

**TITLE 4.**  
**CALIFORNIA GAMBLING CONTROL COMMISSION**  
**NOTICE OF PROPOSED REGULATORY ACTION**  
**APPLICATION WITHDRAWALS AND ABANDONMENTS;**  
**AND HEARING PROCEDURES**  
**CGCC-GCA-2014-02-R**

**NOTICE IS HEREBY GIVEN** that the California Gambling Control Commission (Commission) is proposing to take the action described below in the Informative Digest and Policy Statement Overview. Any interested person, or his or her authorized representative, may present statements or arguments orally or in writing relevant to the proposed regulatory action at a public hearing to be held at **10:00 a.m. on June 18, 2014**, at 2399 Gateway Oaks Drive, Suite 100, Sacramento, CA 95833.

**WRITTEN COMMENT PERIOD**

Written comments relevant to the proposed regulatory action, including those sent by mail, facsimile, or e-mail, may be submitted to the Commission at any time during the public comment period. To be eligible for the Commission's consideration, all written comments must be **received at its office no later than 5:00 p.m. on April 7, 2014**. Written comments should be directed to one of the individuals designated in this notice as a contact person. **Comments sent to persons and/or addresses other than those specified under Contact Persons, or received after the date and time specified above, will be included in the record of this proposed regulatory action, but will not be summarized or responded to regardless of the manner of transmission.**

**ADOPTION OF PROPOSED ACTION**

After the close of the public comment period, the Commission, upon its own motion or at the instance of any interested party, may thereafter formally adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit oral or written testimony related to this proposal or who have requested notification of any changes to the proposal.

**AUTHORITY AND REFERENCE**

Pursuant to the authority vested by sections 19811, 19823, 19824, 19825, 19840, 19841, 19853, 19854, 19869, 19870, 19871, 19872, 19893 and 19951, of the Business and Professions Code,

and sections 11400.20, 11410.40, 11415.10, and 11415.20 of the Government Code; and to implement, interpret or make specific sections 19800, 19805, 19811, 19816, 19821, 19822, 19823, 19824, 19824.5, 19825, 19826, 19827, 19834, 19856, 19859, 19867, 19868, 19869, 19870, 19871, 19872, 19876, 19880, 19881, 19882, 19883, 19890, 19891, 19892, 19930, 19951, and 19984 of the Business and Professions Code and sections 11425.10, 11430.10, 11430.20, 11430.30, 11430.50, 11430.60, 11512, 11517 and 11521, of the Government Code, the Commission is proposing to adopt the following changes to Chapter 1 of Division 18 of Title 4 of the California Code of Regulations:

## **INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW**

### **INTRODUCTION:**

The Commission is the state agency charged with the administration and implementation of the Gambling Control Act (Act).<sup>1</sup> The Commission is authorized to adopt regulations governing the application for a license, permit, registration or approval,<sup>2</sup> including the consideration of an application at an evidentiary hearing.<sup>3</sup> Alternatively, the Commission may consider an application in accordance with Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.<sup>4</sup>

When considering an application through the evidentiary hearing process, the Act provides guidance for the format of the hearing.<sup>5</sup> In addition, the Act provides guidance for restricting communications between the various parties and the Commission.<sup>6</sup> Prior to the initiation of the evidentiary hearing process, the Act provides guidance for the withdrawal of an application.<sup>7</sup>

### **EXISTING LAW:**

Section 19825 of the Business and Professions Code<sup>8</sup> provides authority for the Commission to elect to utilize the administrative procedures act in place of a hearing or meeting of an adjudicative nature.

Section 19870, subdivision (a) provides authority for holding evidentiary hearings, and states that “the Commission, after considering the recommendation of the chief and any other testimony and written comments as may be presented at the meeting, or as may have been submitted in writing to the commission prior to the meeting, may either deny the application or grant a license to an applicant who it determines to be qualified to hold the license.”

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<sup>1</sup> Business and Professions Code, Division 8, Chapter 4, section 19800 et seq.

<sup>2</sup> Business and Professions Code section 19824, subdivision (a).

<sup>3</sup> Business and Professions Code section 19870.

<sup>4</sup> Business and Professions Code section 19825.

<sup>5</sup> Business and Professions Code section 19871.

<sup>6</sup> Business and Professions Code section 19872.

<sup>7</sup> Business and Professions Code section 19869.

<sup>8</sup> All statutory references hereinafter are to the Business and Professions Code, unless otherwise specified.

Section 19871, subdivision (a) provides authority for promulgating regulations pertaining to the evidentiary hearing process, and provides a list of items that must be part of the process by stating that “[t]he Commission meeting described in section 19870 shall be conducted in accordance with regulations of the Commission...”

