



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #132

### *Tribal Gaming Revenue Allocations*

## **Distribution of Tribal Gaming Revenue (Administration -- Division of Gaming)**

[LFB 2003-05 Budget Summary: Page 44, #2]

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### **CURRENT LAW**

Indian gaming receipts are statutorily defined as moneys received by the state from any of the following: (1) tribal reimbursement for state costs of regulation of Indian gaming under Indian gaming compacts (established under the original compacts at \$350,000 annually); (2) payments by Indian gaming vendors and persons proposing to be Indian gaming vendors as reimbursement for state costs of certification and background investigations; (3) tribal reimbursement for state costs of gaming services and assistance provided by the state at the request of a tribe; and (4) other tribal payments pursuant to an Indian gaming compact.

The Indian gaming receipts program revenue appropriation in the Department of Administration (DOA) receives all state receipts relating to Indian gaming, less the amounts appropriated to DOA for general program operations for Indian gaming regulation and to the Department of Justice for Indian gaming law enforcement. Allocations are made to various state agencies from this Indian gaming receipts appropriation.

### **GOVERNOR**

Provide that the first \$24,352,500 PR received in any fiscal year under the state-tribal gaming compacts be credited to the program revenue accounts that are credited with these receipts under current law. Require that receipts in excess of this amount would be credited to the general fund, except that not more than \$112,000,000 may be paid into the general fund in 2003-04 and not more than \$125,000,000 may be paid into the general fund in 2004-05 and any

fiscal year thereafter. Indian gaming receipts in excess of the general fund deposits (\$112,000,000 in 2003-04 or \$125,000,000 in 2004-05 and any fiscal year thereafter) would be credited to the appropriation accounts that are credited with these receipts under current law.

## **DISCUSSION POINTS**

1. The tribal gaming revenue that is currently allocated to state agencies derives primarily from tribal payments to the state under 11 amended state-tribal gaming compacts, signed in 1998 and 1999. Under these amendments, each tribe makes additional annual payments to the state over a five-year period. These payments were not required under the original 1992 compacts. The amounts vary by tribe and reflect the variation in total net revenue among the tribes. The program revenue amounts due under the 1998 and 1999 amendments total \$24.5 million in 2002-03, \$24.4 million in 2003-04, and decline to \$1.5 million in 2004-05. The decline in payments in 2004-05 reflect the end-dates of the compact extensions provided for under the 1998 and 1999 amendments, which range from August, 2003, to September, 2004. However, recently negotiated compact amendments will increase 2003-04 revenue, as described below.

2. Based on the anticipated amendments to the state-tribal gaming compacts, the bill projects minimum tribal payments to the state totaling \$136.4 million in 2003-04 (\$24.4 million provided to current-allocation purposes and \$112 million provided to the general fund) and \$149.4 million in 2004-05 (\$24.4 million provided to current-allocation purposes and \$125 million provided to the general fund). Total tribal gaming revenue under the bill would total \$285.7 million in the 2003-05 biennium, including \$237.0 million in general fund revenues.

3. The compact negotiations have now been completed and the revenue projections under the bill will not be met. Under the 2003 amendments to the state-tribal gaming compacts, state revenue would total an estimated \$102.0 million in 2003-04 (\$34.4 million less than the amount projected under the bill), and \$104.5 million in 2004-05 (\$44.8 million less than the amount projected under the bill).

4. The bill would allocate, from the Indian gaming receipts appropriation in DOA, \$24,784,300 PR in 2003-04 and \$24,752,000 PR in 2004-05 to 14 agencies and 42 program areas for a variety of purposes (not including regulation and enforcement of Indian gaming). These allocations exceed the amount that would be the "first draw" on tribal gaming revenue in each fiscal year (\$24,352,500, under the bill).

5. No new programs are funded from tribal gaming revenue under the bill and existing programs, with three exceptions, are not provided with increases beyond standard budget adjustments. The exceptions include: (a) the allocation to the Department of Public Instruction for aid to alternative schools operating American Indian language and culture education programs would be increased by \$40,000 PR annually; (b) a transfer to the fish and wildlife account of the conservation fund would increase by \$500,000 PR annually, as compared to 2002-03; and (c) a transfer to the parks account of the conservation fund would increase by \$582,000 PR annually, as compared to 2002-03.

