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Re: California Gaming Association's Objections to Notice of Proposed Regulatory Action: 2026 Update to Annual Fees, CGCC-GCA-2025-05-R

To the Office of Administrative Law ("OAL") Reference Attorney and the California Gambling Control Commission:

We write on behalf of the California Gaming Association ("CGA") to comment on and object to the California Gambling Control Commission's ("Commission") Proposed Regulatory Action: 2026 Update to Annual Fees, CGCC-GCA-2025-05-R ("Proposed Action"). The Proposed Action sets calendar year 2027 annual fees to be invoiced in October 2026.[1]

INTRODUCTION

CGA's membership includes both licensed cardrooms and Third-Party Providers of Proposition Players Services ("TPPPS") subject to the Commission's annual fees. CGA objects to the Proposed Action on these grounds:

[1] Initial Statement of Reasons: Update to Annual Fees, CGCC-GCA-2025-05-R, p. 1.

1. The rulemaking file is incomplete. Therefore, the Proposed Action will not withstand judicial review.

2. The Proposed Action is unlawful because the Commission allocates improper and excessive costs to the annual fee, which collect more from the cardrooms and TPPPS businesses than the Commission's reasonable costs for non-licensing activities relating to the cardrooms and TPPPS.

3. The annual fee calculation does not include a reconciliation or offset to account for excess annual fees collected in calendar year 2025. The Commission's regulatory statements pledged to consider such an offset if necessary.

4. The Proposed Action is unlawful because it apportions the annual fee among cardrooms and TPPPS using gross revenues. As a result, the annual fee paid by each cardroom and TPPPS does not bear a fair or reasonable relationship to each entity's burdens on, or benefits received from, the Commission's regulatory activities relating to each cardroom and TPPPS

1. The Rulemaking File Is Incomplete

Government Code section 11347.3 requires the Commission to "maintain a file of each rulemaking that shall be deemed to be the record for that rulemaking proceeding." Section 11347.3, subdivision (b) lists the documents that shall be part of the rulemaking file, including "[a]ll data and other factual information," along with any "technical, theoretical, and empirical studies or reports … ."[2]"All data and factual information" is a broad category, embracing not only a consultant's final report, but the information underlying their findings, including emails between the agency and consultant.[2]

As discussed in CGA's comment letters on the prior fee modernization regulations and annual fees updates (OAL Matter Nos. 2022-0927-02E, 2022-0922-01EE, 2022-1216-01EE, 2023-0306-03, 2024-0412-02S, 2025-0602-05), the rulemaking files for

[2] *POET, LLC v. State Air Resources Bd.* (2013) 218 Cal.App.4th 681, 752.

those regulations are incomplete. We incorporate those earlier comments here.[3] The rulemaking file for the Proposed Action suffers from the same infirmities as those for the earlier fee modernization regulations.

As instructed in the Notice of Proposed Rulemaking, on January 6, 2026, counsel for CGA wrote the Commission requesting the "other technical information upon which the proposed action is based."[4] In response, the Commission sent two .pdf spreadsheets stripped of underlying formulas and metadata.[5] The 2027 Spreadsheets shows $24,516,521 million in costs to be recovered from the annual fee invoiced to be paid in calendar year 2027.[6] The MGT Report established the Commission's and Bureau's annual fee costs at just under $14.2 million in FY 2019–20.[7] The Initial

[3] *See*, Rulemaking File for OAL Matter Nos. 2022-0927-02E, 2022-0922-01EE, 2022-1216-01EE, 2023-0306-03C, January 17, 2023 Letter from Michael G. Colantuono of Colantuono, Highsmith & Whatley, PC to the Commission regarding the California Gaming Association's Objections to Commission Fees Modernization Project III; Rulemaking File for OAL Matter No. 2024-0412-02S, February 12, 2024 Letter from Meghan A. Wharton of Colantuono, Highsmith & Whatley PC to the Commission regarding the California Gaming Association Objections to Notice of Proposed Regulatory Action: Update to Annual Fees, CGCC-GCA-2023-03-R; Rulemaking File for OAL Matter No. 2025-0602-05, March 20, 2025 Letter from Meghan A. Wharton of Colantuono, Highsmith & Whatley PC to the Commission regarding the California Gaming Association Objections to Notice of Proposed Regulatory Action: Update to Annual Fees, CGCC-GCA-2024-04-R.

