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Assembly California Legislature

EDUARDO GARCIA

ASSEMBLYMEMBER, FIFTY-SIXTH DISTRICT

STANDING COMMITTEES

CHAIR: WATER, PARKS AND WILDLIFE
APPROPRIATIONS
UTILITIES AND ENGERY
COMMUNICATIONS AND CONVEYANCE
GOVERNMENTAL ORGANIZATION

RECEIVED
2/3/2021

February 3, 2021

Assemblymember Rudy Salas, Chairperson Joint
Legislative Audit Committee
1020 N Street, Room 107
Sacramento, CA 95814

Re: Indian Gaming Special Distribution Fund Analysis

Dear Assemblymember Salas,

We respectfully request that JLAC conduct an independent financial and performance audit with respect to the Indian Gaming Special Distribution Fund created pursuant to Section 12012.85 of the California Government Code.

On May 16, 2019, the California State Auditor issued Report 2018-132 relating to the Bureau of Gambling Control and the California Gambling Control Commission (“Gambling Control Fund Audit Report”). In directing the State Auditor to perform the audit, the Audit Committee set forth objectives relating to Gambling Control Fund, including “whether the commission or the bureau use gambling funds for any improper purpose” (page 59).

Although the State Auditor was not similarly directed to audit the Indian Gaming Special Distribution Fund (“SDF”), the SDF was implicated in an audit of employee allocation of activities, which led to a finding that the bureau’s “failure to ensure its employees allocate their enforcement activities to the appropriate funding source has contributed to the Gambling [Control] Fund’s surplus” (page 55). Specifically, the State Auditor discovered that over the last three fiscal years, the SDF was improperly used to fund “27,000 hours of card room-related enforcement work” (page 55). Moreover, “[w]ith the exception of two quarters in fiscal year 2018-19, the bureau has not taken steps to reconcile and reimburse the [SDF] funds to date” (page 55).

The Gambling Control Fund Audit Report underscores the pressing need for a similar audit of the use of funds and regulatory activities relating to the SDF, and whether California regulatory activities related to Indian gaming are conducted in a manner that is consistent with the regulation of non-Indian gaming. Under current tribal-state gaming compacts, tribes are required to

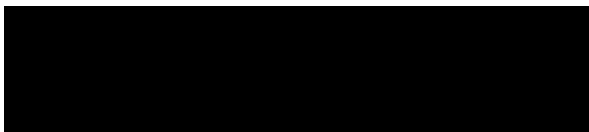
reimburse the State for the costs of regulating tribal gaming activities through payments into the SDF. To the extent that these SDF funds are being used to regulate non-tribal gaming, some of these tribal gaming reimbursement payment may constitute “taxes rather than regulatory fees- which is unlawful,” according to the State Auditor.

Therefore, we respectfully request an audit report that includes the following information:

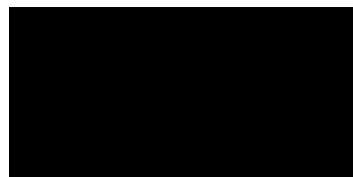
- (1) For the most recent three years, the total amount of moneys appropriated, respectively, to the California Gambling Control Commission, the Department of Justice, the State Department of Public Health, and any other state agencies that have received or are expending moneys appropriated from the SDF;
- (2) For at least the California Gambling Commission, the Department of Justice, and the State Department of Public Health, provide a summary of all of the following information related to SDF:
 - (a) The costs the state agency incurs and a general description of the activities undertaken in the performance of its duties in connection with the implementation and administration of tribal- state gaming compacts,
 - (b) A detailed description of the services or activities that are supported by moneys appropriated from the SDF,
 - (c) How the agency allocates the moneys appropriated from the SDF among the services or activities described in item 2(b) above,
 - (d) The amount of moneys allocated for each service or activity described in item 2(b) above, and
 - (e) The measures of workload completed for each service or activity described in item 2(b) above, and a comparison between the workload related to services and activities occurring in connection with tribal- state gaming compacts and the workload related to similar services and activities that arise from the regulation of horse racing, the California State Lottery, and cardrooms;

- (3) A review of expenditures by the Department of Public Health's Office of Program Gambling to ensure they are appropriate and effective. Are a significant number of individuals being provided services?
- (4) A description of how the California Gambling Control Commission determines a tribe's pro rata share of regulatory costs, as described in Section 2710(d)(3)(C) of Title 25 of the United States Code, that are received by the state from Indian tribes pursuant to the terms of tribal-state gaming compacts or secretarial procedures; and
- (5) A determination whether any moneys appropriated from the SDF have been distributed to an agency, commission, or department not expressly authorized by the tribal-state gaming compacts, regardless whether the distribution was an appropriation, loan, or other transfer.
- (6) Given that there were 27,000 hours improperly funded by the SDF, how was the State's calculation of fees under Section 4 of the compact affected?
- (7) What led employees to improperly charge 27,000 hours from the SDF for card room related activities? Have these funds been returned to the SDF?
- (8) When, and how, did officials in the Bureau of Gambling Control come to know that employees were not charging their time in accordance with their positions' funding sources?
- (9) Given the large reserve, why are no funds being returned to eligible counties for Local Community Benefit Committee (LCBC) grants by tribes paying in to the SDF under 1999 compacts?
*LCBC was created in Senate Bill (SB) 621, Battin (October 2003)
- (10) Determine whether some tribes with 1999 compacts are paying more than their pro rata share of the State regulatory costs.

Sincerely,



Eduardo Garcia
Assemblymember, 56th District



James Ramos
Assemblymember, 40th District