

Proposition 94 – 97: Gaming Compacts Between the State and Tribes

Staff Recommendation:

SUPPORT

Board Recommendation:

SUPPORT

Rationale:

The four compacts ratified by the Legislature allow for the minimum payment of \$123 million per year to the General Fund until 2020. As these tribes increase the number of gaming machines within their casinos, a larger percentage of revenues will also be directed towards the General Fund. While it is likely that the governor's revenue forecast is overstated, revenues will continue to grow as casinos expand gaming operations.

Under state law, only the Governor and tribes are allowed to take part in compact negotiations. Despite a lack of local representation at the negotiation table, compensation for law enforcement, public safety and emergency medical services will be required for all new projects under the amended compacts. Gambling addiction programs previously funded through the Special Distribution Fund will now be supported by the tribes directly to local jurisdictions.

Under the amended compacts, tribes are now required to complete a lengthy environmental review process in order to begin a new project. The process by which tribes can expand casinos onto other lands has also been strengthened. These new procedures allow for additional public comment and review by potentially affected communities.

Background:

In September 1999, the Governor negotiated and the Legislature ratified compacts with 57 of the state's 108 federally recognized tribes. Compacts with five additional tribes were ratified in 2003 and 2004. These compacts outline the rules, regulations and conditions under which tribes may conduct "Class III" gaming (slot machines, banked and percentage card games, and lottery games) on its lands under the federal Indian Gaming Regulatory Act of 1988.

Key provisions of the 1999 compacts include:

- Tribes may operate up to 2,000 slot machines, with a statewide total limited to 61,957 machines.
- Payments made to the Revenue Sharing Trust Fund on a per machine basis.
- Payments made to the Special Distribution Fund based on percentage of revenue from machines operated as of September 1999.
- Special Distribution Fund provides grants to local governments and programs affected by casinos.
- Compacts expire December 31, 2020.

In 2004, compacts with five tribes (the Rumsey Band of Wintun Indians, the United Auburn Indian Community, Pala Band of Mission Indians, Pauma Band of Luiseno Indians, and the Viejas Band of Kumeyaay Indians) were amended and ratified by the Legislature. The amended 2004 compacts allow tribes to operate an unlimited number of Class III slot machines in exchange for payments to the state General Fund for machines added after ratification of the compacts.

In August of 2006, Governor Schwarzenegger and four tribes (Agua Caliente Band of Cahuilla Indians, Pechanga Band of Luisenos Indians, Morongo Band of Mission Indians, and the Sycuan Band of the Kumeyaay Nation) signed new agreements that were ratified by the Legislature in June 2007. Signatures for referenda to the four compacts to be placed on the February ballot have been gathered and are currently awaiting signature verification.

Proposal:

Opponents of the compacts have proposed a referendum to the compacts to appear on the February 2008 ballot. The official ballot language has yet to be finalized. The California Secretary of State has the following language posted:

“If this petition is signed by the required number of registered voters and timely filed with the Secretary of State, it will stop the law (Chapter 40, Statutes of 2007) from going into effect, unless a majority of voters at the next statewide election vote in its favor. The challenged law ratifies an amendment to an existing gaming compact between the state and [**name of tribe**]; exempts certain projects from the California Environmental Quality Act; requires that revenue paid by tribe be deposited in the General Fund (07-0037.)”

Revenue Sharing Trust Fund (RSTF)¹:

Under the previous tribal-state compacts, tribes made payments to the RSTF in exchange for licenses to operate up to 2,000 slot machines. The RSTF (upon appropriation by the Legislature) funds distributions to non-compact tribes pursuant to the provisions of the 1999 compacts. Each non-compact tribe receives either (1) \$1.1 million per year or (2) an equal share of moneys available to the RSTF if funds are not sufficient to make the full \$1.1 million payment. Table 1 below outlines the payments tribes previously made into the RSTF under the 1999 compacts.

¹ “California Tribal Casinos: Questions and Answers”. Legislative Analyst’s Office. February 2007.