[4] Notice of Proposed Regulatory Action: Update to Annual Fees, CGCC-GCA-2025-05-R, p. 8.

[5] Initial Statement of Reasons, 2026 Update to Annual Fees (CGCC-GCA-2025-05-R), at pp. 6-7, Underlying Data Nos. 3 and 4 ("2027 Spreadsheets").

[6] 2027 Spreadsheets.

[7] Department of Justice's Bureau of Gambling Control and the California Gambling Control Commission Fee Study Report of Findings, MGT Consulting, June 9, 2021, p. 7 ("MGT Report") (annual fee cost of service totals $14,186,313).

Statement of Reasons for the Proposed Action fails to explain why an additional $10.5 million is now required to cover Commission and Bureau costs in FY 2026–27.[8]

As another example, the 2027 Spreadsheets supporting the new rulemaking show costs by category of employees and expenses but does not justify any of the costs.[9] Therefore, the CGA cannot determine the reasonableness of the costs. For example, nothing in the rulemaking file explains why the Commission and Bureau incur line item expenses totaling over $3.5 million for "GCF Operating Expenses" allocated to cost pool 1 (total: $7.3 million) in this rulemaking when the total costs in cost pool 1 in the MGT Report was only $4 million.[10]

As another example, the Initial Statement of Reasons states the Proposed Action is based on the "most recent cost and fee analysis … utilizing the latest available data through fiscal year 2024–25."[11] The analysis and data are not included in the rulemaking file. Only top-level spreadsheets are included.[12] Without the underlying data, the CGA cannot evaluate the reasonableness of the costs allocated to the annual fee. The CGA cannot determine whether it was reasonable for such costs to dramatically increase from $14.2 million to more than $24.5 million in just 7 years.[13]

The Proposed Action admits it is based on the "the calculation method recommended by MGT [Consulting Group] … ."[14] It notes the Commission employed the "step-by-step calculation method … following the MGT cost and fee study."[15] As we argued in letters addressing the earlier fee modernization regulations and the prior year's annual fees, the current rulemaking file is missing the underlying information

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[8] Initial Statement of Reasons: Update to Annual Fees, CGCC-GCA-2025-05-R.

[9] 2027 Spreadsheets.

[10] *Compare* 2027 Spreadsheets *with* MGT Report, p. 19 (Table Annual Fee Cost, Line 1, Entity Split line item totals $4,042,983).

[11] Notice of Proposed Regulatory Action: Update to Annual Fees, CGCC-GCA-2025-05-R, p. 2.

[12] 2027 Spreadsheets.

[13] *Compare* 2027 Spreadsheets *with* MGT Report, p. 7.

[14] Initial Statement of Reasons: Update to Annual Fees, CGCC-GCA-2025-05-R, p. 2.

[15] *Id*. at p. 4.

considered by MGT, the Commission, and the Bureau in preparing the MGT Report, including information in internal Commission, Bureau, and MGT emails; emails exchanged between the Commission, the Bureau, and MGT; and other internal Commission, Bureau and MGT documents. As just one example, the MGT Report states MGT analysts relied on extensive meetings with staff in which every fee-related activity was identified and categorized.[16] But the records from these meetings and the data produced are absent from the rulemaking files. Therefore, it is not possible to determine whether MGT excluded unreasonable costs when performing the fee study or simply relied on the Commission's representation that all costs are reasonable.

The rulemaking files do not contain the reasoning underlying the methodology MGT used to apportion annual fees among payors based on gross revenue. The MGT Report states "[a] variety of methodologies were explored and tested but ultimately distribution of this cost was based on annual gross revenues. This methodology presented the fairest option for distribution."[17] The MGT Report and the rulemaking files do not identify or evaluate the other methodologies considered or explain why a gross revenue calculation is "the fairest." Gross revenue is typically a measure of ability to pay — a tax concept — rather than benefits from or burdens on regulatory activity. Notably, a document CGA obtained in litigation from MGT shows then-Commission Executive Director Stacey Luna Baxter, and not MGT, developed the methodology for apportioning the annual fee to the cardroom and TPPPS based on gross revenue. The document references "Stacey's workbook" and "Stacey's model." No such workbook or model is in the current rulemaking file or the files for the earlier fee modernization regulations or annual fees updates.

