

**COMMISSION MEETING
THURSDAY, APRIL 10, 2003
MINUTES**

Chair Orr called the meeting to order at 1:30 p.m., at the Hampton Inn located in Bellingham. He announced that Commissioner McLaughlin would be absent due to a death in her family. A moment of silence was observed in the family's honor. It was also noted that Commissioner Parker would not be present until Friday. Chair Orr welcomed the attendees and introduced the members and staff present:

MEMBERS PRESENT: **COMMISSIONER GEORGE ORR, CHAIR;
COMMISSIONER CURTIS LUDWIG;
COMMISSIONER JANICE NIEMI;**

OTHERS PRESENT: **RICK DAY, Executive Director;
ROBERT BERG, Deputy Director;
AMY PATJENS, Manager, Communications and Legal Dept.;
CALLY CASS-HEALY, Assistant Director, Field Operations;
DERRY FRIES, Assistant Director, Licensing;
JERRY ACKERMAN, Assistant Attorney General;
SHIRLEY CORBETT, Executive Assistant**

Employee Recognition: **Director Day** and **Chair Orr** presented Special Agent John Farrow with a 30-year service award. Director Day announced that Amy Schmitt graduated from Law Enforcement Academy; and that Dylan Milliron had been called back to active military duty. Staff members Dallas Burnett and Claudia Biermann have been invited to moderate and present panels at the NAGRA Spring Conference being held in Canada. A team of agency employees from the Licensing Unit received an incentive grant from the Productivity Board; they were: Bridget Buntin, Cathee Gottfryd, Jessica Iyall, Sharon Mathews, and Dawn Warren. They proposed a change in the mandatory training process for card rooms, which has streamlined that process, and as a result saved the agency approximately \$7,000.

1. Review Of Agenda and Director's Report:

Director Day identified inserts to the agenda packet and reviewed the meeting agendas for Thursday and Friday. Item #4 on Thursday has been removed due to the Petition for Review being withdrawn. Staff is proceeding with settlement negotiations around the revocation that involved a possibility of a license surrender. There were no agenda changes for Friday:

Legislative Update:

SSB 5403 Supplemental Budget - passed. **Director Day** reported that last session, the Legislature transferred \$2.45 million from the Gambling Revolving Account to the General Fund. They did not increase that transfer in this year's Supplemental Budget; however, the budget notes did take the

staff reductions that were proposed in the Governor's Executive Budget, and speed up the timetable in the Supplemental Budget to try to save more money. That appears to have reduced the agency's FTEs by about 24 positions; however, because the Commission had already taken action to reduce the budget, that will not have much of an effect on the Commission during the current biennium. What may happen is the Commission may technically exceed the level of FTEs in the agency's budget notes, but not in the Commission's approved budget level. Therefore, the agency will continue to do business under the Commission approved budget. Director Day affirmed the budget notes do not relate to any specific appropriation in the supplemental bill because the Commission is a non-appropriated agency.

SB 5404 is the Senate's version of the operating budget, which has passed the Senate. The Senate has proposed to transfer another \$1.5 million. They have changed the law to give authority to withdraw funds from the Gambling Revolving Account in the 2003-05 biennium. The House has not come forward with their budget. **Chair Orr** suggested licensees might want to make a note of page 148 line 8, and page 156 lines 1 through 3, and to call their legislators and ask their legislators if they would reconsider the transfers.

Director Day explained the budget notes propose a 10.2 FTE reduction to the Gambling Commission, which would be an actual cut to Commission staffing. If this package survives the House of Representatives' proposal, it would affect the agency's allotments. This is not tied to the appropriation. Director Day advised that he hasn't seen the House Bill; however, the Commission may have the opportunity to provide a written position paper on the fund transfers and budget notes, or may have the opportunity to testify; at the direction of the Commission.

Commissioner Ludwig made a motion seconded by **Commissioner Niemi** directing Director Day to speak on behalf of the Commission by writing a letter and/or testifying regarding the impact of SB 5404 on the Gambling Commission, and any similar budgetary action that may take place in the House. **Commissioner Niemi** suggested that the Commission write a letter to the Chair of the Appropriations Committee explaining how the Commission receives and expends its funds, and that the Commission does object to never knowing each year how much the legislature will attempt to take out; which makes it extremely difficult to plan a budget. She also suggested each Commissioner should talk to members of the House as well. **Chair Orr** called for the vote. *Vote taken; motion passed unanimously.*

House Bill 2213 – **Director Day** explained this is a duplicate of SB 6009, the 5-minute Keno bill, which would remove the restriction from the Lottery statutes. They would be allowed to draw more than once every 24-hours. The concern the Commission expressed was, that by removing the restriction, not having a limitation at all would unintentionally allow for a tribal lottery-type system. The Commission was advised there would be draft language to fix that particular issue and that the intention was only to move forward for possible consideration the 5-minute Keno operation through the Lottery. HB 2213 is still in House Commerce, and SB 6009 was in Rules.