Table 1

Payments into RSTF Under 1999 Compacts	
Number of Slot Machines	Annual Payment Per Machine
1-350	\$ -
351-750	\$ 900
751-1,250	\$ 1,950
1,251-2,000	\$ 4,350

Through 2002, RSTF funds were insufficient to fund the full annual payment to each non-compact tribe. The tribes received on average less than one-half of the \$1.1 million payment annually. In this event, Special Distribution Funds are available for appropriation to cover shortfalls in the RSTF. The Legislature has transferred money to fund the RSTF shortfall each year since 2002-03. In recent years, these transfers have been approximately \$50 million.

Special Distribution Fund (SDF)²:

Current state law provides that the SDF's priority use is to cover shortfalls of the RSTF. The law ranks other allowable uses of the SDF in descending order after this priority use, as follows:

- Appropriations to the Department of Alcohol and Drug Programs (DADP) for its Office of Problem Gambling.
- Funding for state regulation by the California Gambling Control Commission (CGCC) and the Division of Gambling Control in the Department of Justice.
- Grants to local governments affected by tribal casinos.

Figure 2 shows the payments that 1999 compact tribes made into the SDF. These payments are a percentage of the average slot machine net win on machines operated by the tribe on September 1, 1999.³

² Ibid.

³ "Net Win" means the gross revenue from Class III gaming devices less all prizes and payouts that are directly related to the amount wagered, fills, hopper adjustments, and "participation fees". "Participation fees" is defined as payments made to gaming resource suppliers on a periodic basis by the Tribe's gaming operation for the right to lease or otherwise license for play Class III gaming devices that the tribe does not own and that are not generally available for outright purchase by gaming operators.

Table 2

Payments into SDF Under 1999 Compacts	
Slot Machines Operated By Tribe (9/1/99)	Net Win Per Machine
1-200	-
201-500	7%
501-1,000	10%
1,001 or More	13%

Over the last several years, the SDF has collected more revenues each year than the Legislature has spent out of the fund. As a result, the SDF's fund balance is projected to grow to \$132 million by the end of 2006-07.

2006 Amended Compacts:

Key provisions of the 2006 amended compacts include:

- Tribes may operate between 5,000 – 7,500 slot machines, depending on the compact.
- Payments made to the RSTF of \$2 million annually for licenses for machines operating prior to 2006 compacts. \$3 million annually for Sycuan Band.
- No payments made to the SDF.
- Minimum payments of \$123 million for the four tribes combined to the General Fund
- Added payments of 15 percent of revenues from machines 2,001 – 5,000 and 25 percent from machines 5,001 – 7,500 to the General Fund.
- Signed authorization cards from 30 percent of employees triggers secret ballot election to determine if majority wish to certify the union. Tribal neutrality not required.
- Compacts expire December 31, 2020.

The 2006 compacts would cause SDF revenues to drop substantially as several tribes with large casinos would cease making payments into the SDF. Because tribal financial information is confidential, estimates as to the amount of the decline are unknown. Under the terms of several of the proposed compacts, RSTF shortfalls then would be offset by tribal revenues that otherwise would be paid to the General Fund. In this scenario, the SDF's large fund balance may be depleted within one to three years. Therefore, the Legislature may need to consider the current funding priorities of the SDF in statute, as well as the appropriation amounts for various purposes included in the annual budget act.

See Appendix A for a comparison of the 1999, 2004 and 2006 compacts.

Revenue Estimates:

The Governor's budget assumes that annual General Fund revenues related to tribal-state compacts will grow from \$33 million in 2006-07 to \$539 million in 2007-08 due to ratification of the 2006 compacts by the Legislature in 2007. The Legislative Analyst's Office (LAO) challenges this projection. The LAO estimates gross General Fund revenues from all tribal-state compacts would increase to at least \$200 million in the first full fiscal year in which the compacts were effective, considering the minimum payment levels established in the compacts. Additional expansion of General Fund revenues would depend largely on how fast the tribes with 2004 and 2006 compacts bring new slot machines online. Given the pace at which the 2004 compact tribes have expanded and the economics of the gaming industry, the LAO expects that expansion of casino operations will be gradual, rather than sudden and dramatic. To reach the level of revenues assumed by the Governor's budget, the LAO estimates that the tribes with 2006 compacts would all have to had double their number of slot machines by July 1, 2007. Over the next three to ten years, the gross annual General Fund revenues from the compacts could increase to the level projected in the Governor's budget.