The lack of information in the rulemaking files for the Proposed Action and the earlier fee modernization regulations and annual fee updates should concern the Commission. A court may invalidate the annual fee regulations due to the Commission's "substantial failure to comply" with the APA.[18] Omission of required documents from the rulemaking file constitutes such a "substantial failure."[19] Finally, in any judicial action, review is limited to the record before the Commission, subject to

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[16] MGT Report, p. 5.

[17] *Id*. p. 19.

[18] Cal. Gov. Code, § 11350, subd. (a).

[19] *POET, supra,* 218 Cal.App.4th at p. 755.

narrow exceptions.[20] If the Commission's record cannot justify the annual fees, a court will invalidate them.[21]

Without further explanation and access to the documents, data, estimates, and analyses missing from the rulemaking file, the CGA cannot fully evaluate the annual fee to be set by the Proposed Action for reasonableness and compliance with law. Nor can the Commission.

2. Non-Licensing Costs Allocated to the Annual Fee are Unreasonable

Proposition 26 requires the Commission to demonstrate from the record that annual fee revenue "is no more than necessary to cover the reasonable costs of the governmental activity."[22] Due to defects in its fee-setting methodology and unreasonable costs, the Commission cannot.

The Commission and Bureau have two primary revenue sources: licensing fees and annual fees.[23] Licensing fees are application and investigation fees and deposits paid by licensees seeking to work or own gaming businesses and fees paid for other approvals. Cardroom and TPPPS pay annual fees to fund the costs for Commission and the Bureau non-licensing regulatory activities.[24]

(a) The Claimed Non-Licensing Costs are Unreasonable, Dramatically Increasing in Seven Years

In 2018, then-Assemblyman Rob Bonta requested the Joint Legislative Audit Committee approve an audit of the Bureau and the Commission, noting the continued

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[20] Cal. Gov. Code, § 11350, subd. (d); *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 578.

[21] *American Coatings Assn., Inc. v. State Air Resources Bd.* (2021) 62 Cal.App.5th 1111, 1128–1129.

[22] Cal. Const., art. XIII A, § 3, subd. (d).

[23] Auditor of the State of California, "Bureau of Gambling Control and California Gambling Control Commission: Their Licensing Processes are Inefficient and Foster Unequal Treatment of Applicants, Audit Report No. 2018–132," May 2019, p. 31 ("Audit Report").

[24] *Ibid.*

growth of the Gambling Control Fund surplus and asking whether annual fees should be reduced or refunded. The resulting Audit found the Commission and Bureau charged annual fees that "far exceed" the agencies' costs, "rais[ing] questions about the legality and fairness of the current fee structure."[25] The Audit found that in FY 2017–18, the Commission and the Bureau had non-licensing costs supported by the annual fee of $6.9 million. For the same period, the Commission collected $18.9 million in annual fees — nearly three times what could be justified.[26]

In response to the Audit, the Commission hired MGT to prepare a fee study completed in June 2021. The MGT Report identified non-licensing costs for FY 2019–20 of $14,186,313, over twice as much as the Auditor found for FY 2017–18.[27] Further, the MGT Report found the Commission collected $15,206,800 in annual fees in FY 2019–20, an amount that exceeded what MGT viewed as the "cost of providing services" during that year by more than $1 million.[28] Neither the MGT Report nor the Commission explained this discrepancy between the Audit Report and the MGT Report in the earlier fee modernization or annual fee rulemakings.

Instead of following the Audit's recommendation to reduce annual fee revenues and ignoring MGT's finding the annual fee generated excess revenue in FY 2019–20, the Commission elected to increase annual fees in December 2022 through 2025 rulemakings.

The Commission first invoiced annual fees under the new scheme on October 1, 2022. Invoices attached a spreadsheet showing significantly higher non-licensing costs allocated to the annual fee ($19,174,894) than the MGT Report identified ($14,186,313).[29] This amount is almost three times the State Auditor's finding of $6.9 million for FY

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[25] *Id*. at p. 2.