6. In addition to these agency allocations, tribal gaming revenue is also required by statute to fund DOA regulatory and DOJ enforcement activities. Under the bill, these amounts, including program reserves, would total: (a) \$1,278,900 PR in 2003-04 and \$1,308,700 PR in 2004-05 for DOA regulatory functions; and (b) \$117,300 PR in 2003-04 and \$120,500 PR in 2004-05 for DOJ enforcement functions.

7. The total amount that would be appropriated under the bill for the 42 program allocations, DOA regulatory functions, DOJ enforcement activities, and certain program reserves is \$26,218,800 PR in 2003-04 and \$26,231,700 PR in 2004-05.

8. Although the total appropriations of tribal gaming revenue (\$26.2 million annually) exceed the first draw amount under the bill (\$24.4 million annually), the appropriations under the bill can be funded in the 2003-05 biennium under these first-draw amounts because: (a) the tribal gaming revenue account is expected to have an opening balance of approximately \$1.7 million on July 1, 2003; and (b) the account also receives proceeds from several other sources. These additional sources include separate tribal payments required under the original compacts for regulatory purposes (\$350,000 annually), certification fees paid by certain vendors doing business with tribal casinos (an estimated \$225,000 annually), and reversions of unspent allocations in the previous year that are required to be returned to the account (approximately \$413,000 annually). These other sources of revenue total approximately \$988,000 annually. Under the bill's provisions, the tribal gaming revenue account would have a projected balance of \$99,200 on June 30, 2005.

9. The first-draw amount specified in the bill is the same amount as the anticipated tribal gaming revenue in 2003-04 under the 1998 amendments (\$24,252,500). This number has no connection with the appropriation levels under the bill. If the Committee wishes to place a limit on tribal gaming allocations that reflects the annual payments made by tribes under the 1998 and 1999 compact amendments, the Governor's provision for a first-draw amount would accomplish this. This would have the effect of limiting allocations to a specific level and would ensure that the balance of tribal gaming revenue would be deposited in the general fund. However, under this approach, allocations would need to be reduced from current levels in the 2005-07 biennium.

10. The bill would also specify maximum amounts to be deposited in the general fund (\$112 million in 2003-04 and \$125 million in 2004-05 and any fiscal year thereafter) with a provision that revenue exceeding these maximum amounts be deposited in the appropriations that receive tribal revenue under current law. The amounts specified in the bill (which were intended to reflect the expected general fund revenue that would be provided under the amended compacts) could be retained, but these amounts no longer reflect anticipated tribal revenue for the general fund.

11. While the first draw amount and the estimated general fund amounts could be modified to reflect more current estimates, it could be argued that doing so complicates the budgeting process. For example, once set in statute, each decision to modify spending or to reestimate tribal revenue renders such statutory specifications obsolete.

12. It could also be argued that it is not necessary to specify these amounts in statute. An alternative would be to provide that tribal gaming revenue, as defined under current law, would be

used to fund the appropriations made through budget enactments, plus required reserves, and that any unobligated revenue would be deposited in the general fund.

13. To determine the estimated unobligated revenue that would be deposited in the general fund, the appropriated amounts plus reserves under the bill (\$26,218,800 in 2003-04 and \$26,231,700 in 2004-05) can be adjusted as follows. It is these adjusted amounts that must be funded with revenue paid to the state under the 2003 amendments.

- For 2003-04, the appropriated amount can be adjusted by the estimated opening balance (\$1,670,500) and by estimated miscellaneous revenue unrelated to the payments under the 2003 amendments (\$988,200). This results in an adjusted total of \$23,560,100 in 2003-04.
- For 2004-05, the appropriated amount plus reserves can be adjusted by estimated miscellaneous revenue (\$987,600). This results in an adjusted total of \$25,244,100 in 2004-05.

