



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #169

Tribal Gaming Revenue Allocations

County, County-Tribal and Tribal Law Enforcement Grant Programs (DOA -- Office of Justice Assistance and Justice)

[LFB 2001-03 Budget Summary: Page 84, #2 and Page 434, #4]

CURRENT LAW

The Department of Justice (DOJ) is responsible for administration of a cooperative county-tribal law enforcement program. In order to receive funding under the program, a county that has 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 \$761,400 PR (\$708,400 for grant awards and \$53,000 and 1.0 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: (a) the county borders one or more federally-recognized Indian reservations; (b) the county has 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; (c) the county demonstrates a need for the law enforcement services to be funded with the grant; and (d) the county submits an application for a grant and a proposed plan that shows how the county 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, provided from tribal gaming revenues.

OJA also administers the tribal law enforcement assistance grant program under which OJA provides grants 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, provided from tribal gaming revenues.

GOVERNOR

Make the following changes to the county, county-tribal and tribal law enforcement grant programs: (a) delete statutory authority and \$63,600 PR and 1.0 PR position annually and eliminate the cooperative county-tribal law enforcement program in DOJ; (b) transfer \$708,400 PR annually in adjusted base local assistance funding for the county-tribal law enforcement grant program from DOJ to OJA; (c) delete statutory authority for OJA's county law enforcement services grant program; (d) create a new cooperative county-tribal law enforcement grant program, funded at the same level as the combined adjusted base funding levels for the two deleted programs (\$708,400 PR annually from DOJ's cooperative county-tribal law enforcement program and \$250,000 PR annually from OJA's county law enforcement grant program); and (e) eliminate the appropriation for OJA's tribal law enforcement assistance program and transfer funding of \$1,050,000 PR annually to a modified county and tribal law enforcement assistance appropriation. [A technical correction is needed to the combined county and tribal law enforcement assistance appropriation to reflect that funding is transferred from another DOA appropriation.]

Provide the following concerning the new county-tribal law enforcement grant program:

a. Provide that a county would only be eligible to participate in the 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 American Indian reservations; (2) the county board adopts a resolution entering into an agreement with a federally recognized American Indian reservation to establish a cooperative county-tribal law enforcement grant program; and (3) the county submits to OJA a proposal for expenditure of grant moneys.

b. Authorize OJA to require that a county include the following in any grant application: (1) a description of any cooperative county-tribal law enforcement program or law enforcement service 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 funding under the program and the amount of funding requested; (4) identification of the county governmental unit that would administer any aid received under the program and a description of how that

governmental unit would disburse any aid received; and (5) any other information required by OJA or considered relevant by the county submitting the application.

c. Require OJA to develop criteria and procedures for use in administering the program, which would not have to be promulgated as administrative rules.

DISCUSSION POINTS

History of Tribal-Related Law Enforcement Grant Programs

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

4. In 1999 Act 9, the 1999-01 biennial budget act, the funding source for DOJ's cooperative county-tribal law enforcement program was changed from penalty assessment and general purpose revenues to tribal gaming revenue. Act 9 also created two new tribal-related law enforcement grant programs, OJA's county law enforcement services and tribal law enforcement assistance grant programs, funded with tribal gaming revenue.

DOJ's Cooperative County-Tribal Law Enforcement Grant Program

5. Under current law, in determining whether to approve a program plan under DOJ's cooperative county-tribal law enforcement program and, if approved, how much aid the program shall receive, DOJ must consider the following factors: (a) the population of the reservation area to be served by the program; (b) the complexity of the law enforcement problems that the program proposes to address; and (c) the range of services that the program proposes to provide.

6. During the 1999-00 legislative session, the American Indian Study Committee (now named the Special Committee on State-Tribal Relations) reviewed DOJ's grant program and

concluded that the allocation of grant funds only partially reflected the statutory guidelines and that historical participation in the program had a significant impact on the size of grants. As a result of Committee input, beginning with 2000 grants DOJ revised its allocation of funding to use three equally weighted factors -- tribal population, tribal unemployment and county crime rate -- to determine eligible grant awards. Once formal requests and amounts available for each plan were considered, remaining funds were used to supplement those plans facing the greatest decrease in funding from the prior year.

7. The following table identifies the amounts awarded in 2000-01 for calendar year 2001 grants. 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.

