

Indian Gaming Special Distribution Fund

Local Governments Continue to Have Difficulty Justifying Distribution Fund Grants

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This report, our second review of the allocation and expenditure of grants from the Indian Gaming Special Distribution Fund (distribution fund), concludes that Indian Gaming Local Community Benefit Committees (benefit committees) continue to have difficulty complying with grant requirements and related laws. Our review of a sample of 20 grants totaling \$5.7 million revealed that in 10 instances the grant recipient either could not provide evidence of, or could not quantify, the impact of the casino. As a result, they were unable to prove that the funding was in proportion to the impact of a casino, as required by law. In three other cases, benefit committees awarded grants that were unrelated or disproportionately related to casino impacts, and the Yolo County benefit committee awarded the entirety of its nearly \$336,000 allocation to an ineligible entity. Further, in three of the counties we reviewed, benefit committees did not award some cities and counties the minimum amounts the law set aside for them.

In our review of the allocation of funds to counties by the State Controller's Office, we found that the formula established in law does not take into account the possibility of a change during the course of a year in the number of devices operated by a tribe. Had the law taken into account changes due to compact amendments that took effect during fiscal year 2007–08, approximately \$2 million would have been distributed differently, providing some counties with more money and others with less. We also found that many tribes with compact amendments are negotiating agreements with local governments to directly fund mitigation projects, as required by their most recent compact terms. Finally, changes in contribution requirements due to amended compacts, as well as changes in the number of licenses, have altered the revenue streams of both the distribution fund and the Indian Gaming Revenue Sharing Trust Fund.

In the report, the California State Auditor (state auditor) made the following recommendations to the recipient counties of the distribution fund. The state auditor's determination regarding the current status of recommendations is based on the recipient counties responses to the state auditor as of August 2011. Please note that because not all recommendations or parts of recommendations applied to all seven of the counties we visited, the following recommendations will not always include responses from all audited entities.

Recommendation 1.1—See pages 21—25 and 28 of the audit report for information on the related finding.

The Legislature should consider amending the law to prohibit projects that are unrelated to casino impacts or are not proportionally related to casino impacts. The amendment should require that counties forfeit equivalent amounts of future money from the distribution fund if their benefit committees approve grant applications that fail to provide evidence that projects are funded in proportion to casinos' impacts.

Legislative Action: Legislation introduced.

Assembly Bill 742 (as amended March 31, 2011) of the 2011–12 Regular Legislative Session, if passed in its current form, would among other things, require grant applications to clearly show how the grant will mitigate the impact of the casino on the applicant agency and require benefit committees to adopt a conflict-of-interest code.

Recommendation 1.2—See pages 25—27 of the audit report for information on the related finding.

To make certain that the projects' eligibility, merit, and relevance are discussed in a public forum during the projects' selection, the Legislature should also clarify that benefit committees should meet to consider applications before submitting them for tribal sponsorship. Alternatively, the Legislature could emphasize local priorities by amending the law to allow benefit committees to approve any applications that are submitted to them for public debate and committee approval before tribal sponsorship, regardless of the proportionality of a casino's impact.

Legislative Action: Unknown.

The state auditor is not aware of any action taken by the Legislature as of January 5, 2012.

Recommendation 1.3—See pages 28—30 of the audit report for information on the related finding.

To provide an incentive for benefit committees to award cities and counties the amounts that the Legislature has appropriated to them for mitigating casino impacts, the Legislature should require that grant funds allocated for each city and county according to the nexus test revert to the distribution fund if they are not awarded to that city or county.

Legislative Action: Unknown.

The state auditor is not aware of any action taken by the Legislature as of January 5, 2012.

Recommendation 1.4.a—See pages 21—25 of the audit report for information on the related finding.

To help ensure that they meet the grant requirements established in the California Government Code, counties should require that the county auditor review each grant application to ensure a rigorous analysis of a casino's impact and of the proportion of funding for the project provided by the grant. Benefit committees should consider a grant application only when the county auditor certifies that the applicant has quantified the impact of the casino and verifies that the grant funds requested will be proportional to the casino's impact.

Amador County's Action: No action taken.

- ➡ The county did not address this recommendation in its response.

Humboldt County's Action: No action taken.

- ➡ Despite several inquiries, Humboldt County did not respond to the state auditor as requested.

Riverside County's Action: Pending.

