



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #156

### **Tribal Gaming Regulatory Positions (DOA – Division of Gaming)**

[LFB 1999-01 Budget Summary: Page71, #3]

#### **CURRENT LAW**

Base funding and position authority for the general program operations appropriation for the regulation of Indian gaming is \$913,100 PR and 10.0 PR positions. The Office of Indian Gaming in the Division of Gaming: (a) coordinates state regulation of Indian gaming; (b) functions as a gaming liaison between Indians, the general public and the state; (c) functions as a clearinghouse for information on Indian gaming; and (d) assists the Governor in determining the types of gaming that may be conducted on Indian lands, and in entering into Indian gaming compacts.

#### **GOVERNOR**

Provide \$242,800 PR and 5.0 PR positions in 1999-00 and \$225,600 PR in 2000-01 for the Office of Indian Gaming. Revenue would be provided from Indian gaming receipts, including new tribal gaming payments under the amended state-tribal gaming compacts.

#### **DISCUSSION POINTS**

1. The positions provided under the bill would include 1.0 financial supervisor position, 2.0 auditor positions, 1.0 regulation compliance investigator position and 1.0 program assistant position. The investigator position would be filled with an incumbent transferring from a pari-mutuel racing position that would be eliminated under the bill. The funding would also provide \$30,000 in one-time funding in 1999-00 to contract with a private investigator to assist with a backlog of vendor background investigations.

2. The following table shows the staffing for the Office of Indian Gaming under current law, under the Governor's provision and the total that would result.

<u>Position Classification</u>	<u>Current Law</u>	<u>Governor</u>	<u>Total</u>
Unclassified executive (Office Director)*	1.0	0.0	1.0
Administrative manager	1.0	0.0	1.0
Attorney	1.0	0.0	1.0
Auditor	2.0	2.0	4.0
Regulation compliance investigator	2.0	1.0	3.0
Contracts specialist	1.0	0.0	1.0
Program assistant	1.0	1.0	2.0
Financial specialist supervisor	1.0	0.0	1.0
Financial supervisor	<u>0.0</u>	<u>1.0</u>	<u>1.0</u>
Total	10.0	5.0	15.0

\* Now assigned as an attorney position.

3. In its budget request, the Department of Administration (DOA) asked for a total of seven additional positions: three auditor positions, two investigator positions, one financial supervisor position and one program assistant position. The Department indicated that the request was based on an assessment of the responsibilities of the Division of Gaming for the regulation of Indian gaming under the compacts and on a survey of other states in which Indian gaming is authorized. Under the request, three of the additional positions were to be assigned to field audits of casinos (the financial supervisor and two auditors), two positions for slot machine data audits (one auditor and one program assistant) and two positions (investigators) for background investigations of casino vendors.

4. Under the bill, one auditor and one investigator position requested by the Department were not funded. In lieu of the deleted investigator position, the bill would provide \$30,000 in one-time funding in 1999-00 to contract with a private investigator to assist with vendor background investigations. This area of responsibility currently has a backlog situation. According to the Division of Gaming officials, 11 new applications and 39 renewal applications are currently being processed and, because of staffing issues, it has been difficult to stay current in this area.

5. It should be noted that three of the Division's 10 positions for Indian gaming under current law are vacant: two auditor positions and the program assistant position. While the program assistant vacancy is relatively recent, the auditor positions have been vacant since 1996. Division of Gaming officials indicate that, while hiring efforts have been made, auditor positions have been very difficult to fill in the current job market.

6. The hiring difficulties in today's job market are well documented. However, long-term vacancies such as the Office has experienced with the two auditor positions, does raise concerns. The proposal to provide two additional auditor positions when the agency has been unsuccessful in hiring the two vacant auditor positions can be viewed questioned.

7. In addition, an unclassified position provided in the 1997-99 biennial budget act

(1997 Act 27) for a Director of the Office of Indian Gaming has instead been filled and assigned as an unclassified attorney position in DOA's Office of Legal Counsel. As a result, Indian gaming receipts currently fund two attorney positions. (Under Act 27, The Legislature approved a Governor's recommendation to provide the Office with the Director position and one attorney position. Two additional attorney positions, proposed for the Office by the Governor, were denied by the Legislature. The Director was intended to provide additional oversight of the state's role in Indian gaming and to address the staffing issues of the Office.)