[26] *Id*. at p. 34.

[27] *Compare* Audit Report, p. 34 *with* MGT Report, p. 7.

[28] MGT Report, p. 7 (Table titled "Department of Justice's Bureau of Gambling Control and the California Gambling Control Commission Fee Cost & Revenue Analysis, FY 2019/2020," Column C)

[29] *Compare* MGT Report, p. 7 *with* 2023 Annual Fee Calculation, Cost Pools, Summaries, and Base Calculations, Exhibit A ("2023 Spreadsheet").

2017–18, and 35% more than MGT's opinion of $14.2 million for FY 2019–20.[30] Even that 2023 Spreadsheet reports non-licensing costs of almost $6.2 million less than the $24.5 million the 2027 Spreadsheets now claim.[31] All told, the Commission's and Bureau's claimed non-licensing costs increased from $6.9 million in FY 2017–18 to nearly $25 million in 2026.[32] This astronomical growth in non-licensing costs shows the Commission's and Bureau's non-licensing costs, even if reasonable in FY 2017–18, are now unreasonable. Logically, there should only be year-over-year inflationary growth in the costs to regulate an industry the growth of which is barred by statute.[33] There are 88 licensed cardrooms to be regulated in FY 2026–27, the same as in FY 2017–18. Inflation alone cannot explain such a substantial rise in costs.

The Proposed Action seeks to recover nearly $25 million for Commission and Bureau non-licensing expenses from the annual fee for FY 2026–27.[34] This is $10.5 million more than MGT claimed the Commission needed in FY 2019–20.[35] Each year, the Commission breaks out non-licensing costs into six cost pools. Further investigation reveals the increase in costs over the past six years is primarily due to significant increases in costs allocated to cost pools 1 and 3.[36]

Cost pool 1 includes: "Non-application costs that are not directly attributed to an application fee or deposit. This includes costs associated with administration, information technology, and legislative and regulatory workload that affects both cardrooms and TPPPS."[37] The amount in cost pool 1 grew from just over $4 million to over $7.2 million in the 7 years between the MGT Report and the Proposed Action.[38] The Proposed Action does not claim a substantial increase in administrative, IT, legislative,

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[30] *Compare* Audit Report, p. 34, MGT Report, p. 7, *and* 2023 Spreadsheet, Exhibit A.

[31] *Compare* MGT Report, p. 7 *with* 2027 Spreadsheets.

[32] *Compare* Audit Report, p. 34 *with* 2027 Spreadsheets.

[33] Cal. Bus & Prof. Code, §§ 19962, 19963.

[34] 2027 Spreadsheets.

[35] MGT Report, pp. 19, 21.

[36] *Compare* MGT Report, p. 19 *with* 2027 Spreadsheets.

[37] Initial Statement of Reasons: Update to Annual Fees, CGCC-GCA-2025-05-R, p. 4.

[38] *Compare* MGT Report, p. 19 *with* 2027 Spreadsheets.

and regulatory workload justifies this increase or otherwise explain the increased costs to regulate a stable industry. Inexplicably, the Commission projected expenses for 21,349 hours in administrative staff work in the 2027 Spreadsheet after projecting only 15,588 hours for the administrative work four years earlier.[39] The Proposed Action fails to explain why regulating the industry will require more administrative work hours in 2027 than in 2023. We know there will not be 37% more cardrooms and TPPPS operating in 2027 than in 2023.

Additionally, cost pool 1 includes $3.5 million in "GCF Operating Expenditures"—a line item not included in cost pool 1 in 2023. It appears this expense was moved from cost pool 3 to cost pool 1. Nothing in the rulemaking file explains this line item or its inclusion in cost pool 1.

Cost pool 3 includes: "Non-application costs generated by non-Commission actions. This includes costs associated with compliance and enforcement, financial audits, calls for service, and incident reports borne separately amongst TPPPS business licensees and cardroom business licensees."[40] Cost pool 3 increased significantly between FY 2019–20 and the Proposed Action, tripling from $3.2 million to nearly $9.2 million in those seven years.[41] The Proposed Action does not explain the increase or claim a large increase in the Bureau's enforcement and compliance workload. Also, the Proposed Action fails to justify the Bureau's expenditure of over $3 million on more than 24,914 officer hours to police this relatively small industry, nearly 60% more than the 15,887 hours the 2023 spreadsheet reported only 4 years ago.[42] Again, there was no significant increase in the number of cardrooms and TPPPS. Instead, it appears the Bureau's Compliance and Enforcement Section is overstaffed.

