

BUREAU OF GAMBLING CONTROL
SUPPLEMENTAL FINAL STATEMENT OF REASONS
Schedule of Investigation and Processing Costs

The Department of Justice, Division of Law Enforcement, Bureau of Gambling Control submits the following as a supplemental to the final statement of reasons for its rulemaking package “schedule of investigation and processing costs”. The following summary and responses, supersedes the submitted comments and responses pages 3 through 9 of the final statement of reasons.

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. Enforcement is not an issue as the Bureau can apply a late fee or discipline for non-payment. Final 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. Deposits are specifically intended to ensure the Bureau has sufficient funds in advance to meet the anticipated costs of the investigation and to minimize the potential for a formal collections process in the event the applicant fails to pay such costs after they are incurred. The advance collection of a deposit is specifically authorized under B&P Code section 19867.

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.

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. Under B&P Code section 19826(a), the Bureau has the responsibility “to investigate the qualification of

applicants before any license, permit or other approval is issued, and to investigate any request to the commission for any approval that may be required...” At the request of the Commission, the Bureau routinely performs specified investigative tasks related to the suitability of the applicant and the proposed location, and submits its findings to the Commission for its determination to either approve or deny the request. A new license is issued to the gambling establishment upon approval of its relocation. Under B&P Code section 19867(a), the Bureau is authorized to charge the applicant for these investigative tasks through a deposit.

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.

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. The Act clearly assigns the duty of investigation to the Department of Justice. Section 19868 of the Act reads, “the department shall commence its investigation.” The use of the possessive “its” makes clear the intent that the investigation be done by the Department. The Department is not authorized to contract out the investigation to private companies.

Section 19827 makes clear that the Department can employ outside experts, but only for certain purposes, namely determination of compliance with the Act. This contains two limitations. First, experts are authorized for use only in areas of the premises where controlled gambling is conducted. Second, the purpose is to determine compliance with rules and regulations. Outside experts are not authorized to perform investigations.

Response: The Bureau disagrees with the comments. The Act requires in section 19801(i) that “all gambling operations, all persons having a significant involvement in gambling operations . . . be regulated to protect the public health, safety, and general welfare of the residents of this state as an exercise of the police powers of the state.” Failure to conduct adequate investigations into the applicants associated with gambling operations or those having a significant involvement in gambling operations would certainly result in the admission of criminal and corruptive elements into the gambling industry, jeopardizing public health, welfare, safety, and trust, contrary to the Legislative intent and spirit of the Act.

As stated in section 19868(a), in part, “within a reasonable time after the filing of an application and any supplemental information the department may require, and the deposit of any fee required pursuant to Section 19867, the department shall commence its investigation of the applicant and, for that purpose, may conduct any proceedings it deems necessary.” This would include, but not be limited to, the engagement of external, specialized resources to provide information and consultation in jurisdictional areas where the Bureau currently does not have expertise, but requires information material to the investigations in question.

The Bureau has encountered an increasing number of investigations revealing money sources and holdings that are located in foreign countries. Current licensing staff does not have the expertise necessary to conduct these types of investigations (e.g., knowledge of foreign accounting practices, foreign tax laws, foreign language, etc.) when the foreign money sources and consequent inquiries are more than minimal. The use of a third-party consulting firm that has presence in foreign countries involved would be utilized only to assist with requesting and gathering the financial documents necessary for investigation, assist with translations, and advise the Bureau on foreign accounting practices. The role of the third-party consulting firm is one of information gathering and consulting capacity only and not ever in a capacity of making suitability determinations or recommendation for licensure.

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 prohibit 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.