**EFFECT OF REGULATORY ACTION:**

This proposed regulation has been prepared to implement sections 19869, 19870, 19871 and 19872 by providing a clear structure for the consideration of applications by the Commission that provides both flexibility to the applicant and ensures that the Commission is able to review any information it needs in order to determine if an applicant is a person of good character, honesty and integrity. This regulation establishes clear direction by identifying the steps in the process. Providing clarity helps to ensure consistency and uniformity. The ability to provide a clear procedure for the consideration of information is a vitally important part of ensuring that the Commission makes informed decisions and furthers the State’s interest in fairly and effectively regulating gambling.

**ANTICIPATED BENEFITS OF PROPOSED REGULATION:**

These proposed regulations have the benefit of providing *ex parte* guidelines and will clarify the processes for an applicant to withdraw an application or for the Bureau of Gambling Control (Bureau) or Commission to deem an application abandoned. The proposed action also provides clarity to the evidentiary hearing process that will help provide applicants with a clear understanding of what happens to the application once submitted, from the review by the Bureau through consideration by the Commission at a non-evidentiary hearing meeting and what could happen if the application should not be approved. In clarifying the hearing process, the proposal also provides clear benchmarks for when documents, testimony and other information will be required by each party and which may be relevant and material to a Commission decision. This clarity enhances the fairness of the eventual decision and improves the legitimacy and transparency of the decision making process.

**SPECIFIC PROPOSAL:**

This proposed action would make the following specific changes in Chapter 1 of Division 18 of Title 4 of the California Code of Regulations:

ARTICLE 1. DEFINITIONS AND GENERAL PROCEDURES.

Amend Section 12002. General Definitions

This proposed action would add seven terms to Section 12002. In addition, five subsections would be updated, and others would be renumbered accordingly.

Subsection (a) adds the term “Administrative Procedure Act Hearing” or “APA hearing” which defines evidentiary hearings which occur pursuant to sections 19825 and 19930 and which proceed pursuant to the Administrative Procedure Act<sup>9</sup> (APA) and Section 1000 et

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<sup>9</sup> Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code

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seq. of Title 1 of the California Code of Regulations. This definition provides needed separation between the more formal APA hearing and the default Gambling Control Act (GCA) hearing defined below.

Subsection (c) is modified to eliminate language that is no longer applicable in regard to Bureau practices. In the Act, “department” refers to the Department of Justice. While the Act assigns certain powers and authority to the department, in actual practice the responsibility for fulfilling the obligations imposed upon the department is delegated to the Bureau, pursuant to section 19810. Language has been added to make this clarification.

Subsection (d) adds the term “Bureau report” to help delineate a point in time under the Act when the Bureau has completed certain efforts in regards to an application. This is beneficial to the Commission, the applicant and the Bureau from an operational perspective.

Subsection (g) updates the definition of “Conviction” to better conform to Penal Code section 1000.1.

Subsection (h) updates the definition of “Deadly Weapon” to conform with recent amendments to the Penal Code which changed the pertinent section from 12020 to 16430.

Subsection (i) adds the term “Employee of the Commission” to differentiate between employees of the Commission and “Members of the Commission” for purposes of prohibitions on ex parte communications. Providing a distinction helps clarify the applicability of the provisions of the Act regarding ex parte communications at different points in the application process as well as helping to deter inappropriate communications.

Subsection (k) adds the abbreviation “GCA” to the previous definition of Gambling Control Act for clarification.

Subsection (l) adds the term “GCA hearing” which is a default evidentiary hearing available to an applicant under the Act. This evidentiary hearing occurs pursuant sections 19870 and 19871. This definition provides the basis for clarity between the two types of hearings (GCA and APA).

Subsection (m) adds the term “Interim License” which is a term more fully developed later in these regulations and in prior regulations adopted by the Commission. Essentially, it is a license of finite duration during the pendency of some ongoing or future event such as an evidentiary hearing, pending accusation, or application process. This definition is necessary to define a category of license which now covers both interim gambling licenses, which were addressed in an approved prior rulemaking package and interim renewal licenses which are addressed in this rulemaking package.

Subsection (n) defines “Member of the Commission” as an individual appointed to the Commission by the Governor pursuant to sections 19811 and 19812. Similar to subsection

(h), this helps clarify the application of the provisions of the Act regarding *ex parte* communications, who can communicate with whom, and when they can communicate.

Subsection (q) adds the term “Temporary License” which is a license that the Commission may issue prior to the consideration of an application. A temporary license is generally subject to conditions that the Commission may deem appropriate on a case-by-case basis. These licenses have been granted in the past and are specifically referenced in section 19824, but have not been specifically addressed in current regulations.

Adopt Section 12006. Service of Notices, Orders and Communications

This proposed action describes how the Commission will communicate with applicants and is the default manner for all notices proposed in this action.

