currently estimated project costs.

14. Representatives of the Joint Water Quality Commission and St. Croix Chippewa indicate that the facilities are necessary in order for economic development to occur in the area.

15. The Commission and Tribe indicate that the project costs are large because the community currently has no public sewer or water so there will be large costs to tear up the streets, install wastewater collection and drinking water distribution pipes, and repave the streets after the pipes are installed. They also indicate that the designation of the St. Croix River requires more expensive treatment for wastewater discharges than do other rivers. They plan to construct a wastewater treatment system that would discharge wastewater to the groundwater instead of to the river. Their plan includes a 20-year design capacity with projected flows in 20 years of approximately double the projected flow in 2005.

16. In each of the six fiscal years in which the state appropriated tribal gaming revenues for the project, DNR and the Joint Water Commission have signed a grant agreement in approximately April, and DNR encumbered the funds shortly after. The Joint Water Quality Commission periodically submits invoices and DNR pays for costs incurred for design, engineering and construction. As of May 3, 2005, DNR had made payments to the Joint Water Commission totaling \$847,300 of the \$1,900,000 appropriated from 1999-00 through 2004-05. In addition, DNR anticipates it will pay approximately \$130,000 by mid-May, 2005, for land acquisition. This means that as of July 1, 2005, payments will have just started coming from the 2002-03 grant, and no payments will have been made from the 2003-04 or 2004-05 grant (although all of the grants through 2004-05 have been encumbered).

17. Representatives of the Joint Water Quality Commission and St. Croix Indians indicate that one reason they have been slow to spend state grant funds is that there were many delays over the last few years in finding suitable and available land for the facilities. They have recently found locations for the drinking water facility, water tower and wastewater treatment facility. They close on the purchase of the two drinking water parcels in April and anticipate they would close on the parcel for the wastewater facility by approximately the middle of May. DNR considers land acquisition for the facilities to be an eligible expense from the state grant.

18. The Joint Water Quality Commission has been working with the United States Department of Agriculture – Rural Development office in Wisconsin on the possibility of providing a loan for the wastewater facility in 2005 and the drinking water facility in 2006. No financial assistance agreement has been committed or finalized through that office to date.

19. The Joint Water Quality Commission believes that the project might be eligible for a grant of up to \$1,000,000 from U.S. Environmental Protection Agency Clean Water Fund Indian set-asides. The Commission might also explore the availability of Community Development Block Grant public facilities funds for the Town of Swiss.

20. The communities submitted intent to apply (ITA) forms under the clean water fund program by the December 31, 2004, deadline for consideration of 2005-06 financing for the wastewater portion of the project. Their request totaled \$7,020,200, including \$3,510,100 for the Danbury Sanitary District and \$3,510,100 for the St. Croix Chippewa. The clean water fund program provides low-interest loans to municipalities for the planning, design and construction of wastewater facilities. Unsewered projects are eligible for a loan interest rate of 70% of the market rate (currently 3.01%). The state uses general obligation bonds, with debt service payments from the general fund, to pay for the subsidy costs of the low-interest loan and grant components of the program.

21. Clean water fund applications that do not request financial hardship assistance are on a continuous funding cycle. Applications for financial hardship assistance for 2005-06 are due to DNR by June 30, 2005, and must include approvable plans and specifications. The Danbury Sanitary District requested clean water fund hardship financial assistance, but the St. Croix Chippewa did not. Financial hardship assistance is available to municipalities: (a) with median household income of 80% or less (\$39,097 or less in 2004-05) of the median household income of the state; and (b) where the estimated total annual wastewater charges per residential user would exceed 2% of the median household income in the municipality without hardship assistance. The maximum financial hardship assistance is a 70% grant with the remaining 30% of costs provided through a 0% interest rate loan. The municipality must pay at least 30% of the eligible costs of the project. However, the Department may not reduce the amount of financial hardship assistance for a municipality's project due to the municipality receiving assistance for the project from another source unless the combination of assistance from the two sources would reduce the residential wastewater user charges to less than 2% of the median household income in the municipality. For municipalities that are sanitary districts, DNR obtains median household income by: (a) obtaining a map of the district boundaries from the sanitary district; (b) gathering census block data; and (c) providing census block numbers to the U.S. Census Bureau to obtain a special tabulation of median household income for the sanitary district.