Table 3 outlines the contributions that will be made by each of the four tribes. Payments made into the General Fund will total a minimum of \$122.6 million annually, while payments made into the RSTF will total \$9 million annually.

There are currently 71 non-compact tribes that receive \$1.1 million per year, totaling \$78.1 million annually. During FY 2007, these four tribes contributed approximately \$3.1 million into the RSTF, approximately 9 percent of the total \$32.7 million paid to non-compact tribes from the RSTF. Approximately \$45 million of SDF revenues were allocated to address the shortfall in RSTF dollars during FY 2007.

Table 3

Casinos Entering Amended Compacts				
	Agua Caliente	Pechanga	Morongo	Sycuan
Annual Payment into General Fund	\$ 23,400,000	\$ 42,500,000	\$ 36,700,000	\$ 20,000,000
Annual Payment into RSTF	\$ 2,000,000	\$ 2,000,000	\$ 2,000,000	\$ 3,000,000
FY 2007 Payment into RSTF	\$ 549,150	\$ 213,975	\$ -	\$ 2,339,580
Total Payments Required to Non-Compact Tribes				\$ 78,100,000
Total FY 2007 RSTF Payments to Non-Compact Tribes				\$ 32,792,038
Total FY 2007 SDF Shortfall Payments to Non-Compact Tribes				\$ 45,307,962

Potential SDF Shortfalls:

The LAO has stated that over the last several years, the SDF has collected more revenues each year than the Legislature has spent, leading to a fund balance that is projected to grow to \$132 million by the end of 2006-07. The 2006 compacts do not require payments be made into the SDF, thereby resulting in a potential increase in General Fund revenues required to address RSTF shortfalls once SDF revenues have been exhausted. As a result of declining SDF revenues, the Legislature could face funding shortfalls for gambling addiction, regulatory, and local government programs. This, however, will be offset by the requirement within the amended compacts that states tribes must provide compensation for local government services such as public safety, infrastructure and programs designed to address gambling addiction.

Cooperation with Local Governments:

The new compacts require a heightened level of cooperation and agreement between tribes and neighboring cities and counties. Specifically, the tribes must negotiate and enter into enforceable written mitigation agreements with the county and any impacted city to fully mitigate the impacts of gaming-related projects on the off-reservation environment and government services. These agreements are to include direct payments to compensate for local government services such as public safety, infrastructure and programs designed to address gambling addiction.⁴

Operation of Casinos on Indian Land:

The 2006 compact tribes would be able to operate the machines at one, two, or three gambling facilities on Indian lands (depending on the tribe and the compact amendment involved) after negotiating with local government officials on measures to mitigate effects of casino development.

Tribes must operate casinos on Indian lands, which is defined as 1) reservation lands, (2) lands held in trust by the U.S. for benefit of an Indian tribe or individual, or (3) certain specified lands over which an Indian tribe exercises governmental power. (The State Constitution also provides that tribal casinos in California must be on Indian lands “in accordance with federal law.”) Historically, ancestral lands of many tribes have been taken from them by policy or force. Tribes, therefore, may seek to rebuild a land base by having the federal government acquire lands in trust for their use through a lengthy, complex process. In some cases, this can mean that tribes seek to establish a land base in areas (such as urban or suburban areas) not associated with the tribes in recent history.

⁴ Fact Sheet. Coalition to Protect California’s Budget and Economy.

Environmental Mitigation:

Before beginning construction of any project⁵, tribes must prepare a tribal environmental impact report (TEIR), analyzing the potentially significant off-reservation environmental impacts of the particular project. The TEIR includes detailed information about the significant effect(s) on the off-reservation environment which the project is likely to have, including the following matters: aesthetics, agricultural resources, air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, water resources, land use, mineral resources, noise, population and housing, public services, recreation, transportation and traffic, and utilities and service systems.

A notice of preparation of the draft TEIR and notice of completion of the draft TEIR is required and will allow individuals to comment on the document. Those wishing to comment on the report have forty-five (45) days to do so, and tribes must address all comments submitted within the final document.