House Bill 1227 - Promotional Contests of Chance – Passed the House 97-0 and is in Senate Commerce & Trade Committee.

House Bill 1446 - Consolidation of WSGC & Horse Racing Commission – **Director** Day explained this would have consolidated the Gambling Commission and the Horse Racing Commission into the Department of Gaming. That bill has not moved out of Appropriations; however, it bears watching.

House Bill 1637 - Compulsive Gambling Contracting for Services – Passed Senate Rules. The bill would allow the Commission greater discretion to contract with the Council on Problem Gambling. The Commission took a position in support of the bill.

House Bill 1948 - Electronic Scratch Tickets – This bill has not had a hearing and is still in the House Commerce & Labor Committee. **Director Day** noted there are discussions to have a version of that bill allowing electronic scratch tickets to be operated through the Lottery without much of a role from the Gambling Commission. That bill has not been dropped, but may appear at any time.

HB 1667 - Zoning – **Director** Day affirmed the Commission testified as directed in opposition to this bill, and was the only opponent. The last status, as indicated by the Committee Chair, was that the bill would not move out of committee – he essentially directed the parties that he would form an interim committee to attempt to work out a solution, and he wanted the Gambling Commission to be involved in that solution. The Committee Chair advised that he would entertain passing the bill if that didn't take place.

Presentation on House-Banked Card Room Multiple Ownership Issue :

Derry Fries, Assistant Director, reported that in December of 1999, there were no multiple ownerships of house-banked card rooms in three or more house-banked facilities. There were some instances during the pilot study of the card room enhancement program, where the Commission approved a second house-banked card room for those participating in the pilot study. In 1998, there were several Class E card rooms, punchboard/pull-tab operations, and commercial amusement games where there were multiple ownerships in those types of licensees.

Historically, the Commission's position has been not to limit ownership of house-banked card rooms. Statute states the Commission shall not deny a license to an otherwise qualified applicant in an effort to limit the number of licenses to be issued. The key word in the statute is "applicant." Applicant is defined by RCW 9.46.0289 and WAC 230-02-140, as an individual, a limited liability company, partnership, corporation, or other association of individuals. Other considerations regarding multiple ownership relate to whether it is a full (100 percent) or partial (1-99 percent) ownership. The Commission's threshold is 5 percent in a publicly traded corporation, or 10 percent in a privately held corporation.

Mr. Fries reported that the Commission conducted a mini-study on multiple ownerships in Nevada, New Jersey, Illinois, and Mississippi. Nevada has none at this time; however, they are considering draft legislation to consider limiting ownership. Some of the things they are considering in their criteria are: the number of gaming stations and tables, total gross gambling revenue, total number of gaming devices sold or distributed, number of hotel rooms, employees, and payroll. The draft rules are characterized as anti-monopoly rules in the Las Vegas Review Journal. Other factors they intend to consider are: when the person having such a share of the market could become their own supplier of goods and services, have excessive bargaining power to dictate terms, control employee wages, establish their own methods of play, artificially depress payout percentages, and the ability to reduce

hours of operation (which is a taxing issue for the state of Nevada), limited opportunities for competitors, and any other factors they would deem relevant.

Mr. Fries noted that New Jersey doesn't have any multiple ownerships at this time. Illinois is very similar to Nevada. While they have private casinos, the issue of multiple ownerships has never been an issue because of the number of facilities in the state and their locations. They do have the authority, or discretion, to consider how many facilities may go in a particular area, and economic impacts.