22. DNR has determined that the Danbury Sanitary District has a median household income of less than 80% of the statewide median, so it meets the first criterion for eligibility for financial hardship assistance. DNR has made a preliminary determination that if wastewater charges per residential user exceed approximately \$53 per month, the wastewater charges would exceed 2% of the median household income in the municipality and the Danbury Sanitary District would likely be eligible for financial hardship assistance. DNR will make a determination of the residential user charges after the actual application for financial assistance is submitted.

23. The clean water fund provides low-interest rate financing for current needs and 10 years of projected growth, and any projected growth beyond 10 years is financed at the market interest rate (currently 4.3%). (The project of the Joint Water Commission includes plans for 20 years of projected growth.)

24. The Danbury Sanitary District and the St. Croix Chippewa each submitted an intent to apply (ITA) form under the safe drinking water loan program by the December 31, 2004,

deadline for consideration of 2005-06 financing of \$5,653,918 for the drinking water portion of the project. Each of the two communities submitted an ITA for \$2,826,959. The applications for financing in 2005-06 were due April 30, 2005. The communities did not submit applications for 2005-06 financing under the safe drinking water loan program. DNR released a project priority score list in March, 2005. However, at that time, DNR did not have sufficient information to determine the project priority score for the Danbury Sanitary District. DNR will issue a safe drinking water loan program funding list in the fall of 2005. Applications for safe drinking water loan program funds generally exceed available funds. There is no grant component in the safe drinking water loan program. The lowest interest rate loans available under the program are with an interest rate of 33% of the market interest rate (currently 1.419%) for local governments that have a population of less than 10,000, and also have a median household income of 80% or less of the statewide median.

25. Neither the clean water fund program nor the safe drinking water loan program provides financing for the cost of connection laterals and pipes that transport water from the distribution lines in the street to houses or other individual structures and that transport wastewater from the individual structures to the collection lines in the street. The current cost estimates of \$13.2 million include the estimated cost of connecting individual structures to the pipes in the streets. However, this cost is not currently itemized from other project costs. The costs of these connections would need to be determined at the time of application. DNR would remove these connection costs from any eligible costs before finalizing any assistance under the clean water fund or safe drinking water loan programs. The cost of connecting an individual house or other structure to the wastewater and drinking water system is the responsibility of the property owner.

26. The sum of funding need included in the clean water fund and safe drinking water loan program intent to apply forms for the project is \$12.7 million, rather than the most recent cost estimates of \$13.2 million. However, the \$13.2 million cost estimate includes the \$1.9 million of tribal gaming grants that have been awarded through 2004-05, and includes any other funding that might be awarded from EPA or USDA Rural Development. The exact distribution of funding from each funding source (other than the current \$1.9 million in state grants) would be determined through the application process for each funding source.

27. Representatives of the Commission and Tribe indicate that the facility plan may be completed in May, 2005. Their current plan for project activities in 2005 is to obtain DNR approval of the facility plan for the wastewater treatment facilities, complete land purchases for the project, complete design of the wastewater plant, and finalize financing for the wastewater portion of the project. Their plan for 2006 is to begin building the wastewater plant, and to finalize financing for the drinking water portion of the project. Their hope for 2007 is to build the drinking water facility, tear up the streets, install water distribution pipes and wastewater collection pipes, and repave the streets.

28. However, the plans and specifications for the wastewater treatment plant will most likely be done late in calendar year 2005, rather than by the June 30, 2005, deadline that would be necessary to apply for clean water fund program financial hardship assistance for 2005-06. In

addition, as mentioned earlier, the application deadline for 2005-06 safe drinking water loan program financial assistance was April 30, 2005. Therefore, neither the wastewater nor drinking water portions of the project will be ready for 2005-06 financing from the clean water fund and safe drinking water loan programs. Both parts of the projects could potentially be ready to apply for financial assistance in 2006-07.

