

BUREAU OF GAMBLING CONTROL
FINAL STATEMENT OF REASONS
Schedule of Investigation and Processing Costs
Z-2010-0325-01

HEARING DATE: June 9, 2010

**SUBJECT MATTER OF
PROPOSED REGULATIONS:** Schedule of Investigation and
Processing Costs

SECTIONS AFFECTED: California Code of Regulations, Title 11, Division 3,
Chapter 1, amend Section 2037

UPDATED INFORMATION:

The Initial Statement of Reasons, as published on April 16, 2010, is included in the file and is incorporated by reference as if fully set forth herein. The information contained therein is complete and, except as indicated below, no changes have been made to the proposed regulations that would warrant any changes in that information.

Proposed Action:

This proposed regulatory action would make the following specific changes to Division 3 of Title 11 of the California Code of Regulations:

Section 2037(a) currently provides information regarding a deposit amount that is required from an applicant before the Bureau can initiate a background investigation or review related to a license, a finding of suitability, or an approval. This deposit is required in accordance with Business and Professions (B&P) Code sections 19826, 19867, 19984, Title 4, CCR, and Chapters 2.1 and 2.2, in addition to the application fee required under B&P Code section 19951.

Section 2037(a) has been amended as follows:

- For clarification and to better define that each applicant must submit a deposit in order for the Bureau to conduct an investigation related to a license or finding of suitability, the word “An” before the word “applicant” has been replaced with the word “Each”.
- The Bureau also removed “or approval”, where needed, as it was determined that an approval is not conducted during an investigation. An approval is the outcome of a review that is conducted by the Bureau.

- The Bureau does not make the final determination regarding a license, but rather submits a report or makes a recommendation to the California Gambling Control Commission who then makes the final determination. Therefore, “before a final determination is made by” has been replaced by “submit its report or make a recommendation to”.
- For clarity purposes and to better explain the process when an applicant is eligible for a refund of any unused portion of a deposit, the Bureau has replaced “submit to the Commission a request for” with “shall cause a refund to be made of”.
- Paragraph (1), subparagraphs (A) through (D) have been amended to remove the word “An” and replaced it with “Each”, as explained above in section 2037(a).
- Paragraph (1), subparagraph (E) has been amended for clarity. This subparagraph indicates the amount that a gambling establishment shall submit for a renewal of a State Gambling License.
- Paragraph (1), subparagraph (J) has been amended for clarity. This subparagraph indicates the deposit amount that an owner licensee is required to pay when requesting a change in location of a gambling establishment.
- Paragraph (2) references the schedule of deposits for investigation and processing costs under B&P Code sections 19867 and 19984, and Title 4, CCR, Chapters 2.1 and 2.2. The Bureau has removed the language “commencing with section 12200 and 12220”, as this information is already referenced in Section 2037(a).
- Paragraph (2), subparagraphs (C), (D), (E), (F), and (G) have been amended for clarity. These subparagraphs currently specify the deposit amount for several types of applicants. To better define what a “supplemental information package” is, the Bureau has added the reference to “Title 4, CCR, sections 12200 and 12220”.
- Paragraph (2), subparagraph (H) references the deposit amount for an application that is received for a renewal of a license for an owner that is a corporation, partnership, limited partnership, limited liability company, joint venture, sole proprietorship or any other business organization, except a trust. After further review, the Bureau has determined the original proposed amount of \$1,500 is insufficient to cover the cost of the investigation. Therefore, the amount has been adjusted to \$2,000.
- Paragraph (2), subparagraphs (C), (D), (G), (H), (I), and (J) have been amended to correct some grammatical errors.
- Paragraph (3), subparagraph (C) references the deposit amount for an application that is received on behalf of a primary owner or business entity requesting a Renewal of Finding of Suitability as a Gaming Resource Supplier. After further review, the Bureau has determined the original proposed amount of \$1,600 is insufficient to cover the cost of the investigation. Therefore, the amount has been adjusted to \$2,000.