Mississippi has no limitations on multiple ownerships. In Washington, the threshold is three or more house-banked card rooms. These are disclosable under RCW 42.17 of the state public disclosure laws. **Mr. Fries** highlighted the existing multiple ownerships in Washington:

- 1) Steve Michels has an interest in five facilities: The Palace in LaCenter, Chips Casino in Tukwila, Chips Casino in Bremerton, Double Down Saloon in LaCenter, and the Golden Nugget Casino in Tukwila.
- 2) Tim and Mike Iszley have an interest in nine facilities: Silver Dollar in Tukwila, Silver Dollar in SeaTac, Silver Dollar in Mountlake Terrace, Silver Dollar in Tacoma, Habana Café in Tacoma, Golden Nugget Casino and the Hideaway Casino in Shoreline, Golden Nugget in Tukwila, and BC McDonalds in Everett.
- 3) Eric Nelson has a substantial interest in Cleopatra's Club in Kennewick, Cleopatra's Wild Goose Casino in Ellensburg, Cleopatra's Wild Grizzly Casino in Kelso, and Cleopatra's Cable Bridge Casino in Kennewick.

This issue of multiple ownership was discussed by the agency's leadership team and concurrence reached that there should be no limitation on house-banked public card room ownerships. The basis for the staff's decision was the statutory provision, and because staff did not feel there was any compelling or regulatory need at this time, and no public harm involved. Staff believed that there are sufficient safeguards in place through the licensing process, the subsequent regulation, and ongoing monitoring regarding the situation of house-banked public card rooms to not recommend limitations on ownerships. Staff will continue to monitor and update the Commission as needed.

Chair Orr called for questions. **Commissioner Ludwig** inquired about the 49 percent ownership of the Cable Bridge Casino in Kennewick. **Mr. Fries** responded that said he would obtain the information. There were no comments from the public.

Administrative Issues:

Director Day noted the Agency Conference is scheduled for May 20-21 in Olympia. It is the Commission's 30th Anniversary celebration, and staff will be trying to complete the final work on the agency's Strategic Plan. The plan will be presented at the August Commission meeting. Director Day also briefly addressed the Director's E-Link Message, which updated staff on the progress of legislative issues.

Correspondence:

Director Day reviewed the correspondence received from Stephen Whitehouse relating to raffle statutes and a request to consider some liberalization on who may participate in raffles. **Director Day** also reviewed correspondence from Don Kaufman regarding long-term obligations. That issue is scheduled for discussion on Friday.

Monthly Update Reports:

Director Day briefly highlighted the Administrative Case Report and the Congressional Report contained in the agenda packet. A tribal compact update will be discussed in executive session.

News Articles:

Director Day reviewed the news articles contained in the agenda packet. **Chair Orr** called for public comments.

Gary Murray, Recreational Gaming Association, offered comments on the Governor's budget. He pointed out the difficulty of having just recently experienced a license fee increase, and now having the Legislature take more money. He noted the leapfrog effect continues--the licensees pay more and more fees for service, which turns into an actual taxation situation. Mr. Murray felt it was very important for the RGA to go on the record that if the Commission/RGA don't do something, it would continue. Fees would go toward running the state rather than running the Gambling Commission. **Chair Orr** thanked Mr. Murray and pointed out that it was of great value for him to publicly testify and the Commission will remind the legislators that they have public testimony related to this frustration.

Sal Leone, Executive Director of Cascade Youth Music Association, commented about the apparent inconsistency of the Commission regarding multiple ownerships of casinos. He recalled that approximately one year ago, his organization attempted to facilitate a partnership with a food service agency to own a casino. The Commission passed a rule specifically prohibiting nonprofits from being in partnerships of casinos. Yet, the Commission just heard Mr. Fries' presentation wherein he quoted a statute, and said that there isn't anything in the law that limits the ability to get additional licenses, and that there is no public harm when private individuals own multiple casino operations. He asked about the consistency -- why a nonprofit cannot operate Bingo and own a casino, and how that was any different from a private individual owning four or five private casinos and having multiple licenses. He suggested that the Commission needed to look at this because it was a bias against the nonprofits. **Chair Orr** thanked Mr. Leone and commented that his point was well taken and that Mr. Leone deserved an answer to his question. **Ms. Cally Cass-Healy**, Assistant Director pointed out that the agency's Rules Team is currently looking at that very issue. She explained that when the Bingo law was changed, there was language that was stricken from the law that would potentially allow for multiple locations for Bingo licensees.

Commissioner Ludwig said that it was his understanding from previous discussions, that a nonprofit group could organize the commercial operation, but they would have to pay taxes. He inquired if the Cascade Music Group wanted to get into the house-banked card room business, if there was any reason why they couldn't. **Director Day** responded that at this point the rule prohibits it, and there is a case pending on that particular issue. **Commissioner Niemi** asked for further clarification. **Director Day** noted there is a difference between a nonprofit and a commercial

operation and addressed the attempt to keep them separate. At this point, however, there isn't a statute or a particular provision that says nonprofits cannot have an ownership interest in a private operation. The Commission wrote a rule that prohibits that, and that rule is still in existence. That is what the Cascade case is on appeal for in Thurston County, and that case is pending at this point.