Because the Proposed Action recovers inflated, unjustified, and unreasonable costs, the annual fees violate the constitutional "reasonable costs" requirement.[43]

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[39] *Compare* 2023 Spreadsheet *with* 2027 Spreadsheets.

[40] Initial Statement of Reasons: Update to Annual Fees, CGCC-GCA-2025-05-R, p. 5.

[41] *Compare* MGT Report, p. 19 *with* 2027 Spreadsheets.

[42] *Compare* 2023 Spreadsheet *with* 2027 Spreadsheets.

[43] Cal. Const., art. XIII A, § 3, subd. (d).

(b) The Proposed Action Continues to Erroneously Allocate Licensing Costs to the Annual Fee

The Audit Report found the Commission consistently charged annual fees that recover more than the Commission's actual costs for non-licensing activities, while simultaneously undercharging applicants for licensing fees.[44] The Audit Report also found the "excessive surplus [in the Gambling Control Fund] has enabled the [B]ureau to engage in inconsistent billing and time-management practices," leading to "many applicants not paying for the actual costs of their background investigations" and "[B]ureau licensing staff … spending the majority of their time on activities that may not be productive or even directly related to license applications."[45]

The Audit found that, in FY 2017–18, the Commission and the Bureau's non-licensing costs supported by annual fee revenues were $6.9 million, but the Commission collected $18.9 million in annual fees. By contrast, the Commission and Bureau collected only $4.2 million from application fees, renewal fees, background-check deposits, and fees for other approvals. But the Commission and Bureau spent $9.9 million on licensing activities.[46] The Audit concluded the Commission's annual fees may be an unlawful tax both because the Commission used the fees to subsidize licensing activities and because annual fee revenues far exceeded the costs of non-licensing activities.[47] The Proposed Action continues the improper practice of allocating licensing costs to the annual fee.

For example, the Proposed Action imposes annual fees that continue to incorporate methodological flaws in MGT's allocation of Commission costs between licensing and non-licensing activities. The MGT Report admits that methodology allocated costs for the Commission's licensing activities to the annual fee, including the following activities of the Commission's Licensing Division:

> Licensing Division: Conducts comprehensive and analytical reviews of Bureau Background Investigation Reports for applicants. Prepares Licensing Division Memorandums, briefs Executive Director and

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[44] Audit Report, p. 31.

[45] *Id*. at p. 2.

[46] *Id*. at pp. 33–34.

[47] *Id*. at p. 35.

> Commissioners on all licensing matters, processes all administrative tasks associated with suitability outcomes, and leads all program-related tasks to support the Commission's bi-monthly Commission Licensing Meetings.[48]

The MGT report also admits costs for Bureau licensing functions are allocated to the annual fee, including the following activities of the Bureau's Licensing Section:

> Licensing Section: Most of the work of the licensing section can be billed to a specific background investigation; however, there are some required tasks that are not specific to an applicant. These tasks include, the oversight of staff by management, administrative tasks, ordinance review, transactional review, etc.[49]

Importantly, the costs for the licensing activities described above do not represent general overhead functions of the agencies. Instead, these are costs for necessary licensing activities and for the management of the Commission's Licensing Division and the Bureau's Licensing Section.[50]

The MGT Report indicates any licensing cost item that could not be directly attributed to an individual license application was allocated to the annual fee — without apparent justification.[51] Additionally, the Commission admits that 100% of costs shared between licensing and non-licensing activities are allocated to the annual fee.[52] The MGT Report does not explain why it is proper to allocate licensing costs to the

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[48] MGT Report, p. 18.

[49] *Id* at p. 17.

[50] Supplemental Initial Statement of Reasons, Commission Fees Modernization Project, CGCC-CGA-2021-07-R/C, at p. 14 (Commission admits cost pool 2 includes "costs generally associated with processing applications [that] cannot be directly linked to the fee or deposit associated with the review of an application").