Section 2037(b) has been amended as follows:

- Subsection (b) indicates the deposit amount that an applicant would be required to submit if the Bureau determines that a background investigation is of such complexity that the engagement of external specialized resources is warranted. Currently, an applicant may be required to pay an additional \$20,000 to \$200,000. However, an applicant may be subject to additional deposits in amounts necessary to complete the investigation, if notified by the Bureau. Language in this subsection has been modified to remove the dollar amount of the additional deposit.

Additional edits and grammatical changes have been made, as needed, for consistency. The Bureau does not deem these changes as being substantive to require an additional comment period.

REQUIRED DETERMINATIONS:

Local Mandate:

A mandate is not imposed on local agencies or school districts.

Small Business Impact:

The Bureau has determined that the proposed regulatory changes will have no adverse impact on small businesses.

Consideration of Alternatives:

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

Set forth below are the alternatives that were considered and the reasons each alternative was either accepted or rejected:

A. 45-Day Comment Period Ending May 31, 2010

The following comments/objections/recommendations were made regarding the proposed action, either in writing during the 45-day comment period that ended on May 31, 2010, or orally at the public hearing that was held on June 9, 2010.

1. Section 2037(a) specifies that according to B&P Code sections 19826, 19867 and 19984, the Bureau has the authority to request, prior to initiating a background investigation or review related to a license, a Finding of Suitability, or an approval, to require an applicant to submit a deposit amount.
 - a: **Alan Titus - Artichoke Joe's**: The language in this subsection requires payment of deposits prior to the Bureau conducting its investigation, review or approval. We feel that this is inflexible as the Bureau should be able to bill for the amount owed

and require payment by a certain date. Costs of investigations are not known until the investigation is complete, and the time between completion of the investigation and the Commission hearing might not be sufficient for billing the applicant and allowing time to pay.

Response: The Bureau disagrees with this concept. The requirement that an applicant submit a deposit in advance of the Bureau's investigation is currently provided in this regulation. The advance deposit better ensures that the Bureau fully recovers its costs for the investigation and minimizes the potential for a formal collections process in the event the applicant fails to pay such costs after they are incurred.

- b: **Tina Littleton – California Gambling Control Commission (CGCC):** - Proposed amendment to 2037(a) states that the deposit must be received "...before a final determination is made by" the Commission. CGCC feels that this amendment may actually prohibit them from taking any action until the Bureau's costs are paid. The suggested language is:

All costs and charges of the investigation, review or approval must be paid before the Bureau may approve a contract, game or gaming activity, **or submit its report or** make a recommendation to the Commission.

Response: The Bureau agrees with the comment and has modified the text accordingly.

- c: **Tina Littleton – CGCC:** Proposed amendment to this same section should be less specific about who issues the refund. The suggested language is:

At the conclusion of the investigation, review or approval, the Bureau shall provide the applicant with an itemized accounting of the costs incurred and shall **cause a** refund **to be made of** any unused portion of the deposit.

Response: The Bureau agrees with the comment and has modified the language accordingly.

2. Section 2037(a)(1)(A) requires each applicant, other than a Trust, for an initial State Gambling License to submit a deposit for an initial State Gambling License.

- a: **Tina Littleton – CGCC:** The proposed amendments to this section remove the clarifying terms "Sole Proprietor, Corporation, Partnership, Shareholder, Partner, etc." We feel that this may be more confusing to applicants and therefore suggest leaving the terms as is.

Response: The Bureau disagrees with this comment. The term "applicant", as proposed in this section, is defined in the Gambling Control Act (B&P Code section 19805(b)), and is widely accepted and acknowledged as a reference to a person applying for licensure, Finding of Suitability, or approval. Therefore, removal of the

clarifying terms would not cause undue confusion, and adding the term “applicant” provides the proper statutory reference.

3. Section 2037(a)(1)(E) requires a Gambling Enterprise to submit a deposit for Renewal of a State Gambling License.

- a: **Tina Littleton – CGCC**: Subparagraph (E) specifies the amount of the deposit to be submitted by an applicant for renewal of a State Gambling License for a “Gambling Enterprise”. Is this subparagraph supposed to apply to an owner-licensee alone? If so, using the term “Gambling Enterprise” without any clarifying descriptive language does not make that distinction as that term, as defined, clearly includes both owner-licensees and endorsed licensees. It is also unclear whether this particular deposit applies to the owner-licensee applicant and each associated application individually (multiple deposits), or to the entire application package collectively (a single deposit).