Mr. Leone further explained that approximately two to three years ago, Cascade Youth Music Association made the decision that they wanted to pursue an opportunity to own a casino. He recalled that in order to own a casino, one needed to be a private establishment, and be primarily in the food and beverage service at the time. They formed Cascade Food Service, which is an LLC, to operate their snack bar and operate a casino. The reason the license was denied by the Commission was because Cascade Food Service was owned by Cascade Youth Music Association, a nonprofit organization. That was the only reason that the license was denied. At the time the license was applied for, there were no statutes and there were no rules against this concept. The Commission decided to hold the license for a period of four months and not approve it to give the Commission time to pass a special rule specifically prohibiting nonprofits that already had a license in Bingo, from owning a corporation or a company that had a license to operate a casino. It was a rule passed specifically to stop the Cascade Youth Music organization from owning a company and paying their taxes, just as anyone else does.

Jerry Ackerman, Assistant Attorney General, advised the Commission that because this matter was on appeal, they should not be discussing this matter because it may come before the Commission on appeal. He suggested the short response to Mr. Leone's question would be to go back and look at the debate that took place when the rule was passed. The reasons for the rule, including the statutory reasons, and there are statutory reasons, are in that debate. **Mr. Leone** suggested that perhaps the Commission should consider a change.

Chair Orr called for a recess at 2:30 p.m., and the meeting was reconvened at 2:40 p.m.

2. Group V Qualification Review:

Cascades Youth Music Association, Shoreline:

Deputy Director Robert Berg reported the organization was formed in 1952 and this report pertains to their year ended September 30, 2002. The organization has been licensed by the Commission since 1975; two years after the Commission was formed. Their services are to provide financial and volunteer support to the Seattle Cascade Drum and Bugle Corps including field competition and color guard. They support high school programs with an instrument-and-equipment-sharing program. The organization holds a Class L Bingo license and a Class M pull-tab license.

A review of the records by the Financial Investigations Unit showed this organization made significant progress as a nonprofit organization, and is qualified to operate under the Commission rules and statutes as a nonprofit in the state of Washington. He noted that their Bingo payout went from 71.6 percent in 2001 to 75.1 percent in 2002, and their expenses were well within the norm. They are a little higher on other gambling expenses; however, they have been able to return funds to their nonprofit for their purposes, and as such, staff recommends that the Cascades Youth Music Association be certified to conduct gambling activities in the state of Washington as a nonprofit organization. He introduced Dr. Salvatore Leone.

Dr. Leone, Executive Director of Cascade Youth Music Association, informed the Commission that he has been associated with the organization for nine years in various capacities—as a parent, a board member, the board president, and most recently as the executive director. He noted that he is a volunteer for the organization and does this activity because of his love for what the Seattle Cascades do for youth.

The Cascade Youth Music Association is the parent organization, or the nonprofit, which in partnership with other community and educational organizations provides intensive, competitive musical performance activities which develop lifelong skills in the youth. They sponsor the Seattle Cascades Drum and Bugle Corps and associated activities. They help sponsor fall high school marching band competitions in this area; they sponsor a show in cooperation with the University of Washington Husky Band, and they are a potential Seafair partner this year in a drum corps. In some years they sponsor a winter color guard for local parade corps, and they are also a resource to local high school music departments by providing personnel who are assistant directors and technicians for high schools. They share their equipment and they provide education to many of the high schools. The organization teaches discipline, teamwork, commitment, self-reliance, hard work, leadership, and perfection.

The Seattle Cascades was started in 1957 by two gentlemen, Jack Avery and Rod Stubbs. At one time there were over 40 drum corps in the Pacific Northwest. Seattle Cascades is the only remaining national drum corps in the Pacific Northwest because of the high cost of the activity and the dwindling resources to help support this youth activity. They march 135 members between the ages of 15 and 21 and they are a member of the Drum Corps International. **Dr. Leone** recounted the types of competition and awards garnered by this organization. He noted that the Seattle Cascades has made tremendous progress over the last few years. Last year, Seattle Cascades was crowned Division 1 World Finalist; the first time that any corps in the Northwest has been a world finalist. **Chair Orr** complemented the organization and expressed appreciation for the work the organization does.

