



OF LAKE SUPERIOR CHIPPEWAS



Lac du Flambeau Band
of Lake Superior Chippewa Indians

November 13, 2023

Via Overnight Mail & Email

The Honorable Tony Evers
Office of Governor
State of Wisconsin
115 East Capitol
Madison, WI 53702
(608) 266-1212

Re: *State of Wisconsin Joint Committee on Finance Decision to exclude the Bad River Band of Lake Superior Chippewa Indians and the Lac du Flambeau Band of Lake Superior Chippewa Indians each from receiving \$1,000,000 in Tribal Assistance Grant Program funds*

Dear Governor Evers,

On behalf of the Bad River Band of Lake Superior Chippewa Indians ("Bad River") and the Lac du Flambeau Band of Lake Superior Chippewa Indians ("Lac du Flambeau"), we write to you to object to the recent discriminatory act perpetrated against us by the State of Wisconsin (the "State"). On October 31, 2023, the State's Joint Committee on Finance ("Joint Committee") held a Section 13.10 Meeting where Department of Administration Secretary Kathy Blumenfeld requested \$11,000,000 in fiscal year 2023-24 in order to supplement the Tribal Assistance Grant Program created by 2023 Wisconsin Act 19.

As we are sure you can appreciate, it is no coincidence as to how Secretary Blumenfeld settled on the requested amount of \$11,000,000. As you know, Wisconsin is home to 11 federally recognized Indian tribes and her intent was to distribute \$1,000,000 to each Wisconsin tribe, as memorialized in Legislative Fiscal Bureau documents. See Memorandum from Bob Lang, Director of Legislative Fiscal Bureau to Members of the Joint Committee on Finance, Oct. 21, 2023 (Attachment 1); see also Joint Committee on Finance Section 13.10 Meeting (Attachment 2). Instead of approving Secretary Blumenfeld's request, the Joint Committee approved the release of \$9,000,000 with the explicit instruction, absent any reasoning or justification, to exclude Bad River and Lac du Flambeau. See Recorded Motion of Joint Committee on Finance re: Tribal Grants (Attachment 3). Stated plainly, the State's act is discrimination of the highest form and is wrong. To add insult to injury, the source of the moneys is tribal gaming revenues produced by tribal casinos and paid to the State pursuant to the various gaming compacts.

Without additional information, we are left to assume why the Joint Committee made this decision to deprive our respective tribes of funds that would go towards improving the lives of our Tribal Members, who are also Wisconsin residents. It is extremely difficult to express with words the sacrifices made by our ancestors, who negotiated (under extreme duress) cession treaties with the United States in 1837, 1842, and 1854, to ensure that seven generations from those negotiations their relatives would have permanent homelands, i.e. our present day Indian reservations. Over the last few years, both Bad River and Lac du Flambeau have taken steps to protect the natural resources and jurisdictional integrity of our respective reservations. As sovereign governments and stewards of our lands and waters, our respective tribal governments have taken these steps as any reasonable landowner would. Instead of being respected as reasonable governments taking steps to safeguard their territorial jurisdiction, we are being discriminated against by the State with monies extracted from Indian country.

We urge you in the strongest terms possible to take immediate efforts to rectify this situation. If you are without any procedural power to undue this travesty, we urge you to consider litigation to fix this injustice.

Our Tribal Members, who are also residents of Wisconsin, deserve an explanation as to why they are being singled out for such discriminatory treatment. Please respond in writing to this letter by close of business on Monday, November 20, 2023. Additionally, we would welcome a meeting with you and your representatives to discuss this deplorable situation. Lastly, if the State does not rectify this situation to the satisfaction of Bad River and Lac du Flambeau, then each of our respective tribes will be left to explore what remedies under the law we have to protect our rights.

Please free to contact Bad River Chairman Robert Blanchard at (715) 682-7111 ext. 1503 and R.Blanchard@badriver-nsn.gov and Lac du Flambeau John Johnson Sr. at (715) 588-3303 and jjohnsonsr@ldftribe.com.

Sincerely,



Robert Blanchard
Chairman, Bad River Band of
Lake Superior Chippewa Indians



John Johnson Sr.
President, Lac du Flambeau Band of
Lake Superior Chippewa Indians

cc: Bad River Tribal Council Members
Lac du Flambeau Tribal Council Members
Sen. Howard Marklien
Rep. Mark Born
Attorney General Josh Kaul
Secretary Kathy Blumenfeld
Atty. Mel Barnes (Governor's Chief Legal Counsel)
Atty. Andrew Adams III (Lac du Flambeau Legal Counsel)
Atty. Erick Arnold (Bad River Legal Counsel)



Legislative Fiscal Bureau

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October 31, 2023

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Administration: Section 13.10 Request for Tribal Grants -- Agenda Item II

REQUEST

On September 8, 2023, the Department of Administration submitted a request for transfer of \$11,000,000 in 2023-24 from the Joint Committee on Finance's program revenue (PR) supplemental appropriation to the Department of Administration (DOA) appropriation for tribal grants. The source of revenue for the appropriation is tribal gaming revenues. Under the request, \$1,000,000 would be distributed to each of the state's 11 tribes.