Response: The Bureau agrees with the comment, as the proposed language in this subparagraph may be interpreted incorrectly. This subparagraph was meant to specify the renewal amount that a “Gambling Enterprise” must submit for a State Gambling License. The language has been modified to read:

“The Gambling Enterprise shall submit a deposit in the amount of \$1,600 for renewal of a State Gambling License.”

This modification should better clarify that it is the owner-licensee of the Gambling Enterprise who must submit the deposit on behalf of the Gambling Enterprise, and not each applicant associated with the Gambling Enterprise.

4. Section 2037(a)(1)(J) requires an owner-licensee requesting approval for a change in location of a Gambling Establishment to submit a deposit.

- a: **Tina Littleton – CGCC**: It is a “Gambling Establishment” that would be relocated and not the “Gambling Enterprise”.

Response: The Bureau agrees with this comment and has modified the language accordingly.

- b: **Tina Littleton – CGCC**: There is currently no requirement or process established in statute or regulation for requesting approval, in advance, of a location change for a Gambling Establishment. There is also no responsibility specifically assigned to the Bureau in connection with a relocation that calls for investigations or review, and there is no specific authority to charge a fee. The only requirement remotely close is Title 4, CCR, section 12004, which simply requires a registrant or licensee to report any change of address to the Commission within 10 days.

Response: The Bureau disagrees with the comment. When the Commission engages in the approval process for relocation of a Gambling Establishment, the Bureau has the responsibility to investigate that request for approval under B&P Code section 19826(a). With regard to relocation approvals, the Bureau has established a process to perform certain investigative tasks associated with a change in location, as requested by the Commission. This deposit is merely intended to enable the Bureau to recover costs associated with these tasks.

5. Section 2037(a)(1)(L) requires a deposit when the Bureau receives an application requesting an amendment or changes to an approved Game or Gaming Activity.

- a: **Mark Kelegian – Crystal Casino:** Changes to a Gaming Activity are generally non-substantive in nature, and the proposed increased deposits for Gaming Activity modifications are unnecessary. We suggest a structure of deposits—one for substantive changes to game rules and one for non-substantive changes.

Response: The Bureau disagrees with the proposed concept. The majority of applications for modifications to Gaming Activities are substantive in nature, and the staff resources required to process such applications justify the increased deposit amounts. A tiered structure of deposits is not considered practical, given the subjective determination of whether the application involves substantive or non-substantive changes.

6. Section 2037(a)(2)(C) requires an owner that is an individual and/or a sole proprietorship to submit a deposit when requesting to convert a registration to a license.

- a: **Tina Littleton – CGCC:** This section refers to “an owner that is an individual and/or a sole proprietorship.” The use of “and/or” would be inappropriate and possibly confusing. The more correct of the two conjunctions to be used here would be “or”.

Response: The Bureau agrees with the comment and has modified the language accordingly.

7. Section 2037(a)(2)(D) requires an owner that is a corporation, partnership, etc., to submit a supplemental information package when requesting to convert a registration to a license.

- a: **Tina Littleton – CGCC:** The word “for” should be deleted from the phrase “...except for a sole proprietorship or Trust...”

Response: The Bureau agrees with the comment and has modified the language accordingly.

8. Section 2037(a)(2)(C), (D), (E), (F), and (G) require various types of applicants to submit a supplemental information package and a deposit to the Bureau when requesting to convert a registration to a license.
- a: **Tina Littleton – CGCC**: We recommend that language be added in these subparagraphs to be more specific about what the term “supplemental information package” actually means. For example, the opening phrase of subparagraphs (C), (D), (E) and (F) could simply be reworded to read, “A supplemental information package (Title 4, CCR, §§ 12200 and 12220) to convert...” and subparagraph (G) could be reworded to read, “If, after a review of the supplemental information package (Title 4, CCR, §§ 12200 and 12220) to convert....”

Response: The Bureau agrees with the comment and has modified the language accordingly.