Subsection (a) specifies that when this section is cited, notices will be sent to an applicant, the licensee or designated agent by certified mail at their mailing address. This helps make clear what the parties can expect in advance as well as provide guidance to Commission staff.

Subsection (b) specifies that notice is effective upon mailing of the communication. This helps make clear to parties when the relevant time frames under these regulations and the Act begin to run so that everyone can act accordingly.

Adopt Section 12012. Ex Parte Communication

This proposed action addresses and defines *ex parte* communications. The Act<sup>10</sup> imposes prohibitions on communication between “Members of the Commission” and an applicant or an agent of an applicant under certain conditions. These prohibitions are ambiguous. Section 12012 is added to clarify and provide guidance regarding prohibited communications to Members of the Commission, employees of the Commission, Bureau staff, the applicant, and interested parties. Specifically, the proposed regulation does the following:

Subsection (a) states that any communication by a party with the Commission without first providing notice to all parties so that there will be opportunity to participate in the communication is an *ex parte* communication or *ex parte*.

Subsection (b) clarifies that the *ex parte* limitations of section 19872, subdivisions (a) and (b), apply as soon as an application is filed with the Bureau until the Bureau report is issued. This clarification is necessary to provide a finite starting and ending point to the *ex parte* limitations, which provides reasonable guidelines for all parties.

Subsection (c) clarifies that the *ex parte* limitations of section 19872, subdivisions (a) and (c), apply when the Bureau report is issued until a decision is final pursuant to Section 12066. This clarification is necessary to provide a finite starting and ending point to the *ex parte* limitations, which provides reasonable guidelines for all parties.

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<sup>10</sup> Specifically, section 19872

Subsection (d) excludes from ex parte communications those which are:

- Related to procedure or at a properly noticed meeting;
- Provided by the applicant to an employee or member of the Commission while the application is pending disposition before either the Bureau or the Commission, which is simultaneously provided to the Bureau;
- Provided by the Bureau to an employee or member of the Commission while the application is pending disposition before the Commission, which is simultaneously provided to the applicant; or,
- Provided by an interested party while the application is pending disposition before either the Bureau or the Commission to an employee or member of the Commission, which is also provided to the Bureau and applicant.

An exception is allowed for the Bureau to provide confidential information to the Commission without it also being provided to the applicant.

Subsection (e) clarifies that the ex parte limitations of Government Code sections 11430.10 through 11430.80 apply when an evidentiary hearing has been selected either by the Commission or the Executive Director, until the decision is final or when the Bureau has filed an accusatory pleading under Section 12554 until any decision is final. This clarification is necessary to provide a finite starting and ending point to the ex parte limitations, which provides reasonable guidelines for all parties.

Subsection (f) specifies what must happen if an applicant communicates on an ex parte basis. The information must be provided to the Bureau, the communication may be used as basis to deny the applicant's application, and any subsequent meeting may be delayed. This helps alleviate any prejudice that the ex parte communication may have caused and also eliminates any incentive for the applicant to try to gain an advantage.

Subsection (g) provides operational guidance to Commissioners concerning what happens if a member of the Commission has an ex parte communication; the communication must be publically disclosed along with any information or documents being provided to the other party as soon as possible. Any scheduled meeting may be rescheduled to provide sufficient time to allow all parties to fully participate in the communication. In addition, the member of the Commission may voluntarily withdraw. The proposal also provides options on involuntary withdrawal as well, which include not allowing for involuntary withdrawals, allowing the Commission to consider involuntary withdrawals or allowing sufficient time for an applicant to seek judicial recourse should they feel an involuntary withdrawal is warranted.

Subsection (h) specifies that the Commission and its employees are also subject to ex parte rules in their communications upon the merits of the application with either the applicant or the Bureau. This clarifies that ex parte limitations are in effect for communication in both directions with the Commission and its staff.

Amend Section 12015. Withdrawal of Applications

This proposed action would renumber Section 12047 as Section 12015. This renumbered section continues the current application withdrawal procedures and expands upon them. The application process can be lengthy, especially for those applying to be owners of a cardroom, and requires a significant investment in time and funds for the applicant, the Bureau, and the Commission. If at any point in the process, the applicant no longer wishes to proceed with the application, it is beneficial to all parties to have a procedure by which the application process can be ended. The Act, in section 19869, provides for a request to withdraw an application and differentiates between a withdrawal granted “with prejudice” and one granted “without prejudice.”

Subsection (a) defines the time during which an applicant may seek to withdraw his or her application and establishes internal procedures for Commission staff for confirmation of the request. This subsection will provide helpful guidance to the industry, Bureau and Commission staff as to the relevant expectations at any given point in time for withdrawal procedures.

Subsection (b) states that the Commission may grant a request either with or without prejudice, at its discretion, based upon the relevant facts of the application and request. This ensures that the Commission can act in the best interest of the public as directed in statute.

