

Analysis of the 2006 Tribal Compacts and Their Impact on Education Funding

Executive Summary

October 2007

Strategic Education Services was requested by Californians for Fair Gambling Policy to review the 2006 Indian gaming compacts and assess their effect on funding for education.

The 2006 compacts are comprised of four agreements from four tribes: Agua Caliente, Morongo, Pechanga, and Sycuan tribes. Under these compacts, four tribes would be authorized to build new casinos and install 17,000 new slot machines. In exchange, they agree to pay the State a percentage of their “net win.”

There is an effort to put these agreements before the voters on the February 2008 ballot through a referendum campaign. The tribes which exclusively benefit from these 2006 compacts are opposed to this referenda effort.

Key Findings

- The tribes’ estimates of revenues generated from the 2006 compacts are inflated. According to the state’s non-partisan Legislative Analyst, the compacts “will provide the General Fund with less than 0.5% of its annual revenues for the foreseeable future.”
- Although the proponents of the compacts have asserted that these compacts will help the schools, our analysis indicates that there is no direct connection between the 2006 compacts and school funding:
 - Proposition 98, the school funding formula for schools, derives its revenues from *proceeds of taxes*. Because tribes are sovereign nations, the state cannot levy taxes on their economic enterprises. Therefore, the compact payments cannot be considered proceeds of taxes, and they will not be included in the Proposition 98 calculation.
 - Further, all revenues from past compacts have been allocated to non-Proposition 98 expenditures. There is nothing in these compacts to suggest that such practices will be any different than current policy.
 - In the same way that the lottery has done little to support education, these compact revenues will create the false expectations that additional gambling revenues will help support the schools.
- Using the 2006 Compact funds on the non-Proposition 98 side of the budget will exacerbate the disparity in growth rates between K-12 education and non-K-12 education side of the budget.

If approved by voters under the false impression they are voting to “provide billions to California schools,” these gambling compacts could further the misperception that schools are receiving adequate funding from gambling measures – a misconception that already plagues educators’ efforts to provide genuine revenue increases to California schools.

Analysis of the 2006 Tribal Compacts and Their Impact on Education Funding

October 17, 2007

Strategic Education Services was requested by Californians for Fair Gambling Policy to review four 2006 Indian gaming compacts and assess their effect on funding for education. Strategic Education Services specializes in Children's services, K-12 education finance, educational policy and postsecondary education issues.¹

The 2006 Compacts

The four 2006 compacts are comprised of agreements from four tribes: Agua Caliente, Morongo, Pechanga and Sycuan tribes. The legislature ratified these compacts that were agreed to by Governor Schwarzenegger. Under these compacts, four tribes would be authorized to build new casinos and install 17,000 new slot machines. In exchange, they agreed to pay the State a percentage of their "net win."

There is an effort to put these agreements before the voters on the February 2008 ballot through a referendum campaign. The tribes which exclusively benefit from these 2006 compacts are opposed to this referenda effort.

Key Questions

In providing a preliminary assessment of the 2006 Compacts on education, we address the following questions:

- What are the revenues that will be generated from the 2006 compacts?
- Will the 2006 compact revenues flow to education?
- What is the effect of the 2006 compact revenues on the state budget?

What are the revenues that will be generated?

The four benefited tribes have asserted that the new compacts will generate \$9 billion in new revenues over the next two decades.² The Administration also noted that the compacts could raise billions in new revenues.

However, the non-partisan Legislative Analyst's Office has opined that these estimates are not realistic. They note:

"The actual annual effects on state funds from new compacts, however, tend to be in the tens of millions of dollars per year for each tribe's compact....Even assuming all of the 2006 compacts are ratified and a few more similar compacts are ratified in the future, we expect that compact-related sources will provide the General Fund with less than 0.5 percent of its annual revenues for the foreseeable future".³

¹ -Background on Strategic Education Services is on our website: <http://www.strategicadvocates.com>. Brief professional biographies of the company's staff is in the attachment.

² -see website <http://www.yesforcalifornia.com/facts.php>

³ -see Legislative Analyst, "Questions and Answers: California Tribal Casinos", February 2007, pp 14.

Will These Funds Flow to Education?

The proponents of the compacts also have asserted in their website, their television commercials and their campaign literature that these compacts will help the schools. Specifically, they state:

*“Our state will get more than \$9 billion over the next two decades without raising our taxes – providing vitally needed new funding for **our schools**, public safety and other services.”⁴
[emphasis added]*

“The compacts will increase the amount of money in the General Fund and as much as 40% of the money in that fund goes directly into K-14 classrooms. That means K-14 schools will ultimately benefit and the compacts could provide billions of dollars over the next two decades for California’s schools.”

These statements specifically claim that there is a direct connection between the 2006 Compacts and funding for schools. However, our review finds that there is no foundation for this assertion.