Commissioner Ludwig made a motion seconded by Commissioner Niemi to certify Cascades Youth Music Association to conduct gambling activities in the state of Washington as a nonprofit organization. Vote taken; the motion passed with three aye votes.

3. **Manufacturer Review:**

Las Vegas Gaming, Inc., (Imagineering System's Keno System) Nevada:

Derry Fries, Assistant Director Licensing Division, reported that the applicant, a publicly traded company, applied for a Class B manufacturer license to market Keno equipment in Class III tribal gaming facilities in Washington. The organization was incorporated in 1998 in Nevada, to create and offer games of chance in markets throughout the world. He reviewed the shareholder ownerships.

Special agents from the Financial Investigations Unit conducted a personal and criminal history background investigation on all substantial interest holders. They also initiated and completed a financial investigation of the corporate and personal stockholder finances, and completed an onsite inspection of the corporate manufacturing facility in Las Vegas. No disqualifying information was

found. The organization is currently licensed by the following states: Arizona, Iowa, Mississippi, Nevada, Nebraska, New Mexico, and Oregon. The applicant is in good standing with each of these jurisdictions. Based on the staff's review of the application, financial documents and criminal background information, the applicant qualifies for a manufacturer license in Washington; and staff recommends approval of Las Vegas Gaming as a Class B Manufacturer. He introduced Russell Roth, Corporate President and CEO.

Commissioner Niemi asked if the continuing loss as shown under "source of funds" would cause any problems. **Mr. Fries** said it would not cause a problem for the Commission, and he noted the organization is trying to fix that particular revenue stream right now. Commissioner Niemi asked why it didn't affect anything they do in the state of Washington. Mr. Fries responded that staff believed there is a sufficient amount of money to support this application.

Mr. Russ Roth introduced himself and said he would be glad to answer any questions. **Commissioner Ludwig** asked if his market would just be the tribal casino. Mr. Roth affirmed. Commissioner Ludwig asked what type of Keno equipment they marketed. Mr. Roth explained that they have a top-to-bottom Keno game, the computer and software that operates the game, and the displays that show the results. They also have different forms of Keno games played in other states, which they will be trying to market. They are acquiring a company that currently has equipment in 11 casinos in Washington. Initially they will be maintaining that, however, they hope to move on from there with games and new hardware.

Commissioner Ludwig made a motion seconded by **Commissioner Niemi** to approve licensure of Las Vegas Gambling as a Class B Manufacturer. *Vote taken; the motion passed with three aye votes.*

4. Petition for Reconsideration:

Sno-King Amateur Hockey Association Inc., Kirkland

This agenda item was removed in response to correspondence from the Frank Miller Law Firm, requesting the Petition for Reconsideration be withdrawn pursuant to the potential for settling the matter without the need for an administrative hearing -- and in exchange for the opportunity to negotiate a settlement regarding the revocation of Sno-King's gambling license.

5. New Licenses, Changes, and Tribal Certifications:

Commissioner Ludwig made a motion seconded by **Commissioner Niemi** to approve the new licenses, changes and tribal certifications as listed on pages one through 16 on the approval list. *Vote taken; the motion passed with three aye votes.*

6. Other Business/General Discussion/Comments from the Public:

Chair Orr called for public comments. There were none.

7. Executive Session To Discuss Pending Investigations, Tribal Negotiations, and Litigation:

At 3:15 p.m., **Chair Orr** called for an Executive Session, and recalled the meeting at 3:45 p.m., to adjourn. He noted Friday's meeting would commence at 9:30 a.m.

**COMMISSION MEETING
FRIDAY, APRIL 11, 2003
MINUTES**

Chair Orr called the meeting to order at 9:30 a.m., at the Hampton Inn located in Bellingham, and welcomed the attendees. He noted that Commissioner Niemi would be arriving a little later in the meeting.