8. There does not appear to be a need for two attorneys in the Office of Indian Gaming or in the Division of Gaming. Division officials state that the Director position provided under Act 27 was not needed because the Office of Indian Gaming already had an administrative officer position fulfilling the role of office director. It is unclear why the Director position was converted into a DOA attorney, rather than utilized in the manner intended by the Legislature or left vacant. If the position is not utilized as intended, one may question whether it should be funded from Indian gaming receipts. The Committee could eliminate the position.

9. Another factor affecting staffing for the Office of Indian Gaming is that personnel requirements could be affected by a proposed computer system funded under the bill (see Issue paper #155). The proposed system would be designed for tracking, aggregating, analyzing and reporting casino slot machine accounting data. This system was not part of the agency's budget request and the need for the system only became clear as the amendments to the state-tribal gaming compacts were nearing completion. Under these amended compacts, significant on-line access to slot machine accounting data will be provided to the state. If approved, the new system could change the staffing needs of the Office because of the automated nature of the hardware and software associated with the new system. This could help address vacancy issues. It may be possible, for example, to hire less experienced, entry-level auditors or to reclassify positions to classifications that are more easily filled. These new personnel could then be trained to work with the new computer system. Division of Gaming officials are aware of these possibilities and would manage the hiring of new personnel in accordance with the decision regarding the approval of the computer system.

10. It can be argued, then, that under the amended compacts the tribal gaming regulatory environment and the staffing needs of the Office of Indian Gaming are changing. The issue before the Committee is whether the Legislature should approve a 50% increase in staffing (five additional positions) for the Office. The Division of Gaming argues that, based on the magnitude of tribal gaming in Wisconsin and on surveys of other states, the Office of Indian Gaming should be provided the additional positions.

11. The argument that the magnitude of Wisconsin's tribal gaming is relatively large, compared to other states, appears to be accurate, at least with respect to electronic gaming devices. However, it is not entirely clear that Wisconsin's staffing for the regulation of tribal gaming is necessarily deficient when compared to other states. There are 24 states with tribal compacts and state involvement in the oversight of Indian gaming and the staff resources associated with this oversight vary considerably between states. Some states have a relatively small oversight role

relating to Indian gaming and have few staff performing this role (for example, Michigan, Minnesota and South Dakota). Some states have negotiated different state oversight responsibilities and have relatively large staff resources devoted to Indian gaming (for example, Arizona and Connecticut). Based on discussions with six Indian gaming states and additional information for two other states provided by the National Council on State Legislatures, it appears that each state has had a unique experience in dealing with Indian gaming. These differences have affected their compact provisions, the perceived regulatory role of the state and the resources devoted to oversight. Generalizations, therefore, are difficult and each state must be assessed individually.

12. An assessment of Wisconsin's regulatory needs should be judged primarily on the basis of the oversight role specified in the state-tribal gaming compacts. Additional factors to consider include the respective roles of other state agencies involved in the oversight effort, the number and size of the casino operations and the amount of tribal gaming revenue provided to support the oversight.

13. The state regulatory role specified under the Wisconsin compacts include the following:

- *Vendor background investigations and certification.* DOA must certify all casino vendors with contracts exceeding \$10,000 on the basis of a criminal background investigation conducted by DOA with the assistance of the Department of Justice (DOJ). The certifications for vendors are renewed annually (subject to backlog constraints).

- *Electronic games of chance.* DOA receives test results of electronic games conducted by a gaming test laboratory, is notified by the tribes of the installation or removal of any electronic gaming machine, and may designate electronic gaming machines as non-complying (the tribe may contest the finding). DOA and DOJ have the right to inspect electronic gaming machines and DOA maintains an inventory of all electronic gaming machines in Wisconsin.