2001 Cooperative County-Tribal Law Enforcement Grant Program

<u>County/Tribe</u>	<u>Award Amount</u>	<u>Purpose</u>
Ashland/Bad River	\$61,900	Funds one sheriff's deputy
Bayfield/Red Cliff	74,200	Supports tribal police department
Brown/Oneida	26,250	Split evenly between the Brown County Sheriff's Department and the Oneida Police Department
Forest/Potawatomi	46,700	Supports Forest County Sheriff's Department
Forest/Sokaogon	40,400	Supports Forest County Sheriff's Department
Jackson/Ho Chunk	38,000	Supports Jackson County Sheriff's Department
Juneau/Ho Chunk	47,000	Funds one Native American officer in Juneau County Sheriff's Department
Menominee/Menominee	42,520	Funds personnel costs of tribal and county law enforcement
Monroe/Ho Chunk	28,000	Tribe-related programming and services of Monroe County Police Department
Polk/St. Croix	24,235	Tribe-related programming and services of Polk County Sheriff's Department
Sauk/Ho Chunk	27,365	Tribe-related programming and services of Sauk County Sheriff's Department
Sawyer/Lac Courte Oreilles	79,615	Funds one Lac Courte Oreilles deputy in Sawyer County Sheriff's Department
Shawano/Stockbridge-Munsee	70,700	Partially funds four tribal deputies in Stockbridge-Munsee Police Department
Vilas/Lac du Flambeau	80,045	Supports tribal police department
Wood/Ho Chunk	<u>21,470</u>	Tribe-related programming and services of Wood County Sheriff's Department
Total	\$708,400	

8. DOJ is required to annually report to the Governor, Legislature and the Special Committee on the performance of the programs. The reports have not assessed the performance of specific programs, but have been more general in nature. In its January 8, 2001, report, DOJ indicates that the calendar year 2000 grants have been used for a variety of law enforcement services to Indian communities, including "the costs of patrol, investigation, crime prevention, law enforcement training, alternatives to drug abuse and gang involvement, diversity training and cultural awareness education, computer technology and water rescue and other emergency equipment. Several grants are awarded to programs that include tribal police departments, while most generally help pay for services provided by county sheriffs to Indian reservations and communities."

OJA's County Law Enforcement Services Grant Program

9. 1999 Act 9 provided \$250,000 PR annually for the new county law enforcement services grant program. Because of the delay in passage of the 1999-01 biennial budget act and the time needed to develop criteria and procedures for awarding grants under this new program, OJA combined 1999-00 and 2000-01 monies, issued one request for applications and awarded two-year grants to successful applicants, with a maximum award of \$100,000. In evaluating grant applications, OJA considered: (a) the demonstrated need for law enforcement services related to tribal lands and tribal member activities within the county's jurisdiction; (b) the feasibility of the proposed plan for addressing the demonstrated problems and its likelihood of success; (c) the extent to which resources were unavailable to address the demonstrated problem; and (d) the feasibility of the county's plan for managing, coordinating and evaluating its proposed plan to address the problem. Application kits were sent to 15 potentially eligible counties and four submitted applications. All four received the full amount requested. The following table identifies the counties that received grant funding in 1999-01.

1999-01 County Law Enforcement Services Grant Program

<u>County</u>	<u>Award Amount</u>	<u>Purpose</u>
Burnett	\$100,000	Tribal liaison officer, supplies, vehicle
Oconto	88,744	Officer overtime to patrol Menominee border, supplies
Oneida	100,000	Deputy, liaison to Lac du Flambeau, vehicle
Shawano	<u>100,000</u>	Investigator, supplies and vehicle
Total	\$388,744	

OJA's Tribal Law Enforcement Assistance Program

10. In 1999 Assembly Bill 133 (the 1999-01 biennial budget bill), the Governor recommended creation of the tribal law enforcement assistance program, with funding of \$200,000 in 1999-00 and \$600,000 in 2000-01. In Enrolled AB 133, the Legislature added \$450,000 in funding annually, with the additional resources earmarked for three tribes (Stockbridge-Munsee, \$175,000 annually; St. Croix Chippewa, \$150,000 annually; and Lac Courte Oreilles Chippewa, \$125,000 annually). In 1999 Act 9, the Governor vetoed the statutory earmarks but left the funding unchanged. As a result, 1999 Act 9 provided \$650,000 in 1999-00 and \$1,050,000 in 2000-01 for the tribal law enforcement assistance program.

11. As with the county grant program, OJA combined grant funding for the tribal program, issued one request for applications and awarded 16-month grants. In evaluating grant applications, OJA considered the demonstrated need for law enforcement operations and services by tribes, the feasibility of the proposed plan for addressing the demonstrated problems, the extent to which resources were unavailable and, the extent to which a tribe had provided, or had made good faith efforts to provide, full compensation to units of local government for services provided to the

tribe. In addition, tribes that signed Memoranda of Understanding (MOU) regarding government-to-government matters that featured law enforcement or public safety as a concern were to be given additional consideration, if their proposals appeared to address those concerns (the Red Cliff, Bad River, Stockbridge-Munsee and St. Croix MOU contain law enforcement or public safety initiatives).

