

# SANTA BARBARA COUNTY BOARD AGENDA LETTER



Clerk of the Board of Supervisors  
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Santa Barbara, CA 93101  
(805) 568-2240

**Agenda Number:**  
**Prepared on:** 11/11/03  
**Department Name:** CAO  
**Department No.:** 012  
**Agenda Date:** 02/10/04  
**Placement:** Departmental  
**Estimate Time:** 45 minutes  
**Continued Item:** NO  
**If Yes, date from:**

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**TO:** Board of Supervisors  
**FROM:** Michael F. Brown  
County Administrator  
**STAFF CONTACT:** Jim Laponis, Deputy County Administrator  
Lori Norton, Analyst X 3421  
**SUBJECT:** Indian Gaming Revenues - Special Distribution Funds

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## Recommendation(s):

That the Board of Supervisors:

1. Receive a report on SB 621, which establishes the method for calculating and distributing \$25 million from the Indian Gaming Special Distribution Fund to local governments impacted by tribal gaming
2. Consider adopting a Resolution (Attachment A) of the Board recognizing the creation of the Santa Barbara County Indian Gaming Local Community Benefit Committee (Committee), created by SB 621, and codified as Government Code section 12715(b)(1). The primary purpose of the Committee is to select the local jurisdiction grants to be funded from the County Tribal Casino Account
3. Appoint two (2) representatives from the County to serve on the Committee
4. Direct staff to ask the City of Solvang, to forward a recommendation for three (3) elected representatives, to be appointed by the Board of Supervisors, to serve on the Committee
5. Direct staff to ask the Santa Ynez Band of Chumash Indians to select two (2) representatives, to be appointed by the tribe, to serve on the Committee

## Alignment with Board Strategic Plan:

The Recommendations are primarily aligned with the Board of Supervisor's Strategic Plan Goal number 1: An Efficient Government Able to Anticipate and Respond Effectively to the Need of the Community.

## Executive Summary and Discussion:

On October 12, 2003, SB 621, which was introduced by Senator's John Burton and Jim Battin, was chaptered into law. SB 621 (Attachment B) establishes the method of calculating and distributing \$25 million from the Indian Gaming

Special Distribution Fund to local jurisdictions impacted by tribal gaming. Of the \$25 million available statewide, the allocation available for distribution to local jurisdictions in Santa Barbara County is estimated to be \$1.1 million.

### **Indian Gaming Local Community Benefit Committee**

SB 621 creates, in each county where Indian gaming is conducted, an Indian Gaming Local Community Benefit Committee, with specified membership. The primary purpose of the Committee is to select local jurisdiction grants to be funded from the Tribal Gaming Casino Account.

The actions before your Board are necessary to appoint members to the Santa Barbara County Indian Gaming Local Community Benefit Committee (Committee). The composition and appointing authority for the membership of the Committee is statutorily prescribed. Pursuant to SB 621, the Committee shall be composed of seven (7) representatives as follows:

1. Two (2) representatives from the County, selected by the County Board of Supervisors
2. Three (3) elected representatives from cities located within four (4) miles of a tribal casino in the county, selected by the County Board of Supervisors
3. Two (2) representatives selected upon the recommendation of a majority of the tribes paying into the Indian Gaming Special Distribution Fund in each county.

Based on the above, the Board is required to select (appoint) two representatives from the County. The statute does not specify that the County representatives must be elected. As such, the Board may select elected, appointed, or public representatives as members. Further, the Board is to select (appoint) three elected representatives from the City of Solvang—the only city that is located with four miles of the tribal casino. The Santa Ynez Band of Chumash Indians is the only tribe paying into the Indian Gaming Special Distribution Fund established for Santa Barbara County, and as such, shall select two representatives. The Indian Gaming Local Community Benefit Committee fits the definitions of “local agency” and “legislative body” under the Brown Act, and that Act will apply to its meetings.

The County Administrator has contacted Marlene Demery, City Manager of the City of Solvang and Chairman Armenta of the Santa Ynez Band of Chumash Indians, and provided them with a copy of a Draft of this letter and the associated presentation materials. The County Administrator sought input as to the accuracy and content of the information contained herein. Further, the County Administrator invited the City and Tribe to collaborate with staff in presenting this material to the Board.

The primary purpose of the Indian Gaming Local Community Benefit Committee is to select local jurisdiction grants to be funded from the Tribal Gaming Casino Account. In addition, the Committee has the following responsibilities:

1. Establish all application policies and procedures for grants
2. Assess the eligibility of applications for grants from local jurisdictions impacted by tribal gaming operations
3. Determine the appropriate amount for reimbursement of the demonstrated costs incurred by the County for administering the grant programs. The reimbursement for the county administrative costs may not exceed 2 percent (2%) of the aggregate county tribal account in any given fiscal year.