29. It is unlikely that any of the current state grant to the Town of Swiss and St. Croix Chippewa Indians for 2003-04 or 2004-05 will be expended before 2005-06. It is likely that approximately \$900,000 of state grant funds awarded through 2004-05 will remain at the end of 2004-05. This would probably provide sufficient funds to complete design plans and specifications for the project.

30. The Committee may wish to consider providing no grant in 2005-06 in order to provide the Joint Water Quality Commission with time to spend funds that have been granted in prior years. This would also give the Commission time to explore and apply for other financial assistance options through the USDA Rural Development and Wisconsin clean water fund program and safe drinking water loan programs. If construction begins in 2006 or 2007, a state grant in 2006-07 could be applied towards construction costs.

31. The bill's provision of \$500,000 in the 2005-07 biennium would provide the same \$2,400,000 in cumulative funding as was contemplated in the 2001-03 budget provision. The Committee may wish to provide the \$250,000 in each of 2006-07 and 2007-08, instead of in the two years of the 2005-07 biennium (no funds would be appropriated in 2005-06), and specify that no funds may be encumbered after June 30, 2008 (instead of June 30, 2007 under the bill, or June 30, 2005, currently). This would carry base funding of \$250,000 in 2006-07 to 2007-08, and would provide no funding after 2007-08.

32. It is uncertain whether the community will be able to afford the high costs of the project without larger grant amounts than the tribal gaming revenues provided in the bill. The Committee may wish to consider providing no grant funds in either year of the biennium, in order to provide the Joint Water Quality Commission with time to explore all other financing options. If the Joint Commission is able to obtain grant or low-interest loans from other sources, the tribal gaming grant may not be needed. If the Joint Commission is not able to obtain sufficient grants or low-interest loans from other sources to make the project affordable for the community, the state may need to consider whether state grants of more than the \$500,000 provided in the bill are necessary to make the project feasible. Decisions about funding from tribal gaming revenue in any years after 2006-07 could be made as part of 2007-09 budget discussions.

33. The \$1.9 million in grants awarded to the project through 2004-05 had no requirement for any local match. The Committee could consider requiring that the municipalities provide a match of \$1 for every state grant dollar awarded in 2005-06 or subsequent years.

ALTERNATIVES

1. Approve the Governor’s recommendation to provide \$250,000 PR in tribal gaming revenue each year to the Town of Swiss (Danbury) in Burnett County and the St. Croix Band of Chippewa for design, engineering, and construction of wastewater and drinking water treatment facilities. Change the date after which no moneys could be encumbered from the appropriation to June 30, 2007.

2. Provide \$0 in 2005-06 and \$250,000 PR in 2006-07 in tribal gaming revenue to the Town of Swiss (Danbury) in Burnett County and the St. Croix Band of Chippewa for design, engineering, and construction of wastewater and drinking water treatment facilities. Approve the Governor’s recommendation to change the date after which no moneys could be encumbered from the appropriation to June 30, 2007.

<u>Alternative 2</u>	<u>GPR-REV</u>	<u>PR</u>
2005-07 REVENUE (Change to Bill)	\$250,000	
2005-07 FUNDING (Change to Bill)		- \$250,000

3. Adopt Alternative 2, but change the date after which no moneys could be encumbered from the appropriation to June 30, 2008.

<u>Alternative 3</u>	<u>GPR-REV</u>	<u>PR</u>
2005-07 REVENUE (Change to Bill)	\$250,000	
2005-07 FUNDING (Change to Bill)		- \$250,000

4. Maintain current law. (Future funding needs could be considered in subsequent biennia.)

<u>Alternative 4</u>	<u>GPR-REV</u>	<u>PR</u>
2005-07 REVENUE (Change to Bill)	\$500,000	
2005-07 FUNDING (Change to Bill)		- \$500,000

5. In addition to approving Alternative 1, 2 or 3, require that the Town of Swiss and St. Croix Chippewa Indians provide a match of local dollars for each \$1 awarded in 2005-06 and subsequent years for the tribal gaming grant.

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