



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #165

Tribal Gaming Vendor Certification Costs (DOA - Division of Gaming)

[LFB 2001-03 Budget Summary: Page 83, #3]

CURRENT LAW

An Indian gaming vendor is defined as a person who enters into a contract with an Indian tribe for materials, supplies, equipment or services which are unique to the gaming operations of the tribe and not common to the other operations of the tribe. The Department of Administration (DOA), in accordance with an Indian gaming compact or with the regulations of, or an agreement with, the National Indian Gaming Commission, must certify and conduct background investigations of a person proposing to be an Indian gaming vendor. Under the state-tribal gaming compacts, certification is required for any gaming-related contract involving total consideration exceeding \$10,000 in any year. The persons who are subject to the background investigations must be photographed and fingerprinted. The Department of Justice (DOJ) is authorized to submit the fingerprint cards to the Federal Bureau of Investigation for the purpose of verifying the identity of the persons fingerprinted and obtaining records of their criminal arrests and convictions. Under the state-tribal gaming compacts, applicants for a vendor certificate are required to pay the state for its actual costs of conducting investigations and making determinations regarding the certification of the applicant.

GOVERNOR

Provide \$200,000 PR annually from Indian gaming receipts for tribal gaming vendor certification costs of the Division of Gaming.

DISCUSSION POINTS

1. 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.

2. Under the bill, the expenditure authority (\$200,000 annually) would be provided to the Indian gaming receipts appropriation. However, funding for this purpose should be provided to the general program operations appropriation for Indian gaming. If the provision is approved, a correction would be needed to provide the expenditure authority to the correct appropriation.

3. Under 1999 Act 9, the 1999-01 biennial budget act, 1.0 investigator position was provided for vendor certification work. According to DOA, 5.0 of the 14.0 positions authorized for the general program operations for Indian gaming are now allocated to vendor certification work. In addition, Act 9 provided \$30,000 in one-time funding in 1999-00 for private investigator contracts to assist with vendor investigations. The Division budgets \$142,000 annually for private investigation services and the \$30,000 provided in 2000-01 increased the budget to \$172,000 for this purpose in 1999-00. These additional resources were provided to address backlogs in pending vendor certification applications. In May, 1999, 11 new applications and 39 renewal applications (a total of 50 applications) were being processed. As of April 26, 2001, six new applications and 52 renewal applications (a total of 58) are being processed.

4. Revenue from vendor certifications totaled \$101,200 in 1999-00, and revenue in 2000-01, through April, 2001, totals \$189,000. Expenses relating to investigative work totaled approximately \$251,900 in 1999-00, and expenses in 2000-01, through April, totals approximately \$240,700. These amounts primarily reflect investigative costs. It does appear that these costs are trending upward.

5. DOA did not request additional funding for vendor certification costs in its 2001-03 biennial budget request for the Division of Gaming. DOA indicates that the funding was provided in the bill to address the prospect of higher costs relating to additional vendor applicants. During the preparation of the budget, it was believed that additional vendor applicants would be processed, particularly with regards to the development of new, off-reservation tribal casino operations such as the facility proposed to be located at the existing Dairyland pari-mutuel racetrack in Kenosha. Governor Thompson negotiated state-tribal gaming compact amendments with the Menominee Indian Tribe, signed on August 18, 2000, that relate primarily to the terms under which the Kenosha facility would operate.

6. While the proposed tribal gaming facility in Kenosha still requires federal approval as well as final approval by the Governor, one vendor associated with the proposed casino (NII-JII Entertainment, Inc.) has already applied for certification with the Division of Gaming. The completed application for this vendor was submitted in December, 1999, and, according to DOA, the Division has invoiced the vendor applicant \$230,800 for expenses relating to this investigation.

7. Invoices are issued by the Division if investigation costs exceed certain minimum fees charged to all applicants. In the last 12 months, six other vendors have been invoiced a

combined total of \$55,900. The \$230,800 invoiced to NII-JII, then, represents 80.5% of the invoices issued by the Division since May, 2000. It should also be noted that NII-JII has not yet paid \$143,100 (62%) of its invoiced amounts. It is the only vendor applicant that is overdue in its invoiced payments.

8. DOA indicates that there is a potential for additional expensive investigations, which raises a concern that the Division of Gaming have adequate expenditure authority to conduct these investigations. The additional spending, if it occurs, would be offset by additional revenue from vendors, who must pay the actual costs of the investigation.

9. On the one hand, the continuing backlog of pending applications and the potential for complicated and expensive investigations provides support for the Governor's recommendation. On the other hand, it appears that the increase in investigative costs over the past year relates primarily to the NII-JII investigation. According to DOA, NII-JII is the only applicant to date that is associated with a proposed off-reservation site. It could be argued that the rise in vendor application costs in the last year is related to the prospect of off-reservation sites being developed. Under the current administration, the prospect for the expansion of off-reservation tribal casinos now appears less likely and vendor certification work may return to prior levels in the 2001-03 biennium.

10. The Division of Gaming also does not typically utilize all of its expenditure authority for the general program operations relating to tribal gaming. The Division had \$236,200 in unobligated authority in 1998-99, and \$115,200 in unobligated authority in 1999-00. Even with the added vendor certification costs experienced in 2000-01, the Division has no plans to request additional expenditure authority this year. This provides some grounds for viewing these vendor certification costs as manageable within the current general program operations budget for Indian gaming.

11. Given these factors, the Governor's recommendation could be denied. If vendor certification costs continue to increase and additional higher expenditure authority is needed in 2001-02 or 2002-03, DOA could request the necessary expenditure authority under s. 16.515 of the statutes.

ALTERNATIVES TO BILL

1. Approve the Governor's recommendation to provide \$200,000 annually from Indian gaming receipts for tribal gaming vendor certification costs of the Division of Gaming. Correct the bill to provide the funding to the general program operations appropriation for Indian gaming.

2. Maintain current law.

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| Alternative 2 | PR |
| 2001-03 FUNDING (Change to Bill) | - \$400,000 |

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