### **Implementation Timeline**

Although SB 621 does not specify a timeline for implementing the Indian Gaming Local Community Benefit Committee, it does prescribe that funds not allocated by the end of each fiscal year shall revert back to the Indian Gaming Special Distribution Fund (SDF). As such, the approximately \$1.1 million available for distribution by the Santa Barbara County Indian Gaming Local Community Benefit Committee must be allocated by June 30, 2004, or it will revert back to the SDF for statewide distribution.

## **Potential "Clean-Up" Legislation**

Staff has been advised that Senator Battin may introduce "SB 621 clean-up" legislation in the current legislative session. The clean-up legislation may include a provision to allow for an extension of time for the implementation of the Indian Gaming Local Community Benefit Committee and for the distribution of funds currently available in the Tribal Casino Accounts. Staff will closely monitor and report to the Board on the legislation if it is introduced.

## **Background Information**

### **AB 1385 - Creation of the Indian Gaming Special Distribution Fund**

In October 1999, AB 1385 was Chapter into law as Government Code Section 12012.85. AB 1385 ratified fifty-seven (57) Tribal State Gaming Contracts, including the compact between the State of California and the Santa Ynez Band of Chumash Indians, as executed on September 10, 1999. AB 1385 designated the Governor as the state officer responsible for negotiating and executing, on behalf of the State, Tribal-State Compacts. Additionally, in deference to tribal sovereignty, AB 1385 affirmatively states that neither the execution of a tribal-state gaming compact nor the on-reservation impacts of compliance with the terms of a tribal-state gaming compact shall be deemed to constitute a project for purposes of the California Environmental Quality Act (CEQA).

AB 1385 created two funds: the Indian Gaming Revenue Sharing Trust Fund (RSTF) and the Indian Gaming Special Distribution fund (SDF). Pursuant to AB 1385, the RSTF is to receive moneys derived from gaming device **license fees** that are paid into the fund for the purpose of making distributions to non-compact tribes. Each non-gaming tribe is to receive \$1.1 million annually from funds deposited in the RSTF.

The purpose of the SDF, as specified in AB 1385 is for the receipt and deposit of money received by the State from Indian Tribes engaged in gaming operations. The amount deposited by each Tribe into the SDF is based on the number of terminals and the percentage of average slot machine net wins. SDF funds shall be available for appropriates for the following purposes:

1. Grants, including an administrative costs, for programs designed to address gambling addiction
2. Grants, including any administrative costs, for the support of state and local government agencies impacted by tribal gaming
3. Compensation for regulatory costs incurred by the State Gaming Agency and the Department of Justice in connection with the implementation and administration of Tribal-State Gaming Compacts
4. Disbursements for the purpose of implementing the terms of tribal labor relations ordinances promulgated in accordance with Tribal-State Compacts, subject to certain limitations
5. Any other purpose specified by law

Although AB 1385 created the RSTD and the SDF, it left unresolved the issues of how funds from the RSTF and the SDF would be collected and distributed for the specified purposes. Further, AB 1385 did not prioritize funding for any of the specified purposes.

### **SB 621 - Amends Purpose and Establishes Priorities for Use of Special Distribution Funds**

SB 621, enacted in October 2003, adds to the purpose (specified use) of SDF funds and establishes funding priorities. Under SB 621, the payment of any shortfall in the RSTF is added to the use of SDF funds and is given the highest priority for funding from the SDF. SB 621 states that the payment of any shortfall in the RSTF "...shall be the first priority use of the SDF".

This is of concern to the County in that it is probable that shortfalls in the RSTF may consume all future SDF funds. The State-Tribal compacts state that, "...each Non-Compact Tribe in the State shall receive the sum of \$1.1 million per year. In the event that there are insufficient monies in the ...RSTF]...to pay \$1.1 million per year to each Non-

Compact Tribe, any available monies in ...[the RSTF]... shall be distributed to Non-Compact Tribes in equal shares.” (Section 4.3.2.1(a)). These Compacts also state that “payments made to Non-Compact Tribes shall be made quarterly and in equal shares out of the ...[RSTF]. On October 22, 2003, there were seventy (70) Non-Compact Tribes eligible to receive a distribution from the RSTF.