MEMBERS PRESENT: **COMMISSIONER GEORGE ORR Chair;**
COMMISSIONER CURTIS LUDWIG;
COMMISSIONER ALAN PARKER;
COMMISSIONER JANICE NIEMI;

OTHERS PRESENT: **RICK DAY, Executive Director;**
ROBERT BERG, Deputy Director;
CALLY CASS-HEALY, Assistant Director, Field Operations;
DERRY FRIES, Assistant Director, Licensing;
AMY PATJENS, Administrator, Communications & Legal;
JERRY ACKERMAN, Assistant Attorney General;
SHIRLEY CORBETT, Executive Assistant;

8. Minutes: Regular Meeting, March 13 and 14, 2003 – Olympia:

Commissioner Parker made a motion seconded by Commissioner Ludwig to approve the regular meeting minutes of March 13 and 14, 2003, as presented. *Vote taken; the motion passed with three aye votes.*

9. Consideration of Petitioner's Motion and Petition for Review of Administrative Law Judge's Initial Order on Petition for Declaratory Order:

Bullseye Distributing, LLC, Spokane

Chair Orr, Presiding Officer

Michael Lufkin, Assistant Attorney General, appeared on behalf of Commission staff;

Patrick Risken, Attorney, appeared on behalf of the Petitioner. **Chair Orr** reiterated that

Commissioner Niemi had been delayed due to car problems, but that with three commissioners present there was still a quorum. **Chair Orr** explained the ground rules and noted that in the

motion, some evidence was asked to be stricken. Chair Orr asked Attorney Risken to explain the reason why he wanted that stricken, and would then ask for rebuttal from Assistant Attorney General Lufkin. He noted the Commissioners would adjourn for an executive session, make a decision on that matter, and then hear the Petition for Review. Both parties presented their testimony; a transcript of the hearing is available upon request.

At 9:40 a.m., **Chair Orr** called for an executive session to deliberate the matter. The open public meeting was reconvened at 9:50 a.m. **Commissioner Ludwig** made a motion seconded by **Commissioner Parker** to deny the Motion to Strike for the reasons cited by Counsel and the administrative code provisions cited. *Vote taken the motion passed 3-0.*

Chair Orr addressed the Petition for Review of the Administrative Law Judge's Initial Order on the Petition for Declaratory Order Petition. Both parties presented their testimony; a transcript of the hearing is available upon request. (Commissioner Niemi arrived at the meeting at 10:15 a.m.)

At 10:10 a.m., **Chair Orr** called for an Executive Session and reconvened the open public meeting at 10:20 a.m. Chair Orr reported that Commissioner Niemi would recuse herself from this decision based on the fact that she was not present to hear the testimony.

Commissioner Ludwig made a motion seconded by **Commissioner Parker** to affirm the ALJ's Findings of Fact, Conclusions of Law, and to adopt the Initial Order. *Vote taken; the motion passed 3-0.* Assistant Attorney General Ackerman affirmed an Order would be prepared for signature.

Chair Orr recessed the meeting at 10:22 a.m., and called the meeting back to order at 10:30 a.m.

RULES UP FOR FINAL ACTION

10. Digital Surveillance for Card Rooms:

WAC 230-40-625, WAC 230-40-825, WAC 230-40-550, WAC 230-40-815, WAC 230-40-860, WAC 230-40-875 and WAC 230-40-895:

Cally Cass-Healy, Assistant Director, Field Operations, reported that Item 10 contains rule amendments to allow digital surveillance in card rooms. The package is up for final action. The rules were written with the concept that the technical detail would not be included in the rules any more than necessary because technology has a tendency to become obsolete. Instead, the rules set forth the minimum standards for digital surveillance. Items A and B have proposed language changes requiring a vote for amendment; Items C through G are housekeeping changes.

Item A-WAC 230-40-625 – Language was added to authorize digital surveillance in the card rooms. Safeguards were established to ensure the authenticity, integrity, and readability of recordings and to ensure the current regulatory program is not compromised by the use of digital surveillance. Language was added to the rule so that licensees have the reporting requirements available. Changes were made for the retention period of jackpot payouts of \$500 or more; they were increased from seven days to thirty days to maintain consistency with the Commission's current retention requirements. One change was made since last month in Section 3B-11. Staff recommends removing the one-hour power backup source to require the operator to properly shut down the

system. Staff thought it might be cost prohibitive to set an extensive amount of time. The objective is to simply allow the licensee enough time to shut the system down and get custody of their assets.

Item B-WAC 230-40-825 – Contains the same changes as WAC 230-40-625.

The remainder of the rules were housekeeping.

WAC 230-40-550 – The word “tape” was removed, because digital recordings are not recorded to tape. The term “recordings” will be used to encompass both analog and digital recordings.

WAC 230-40-815 – The word “taping” was removed from subsection 33 and 35, because digital recordings are not recorded to tape.

WAC 230-40-860 and WAC 230-40-875 - The word “taped” was removed and the term “recorded” was inserted.