12. All nine tribal applicants received grant funding. However, although the application kit indicated that a total of \$1,700,000 was available for grants over the 1999-01 biennium and OJA received grant applications totaling \$2,080,928, only \$820,445 in grants was awarded. The following table identifies the tribes that were awarded 16-month grants in 1999-01.

1999-01 Tribal Law Enforcement Assistance Grant Program

<u>Tribes</u>	<u>Award Amount</u>	<u>What Funded</u>
Bad River Band	\$162,052	Two officers, vehicle and related costs
Ho Chunk Nation	103,872	Two community officers, training and related supplies
Lac Courtes Oreilles	61,813	Warden, training and related supplies
Lac du Flambeau	71,533	Investigator
Menominee	70,200	Two equipped vehicles, maintenance
Oneida	117,373	DARE and school liaison officers, training, equipment and supplies
Red Cliff Band	67,508	Personnel, overtime, related equipment and supplies
St. Croix	89,896	Two officers and related supplies
Stockbridge-Munsee	<u>76,198</u>	Investigator, training and related equipment
Total	\$820,445	

13. On December 6, 2000, Representative Terry Musser, Chair of the Special Committee on State-Tribal Relations, sent a letter to the OJA executive director expressing the Committee's concern that the available funding for tribal law enforcement aids was not fully awarded. The letter indicated that "the funding available for reservation law enforcement aids does not meet current needs and that the loss of the funds not awarded in the first round of grants would be a blow to efforts to build law enforcement capabilities on Indian reservations. For these reasons, the committee directed me to urge you strongly to proceed with a second round of grants to award the remaining funds before the end of the current fiscal year."

14. The OJA executive director has indicated that the remaining \$879,555 in unawarded grant funding will not be disbursed in 2000-01, because DOA informed OJA that these funds have been reprogrammed in the Governor's 2001-03 budget recommendations (discussed further below).

15. The bill makes no changes to the statutory provisions concerning the tribal grant program. The appropriation for the tribal law enforcement assistance grant program would, however, be eliminated under the bill, with the tribal grant program's funding of \$1,050,000 PR annually combined under a modified county and tribal law enforcement grant appropriation that would provide funding for the new county-tribal law enforcement grants as well as the tribal grant

program. OJA would, therefore, have discretion as to the allocation of grant funds between the two grant programs.

16. An advantage to combining appropriations would be that OJA would be able to fund applications that identified the greatest need under either grant program. In addition, if some of the grant funding for one of the programs went unused, OJA would have the flexibility to apply those funds to applications in the other grant program.

17. A disadvantage to combining appropriations would be that the Legislature would have less control in regards to specifying the level of funding for each grant program, and that the purposes for which tribal revenues are utilized would be obscured. An alternative to maintain separate appropriations could, therefore, be considered.

Proposed Cooperative County-Tribal Law Enforcement Grant Program

18. Under the bill, two separate grant programs relating to county-tribal law enforcement in two agencies would be eliminated and replaced with one new grant program. Unlike OJA current county program but similar to DOJ's current county-tribal program, a county board would be required to adopt a resolution entering into an agreement with a federally recognized American Indian reservation to establish a cooperative county-tribal law enforcement program in order to be eligible for a grant under the new program.

19. Currently, law enforcement grant programs benefiting tribes are located both in DOJ and OJA. The bill would end this duplication and locate all such programs in OJA, which is responsible for administering a wide range of justice-related grant programs, utilizing both federal and state funds. Currently, OJA administers 16 separate grant programs and may be considered to have more expertise in administering grant programs.

20. However, dating back to 1955, DOJ has been responsible for administering tribal law enforcement grant programs. Some might argue that the program should remain in DOJ where it has traditionally been placed. Concerns could also be raised about OJA's administration of the tribal grant program in that 52% of funds appropriated by the Legislature for this program were never awarded.

21. The new grant program would not have certain program elements that are a part of DOJ's current county-tribal law enforcement program. This would 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.

22. When OJA was developing the criteria for its tribal grant program, the American Indian Study Committee (now the Special Committee on State-Tribal Relations) urged OJA to

coordinate its grants with DOJ's grant program. The Committee recommended that the DOJ statutory criteria, as well as other Committee-identified issues, also be considered by OJA in determining whether, and in what amount, to fund tribal grant requests. These criteria and issues included: (a) the population of the reservation area to be served by the program; (b) the complexity of the law enforcement problems that the program would propose to address, including jurisdictional issues; (c) the range of services that the program would propose to provide; (d) the size and location of the reservation to be served; and (e) other sources of support for reservation law enforcement. While these recommendations addressed the tribal grant program, the criteria could be applied to the proposed county-tribal program as well.

Other Bill Provisions

23. Under the bill, 1.0 budget and policy analyst position in DOJ would be eliminated. The position is responsible for administration of DOJ's cooperative county-tribal law enforcement program but also has broader department-wide budget responsibilities. DOJ has indicated that if the cooperative county-tribal law enforcement program was to be retained in DOJ, it would need to retain the administrative position deleted under the bill.