BACKGROUND

Under 2023 Act 19 (the 2023-25 budget act), \$11,000,000 PR in tribal gaming revenues was reserved in the Finance Committee's supplemental appropriation [s. 20.865(4)(g)] for tribal grants in 2023-24. The act created an annual PR appropriation under DOA for tribal grants [s. 20.505(1)(ky)], funded \$0 annually, and specified that any unencumbered balance would revert to the tribal gaming receipts appropriation [s. 20.505(8)(hm)] at the end of each fiscal year. As passed by the Legislature, the 2023-25 biennial budget bill would have sunset the tribal grants appropriation on July 1, 2025. In Act 19, the sunset date was vetoed by the Governor. Act 19 does not specify the manner in which grant amounts are to be determined.

ANALYSIS

There are 11 federally-recognized tribal governments in Wisconsin, all of which operate casino facilities as authorized under state-tribal gaming compacts. Under the compacts, tribes are scheduled to make payments to the state based on a percentage of net gaming revenue (gross revenue minus winnings). Gaming payments fund programs in various state agencies and provide revenue to the general fund. Under state-tribal agreements, the Governor must attempt to ensure that gaming revenues are used for programs that benefit tribal communities. Under 2023 Act 19, it was estimated

that tribal gaming revenues would total \$60.2 million in 2023-24. Of that, \$33.1 million is allocated for state agency programs in 2023-24, excluding the \$11.0 million reserved for tribal grants and \$3,613,000 reserved for potential release to make one-time aid payments to counties affected by the 2022 U.S. 7th Circuit Court of Appeals decision *Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin v. Evers*.

It should be noted that in 2019-20 and 2020-21, tribal payments were postponed because of casino closures during the COVID-19 pandemic. As a result, in 2023-24, Act 19 estimated an opening balance of -\$32,957,600 and a general fund deposit of \$0 from tribal gaming revenues. A number of postponed payments are included in the estimated tribal payments for the 2023-25 biennium. The act estimated that \$8,892,700 of tribal gaming revenue would be deposited to the general fund in 2024-25. However, a general fund deposit of \$19,674,600 was made at the end of 2022-23 as a result of certain tribal payments that were made earlier than anticipated. As a result, the opening balance of the tribal gaming receipts appropriation is \$0 in 2023-24. Based on updated projections reflecting the early payments received by the state in 2022-23, it is estimated that no tribal gaming revenue will be deposited to the general fund in 2023-24 or 2024-25. Table 1 provides updated projections for the 2023-25 biennium.

TABLE 1

Tribal Gaming Receipts Appropriation Condition

	<u>2023-24</u>	<u>2024-25</u>
Opening Balance	\$0	-\$31,034,000
Estimated Tribal Payments	\$16,221,800	\$61,921,400
Regulatory Payments	350,000	350,000
Unobligated Fund Reversions	<u>300,000</u>	<u>699,900</u>
Total Revenue	\$16,871,800	\$62,971,300
Program Allocations to State Agencies	\$33,070,100	\$33,138,400
Program Reserves	<u>14,835,700*</u>	<u>237,100</u>
Closing Balance	-\$31,034,000	-\$1,438,200

* Includes \$11.0 million for tribal grants and \$3,613,000 for potential release to counties.

If the release of PR funding for tribal grants is approved by the Committee to be allocated in the manner specified in the request, the Department would distribute awards equally amongst the 11 tribes (\$1.0 million each), as shown in Table 2 below. The Department would specify in grant agreements with each tribe or band that grant monies could not be used to pay gaming-related expenses.

TABLE 2**Proposed Distribution of Tribal Grants**

<u>Tribe or Band</u>	<u>Award</u>
Bad River Band of Lake Superior Chippewa	\$1,000,000
Forest County Potawatomi	1,000,000
Ho-Chunk Nation	1,000,000
Lac Courte Oreilles Band of Lake Superior Chippewa	1,000,000
Lac du Flambeau Band of Lake Superior Chippewa Indians	1,000,000
Menominee Indian Tribe of Wisconsin	1,000,000
Oneida Nation	1,000,000
Red Cliff Band of Lake Superior Chippewa	1,000,000
Sokaogon Chippewa Community	1,000,000
St. Croix Chippewa Indians of Wisconsin	1,000,000
Stockbridge-Munsee Community Band of Mohican Indians	<u>1,000,000</u>
Total	\$11,000,000

On February 9, 2022, the Joint Finance Committee approved the one-time transfer of \$7,000,000 PR in 2021-22 to DOA's tribal grants appropriation, created under 2021 Wisconsin Act 58. Act 58 also included nonstatutory language to establish the amount of each tribal assistance grant based on the pro rata number of employees employed by the tribe or band as of December 31, 2019. The grants were able to be used as each tribe deemed necessary to meet the needs of its members, but could not be used for gaming-related expenses. The grant amounts provided through the 2021-22 transfer of funds are indicated in Table 3.