There are two theoretical scenarios of how compact revenues could be distributed to schools, neither of which are plausible:

1. Scenario 1: Revenues distributed through the K-14 schools major school finance mechanism, Proposition 98; or
2. Scenario 2: Revenues distributed directly to the schools outside of Proposition 98.

Scenario 1: Compact Revenues Ineligible for Proposition 98 Funding. The principal financing mechanism to fund K-14 schools is Proposition 98, passed by the voters in 1988. Proposition 98 establishes in the state constitution, a *minimum funding* level for K-14 schools funded from both property taxes and state General Fund support. The complex funding formulas increase the minimum funding formula through the growth in K-12 average daily attendance and growth in the state economy. The intent of Proposition 98 was simple: as state economy grows, so should funding for schools.

One component of the Proposition 98 formulas includes General Fund Revenues. General fund revenues are defined to be proceeds of taxes.⁵ The revenues generated from the 2006 Compact are not proceeds of taxes. They are payments made pursuant to an agreement (i.e. compact). Moreover, because tribes are sovereign nations, the state cannot levy taxes on their economic enterprises. As a result, these revenues will not be included in the Proposition 98 funding formulas. Given this, it means that contrary to the assertions made by the campaign’s proponents, the compact revenues will **not** help the schools.

The reason the revenues are not included is that the funding formula is based on proceeds of taxes. These revenues are not proceeds of taxes, and therefore not part of the Proposition 98 calculations that guarantee funding for K-14 education.

⁴ -see website <http://www.yesforcalifornia.com/>

⁵ -see Article XIII B, section 8, subdivision c of the State Constitution for definition of ‘proceeds of taxes’. Section 41202 of the Education Code establishes definitions for the implementation of Proposition 98. Subdivision b) of section 41202 defines “General Fund revenues which may be appropriated pursuant to Article XIII B”, as used in paragraph (1) of subdivision (b) of Section 8 of Article XVI, means General Fund revenues that are the proceeds of taxes as defined by subdivision c) of Section 8 of Article XIII B of the California Constitution,...

Scenario 2: Compact Revenues Appropriated as Non-Proposition 98 Funds for Schools.

Second, an argument can be made that the Governor and the Legislature could choose to allocate a portion of 2006 Compact funds to K-12 schools outside the Proposition 98 formula. There is nothing in law to prevent them from choosing to allocate these revenues for schools. However, this would be an unlikely scenario. Past efforts to implement Proposition 98 by both the Legislature and the Governor have demonstrated that every effort has been made to make the *minimum* funding level established by Proposition 98 the *maximum* level of funding for schools. This year's 2007-08 budget serves as an excellent case study of that phenomena. The Governor, in his May Revision, provided a Proposition 98 funding level that was \$427 million over the minimum guarantee. The Legislature reduced the funding level by \$427 million to ensure that schools do not receive more than the minimum guarantee.

Further, based on past practice, all compact revenues have been allocated to the non-Proposition 98 side of the budget, much of it earmarked for specific purposes related to entities and individuals affected by tribal casinos.⁶ It is unlikely that this practice will change in the near future. In addition, there are a number of budget agencies which would seek to claim that their needs merit additional resources.

It should be noted that these new compacts would eliminate each of these tribes' existing contributions to a "Special Distribution Fund" which exists in part to provide funds to city and county governments for mitigating casino impacts and to fund state gambling regulatory agencies. As the Special Distribution Fund shrinks, the General Fund will have to make up the difference.

False Expectations. If anything, assertions that compact revenues support schools create the false expectation that the 2006 Compacts can save the schools in the same way the lottery was supposed to help the schools back in the 1980's. In fact, one could argue that the public has assumed the lottery has 'solved' the state's financing programs for schools.

Yet, the lottery has done little to support education. Although it has generated slightly over one billion dollars in funds, it represents 1.5% of total school revenues. In per pupil terms, the lottery has generated only \$170 per pupil. And, California still ranks only 29th in expenditures per pupil nationwide.⁷

Such false expectations provide greater ammunition for those that seek to minimize education funding, and make it more challenging for education advocates to ensure adequate funding for our schools.

⁶ For example, local governments affected by tribal casinos, Department of Alcohol and Drug Programs for the Office of Problem Gambling, Tribal Transportation Bonds, etc.

⁷ - Data: National Center for Education Statistics (NCES) Common Core of Data, 2004-05.

What is the effect of the Compact's revenues on the State Budget?

The table shows the increases in state General Fund support by agency over an eight year time frame.

Current Trend. The table shows that state general fund support for K-12 education has not fared well compared to other state agencies. K-12 education grew 50% which is slightly below the growth in the entire state budget (52%). Other agencies, such as health and human services (68%) and corrections/rehabilitation (103%) have grown at significantly faster rates than K-12 education has.