[51] MGT Report, pp. 17–18.

[52] During the Commission's November 29, 2022 meeting, at time stamp 42:54, Director Stacey Luna Baxter confirmed that costs which could arguably be assigned to both annual fees and licensing fees were applied to the annual fee to subsidize individual applicants.

annual fee other than to say they are not specific to an applicant.[53] The MGT Report does not explain why these licensing costs are not recovered from fees applicants pay.

The Proposed Action continues to erroneously allocate licensing costs to the annual fee. Specifically, the Commission admits costs for licensing activities make up cost pool 2:

> Cost Pool 2. Non-application costs that have a connection to the application process for the controlled gambling industry, but are not charged to a direct fee or deposit because the costs are not specific to a submitted application. This includes costs such as those associated with responding to general phone calls, and the processing of electronic and regular mail.[54]

Further, during discovery in the pending annual fees litigation, the CGA learned the Commission allocates all Commission and Bureau operating expenses—over $3.5 million for the Proposed Action – to be recovered through annual fees even though a substantial portion of these operating expenses support licensing activities.[55]

The costs used to calculate the annual fee for the Proposed Action are inflated by this inclusion of licensing costs and operating expenses. Accordingly, the fees proposed by the Proposed Action violate Proposition 26 because the Commission's annual fee charged to cardrooms and TPPPS collects more than the reasonable costs of the Commission's non-licensing activities.[56] The annual fee is therefore "a vehicle for generating revenue" for the Commission's discretionary use and is unlawful unless approved by legislative super-majorities as a tax.[57]

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[53] MGT Report, p. 17.

[54] Initial Statement of Reasons: Update to Annual Fees, CGCC-GCA-2025-05-R, pp. 4-5.

[55] 2027 Spreadsheets at "GCF Operating Expenses" line items for Commission and Bureau.

[56] Cal. Const., art. XIII A, § 3, subd. (d).

[57] *Jacks v. City of Santa Barbara* (2017) 3 Cal.5th 248, 261.

3. The Proposed Action Fails to Address the Surplus Collected in 2025

In the initial rulemaking setting the annual fees using the MGT methodology, the Commission represented that it would consider using an offset when the Commission collects annual fees in excess of the amount needed to fund the Commission and Bureau in a given year.[58] The Commission further explained in the next rule making: "Should an increase in revenue occur in a manner that cannot be effectively corrected through the rulemaking process by adjusting the fee amounts annually, the Commission will consider offsets for previous years over collections or other methods necessary to ensure only the proper amount is collected."[59] The Commission agreed to consider an offset process when overcollections occur:

> Based on the most recent fiscal analysis conducted by the Commission, the annual fees expected to be collected will not significantly exceed the funding requirements of the Commission and DOJ, and as stated, should that unexpectedly occur, the Commission will consider the adoption of future annual fee determinations to offset with the goal of only collecting what is needed.[60]

Curiously, the Commission removed the offset commitment from the 2024 annual fee rulemaking that set the annual fees to be collected in calendar year 2025. Instead, the Commission only agreed to collect "what is needed."

> Based on the most recent fiscal analysis conducted by the Commission, the annual fees expected to be collected will not significantly exceed the funding requirements of the Commission and DOJ, and as previously stated, should that unexpectedly occur, the Commission will amend its regulations with the goal of only collecting what is needed.[61]

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[58] Final Statement of Reasons, Commission Fees Modernization Project III, CGCC-GCA-2022-03-C at p. 8.

[59] Final Statement of Reasons, Commission Fees Modernization Project III, CGCC-GCA-2023-03-R at p. 9.

[60] *Id*. at p. 13

[61] Final Statement of Reasons, Update to Annual Fees, CGCC-GCA-2024-04-R, at p. 13.