TABLE 3**Distribution of Tribal Assistance Funds**

<u>Tribe or Band</u>	<u>Employee Count</u>	<u>Award Amount</u>
Forest County Potawatomi	4,490	\$1,762,300
Oneida Nation	3,511	1,378,100
Ho-Chunk Nation	3,206	1,258,400
Menominee Indian Tribe of Wisconsin	1,555	610,400
St. Croix Chippewa Indians of Wisconsin	1,156	453,700
Lac Courte Oreilles Band of Lake Superior Chippewa	1,137	446,300
Lac du Flambeau Band of Lake Superior Chippewa Indians	980	384,600
Stockbridge-Munsee Community Band of Mohican Indians	577	226,500
Red Cliff Band of Lake Superior Chippewa	460	180,600
Bad River Band of Lake Superior Chippewa	456	179,000
Sokaogon Chippewa Community	<u>306</u>	<u>120,100</u>
Total	17,834	\$7,000,000

If the amounts reserved for tribal grants are transferred to the DOA appropriation in 2023-24 or 2024-25 and not fully expended or encumbered before June 30 of the applicable fiscal year, the funds would revert to DOA's appropriation for tribal gaming receipts [s. 20.505(8)(hm)]. If the Committee decides not to approve the request at this time, the Department could submit a request to the Committee at a future date. Any available funds that are not spent by state agency programs would subsequently be transferred to the state's general fund.

ALTERNATIVES

1. Approve the request to transfer \$11,000,000 PR in 2023-24 from the Joint Committee on Finance's supplemental funding appropriation under s. 20.865(4)(g) to the Department of Administration's appropriation under s. 20.505(1)(ky) for tribal grants, to provide grants of \$1,000,000 each for all 11 federally-recognized tribal governments in Wisconsin. Specify that grant monies could not be used to pay gaming-related expenses in grant agreements with each tribe or band.

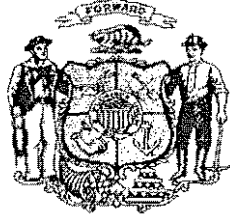
2. Deny the request.

Prepared by: Brianna Murphy

STATE OF WISCONSIN

SENATE CHAIR
Howard Marklein

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ASSEMBLY CHAIR
Mark Born

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Joint Committee on Finance

Section 13.10 Meeting

10:00 a.m., Tuesday, October 31, 2023

Room 412 East, State Capitol

AGENDA

I. Department of Justice – Joshua Kaul, Attorney General

Case: Federal Trade Commission and the State of Wisconsin v. Rhinelander Auto Center, Inc., Rhinelander Motor Company, Rhinelander Auto Group LLC, Rhinelander Import Group LLC, and Daniel Towne

II. Department of Administration – Kathy Blumenfeld, Secretary, Department of Administration

The Department of Administration requests a supplement of \$11,000,000 PR-S in fiscal year 2023-24 from the Committee's appropriation under s. 20.865(4)(g) to the department's tribal grants appropriation under s. 20.505(1)(ky) for administering the tribal assistance grant program created in 2023 Wisconsin Act 19.

Handwritten signature of Howard Marklein in black ink.

Howard Marklein
Senate Chair

Handwritten signature of Mark Born in black ink.

Mark Born
Assembly Chair

DEPARTMENT OF ADMINISTRATION

Tribal Grants

Motion:

Move to release \$9.0 million from the Joint Committee on Finance's supplemental PR appropriation [s. 20.865(4)(g)] to the tribal grants annual PR appropriation under the Department of Administration [s. 20.505(1)(ky)]. Distribute \$1.0 million to each of nine of Wisconsin's 11 tribes or bands, not including the Bad River Band of Lake Superior Chippewa and the Lac du Flambeau Band of Lake Superior Chippewa Indians. Specify in grant agreements with each tribe or band that grant monies may not be used to pay gaming-related expenses.

Note:

Under 2023 Act 19 (the 2023-25 budget act), \$11.0 million PR in tribal gaming revenues was reserved in the Finance Committee's supplemental PR appropriation. This motion would release \$9.0 million PR of the appropriated \$11.0 million. The remaining \$2.0 million would continue to be reserved in the supplemental PR appropriation.