Table General Fund Support (amounts in millions)				
	<u>1999-2000</u>	<u>2007-08</u>	<u>Dollar Change</u>	<u>Percent Change</u>
Legislative, Judicial, Executive Resources	\$ 2,336	\$ 3,792	\$ 1,456	62%
Health and Human Services	\$ 1,442	\$ 1,674	\$ 232	16%
Corrections and Rehabilitation	\$ 17,724	\$ 29,719	\$ 11,995	68%
K-12 Education	\$ 4,836	\$ 9,836	\$ 5,000	103%
Higher Education	\$ 27,483	\$ 41,341	\$ 13,858	50%
General Government	\$ 8,066	\$ 11,980	\$ 3,914	49%
Other	\$ 3,748	\$ 1,579	\$ (2,169)	-58%
Total	\$ 1,551	\$ 2,337	\$ 786	51%
	\$ 67,186	\$ 102,258	\$35,072	52%

Effect of the 2006 Compact Revenues. The amount of the tribes' payments to the state is to comprise a percentage of their "net win" from the new slots. According to the compact, the "net win" is to be determined by the tribes themselves – a change from past Indian compacts which were based upon a per-slot-machine fee or an independently certified -- and a provision which renders the actual amount of new state revenues uncertain.

To the extent the new revenues can be estimated, the Legislative Analyst notes that in the context of the overall budget, the impact of the 2006 Compact revenues will be minimal. However, to the extent that none of these revenues are dedicated to K-14 education, they will exacerbate the growth disparity between the Proposition 98 and non-Proposition 98 side of the budget, and skirt the will of California voters who approved Proposition 98 and demanded that education funding grow commensurate with the state economy.

Conclusion

Based on the best information currently available, we find the following:

- Current estimates on the level of revenues generated from the 2006 compacts are inflated.
- None of the 2006 Compacts' revenues can flow through Proposition 98, meaning that these funds will not benefit the schools. Because the Legislature and the Governor on a bipartisan basis and over several years have never used compact revenues for K-12 schools, it is highly unlikely that any compact funds will be used for K-12 schools in the future.
- Using the 2006 Compacts' funds on the non-Proposition 98 side of the budget will exacerbate the disparity in growth rate between K-12 education and non-K12 education side of the budget.

If approved by voters under the false impression they are voting to "provide billions to California schools," these gambling compacts could further the misperception that schools are receiving adequate funding from gambling measures – a misperception that already plagues educators' efforts to provide genuine revenue increases to California schools.

Attachment

Professional Biographies
Staff of Strategic Education Services

Dale F. Shimasaki, Ph.D CEO

Dr. Shimasaki has approximately thirty years experience shaping state, federal and local education budget policies. Dr. Shimasaki served for three years in the Office of the Legislative Analyst, two years as Principal Consultant for the Assembly Budget Committee and six years as Chief Consultant for Educational Policy and Finance for Speaker of the Assembly, Willie L. Brown, Jr. From 1992 through 1996 Dr. Shimasaki served as Director of Research and Director of Governmental Relations for the City College of San Francisco. He has also served for two and a half years as the Executive Director of the Civil Liberties Public Education Fund. Dr. Shimasaki's doctoral dissertation was on implementation of Proposition 98, the current school finance funding mechanism for K-14 education.⁸

Stephen Rhoads Principal Consultant

Stephen Rhoads brings to Strategic Education Services over thirty-five years of extensive experience in education and energy policy. As a Principal Consultant, he helps to ensure the clients' needs will be addressed. Mr. Rhoads served as the Executive Director of the California Energy Commission for ten years, as the Undersecretary to the Governor's Office of Child Development and Education during the Wilson Administration and has served many years in the Legislature. He has also served as the Chief Consultant to Republican Assembly Member James Brulte, Budget Staff Director for the Minority Ways and Means Committee, as the Deputy Director for the Assembly Republican Caucus and the School Finance Expert for the Legislative Budget Committee of the Legislative Analyst's Office.

Sandra Vargas Senior Legislative Advocate

Prior to joining Strategic Education Services in 2004, Ms. Vargas served as the Education Consultant in the office of Senator Denise Ducheny (D-San Diego) in 2002. She first joined the California State Legislature as a Legislative Aide in the office of former Assemblymember Tony Cardenas. Ms. Vargas began her career in state government in the Governor's Office of Planning and Research (OPR), under the administration of former Governor Gray Davis. Ms. Vargas is also a former Spanish teacher at Florin High School in the Elk Grove Unified School District. Sandra Vargas currently serves as a member of the Board of Trustees for Washington Unified School District in the City of West Sacramento.

⁸ - see Shimasaki, Dale F., "The Implementation of a Voter-Approved Entitlement for K-12 Education: Budgetary Responses to Proposition 98", University of California, 1994