WAC 230-40-895 – The word “tapes” was removed in several subsections and headings were added to each of the rules for ease of reading.

Ms. Cass-Healy advised that the action that needed to be taken at this meeting relates to WAC 230-40-625 and 230-40-825, the language would need to be amended for the change; and the remainder of the rules including WAC 230-40-625 and 230-40-825, would need to be voted on for final action.

Commissioner Niemi made a motion seconded by **Commissioner Ludwig** to adopt the amendments proposed for WACs 230-40-625 and 230-40-825. *Vote taken; the motion passed unanimously.*

Commissioner Niemi made a motion seconded by **Commissioner Ludwig** to adopt the rules proposed for WACs 230-40-625, 230-40-825, 230-40-550, 230-40-815, 230-40-860, 230-40-875, and 230-40-895. *Vote taken; the motion passed unanimously.*

11. Bingo Adjusted Cash Flow - Petition and Variance Procedures:

WAC 230-20-059:

Amy Patjens, Manager, Communications and Legal, reported that at the January Commission meeting, the commissioners asked staff to bring forward a rule that would delete the current variance process for cash flow cases. The rule is up for final action. She noted the current variance process adds an extra step in the administrative process. If a licensee is not meeting the cash flow requirements, they have the ability to request a variance from the Commission, and then also to request a regular administrative hearing, which is similar to the other types of administrative actions the Commission has been involved in. Under this proposal, if no variance process exists, the Director would simply issue charges for revocation if a licensee doesn't meet the requirements, the ALJ would hear the case, rule, and then either party could appeal to the Commission.

A letter from Don Kaufman, Big Brothers/Big Sisters, included in the agenda packet conveyed his concerns about not having a variance process.

Ms. Patjens advised the Commission has several options. The rule could be adopted today, or, the Commission could file the petitions before them and continue to discuss the petitions. Another option would be to hold off on taking final action. Under the Administrative Procedures Act, the Commission has 60 days after it has received a petition for rulemaking to act on it. Staff received the Petitions on March 27, and staff's reason for putting them on the agenda was because staff knew they were meant to be alternatives to the variance rule up for final action today. However, the Commission is not required to take any action on the petitions until next month. Ms. Patjens also noted a new quarter started on April 1, and whether the action is taken today or delayed a month won't matter because things are measured on a quarterly basis. **Commissioner Ludwig** commented that the petitions with the two alternatives could be considered as amendments. Ms. Patjens affirmed they could be amendments, or they could be other alternative. Commissioner Ludwig advised that he was thinking of the timeframe to keep them running together, and asked if they are treated as amendments, whether they have to be filed for further discussion. Ms. Patjens responded that because they came in the form of a rule petition, they could do that, as long as the petitioners concurred. Commissioner Ludwig advised he was in favor of setting this over so that Commissioner McLaughlin could be present.

Mr. Ackerman, Assistant Attorney General, believed that since the Petition for Rulemaking currently is in that form, it needed to be treated as such. He indicated there isn't a rule that's clearly on point, and that it may be possible for the petitioners to ask the Commission to consider the Petition as an amendment. That may trigger other issues as to whether or not it is a substantial amendment. Mr. Ackerman clarified that if the Commission wanted to treat this as an amendment, the Commission needed to have the petitioners, who put forth the petitions contained in the agenda packet, come forward and say they are withdrawing their petitions and ask the Commission to treat the substance of what has been submitted as their request for an amendment to the rule that is currently before the Commission. That action is distinguished from either acting upon the variance rule that is currently before the Commission, and either passing or deciding not to pass that rule, and then commencing the rulemaking process again, to decide whether or not to change the rule the Commission has either passed or rejected. **Commissioner Niemi** thought that Commissioner Ludwig had a good middle ground for this--the should commissioners hear the petitioners as far as the Petition goes and not pass the rule today; to listen to them and consider it, and then next month make a decision as to whether or not to change the variance rule. If the Commission were to decide to eliminate the variance, it would be effective June 30, 2003.

Mr. Ackerman explained there is a rule that is up for adoption at this meeting (it has been heard for the past three months), and the Commission has the choice of adopting the rule, deciding not to adopt the rule, or set the matter over one month. Tab 15 of the agenda packet contains Petitions to create a rule which is on the same topic, but significantly different from the rule that is before the Commission today. If the Commission adopts the variance rule, they will then, either this month or next month, have to decide whether or not to begin the rulemaking process for the petitions that are behind Tab 15. Those are petitions to change the rule the Commission may or may not adopt today. Or, the Commission may simply defer this topic to next month having heard from the proponents of the petitions that are behind Tab 15, and then weigh both of the proposed alternatives at the same time and decide whether or not the Commission wants to adopt or not adopt what's behind Tab 11, and decide whether the Commission wishes to continue the rulemaking process on the petitions.