The county stated that in Riverside County, the county auditor is an elected official who neither reports to the County Executive Officer nor the Board of Supervisors. As such, the county auditor cannot be "required" to provide this assistance, but will be asked to participate if Special Distribution Funds are appropriated in the future.

Santa Barbara County's Action: No action taken.

- ➡ Despite several inquiries, Santa Barbara County did not respond to the state auditor as requested.

San Diego County's Action: Partially implemented.

The county stated that it continues to take this recommendation under advisement, as both the county and benefit committee agree with the importance of thorough review and the seeking of input. It further stated that instead of the county auditor reviewing every grant application, and in an effort to avoid any potential conflict of interest, the county auditor conducted a review of the benefit

committee grant process and documents. Finally, the county stated that the county auditor validated the committee's methods used to quantify impacts, and did not have any suggestions to improve the request for information, but did reiterate the need for thorough analysis of the data presented in the application during the review process. However, the county did not provide evidence to substantiate this claim, nor do the benefit committee May 2011 meeting minutes reflect these statements.

Shasta County's Action: Pending.

The county stated that it continues to work with the county auditor in determining their legal responsibilities as it relates to auditing grant applications. However, the county has provided no evidence to substantiate this statement.

Yolo County's Action: No action taken.

The county did not address this recommendation in its response.

Recommendation 1.4.b—See page 31 of the audit report for information on the related finding.

To help ensure that they meet the grant requirements established in the California Government Code, counties should review the law for changes that may affect applicants' eligibility for distribution fund grants before awarding the grants so that ineligible entities do not receive grants.

Yolo County's Action: No action taken.

The county did not address this recommendation in its response.

Recommendation 1.4.c—See pages 24 and 25 of the audit report for information on the related finding.

To help ensure that they meet the grant requirements established in the California Government Code, counties should more rigorously review applications that are to be administered and spent by an entity other than the local government that applies for the funds. Specifically, benefit committees should require that each grant application clearly show how the grant will mitigate the impact of the casino on the applicant agency.

Amador County's Action: Partially implemented.

In April 2011 the benefit committee adopted procedures requiring eligible applicants to demonstrate how they will be able to document and quantify the impact that is being mitigated by the project. The county stated that the benefit committee considered many projects, evaluated each for quantifiable impacts by the casino, and recommended funding based on the projects that best mitigated the impact. It further stated that projects that did not quantify their impacts were rejected outright at that time. However, the county did not provide documentation to substantiate this claim, and this process was not reflected in the benefit committee's May 2011 meeting minutes.

Humboldt County's Action: No action taken.

Despite several inquiries, Humboldt County did not respond to the state auditor as requested.

Riverside County's Action: No action taken.

The county did not address this recommendation in its response.

Santa Barbara County's Action: No action taken.

Despite several inquiries, Santa Barbara County did not respond to the state auditor as requested.

San Diego County's Action: Fully implemented.

The county stated that the benefit committee's process is one that provides a rigorous review of the grant applications through a comprehensive, transparent, and public process. At the February 23, 2011, public meeting of the benefit committee, committee members reviewed the grant application form, the Frequently Asked Questions document, and the grant process. The benefit committee confirmed that the established policies, procedures, and application form for the grants follow the priorities specified in Section 12715(g) of the California Government Code. The benefit committee further confirmed that grant documents request information from applicants to ensure that metrics clearly demonstrate proportionality for impacts, and authorize the continued use of existing grant documents.

Shasta County's Action: No action taken.

➔ The county did not address this recommendation in its response.

Yolo County's Action: Fully implemented.

The county stated that in the benefit committee's last funding cycle, the benefit committee elected to fund three applications which clearly described the impacts of tribal gaming they were seeking to mitigate, including an analysis of proportionality where appropriate.

Recommendation 1.4.d—See pages 28—30 of the audit report for information on the related finding.

To help ensure that they meet the grant requirements established in the California Government Code, counties should ensure that eligible cities and counties receive the proportional share of funding they are set aside according to the nexus test by making the governments aware of available distribution fund grants and of the minimum grant amounts that are set aside for them under the nexus test.

Amador County's Action: Partially implemented.

The county stated that each jurisdiction in the county that was eligible for funding from the distribution fund was notified of the eligibility and of the amount that they were eligible for. However, the county did not provide evidence to substantiate this claim.