To provide \$1.1 million annually to each of the 70 non-compact tribes would require a total distribution of \$77 million annually. Currently, the State Gambling Commission estimates the annual receipts to the RSTF will be \$33 million—less than half of the amount necessary. For FY 2002-2003, the shortfall in payments from the RSTF to Non-Compact Tribes was approximately \$51 million. AB 673 (Chapter 210, Statutes 2003 as Government Code Section 12090.90) provided for the transfer of \$50,568,787.99 from the SDF to the RSTF to cover the shortfall.

SB 621 places appropriations for the support of local government agencies impacted by tribal gaming as the last priority for funding. This too is of concern to the County in that SDF funds are the only source of revenue available to local governments for mitigating the off-reservation impacts of Indian gaming. Funds for local governments will only be available after deducting amounts appropriated pursuant to each of the higher priorities—in short it is conceivable that the approximately \$1.1 million available for distribution in FY 03-04 will be one-time revenue.

### **Collection and Allocation of Special Distribution Funds to Local Governments**

Tribes with 200 or more machines in operation prior to 1999 are required to contribute to the SDF. The amount of SDF collected is a percentage of the “net wins” for current gaming machines multiplied by the number of gaming machines in operation on September 1999. The percentage increases with the number of machines as follows: first 200 machines (0%), 201-500 (7%), 501-1000 (10%), and over 1000 (13%).

SB 621 establishes the method for calculating the distribution of appropriations from the SDF for grants to local government agencies impacted by tribal gaming. On an annual basis, the State Department of Finance, in consultation with the Gambling Control Commission, shall calculate the total revenues available to local governments. The Department of Finance shall include the information in the State’s May Budget Revision. As such, the County will be able to anticipate any revenues that may be available through SDF.

SB 621 establishes a County Tribal Casino Account in the State treasury for each county that contains a tribal casino. Monies paid by tribes of each County into the SDF, after deduction of amounts appropriated pursuant to higher priorities, are available to distribute to County Tribal Casino Accounts. Of the \$25 million available for distribution under SB 621, \$23.75 million (95%) will be allocated to the seventeen (17) counties that have gaming devices subject to an obligation to contribute to the SDF. The remaining \$1.25 million five (5%) is available to the 8 counties that do not have gaming devices subject to an obligation to contribute to the SDF.

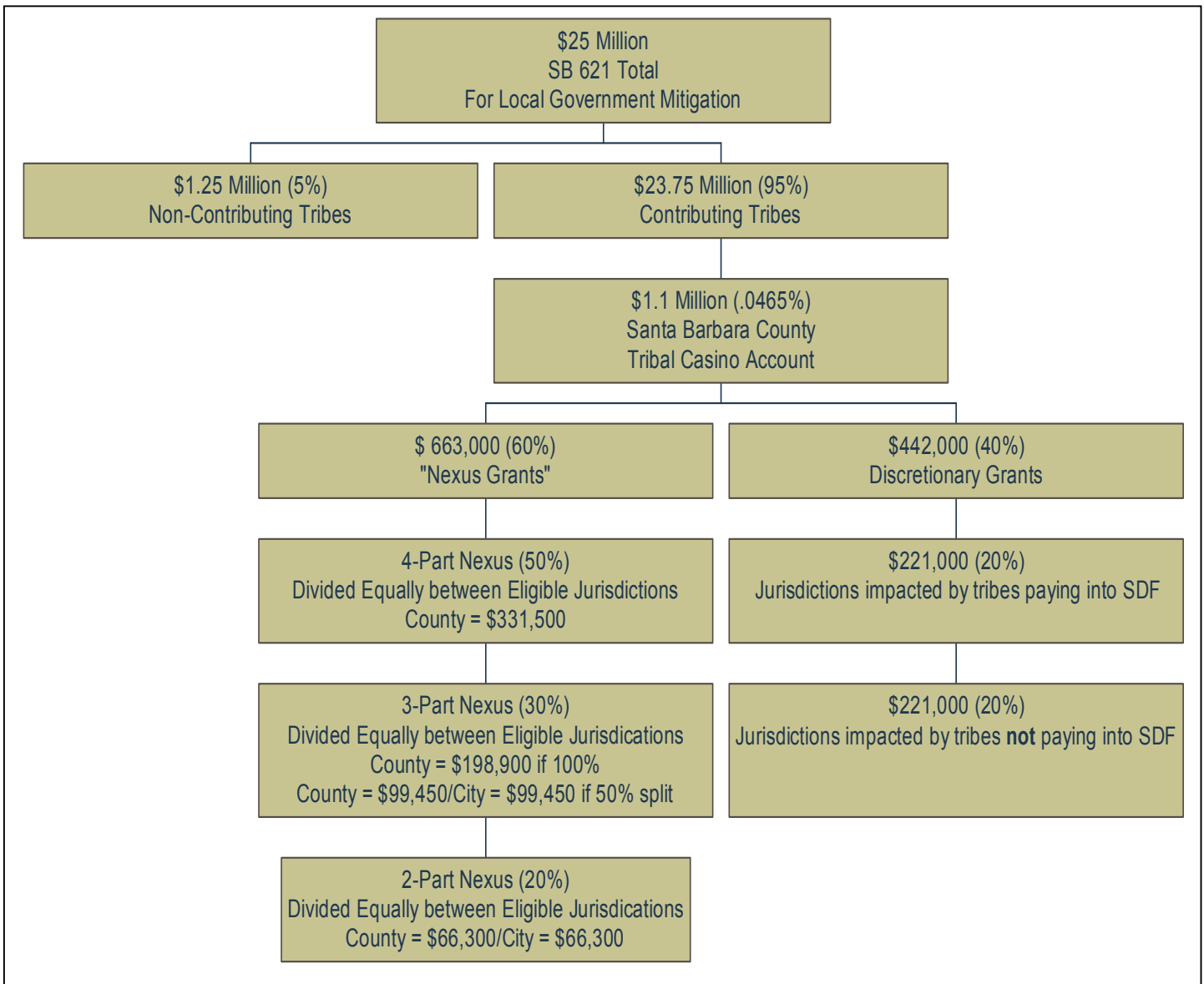
The available funds will be distributed by the State into each County Tribal Casino Account based on the percentage of SDF paying machines. At September 30, 2003, Santa Barbara County had 560 (4.65%) of the total 12,041 SDF paying machines in operation in California. Under the SB 621 distribution formula, Santa Barbara County will receive \$1.1 million (4.65%) of the \$23.75 million available to counties with gaming devices subject to an obligation to contribute to the SDF.