Subsection (c) requires any unused portion of the background investigation deposit to be returned if the request to withdraw is granted. The background deposit is intended to reimburse the Bureau for their expenses related to a background investigation. However, if an application is withdrawn and no further background investigation is required, any unexpended deposit balance should be returned to the applicant. This provides guidance to the Bureau and is informative to the applicant.

Subsection (d) clarifies that, if a request for withdrawal is granted with prejudice, the applicant is not eligible to re-apply for licensure until after one year from the date the requested is granted. This prohibition is imposed by section 19869 and is included in the regulation for clarity.

Subsection (e) requires the Bureau to continue and conclude its investigation of an applicant in the event a request to withdraw an application is denied, as allowed by section 19869.

Subsection (f) clarifies that, consistent with other sections, an applicant who withdraws their application shall not have a right to an evidentiary hearing on the decision.

Amend Section 12017. Abandonment of Applications

This proposed action would renumber Section 12048 as Section 12017. This renumbered section continues the practice of allowing the abandonment of applications under limited specified circumstances.

Subsection (a) defines the process whereby the Chief of the Bureau may deem an application abandoned based on certain criteria, including when an applicant is essentially no longer cooperating in the application process. This section is intended to provide a helpful mechanism to address applications which do not warrant continued Bureau investigation due to lack of cooperation, interest, or other circumstances that may warrant abandonment, such as the applicant's death or unemployment.

Subsection (b) defines a process whereby the Executive Director, after the Bureau has issued its report and has not recommended denial, may deem an application abandoned based on certain criteria, including when an applicant is essentially no longer cooperating in the application process. This subsection is intended to provide a helpful mechanism to address applications which do not warrant Commission consideration due to lack of cooperation, interest, or other circumstances that may warrant abandonment, such as the applicant's death or unemployment.

Subsection (c) defines a process where the Commission, after the Bureau has issued its report, may deem an application abandoned based on certain criteria, including when an applicant is essentially no longer cooperating in the application process. This subsection is intended to allow the Commission to consider applications that warrant consideration due to lack of cooperation, interest, or other circumstances that may warrant abandonment, such as the applicant's death or unemployment.

Subsection (d) defines the treatment of corresponding deposits related to an abandoned application. This provides important details about the abandonment process.

Subsection (e) clarifies that, consistent with other sections, an applicant whose application has been abandoned shall not have a right to an evidentiary hearing on the decision.

#### Adopt Section 12035. Issuance of Interim Renewal License

This proposed action adds a new interim renewal license category which extends a current license approval to allow for an evidentiary hearing to occur without an applicant becoming unlicensed prior to Commission action. By holding this interim renewal license, an applicant is responsible for any existing conditions and for those fees normally required of an applicant/licensee.

Subsection (a) states that an interim renewal license shall be issued after the Commission or Executive Director has elected to hold an evidentiary hearing upon a renewal application or where an accusation has been filed. The applicant's previously issued license will, at some point, expire, leaving him or her without a valid license and legally unable to continue in the licensed activity. The interim renewal license is issued to address this gap in licensure while the evidentiary hearing is pending.

Subsection (b) provides the specifics and nature of the interim renewal licenses; including, any restrictions or limitations, the fees required and how the licensee interacts with any ongoing procedures of the Commission.

ARTICLE 2. PROCEDURES FOR HEARING AND MEETINGS ON APPLICATIONS.

Amend Section 12050. Bureau Recommendation and Information

The Act, in subdivision (a) of section 19826, allows the Bureau to recommend the denial or limitation, conditioning, or restriction of any license, permit, or approval, after the completion of a background investigation. This proposed action details the manner in which any recommendation shall be provided to the applicant and how the information may be considered by the Commission.

Subsection (a) requires the Bureau to provide the applicant with the Bureau's report, any recommendation, and any other documents or information at the same time it is provided to the Commission. This requirement ensures that all parties are informed, are provided the same information, and can all properly address the Commission at a Commission meeting.

Subsection (b) clarifies that the authority to make a decision on the suitability of an applicant ultimately rests with the Commission and neither the Commission nor an Administrative Law Judge is bound by the Bureau's recommendation.

Amend Section 12052. Commission Meetings; General Procedures; Scope; Rescheduling of Meeting

This proposed action provides general procedures regarding the hearing process.

Subsections (a) and (b) clarify Commission authority and specify that this article does not apply to disciplinary proceedings. This helps all parties understand their rights and obligations.