- *Monitor and Investigate.* DOA and DOJ have the right to monitor casino operations to ensure compliance with the provisions of the compacts. These agencies may inspect all premises, equipment, records, documents or other items relating to gaming operations and may investigate activities of tribal officers, employees, contractors or gaming participants.

- *Audit Review and Comment.* The Legislative Audit Bureau (LAB) and DOA may review and comment on all casino financial and security audits conducted by independent auditors. Prior to an audit, LAB and DOA may comment or raise objections to engagement letters and audit procedures. LAB and DOA receive all financial and security audits and associated management letters and may receive, upon request, copies of all current internal accounting and audit procedures.

14. In Wisconsin, then, these responsibilities are shared between state agencies. DOJ is very involved in casino law enforcement activities and performs a small role in background investigations. The LAB takes the lead in audit review and comment. The Office of Indian Gaming has the primary role in background investigations and in documenting and tracking electronic

gaming devices. Casino field audits, while authorized under the compacts, are not required. This is not to say that this function is unimportant, but rather that the number and frequency of such inspections are at the state's discretion.

15. As noted above, the Office currently has a backlog of vendor background investigations to perform. In addition, Office officials have indicated that the inventory of electronic gaming devices is not current. The Committee could approve the Governor's recommendation to provide 5.0 additional staff in order to address these backlogs, the analysis of additional electronic data to be provided under the amended compacts and the on-site oversight role the Office hopes to play.

16. The Committee could also limit its approval of additional staff to those directly related to working on the backlogs in vendor background investigations and the inventory system for electronic games. This could be accomplished by providing 3.0 of the positions under the bill: 1.0 investigator position, 1.0 auditor position and 1.0 program assistant position. Under this alternative, the investigator would be available to address the backlog in background investigations. In addition, the \$30,000 in one-time funding, under the bill, to contract with a private investigator to assist with the investigations could also be retained. The auditor and program assistant positions that were requested by DOA for slot machine audits would also be provided under this alternative and could be utilized to address the backlog in electronic game inventory work. Under this alternative, 1.0 financial supervisor and the 1.0 auditor position provided under the bill would be eliminated. This would limit the performance of field audits at casinos. However, such audits are not required under the compacts and the need for such audits may be somewhat diminished by the electronic access to slot machine data. Random spot checking of casino operations may have to suffice until related staff vacancies are filled and other areas of the Office's responsibilities are caught up.

17. Alternatively, the Committee could conclude that the Department's staffing needs could benefit from further reflection on the internal organization of the Office of Indian Gaming and how the Office should function under the amended state-tribal gaming compacts, particularly in view of the opportunity to seriously enhance regulatory oversight through sophisticated computer monitoring. The Committee, then, could maintain current law. The Department could place a higher priority on filling vacancies in the Office of Indian Gaming and more effectively utilize its positions.

## **ALTERNATIVES**

### **A. Positions Under Bill**

1. Approve the Governor's recommendation to provide \$242,800 and 5.0 positions in 1999-00 and \$225,600 in 2000-01 for the Office of Indian Gaming.
2. Modify the Governor's recommendation by deleting \$84,200 in 1999-00 and

\$97,600 in 2000-01 and 2.0 positions in 1999-00 (1.0 financial supervisor and 1.0 auditor position).

<u>Alternative A2</u>	<u>PR</u>
<b>1999-01 FUNDING</b> (Change to Bill)	- \$181,800
<b>2000-01 POSITIONS</b> (Change to Bill)	- 2.00

3. Maintain current law.

<u>Alternative A3</u>	<u>PR</u>
<b>1999-01 FUNDING</b> (Change to Bill)	- \$468,400
<b>2000-01 POSITIONS</b> (Change to Bill)	- 5.00

## **B. Unclassified Director Position**

1. In addition to any of the alternatives above, delete \$85,900 annually and 1.0 unclassified Director position for the Office of Indian Gaming.

<u>Alternative B1</u>	<u>PR</u>
<b>1999-01 FUNDING</b> (Change to Bill)	- \$171,800
<b>2000-01 POSITIONS</b> (Change to Bill)	- 1.00

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