SB 621 further prescribes how the \$1.1 million is to be distributed within the County, by the Indian Gaming Local Community Benefit Committee. Following is a brief overview of the prescribed allocation of local grant funds, followed by a chart which depicts how grant funds will be allocated in Santa Barbara County as per the allocation formula:

- 60% of funds are for “nexus grants” to cities and counties impacted by tribes paying into the SDF. SB 621 establishes a 4-part nexus grant test, which is based on geographical proximity to tribal lands upon which a tribal casino is located. The 60% nexus grants are divided as follows:
  - 50% awarded in equal proportion to local governments that meet all 4 of the nexus test criteria

- 30% awarded in equal proportion to local governments that meet 3 criteria
- 20% awarded in equal proportion to local governments that meet 2 criteria
- 20% of funds are for discretionary grants to jurisdictions impacted by tribes paying into SDF. This 20% is available to all local government jurisdictions irrespective of any nexus or impact
- 20% of funds are for discretionary grants to jurisdictions impacted by tribes **not** paying into the SDF. If this provision is not applicable to a County (like Santa Barbara County) the 20% may be made available to jurisdictions impacted by tribes paying into the SDF

The following chart depicts an overview of how the local SB 621 allocation of funding for FY 2003-2004 may occur. As is depicted by the chart, the bulk of funds will be distributed based on the nexus criteria contained in SB 621. Recipients of nexus grant funds are essentially prescribed by the legislation. Discretionary grants provide greater flexibility for consideration and distribution by the Committee:



## **Overview of Local Grant Funding Process**

In accordance with SB 621, grants made from Tribal Casino Accounts shall be made only upon the affirmative sponsorship of the Santa Ynez Band of Chumash Indians which is the only tribe in Santa Barbara County that pays into the Indian Gaming Special Distribution Fund from which the grant moneys are available for distribution. Pursuant to SB 621, Tribal sponsorship shall confirm that the grant application has a reasonable relationship to a casino impact and satisfies at least one of the priorities listed in the following section. The Indian Gaming Community Benefit Committee selects the local government jurisdiction grants to be funded and submits a list to the State Controller who shall release funds, from the Tribal Casino Account, directly to the local government entities. Funds that are not allocated from the Tribal Casino Account by the end of the fiscal year shall revert back to the State Indian Gaming Special Distribution Fund.

SB 621 does not define exactly how the Tribal sponsorship, grant application, committee consideration process works. The Gaming Community Benefit Committee is charged with developing application policies and procedures, and assessing eligibility and amount of grant funding. It is therefore assumed the Committee will establish the specifics of how the sponsorship, application and award process will work in Santa Barbara County. SB 621 does not provide for an appeal process.