Subsection (c) lists the specific notices that applicants are to receive in advance of a meeting and what those notices are to contain. This is to ensure that each applicant is informed and has an opportunity to address the Commission if they so choose. In addition, this subsection incorporates a Notice of Defense Form (CGCC-ND-002). This new form is provided to the applicant to complete, and once returned to the Bureau and Commission, provides important guidance for how the evidentiary hearing process will proceed. The applicant may accept any proposed conditions, waive their participation in the evidentiary hearing or may indicate their interest in continuing and participating in an evidentiary hearing. Should the applicant waive participation in their evidentiary hearing, the subsection provides guidance for how the Commission may choose to consider the application. Should the applicant indicate a desire to participate in the hearing, a space is provided where any legal counsel's or other representative's information can be provided to the Commission and Bureau.

Subsection (d) codifies existing practices which allow the Executive Director to reschedule matters before a meeting and the Commissioners to reschedule matters at a meeting. It does not change the current operation of the Commission.

Subsection (e) clarifies that anyone who provides testimony at a Commission meeting may be sworn in by a member of the Commission or the Executive Director.

Adopt Section 12054. Consideration at Regular (Bagley-Keene) Commission Meetings

This proposed action provides procedural guidance by laying out the various decisions the Commission may make at a non-evidentiary meeting in regards to an application.

Subsection (a) describes the actions Commissioners may take at a Commission meeting, including approval of an application, sending a matter to a hearing under section 12056 (an evidentiary hearing), extending a license as necessary under section 19876(c), tabling or continuing an item, approving the withdrawal of an application, deeming a license abandoned, and granting an interim renewal license if appropriate. This list is intended to be informative and provides all parties with a non-exhaustive list of the possible actions that may occur during the meeting process.

Subsection (b) states that evidentiary hearings are not available to an applicant when the Commission approves or denies withdrawal or makes a finding of abandonment under paragraphs (5) and (6). This is to improve efficiency and clarity in the application process. If a party wanted to contest the rejection of the withdrawal or abandonment via an evidentiary hearing they are still able to avail themselves of the normal licensing process which affords them an opportunity for an evidentiary hearing.

Adopt Section 12056. Evidentiary Hearing

This proposed action defines the manner by which the Commission or Executive Director determines between an APA and GCA evidentiary hearing format once the Commission has elected to hold an evidentiary hearing. Additional procedural information is also provided.

Subsection (a) states that a GCA hearing, as described in sections 19870 and 19871, is the default evidentiary hearing path, unless otherwise specified by the Commission or the Executive Director. The proposal provides an alternative that would limit the selection of an APA hearing to just those cases where the Bureau has recommended denial. This provides helpful procedural guidance to the applicant as to how an evidentiary hearing is selected.

Another Alternative for the use of the APA hearing process is also being proposed. This alternative would allow for the Commission to utilize the APA hearing process with any application, regardless of Bureau recommendation, but would designate Commission staff to present the case in situations where the Bureau had not recommended denial. This alternative would require numerous adjustments to other sections as follows:

- In addition to the definition of “Employee of the Commission,” in Section 12002, the additional definitions of “Advisor to the Commission” and “Advocate of the Commission” would be required. “Advocate of the Commission” would provide for those staff tasked with presentation during the APA hearing process in the event that the Bureau had not recommended denial. “Advisor to the Commission” would be any employee of the Commission not designated as advocate to the Commission.

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- The proposed *ex parte* regulations of Section 12012 would be revised to reflect that any advocates to the Commission would be differently directed in their ability to communicate with the applicant, Bureau and Commission on items related to the merits of a specific application.
- The determination of evidentiary hearings in Section 12056 would be revised to allow for, in cases where an APA hearing is elected and the Bureau has not recommended denial, employees of the Commission to be designated as advocates of the Commission.
- The APA hearing process, in Section 12058, would be revised to allow for the advocate to the Commission to prepare and file the Statement of Issues in cases where the Bureau had not recommended denial.

Subsection (b) reiterates the requirement that certain elements of a Bureau report remain confidential, as specified in the Act. This is meant to comport with the limitations of the Act and does not provide any new basis for withholding information.

Subsection (c) makes clear that under an APA or a GCA hearing, each side bears their own costs. This simply provides guidance to public expectations regarding the licensure process.

Adopt Section 12058. APA Hearings

This proposed action provides procedural guidance for when the Commission or Executive Director elects to hold the evidentiary hearing through the processes of the APA.

Subsection (a) states that the Commission will determine whether an APA hearing will be held before an Administrative Law Judge sitting on behalf of the Commission or before the Commission itself with an Administrative Law Judge presiding, in accordance with Government Code section 11512, and that notice of the hearing will be provided pursuant to the APA. This provides procedural guidance to all parties.

Subsection (b) states that the burden is on the applicant at all times to prove his or her qualifications under the Act. This reiterates the mandate in the Act that the applicant must prove they are suitable for licensure.

Subsection (c) states that the Bureau will prepare and file a Statement of Issues according to Government Code section 11504, whether they made a recommendation or not. This provides guidance to all parties.