24. Under current law, unencumbered balances at the end of a fiscal year in a program revenue annual appropriation are retained in the appropriation, but may not be expended in a subsequent year unless expenditure authority is provided. A provision under the bill, discussed in Issue Paper #167, Reversion of Unencumbered Tribal Gaming Revenue, would provide that, generally, for annual appropriations receiving tribal gaming revenue, any unencumbered balance on June 30 of each year would revert to the Indian gaming receipts appropriation. All three current grant programs have annual appropriations. Therefore, under the bill, it is estimated that \$111,300 in OJA county law enforcement services grant money and \$879,600 in OJA tribal law enforcement services grant money would revert to the Indian gaming receipts appropriation for allocation for other purposes in 2001-03. (DOJ's grant program is not estimated to have an unencumbered balance on June 30, 2001.)

25. The bill identifies the recommended county and tribal law enforcement assistance appropriation as a program revenue appropriation. A technical correction is needed to properly identify this appropriation as a program revenue-service appropriation as it receives funding from DOA's Indian gaming receipts appropriation.

ALTERNATIVES TO BILL

A. County-Tribal Law Enforcement Grant Program

1. Approve the Governor's recommendation to: (a) delete statutory authority and \$63,600 and 1.0 position annually and eliminate the cooperative county-tribal law enforcement program in DOJ; (b) transfer \$708,400 annually in adjusted base local assistance funding for the county-tribal law enforcement grant program from DOJ to OJA; (c) delete statutory authority for OJA's county law enforcement services grant program; and (d) create a new cooperative county-

tribal law enforcement grant program, funded at the same level as the combined adjusted base funding levels for the two deleted programs (\$708,400 annually from DOJ and \$250,000 annually from OJA's county law enforcement grant program). Create the following statutory provisions for the new grant program: (a) provide that a county would only be eligible to participate in the 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 American Indian reservations; (2) the county board adopts a resolution entering into an agreement with a federally recognized American Indian reservation to establish a cooperative county-tribal law enforcement grant program; and (3) the county submits to OJA a proposal for expenditure of grant moneys; (b) authorize OJA to require that a county include the following in any grant application under the program: (1) a description of any cooperative county-tribal law enforcement program or law enforcement service 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 funding under the program and the amount of funding requested; (4) identification of the county governmental unit that would administer any aid received under the program and a description of how that governmental unit would disburse any aid received; and (5) any other information that would be required by OJA or considered relevant by the county submitting the application; and (c) require OJA to develop criteria and procedures for use in administering the program that would not have to be promulgated as administrative rules. In addition, technically correct the county and tribal law enforcement assistance services appropriation funding source designation.

2. Approve alternative 1. In addition, provide that any of the following be added to the requirements under OJA's county-tribal law enforcement grant program:

a. To be eligible to receive a grant, require a county and tribe to develop and submit a joint program plan to OJA for approval.

b. Provide that in developing criteria for evaluating applications for funding under the program, OJA must consider the following factors: (1) the population of the reservation area to be served by the program; (2) the complexity of law enforcement problems the program proposes to address, including jurisdictional issues; (3) the range of services the program proposes to provide; (4) the size and location of the reservation to be served; (5) other sources of support for reservation law enforcement; and (6) any other factors OJA may develop.

c. Require a county and tribe, prior to the receipt of grant funds for the 2nd and any subsequent grant award, to jointly submit a report to OJA regarding the performance of law enforcement activities on the reservation under the previous grant.

d. Require OJA to report annually to the Governor, the Legislature and the Special Committee on State-Tribal Relations on the performance of cooperative county-tribal law enforcement programs receiving grants under the county-tribal law enforcement program,

including the percent of appropriated county-tribal grant moneys OJA awarded in the prior fiscal year.

3. Maintain current law, which would: (a) maintain the cooperative county-tribal law enforcement program in DOJ; and (b) maintain both the county law enforcement services grant and tribal law enforcement assistance grant programs in OJA, funded in separate appropriations. In addition, technically correct the county law enforcement services appropriation funding source designation.

Alternative A3	PR
2001-03 FUNDING (Change to Bill)	\$127,200
2002-03 POSITIONS (Change to Bill)	1.00

B. Tribal Law Enforcement Assistance Grant Program Appropriation [to be considered if Alternatives A1 or A2 are selected]

1. Approve the Governor's recommendation, as technically corrected, to repeal OJA's tribal law enforcement assistance appropriation and transfer the tribal law enforcement assistance grant funding of \$1,050,000 annually to the renamed county and tribal law enforcement assistance appropriation.

2. Retain a separate appropriation for the tribal law enforcement assistance grant program, with funding of \$1,050,000 annually.

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