The Initial Statement of Reasons for the Proposed Action makes no mention of what will happen if the Commission collects annual fee revenue that exceeds the funding requirements for the Commission and the Bureau.[62]

Additionally, the Proposed Action fails to acknowledge and offset or distribute the substantial surplus in annual fee revenue invoiced in 2024 and collected in 2025. For that year, the Commission and Bureau anticipated annual expenditures were $25,403.565.[63] Yet, in late 2024, the Commission invoiced $28,724,849 in annual fees to be collected in calendar year 2025—far exceeding what the Commission and Bureau needed to cover expenses in that year.[64] The fund condition statement for the Gambling Control Fund shows the Bureau collected $27,448,000 in annual fees in calendar year 2025.[65] Therefore, if the Commission and Bureau correctly projected expenditures, then they generated a surplus of $2,044,435 in 2025. However, because the Commission and Bureau never spend the full amount of the projected expenditures, we can presume the surplus for 2025 was higher.

The Proposed Action is defective because it does not include an offset or any other mechanism to credit back the substantial 2025 surplus in annual fee revenues to the annual fee payers as promised in the prior regulatory actions.[66] The Commission promised future annual fees calculations would include an offset when annual fees collections exceeded the funding requirements for the Commission and the Bureau.[67] In the Proposed Action, the Commission breaks that promise.

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[62] Initial Statement of Reasons, 2026 Update to Annual Fees, CGCC-GCA-2025-05-R.

[63] 2025 Spreadsheets.

[64] *Id*.

[65] Governor's Budget 2026-2027, Fund Condition Statement for Gambling Control Fund line item for "Other Regulatory Fees."

[66] Initial Statement of Reasons, 2026 Update to Annual Fees, CGCC-GCA-2025-05-R; 2027 Spreadsheets.

[67] Final Statement of Reasons, Commission Fees Modernization Project III, CGCC-GCA-2023-03-R at p. 9.

4. Allocation of the Annual Fee Among Payors is not Fair or Reasonable

Proposition 26 requires the Commission to demonstrate from the record that the annual fee each cardroom and TPPPS pays bears "a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity."[68] Due to defects in the apportionment methodology the Commission cannot do so.

Historically, the Commission apportioned annual fees among cardrooms based on number of authorized gaming tables, and on TPPPS based on number of employees. The Commission abandoned this approach in 2023.

Beginning with the fee modernization regulations in 2022 and 2023 and continuing in the Proposed Action, active cardrooms and TPPPS earning three-year average gross revenues of less than $1.5 million are charged a fixed annual fee. In the Proposed Action, the fixed fee amounts are $13,791 for cardrooms and $4,340 for TPPPS.[69] Those earning three-year average gross revenues greater than $1.5 million are charged a flat percentage of their average gross revenue of 1.09% for cardrooms and 1.49% for TPPPS.[70] Notably, the MGT Report did not support this approach with evidence, and nowhere suggests gross revenues somehow correlate to the Commission and Bureau's non-licensing costs.[71]

To satisfy Proposition 26, all cardrooms and TPPPS must be charged the cost to regulate them. The Commission cannot apportion its annual fee based on gross revenue without identifying sufficient nexus between an entity's annual gross revenues and the reasonable cost to regulate it.[72] How is a card room more costly to regulate than one with an equal number of tables but lower receipts? The Proposed Action does not say.

While gross revenue may be a measure of ability to pay (a tax concept), it is not a measure of the Commission and Bureau costs for non-licensing activities, as Proposition

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[68] Cal. Const., art. XIII A, § 3, subd. (d).

[69] Initial Statement of Reasons: Update to Annual Fees, CGCC-GCA-2025-05-R, p. 4.

[70] *Ibid*.

[71] MGT Report, p. 21.

[72] *California Building Industry Association v. State Water Resources Control Board* (2018) 4 Cal.5th 1032, 1046.

26 requires for fee distinctions. Such a fee is not based on reasonable non-licensing costs of the Commission and Bureau's regulation. Therefore, it is not constitutional.[73]

The Initial Statement of Reasons cites no evidence showing that regulation of higher-earning cardrooms and TPPPS demand more of the Commission and Bureau than regulation of their lower-earning peers. Instead, the Initial Statement of Reasons merely asserts this as fact.[74] Under the Proposed Action, cardrooms and TPPPS with similar number of tables or employees, but significantly different revenues, will pay significantly different fees. Differences in cardroom and TPPPS revenues reflect location, management, clientele, and wagering levels. None of the factors that cause differences in revenue have an apparent relationship to the non-licensing costs the Commission and bureau incur. There is no evidence in the rulemaking file that the non-licensing activities of the Commission and Bureau to regulate two cardrooms with near-identical table counts vary significantly based solely on differences in revenue.[75] Likewise, no evidence shows the non-licensing activities of the Commission and the Bureau as to TPPPS with comparable employment vary with differences in revenue.