9. Section 2037(a)(2)(G) requires a player or other employee to submit a supplemental information package when requesting to convert a registration to a license, if it is determined that further investigation is needed.
- a: **Tina Littleton – CGCC**: There are a few minor punctuation and editorial changes needed.

Response: The Bureau agrees with the comment and has made the minor punctuation and editorial changes accordingly.

10. Section 2037(a)(2)(H) requires a deposit for an application received for renewal for an owner that is a corporation, partnership, etc.
- a: **Tina Littleton – CGCC**: The word “for” should be deleted from the phrase “..., except for a trust...”

Response: The Bureau agrees with the comment and has modified the language accordingly.

11. Section 2037(a)(2)(H), (I), and (J) requires an applicant for a renewal to submit a deposit to the Bureau.
- a: **Tina Littleton – CGCC**: The language is inconsistent with the structure of similar provisions elsewhere in the regulations. The suggested language should read:

“An applicant for renewal of....shall submit a deposit....”

Response: The Bureau agrees with the comment and has modified the language in subparagraphs (I) and (J). However, for grammatical purposes, the language in subparagraph (H) has been changed to “An application for renewal of...”

12. Section 2037(a)(3)(C) requires that an application for a primary owner or business entity for a Renewal of a Finding of Suitability as a Gaming Resource Supplier, Financial Source or Management Contractor shall submit a deposit in the amount of \$2,000.

- a: **Sharon Paul – QCS Enterprises, Inc.:** The increased deposit amounts will bring us a hardship. In reference to a recent invoice regarding the deposit, we have “no idea what needed to be investigated to merit that amount of money”.

Response: This is a general objection regarding the perceived financial impact of the proposed amendment on a Tribal vendor. The Bureau believes that no revision to the language is warranted on this basis because the total deposit amount submitted by applicants does not change. The intent of this proposal is to increase the initial deposit. The proposed deposit amount in question was based on specific tasks customary for any renewal investigation, as required by the California Gambling Control Commission and the Bureau.

13. Section 2037(b) requires the Bureau to request additional deposit amounts if a background investigation is of such complexity that the engagement of external specialized resources is warranted.

- a: **Mark Kelegian – Crystal Casino:** We also believe that it may be appropriate to have a formal or informal hearing/meeting with an applicant, prior to the determination that an outsourced investigation is needed.
- b: **Alan Titus – Artichoke Joe’s:** We do not believe that engagement of “external specialized resources” is authorized by statute, and thus this regulation is not authorized by the Act and is unnecessary.

Response: The Bureau disagrees with the comments. Once the Bureau determines that the engagement of external specialized resources is warranted, the Bureau will notify the applicant in writing and provide an estimate of total investigative costs. At the request of the applicant, or at the discretion of the Bureau, the Bureau will schedule a meeting to generally address the basis for that determination. However, the Bureau does not believe that such a meeting is a prerequisite to that determination.

Additionally, there is no limitation in the Gambling Control Act (B&P Code section 19800 et seq.) to prevent the Bureau from contracting out for the purpose of information gathering with regard to an applicant’s foreign source income and holdings. Additionally, the Bureau may contract for such purposes as are required by the circumstances of the applicant, pursuant to the general restrictions applicable to a state agency outsourcing work from civil service staff. Furthermore, it is not required to have a regulation authorizing it to contract out for such services, but does need to adopt a regulation addressing a schedule of costs, as set forth in the proposed rulemaking.

14. Section 2037, AUTHORITY AND REFERENCE CITATIONS

- a: **Tina Littleton – CGCC**: The proposed action includes amendments to include section 19952 in the authority section. That statute does not assign any responsibility or grant any authority to the Department/Bureau. The Bureau’s general statutory authority to “investigate” requests for approval, and to establish and collect deposit fees, appears to be sufficient and appropriate both as authority and reference citations for the new deposit fee specified in subparagraph (M) of paragraph (1) of subsection (a) of Section 2037.

Response: The Bureau agrees with this comment and has removed section 19952 from the authority section.

There were no further comments, objections or recommendations received within the initial 45-day public comment period regarding the proposed action.

B. 15-Day Comment Period Ending August 20, 2010

There were no comments, objections or recommendations received within the 15-day public comment period regarding the modified text of the proposed action.