14. The revised 2003-05 tribal gaming revenue that would actually be realized under the 2003 compact amendments (\$102.0 million in 2003-04 and \$104.5 million in 2004-05) and the total amounts appropriated under the bill, adjusted for the opening balance and other revenues (\$23,560,100 in 2003-04 and \$25,244,100 in 2004-05) result in a reestimate of the general fund revenue that would be realized. Under the bill, general fund revenue is estimated at \$112.0 million in 2003-04 and \$125.0 million in 2004-05. These estimates should be modified to \$78.4 million in 2003-04 and \$79.3 million in 2004-05, as shown in the following table:

**Tribal Gaming Revenue Summary  
(2003-05 Biennium)**

	<u>2003-04</u>	<u>2004-05</u>	<u>Biennium</u>
<b>Senate Bill 44</b>			
Estimated Tribal Gaming Revenue	\$136,352,500	\$149,352,500	\$285,705,000
First-Draw Amount	<u>24,352,500</u>	<u>24,352,500</u>	<u>48,705,000</u>
General Fund Revenue	\$112,000,000	\$125,000,000	\$237,000,000
<b>Revised</b>			
Estimated Tribal Gaming Revenue	\$101,965,600	\$104,516,200	\$206,481,800
Adjusted Appropriation Amounts	<u>23,560,100</u>	<u>25,244,100</u>	<u>48,804,200</u>
General Fund Revenue	\$78,405,500	\$79,272,100	\$157,677,600
Change to General Fund Revenue	-\$33,594,500	-\$45,727,900	-\$79,322,400

15. As a result of this analysis, the general fund revenue estimate relating to tribal gaming revenue payments should be reduced by \$33,594,500 in 2003-04 and \$45,727,900 in 2004-05.

16. If the Governor's recommendation for a first-draw mechanism is approved, the statutory first-draw amount would not be sufficient to sustain base level funding for the tribal gaming revenue allocations in the 2005-07 biennium and reductions would need to be made to the

allocations or the first draw amount would need to be modified.

17. Alternatively, the Governor's recommendation could be deleted and the Committee could provide that tribal gaming revenue receipts would be transferred in an amount sufficient to fund the statutory allocations made from the Indian gaming receipts appropriation, the amounts appropriated for DOA tribal gaming regulatory functions and DOJ tribal gaming enforcement activities, plus required reserves, and that any remaining unobligated revenue would be deposited in the general fund.

18. Under either option, if expenditure authority for DOA regulatory functions, DOJ enforcement functions, or other state agency allocations are modified in budget deliberations or in subsequent enactments, the reestimated general fund revenue shown in the above table would need to be adjusted accordingly.

## ALTERNATIVES

1. Approve the Governor's provision to provide that the first \$24,352,500 received in any fiscal year under the state-tribal gaming compacts be credited to the program revenue accounts that are credited with these receipts under current law. Require that receipts in excess of this amount would be credited to the general fund, except that not more than \$112,000,000 may be paid into the general fund in 2003-04 and not more than \$125,000,000 may be paid into the general fund in 2004-05 and any fiscal year thereafter. Require that Indian gaming receipts in excess of the general fund deposits (\$112,000,000 in 2003-04 or \$125,000,000 in 2004-05 and any fiscal year thereafter) be credited to the appropriation accounts that are credited with these receipts under current law. Decrease general fund revenue by \$33,594,500 in 2003-04 and \$45,727,900 in 2004-05 relating to tribal gaming payments to the state.

<u>Alternative 1</u>	<u>GPR</u>
2003-05 REVENUE (Change to Bill)	- \$79,322,400

2. Delete the Governor's provision. Provide that tribal gaming revenue receipts would be transferred in an amount sufficient to fund the statutory allocations made from the Indian gaming receipts appropriation, the amounts appropriated for DOA tribal gaming regulatory functions and DOJ tribal gaming enforcement activities, plus required reserves, and that any remaining unobligated revenue would be deposited in the general fund. Decrease general fund revenue by \$33,594,500 in 2003-04 and \$45,727,900 in 2004-05 relating to tribal gaming payments to the state.

<u>Alternative 2</u>	<u>GPR</u>
2003-05 REVENUE (Change to Bill)	- \$79,322,400

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