The County is required to administer the local grant process. The Indian Gaming Local Community Benefit Committee shall determine the appropriate amount for reimbursement of the demonstrated costs incurred by the County for administering the grant programs. The reimbursement for county administrative costs may not exceed 2 percent (2%) of the aggregate County Tribal Account in any given fiscal year. Counties are also required to provide an annual report to the Legislature by April 1<sup>st</sup> of each year detailing the specific projects funded by all grants in their jurisdictions. Every three years, the State Auditor will conduct an audit of the allocation and use of moneys by recipients of SDF grant funds.

## **Priorities and Prohibitions for Use of Local Grants**

SB 621 also establishes priorities for the use of local grant funds. The priorities are: Law enforcement, fire services, emergency medical services, environmental impacts, water supplies, waste disposal, behavioral, health, planning and adjacent land uses, public health, roads, recreation and youth programs, child care programs.

Further SB 621 prohibits funding any grant that directly or indirectly supports any effort to oppose or challenge Indian Gaming. All grant recipients are required to provide public notice, either through a slogan, sign, or other mechanism, to state that the local government project has received funding from the Indian Gaming Special Distribution Fund and identifies the individual tribe from which the grant funds are derived.

## **Mandates and Service Levels:**

SB 621 creates an Indian Gaming Local Community Benefit Committee in Santa Barbara County and requires local grants funded by the Committee to be administered by the County. As administrator of local grants, the County is required to provide an annual report to the legislature.

## **Fiscal and Facilities Impacts:**

The Indian Gaming Local Community Benefit Committee will staff support and will administration of the local grants funded by the Committee. SB 621 limits the amount available to the County to administer local grants to 2% of the annual amount allocated to the Tribal Gaming Account. The Indian Gaming Local Community Benefit Committee determines the amount, thus may limit it further. For FY 2003-04, the maximum the County could receive for administering local grants is \$22,000 (2% of the total \$1.1 million allocated to the Tribal Gaming Account).

**C:** Shane Stark, County Counsel  
Jennifer Klein, Deputy County Counsel  
Robert Geis, Auditor / Controller  
Chairman Vincent Armenta, Santa Ynez Band of Chumash Indians  
Marlene Demery, City Manager, City of Solvang

Resolution Recognizing the Creation  
of the Santa Barbara Indian Gaming  
Local Community Benefit Committee

**WHEREAS,** On October 12, 2003, Senate Bill 621 ("SB621"), which establishes a method of calculating and distributing \$25 million statewide, from the Indian Gaming Special Distribution Fund to local governments impacted by tribal gaming, was chaptered into law; and,

**WHEREAS,** SB 621 establishes a County Tribal Casino Account in the State Treasury for each county that contains a tribal casino, and prescribes the formula by which the State will distribute funds from the Indian Gaming Special Distribution Fund into a County Tribal Casino Account within the State Treasury; and,

**WHEREAS,** SB 621 creates an Indian Gaming Local Community Benefit Committee in each County where Indian Gaming is conducted, and prescribes the membership, and the appointing authority for the membership of the Committee as follows:

1. Two (2) representatives from the County, selected by the County Board of Supervisors
2. Three (3) elected representatives from cities located within four (4) miles of a tribal casino in the county, selected by the County Board of Supervisors
3. Two (2) representatives selected upon the recommendation of a majority of tribes paying into the Indian Gaming Special Distribution Fund in each county

**WHEREAS,** The primary purpose of the Indian Gaming Local Community Benefit Committee is to select local jurisdiction grants to be funded from the County Tribal Gaming Casino Account; and,

**WHEREAS,** SB 621 requires local grants funded by the Indian Gaming Local Community Benefit Committee to be administered by the County, and as administrator of local grants, requires the County to provide an annual report to the Legislature; and,

**WHEREAS,** The Indian Gaming Local Community Benefit Committee fits the definition of "local Agency" and "legislative body" under the Brown Act, and that Act will apply to its meetings; and,

**NOW, THEREFORE, BE IT HEREBY ORDERED AND RESOLVED** that the Santa Barbara Board of Supervisors recognizes the creation of the Santa Barbara County Indian Gaming Local Community Benefit Committee, created by SB 621, and codified as Government Code Section 12715(b)(1).

**PASSED AND ADOPTED** by the Board of Supervisors of Santa Barbara County, State of California this 10<sup>th</sup> of February 2004 by unanimous vote of all members present.