Allocating reasonable non-licensing costs to cardroom owners based on the number of tables more closely ties fees to the regulatory costs. Allocating reasonable non-licensing costs to TPPPS based on employment far more closely ties fees to the regulatory costs than does the Proposed Action.

It appears from statements made during the early public hearings on the fee modernization regulations that the Commission changed from a per-table charge to a charge based on gross revenue to require more profitable clubs to subsidize lower-earning cardrooms and TPPPS.[76] Proposition 26 forbids such cross-subsidies.[77]

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[73] *San Buenaventura, supra*, 3 Cal.5th at p. 1210.

[74] Initial Statement of Reasons: Update to Annual Fees, CGCC-GCA-2025-05-R, p. 6.

[75] Cf. *Sutter's Place, Inc. v. City of San Jose* (2024) 104 Cal.App.5th 855, 867–868 [upholding under Prop. 26 equal division of regulatory costs between two cardrooms with same table count].)

[76] California Gambling Control Commission, Gaming Policy Advisory Committee, June 27, 2023 Hearing, at timestamp 44:37–45:23.

[77] Cal. Const., art. XIII A, § 3, subd. (d).; cf. *Green Valley Landowners Assn. v. City of Vallejo* (2015) 241 Cal.App.4th 425, 439–442 [applying Prop. 218].

Unfortunately, the Proposed Action continues to subsidize lower earning cardrooms and TPPPS at the expense of others by apportioning the annual fee based on receipts. The Initial Statement of Reasons acknowledges that it apportions the annual fee in this way to ensure "that those businesses whose three-year gross revenue is under $1,500,000 per year pay a lower proportion of the total fees necessary to ensure that no cardroom business licensee is significantly impacted."[78] If the Commission wishes to subsidize or otherwise support lower earning cardrooms and TPPPS, it must use discretionary revenues to do so — it may not overcharge higher earning cardrooms and TPPPS to do so.

For the Proposed Action, the acknowledged subsidy causes the annual fee to violate Proposition 26's fair or reasonable apportionment requirement.

CONCLUSION

These defects are fatal to the Proposed Action. The Gambling Control Act requires the Commission to limit regulatory fees "to the reasonable regulatory expenditures … to administer this chapter."[79] "Whenever by the express or implied terms of any statute a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute."[80]

Similarly, a regulatory fee is valid only if it meets the dual constitutional requirements that it be limited to "reasonable costs" and its apportionment among fee-payors be "fair or reasonable."[81] As explained above, the costs to be recovered by the annual fees are improperly inflated and include licensing costs. Further, the annual fee is not fairly and reasonably apportioned because the Proposed Action continues the improper use of gross revenues to apportion the fee. Therefore, the annual fee in the Proposed Action is unlawful under Proposition 26 and other law.

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[78] Initial Statement of Reasons: Update to Annual Fees, CGCC-GCA-2025-05-R, p. 7.

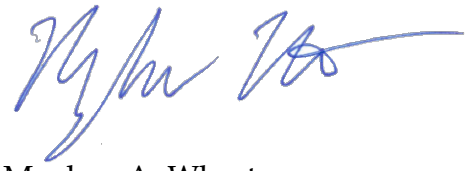
[79] Bus. & Prof. Code, § 19951, subd. (e); *see also* Cal. Const., art. XIII A, § 3, subd. (d).

[80] Cal. Gov. Code, § 11342.2.5

[81] Cal. Const., art. XIII A, § 3, subd. (d); *California Building, supra,* 4 Cal.5th at p. 1046.

The California Gaming Association respectfully requests that the Commission not adopt the Proposed Action and instead direct staff to prepare proposed annual fees that reflect the reasonable cost of the non-licensing regulatory activities of the Bureau and Commission and fairly and reasonably apportion the annual fee costs among the cardroom and TPPPS.

Very truly yours,



Meghan A. Wharton

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