Subsection (d) makes it clear that the Bureau is not required to make a recommendation or seek any particular outcome in the APA process, but rather to merely provide the facts to the decision makers. This makes clear what is expected of all parties. This subsection would not be included if the alternative in Section 12056 is adopted limiting the selection of an APA hearing to those cases where the Bureau has recommended denial.

Subsection (e) discusses the process at the end of an evidentiary hearing for the Commission to reach a decision. This provides guidance to the applicant and the Commission.

Subsection (f) clarifies that only the Executive Director or the Commission can delay or cancel any scheduled hearing date.

Adopt Section 12060. GCA Hearings

This proposed action would implement the evidentiary hearing process pursuant to sections 19870 and 19871. This process provides a clear method for the applicant to show the Commission that they meet the requirements of the Act and are of good character, honesty and integrity.

Subsection (a) creates a path for the Executive Director to schedule an application for a GCA hearing without an initial Bagley-Keene public meeting. The Commission still retains the option of sending a matter that has been scheduled for a GCA hearing to an APA hearing. This is intended to provide a more expeditious resolution of certain applications which would benefit all applicants and the public in general; and, it is also consistent with the spirit of the Act.

Subsection (b) provides guidelines for when the Commission elects to hold an evidentiary hearing pursuant to Section 12054. This is intended to provide a timeline that is accelerated when no documents or witness lists are being included.

Subsection (c) requires the Commission to designate a presiding officer who may be either a member of the Commission's legal staff or an Administrative Law Judge. This provides important clarification under the Act and a procedural requirement for the Commission.

Subsection (d) allows the applicant or the Bureau to request, in writing to the Executive Director, a continuation of the GCA hearing. This allows for a delay as necessary to eliminate any potential burden on the parties and provides flexibility for the Commission.

Subsection (e) requires the Bureau and applicant to exchange certain information and documents in advance of the GCA hearing. The Bureau is required to exchange at least 45 days prior to the GCA hearing, while the applicant is required to exchange at least 30 days prior to the GCA hearing. This provides guidance to both parties as to procedure.

Subsection (f) provides that the presiding officer rules on the admissibility of evidence and that any ruling is final. This includes that relevant evidence will be admitted and that there are no applicable technical rules which would bar evidence from being admitted so long as reasonable persons would rely on it. This also includes when and how pre-hearing conferences may occur as well as what issues may be discussed during the conference. This provides guidance to both parties and the presiding officer.

Subsection (g) allows the Commission to prohibit the admission of certain evidence upon a showing of prejudice. This provides guidance to both parties so as to discourage certain potential discovery abuses for any potential advantage.

Subsection (h) requires the Bureau to commence the GCA hearing by presenting the facts and information in the Bureau's report, the background investigation, and the basis for any recommendation. The Bureau is not required to make any recommendation or seek any particular outcome, unless it so chooses, but simply to provide the Commission with the facts and law related to the application along with their background investigation so that the Commission can make an informed decision. This provides helpful procedural guidance to the Bureau and applicant.

Subsection (i) reiterates that the burden remains with the applicant to prove their suitability under the Act.

Subsection (j) makes clear that applicants may represent themselves or retain an attorney or lay representative. This is meant to identify the representation options for the evidentiary hearing proceeding.

Subsection (k) discusses the rights the Bureau or applicant has during a GCA hearing including calling witnesses, introducing documentary evidence, cross-examining witnesses, and impeaching witnesses. The applicant may also be called to testify. This provides helpful procedural guidance to the parties.

Subsection (l) requires that oral evidence be taken upon oath or affirmation, administered by the Executive Director, a member of the Commission, or an Administrative Law Judge. This provides helpful procedural guidance to all.

Subsection (m) discusses the process at the end of an evidentiary hearing for the Commission to reach a decision. This provides guidance to the parties.

#### Adopt Section 12062. Issuance of GCA Hearing Decisions

This proposed action describes the procedural method and requirements by which the Commission proposes its decision following a GCA evidentiary hearing.

Subsection (a) requires that a member of the Commission's legal staff will prepare and submit to the Commission a proposed decision with a detailed statement of reasons within 30 days of the conclusion of the hearing. This provides guidance to the parties and the Commission.

Subsection (b) requires the Commission to issue its decision, in compliance with section 19870, within 45 days of the issuance of the proposed decision. The decision shall be served upon the applicant at the applicant's address of record by certified mail. This provides guidance to the parties and the Commission.

Subsection (c) requires all decisions to specify an effective date and allows the inclusion of directions as to any stay provisions or orders to divest. This provides guidance to the parties and the Commission.

Subsection (d) restricts voting on the decision to only members of the Commission who heard the evidence presented in the hearing, unless such restriction would prevent the existence of a quorum. In such case, another member may be allowed to vote after a review of the record and any additional briefing or hearing deemed necessary. This provides guidance to the parties and the Commission.