Santa Barbara County's Action: No action taken.

➔ Despite several inquiries, Santa Barbara County did not respond to the state auditor as requested.

Recommendation 1.4.e—See pages 28—30 of the audit report for information on the related finding.

To help ensure that they meet the grant requirements established in the California Government Code, counties should encourage eligible local governments to submit multiple applications so that the benefit committees can choose appropriate projects while ensuring that local governments are awarded the amount defined in law.

Amador County's Action: Partially implemented.

The county stated that eligible jurisdictions were encouraged to apply for multiple projects so that the benefit committee could choose projects that best mitigated the impacts addressed by the distribution funds. It further stated that as a result, many more project requests were received than could be funded. However, the county did not provide evidence to substantiate this claim.

Riverside County's Action: Pending.

The county stated that during the next request for distribution fund grant applications, eligible entities will be encouraged to submit multiple funding applications.

Santa Barbara County's Action: No action taken.

Despite several inquiries, Santa Barbara County did not respond to the state auditor as requested.

San Diego County's Action: Fully implemented.

The county stated that it continues to broadly distribute notice to eligible local governments via email to announce the call for applications. It further stated that it also files public notice with its County Clerk of the Board so agenda packets are posted in compliance with the Brown Act requirements. The notice states that eligible agencies can submit multiple applications.

Shasta County's Action: No action taken.

The county did not address this recommendation in its response.

Recommendation 1.4.f—See pages 31—34 of the audit report for information on the related finding.

To help ensure that they meet the grant requirements established in the California Government Code, counties should require benefit committee filing officers to avail themselves of the free training provided by the Fair Political Practices Commission (FPPC) so that the filing officers are aware of and meet their responsibilities under the Political Reform Act of 1974. Counties should also adhere to FPPC guidelines for notifying filers of the need to submit statements of economic interests.

Amador County's Action: Partially implemented.

In April 2011 the benefit committee adopted procedures requiring all members of the benefit committee to submit a properly completed Form 700 specifically identifying the benefit committee as required by the FPPC. However, the county did not provide evidence of these procedures to substantiate this claim. Further, it did not address all aspects of the recommendation.

Humboldt County's Action: No action taken.

Despite several inquiries, Humboldt County did not respond to the state auditor as requested.

Riverside County's Action: Partially implemented.

The county stated that the benefit committee adopted the Standard Code of the FPPC as the Conflict of Interest Code, and it requires committee members to complete Form 700 annually. However, the county did not provide evidence to substantiate this claim. Further, it did not address all aspects of the recommendation.

Santa Barbara County's Action: No action taken.

Despite several inquiries, Santa Barbara County did not respond to the state auditor as requested.

Shasta County's Action: Partially implemented.

The county stated that county filing officers notified all committee members of the requirement to submit Statement of Economic Interest forms and, as a result, all current benefit committee members have complied. However, the county did not provide evidence to substantiate this claim. Further, it did not address all aspects of the recommendation.

Yolo County's Action: Partially implemented.

The county stated that the filing officer for its benefit committee followed the FPPC guidelines for notifying committee members of the need to submit statements of economic interests, and all of the committee members filed the required Form 700 by the required date. However, the county provided no evidence to substantiate this claim.

Recommendation 1.4.g—See pages 32 and 33 of the audit report for information on the related finding.

To help ensure that they meet the grant requirements established in the California Government Code, counties should ensure that benefit committees' conflict-of-interest codes comply with the political reform act by reviewing the act and their codes, and changing the codes as necessary to meet the act's requirements.

Santa Barbara County's Action: No action taken.

➔ Despite several inquiries, Santa Barbara County did not respond to the state auditor as requested.

Shasta County's Action: Pending.

The county stated that it is continuing to review the benefit committee conflict of interest code and will update it as necessary. However, the county did not provide documentation to substantiate this claim.

Recommendation 2.1—See page 42 of the audit report for information on the related finding.

The Legislature should amend the law for allocating distribution funds to counties to include provisions for prorating a county's distribution fund allocation based on the percentage of the year that each gaming device in the county is required to contribute to the fund. Such an amendment would ensure a more proportionate distribution when the number of contributing gaming devices changes during the course of the year.

Legislative Action: Unknown.

The state auditor is not aware of any action taken by the Legislature as of January 5, 2012.