Proponents:

- County of San Diego Supervisor, Pam Slater-Price
- County of San Diego Supervisor, Bill Horn
- County of San Diego Supervisor, Greg Cox
- County of San Diego Supervisor, Ron Roberts
- San Diego Regional Chamber of Commerce
- San Ysidro Chamber of Commerce
- Cabazon Chamber of Commerce
- City of San Diego Council Member, Ben Hueso
- City of National City Mayor, Ron Morrison

Opponents:

- Hollywood Park Racetrack
- Bay Meadows Racetrack
- The Pala Band of Mission Indians
- UNITE HERE
- California Indian Tribes For Fair Play
- California Federation of Teachers
- Jamul Action Committee
- Concerned Citizens for Pauma Valley
- California Labor Federation AFL-CIO
- SEIU California State Council

⁵ A project is defined as any activity occurring on Indian lands which may cause either a direct physical change in the off-reservation environment, or a reasonably foreseeable indirect physical change in the off-reservation environment. This could include, but not limited to, the construction or planned expansion of any gaming facility.

Appendix A			
Differences Between 1999 Compacts and 2006 Compacts			
	1999 Compacts	2004 Compacts	2006 Compacts
How many Class III slot machines are authorized?	<ul style="list-style-type: none"> Up to 2,000. Total number of machines statewide limited to 61,957. 	<ul style="list-style-type: none"> Unlimited number of devices 	<ul style="list-style-type: none"> 5,000-7,500 per tribe, depending on the compact.
Which state funds receive tribal compact monies?	<ul style="list-style-type: none"> Revenue Sharing Trust Fund (RSTF) Payments on a per machine basis. 	<ul style="list-style-type: none"> Revenue Sharing Trust Fund (RSTF) Payments of \$2 million annually per tribe for licenses for machines operating prior to 2004 compacts. 	<ul style="list-style-type: none"> RSTF Payments of \$2 million annually (for all but one tribe) for licenses for machines operating prior to 2006 compacts. \$3 million annually for Sycuan Band.
	<ul style="list-style-type: none"> Number of Slot Machines/Annual Payment per Machine 1-350/\$0 351-750/\$900 751-1,250/\$1,950 1,251-2,000/\$4,350 SDF Payments on a per machine basis. 	<ul style="list-style-type: none"> General Fund: Payments of \$8,000 - \$25,000 per machine added after the 2004 compacts. Estimated to average 15 percent of added machines revenue as of 2004. 	<ul style="list-style-type: none"> General Fund: Minimum payments of \$168 million for the five tribes combined (about 10 percent of existing machines' current revenues).
		<ul style="list-style-type: none"> Designated Account for Transportation Bond: Payments of about \$100 million for all of the tribes combined for 18 years. SDF: No payments. 	<ul style="list-style-type: none"> General Fund: Added payments of 15 percent of revenues from machines 2,001-5,000 and 25 percent from machines 5,001-7,500. SDF: No payments.
What support is provided for local governments affected by casinos?	<ul style="list-style-type: none"> Number of Slot Machines/Net Win per Machine 1-200/7% 201-500/10% 1,001 or more/13% SDF provides grants to these local governments. 	<ul style="list-style-type: none"> Tribe must negotiate with local governments on agreements (including potential payments) to address infrastructure, safety, and other issues. 	<ul style="list-style-type: none"> Tribe must negotiate and enter into enforceable written mitigation agreements with the county and any impacted city to fully mitigate the impacts of gaming-related projects on the off-reservation environment and government services.
What are some key compact provisions concerning labor relations?		<ul style="list-style-type: none"> Signed authorization cards from 50 percent of employees certifies union as exclusive bargaining representative. Tribal neutrality required during organization process. 	<ul style="list-style-type: none"> Signed authorization cards from 30 percent of employees triggers secret ballot election to determine if majority wish to certify the union. Tribal neutrality not required.
When do the compacts expire?	<ul style="list-style-type: none"> December 31, 2020. 	<ul style="list-style-type: none"> December 31, 2020. 	<ul style="list-style-type: none"> December 31, 2030.