Adopt Section 12064. Requests for Reconsideration

This proposed action defines the procedure by which an applicant can request reconsideration from the Commission after an evidentiary hearing but before any decision becomes final.

Subsection (a) allows an applicant to request reconsideration of an issued decision within 30 days of service of that decision.

Subsection (b) specifies the conditions under which an applicant may request reconsideration, based upon either newly discovered evidence or legal authorities that could not reasonably have been presented at the hearing or before the Commission's issuance of a decision; or, other good cause for which the Commission may decide, in its sole discretion, merits reconsideration.

Subsection (c) authorizes the Executive Director to initially determine whether a request for reconsideration is complete and should be placed on the Commission's agenda for consideration. This provides important guidelines for the handling of a request including; that the approved request is to be placed on the Commission's agenda within 60 days of its receipt, and requires the applicant to be given at least 10 days advance notice of the Commission meeting at which the request will be considered. This paragraph also states that the applicant will be notified of the Commission's decision on the request within 10 days following the meeting.

Subsection (d) states that a decision will be stayed while the request is under review by the Commission.

Subsection (e) clarifies that the granting or denying of a reconsideration request shall be at the sole discretion of the Commission.

Adopt Section 12066. Final Decisions; Judicial Review

This proposed action provides procedural guidance to applicants related to when a decision of the Commission becomes final and what judicial remedy may be available.

Subsection (a) provides that a decision to withdraw or a finding of abandonment is final, upon either a decision by the Commission or 30 days after a notice of abandonment is issued by either the Executive Director or the Bureau.

Subsection (b) provides that the decision of the Commission following a GCA or APA hearing shall become final: 30 days after service of the decision, if reconsideration has not

been granted; or immediately after the Commission affirms its decision or issues a reconsidered decision, if reconsideration has been granted.

Subsection (c) reiterates that the appeal by the applicant is subject to judicial review under Code of Civil Procedures section 1085.

Adopt Section 12068. Decisions Requiring Resignation or Divestiture

This proposed action relocates much of subsection (c) from former Section 12050 to this section. It remains in substantially the same form.

Repeal Section 12218.5. Withdrawal of Request to Convert Registration to License

This proposed action would repeal this section. With a reframing of general withdrawal provisions, this section is no longer needed.

Repeal Section 12234. Withdrawal of Request to Convert Registration to License

This proposed action would repeal this section. With a reframing of general withdrawal provisions, this section is no longer needed.

## **CONSISTENCY OR COMPATIBILITY WITH EXISTING STATE REGULATIONS**

The Commission has evaluated this regulatory action and determined that the proposed regulations are neither inconsistent nor incompatible with any other existing state regulations.

The Commission is vested with jurisdiction and supervision over gambling establishments and over all persons or things having to do with the operations of gambling establishments in California. The scope and content of the Commission's regulations is generally set forth in section 19841. As provided in subdivision (a) of section 19870, the Commission may approve or deny a license "... after considering the recommendation of the chief and any other testimony and written comments as may be presented at the meeting..." As provided in subdivision (a) of section 19871, "the Commission meeting described in Section 19870 shall be conducted in accordance with regulations of the commission..." Those regulations that currently implement the Commission's authority to establish hearing procedures are being amended in this proposal. The only equivalent process available to the Commission outside of its regulatory authority is provided in section 19825 which provides that "[t]he Commission may require that any matter that the Commission is authorized or required to consider in a hearing or meeting of an adjudicative nature regarding the denial...of a license...be heard and determined in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code."

While the Bureau [Department of Justice] has also been granted some authority to adopt regulations (section 19826), that authority is limited to the adoption of regulations reasonably related to its specified duties and responsibilities. These proposed regulations are not inconsistent or incompatible with any Bureau regulation (Title 11, CCR, Division 3), nor do they fall within the Bureau's authority to adopt regulations.

### **COMPARABLE FEDERAL LAW**

There are no existing federal regulations or statutes comparable to the proposed regulations.

### **FISCAL IMPACT ESTIMATES**

**FISCAL IMPACT ON PUBLIC AGENCIES INCLUDING COSTS OR SAVINGS TO STATE AGENCIES OR COSTS/SAVINGS IN FEDERAL FUNDING TO THE STATE:** None.

**NON-DISCRETIONARY COST OR SAVINGS IMPOSED UPON LOCAL AGENCIES:** None.

**MANDATE IMPOSED ON ANY LOCAL AGENCY OR SCHOOL DISTRICT FOR WHICH PART 7 (COMMENCING WITH SECTION 17500) OF DIVISION 4 OF THE GOVERNMENT CODE REQUIRES REIMBURSEMENT:** None.

**COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT FOR WHICH PART 7 (COMMENCING WITH SECTION 17500) OF DIVISION 4 OF THE GOVERNMENT CODE REQUIRES REIMBURSEMENT:** None.

**EFFECT ON HOUSING COSTS:** None.

#### **IMPACT ON BUSINESS:**

The Commission has made an initial determination that the adoption of these regulations would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

This proposed action imposes no mandatory requirement on businesses. The regulation simply provides a clear process to follow once a party decides to exercise their right to submit an application for licensure by the Commission. While there may be some cost to a business by submitting an application, the cost would be at the discretion of the party. As the law currently requires a form of evidentiary hearing, and the proposed regulations simply codify the Commission's current practice and procedure, there is no significant change in the burden of the process on affected businesses.

#### **COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS:**

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

#### **EFFECT ON SMALL BUSINESS:**

The Commission has determined that the proposed regulatory action may affect small businesses, if any affected gambling enterprise would qualify as a small business.

This proposal is applicable to only adjudicative meetings and hearings already being conducted by the Commission. These regulations would only be used by Commission staff, the Bureau of Gambling Control and applicants or their attorney of record. For applicants subject to an adjudicative proceeding, there is no requirement to obtain an attorney. The regulation simply provides applicants a clear process to follow to exercise their rights to request licensure and for the Commission to consider all relevant witnesses, information and documents.

## **RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

### **IMPACT ON JOBS/NEW BUSINESSES:**

The Commission has determined that this regulatory proposal will not have a significant impact on the creation of new jobs or businesses, the elimination of jobs or existing businesses, or the expansion of businesses in California.

The basis for this determination is that this proposed action imposes no mandatory requirement on businesses or individuals and does not significantly change the Commission's current practice and procedure. The proposed action simply provides a clear process to follow once a party has decided to submit an application for Commission consideration.

### **BENEFITS OF PROPOSED REGULATION:**

This proposed action will have the benefit of providing a clear evidentiary hearing procedure and *ex parte* guidelines. This evidentiary hearing process will help to provide applicants with a clear understanding of the process their application will follow, from review of the Bureau through consideration by the Commission at a non-evidentiary hearing through the evidentiary hearing process. Moreover, it will facilitate the production and presentation of all documents, testimony and other information which may be relevant and material to a Commission decision thereby enhancing the fairness of the decision and the legitimacy and transparency of the decision making process.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

## **CONSIDERATION OF ALTERNATIVES**

The Commission must determine that no reasonable alternative considered by the Commission or that has otherwise been identified and brought to the attention of the Commission would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

### **INITIAL STATEMENT OF REASONS, INFORMATION AND TEXT OF PROPOSAL**

The Commission has prepared an Initial Statement of Reasons and the exact language for the proposed action and has available all the information upon which the proposal is based. Copies of the language and of the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Commission at 2399 Gateway Oaks Drive, Suite 220, Sacramento, CA 95833-4231.

### **AVAILABILITY AND LOCATION OF THE RULEMAKING FILE AND THE FINAL STATEMENT OF REASONS**

All the information upon which the proposed action is based is contained in the Rulemaking File that will be available for public inspection and copying at the Commission's office throughout the rulemaking process. Arrangements for inspection and/or copying may be made by contacting the backup contact person named below.

Upon its completion, the Final Statement of Reasons will also be available. A copy of the Final Statement of Reasons may be obtained, once it has been prepared, by making a written request to one of the contact persons named below or by accessing the Commission's Web site listed below.

### **CONTACT PERSONS**

All comments and inquiries concerning the substance of the proposed action should be directed to the following **primary** contact person:

James B. Allen, Manager  
Regulatory Actions Unit  
California Gambling Control Commission  
2399 Gateway Oaks Drive, Suite 220, Sacramento, CA 95833-4231  
Telephone: (916) 263-4024  
Fax: (916) 263-0499  
E-mail: [jallen@cgcc.ca.gov](mailto:jallen@cgcc.ca.gov)

Requests for a copy of the Initial Statement of Reasons, proposed text of the regulation, modified text of the regulation, if any, or other technical information upon which the proposed action is based should be directed to the following **backup** contact person:

Joshua Rosenstein, Regulatory Actions Analyst  
Regulatory Actions Unit  
California Gambling Control Commission  
2399 Gateway Oaks Drive, Suite 220, Sacramento, CA 95833-4231  
Telephone: (916) 274-5823  
Fax: (916) 263-0499  
E-mail: [jrosenstein@cgcc.ca.gov](mailto:jrosenstein@cgcc.ca.gov)

NOTICE OF PROPOSED REGULATORY ACTION  
APPLICATION WITHDRAWALS AND  
ABANDONMENTS, AND HEARING PROCEDURES  
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### **WEB SITE ACCESS**

Materials regarding this proposed action are also available on the Commission's Web site at [www.cgcc.ca.gov](http://www.cgcc.ca.gov).