Frank Miller, Attorney, stated the Washington Charitable and Civic Gaming Association (WCCGA), contacted him about a month ago, with a goal of finding a possible solution or compromise to an issue that is very difficult to deal with, and is at a crisis stage. He affirmed the industry that is facing great challenges—it is not as profitable as it used to be, but still doing great work in the state. On behalf of the WCCGA, Mr. Miller opposed the proposed amendment to remove the variance. He explained the WCCGA is composed of approximately 20 nonprofit charitable organizations that conduct Bingo operations in the state. He reflected that in 2000, there was an in-depth study by the Commission, overseen by Director Bishop, to look at this issue once again. The minutes reflect that at one time it was a net income-net return requirement, and staff wanted to simplify the process. The cash flow requirement was developed in 2000, and the rule was put into effect in April of 2001. The rule was negotiated over a period of a year and it was established that “this was as low as they could go; they couldn’t go much lower.” It included a variance procedure and as Director Bishop cautioned in November of 2000 – “in any new regulatory program when drastic changes are being made, there needs to be variances, and when new restrictions are placed on people, it’s necessary to have a means for people to come into compliance.” Mr. Miller believed the variances were put in that rule to provide an opportunity to give some flexibility in the event certain things happened. If a licensee was out of compliance the licensee could submit a plan, and over a period of time, come into compliance. Another criteria had to do with long-term binding obligations, which is an issue the Commission faced last month. Mr. Miller noted that at the time everyone worked to put this rule together, it was the result of negotiated rulemaking -- a year and a half of negotiation.

Mr. Miller suggested that removing the variance, literally takes the flexibility portion of that rule away from licensees that would otherwise qualify for a one or two-year period of time to come back into compliance. Mr. Miller reported that had the licensees known that an option to remove the variance would be considered two years later, many of them would have never agreed to the rules at that time. He conceded that he wasn’t sure the variance the way it was written was the right solution, and he acknowledged it has been a difficult process because the guidelines aren’t clear and because there are ambiguities. Mr. Miller believed the rule was flawed and that there is a need to find a solution. He commented that since 2001, the world has changed – the market has collapsed, Boeing has declined, and Washington’s unemployment is at an all-time high. Competition is at an all-time high for the gambling dollar and consequently some of these organizations have gone down, and some are still making it. The Legislature ultimately passed a law to allow Bingo more than three days a week of operation. In reference to the number of licensees that were out of compliance in the last four quarters, he noted it was the third and fourth quarter, but primarily the fourth quarter of 2002, that put most of these organizations out of business – which was when the legislative change was implemented. The number of Bingo sessions increased, there were more sessions, less people at those sessions, and yet licensee’s were required to pay out prizes—which is why payouts went up for the third and fourth quarter.

Mr. Miller advised the WCCGA is proposing an alternative that would keep the rule as is, but expand the variance criteria; give it to an ALJ, or the Director, and takes it out of the Commission’s domain until it came to them on appeal. He thought this might be a solution that would at least allow staff and the charities time to come together—to see if there is a better solution. Mr. Miller believed there are some potential solutions that are better, and he suggested the Commission needed

to take into account the times, and to give the charities some flexibility for unforeseen problems that occur beyond their control. Removing the variance would eliminate that flexibility. If the variance as proposed is passed, and if licensees aren't able to file petitions and find an alternative, the only remedy available is to go to an ALJ. The licensee would be facing a revocation proceeding – not a suspension of three or seven days; they would be facing revocation proceedings, which would come back to the Commission. Mr. Miller offered examples of charities returning \$500,000 to \$600,000 to their organization – even while they might be out of compliance, and noted that under the Commission's current rule, the licensee would be facing a revocation proceeding – which he felt was very harsh in today's climate.

Commissioner Parker responded that while the licensee's ability to operate at a certain level may be subject to revocation, they could ask to come in at a reduced level. **Mr. Miller** thought that might need to be part of the solution. He affirmed there were different processes in the past – they could be downgraded to a lower level if an organization was unable to comply. However, going down to a lower level affects them greatly. He questioned if the licensee could go back to a higher level if they came back into compliance. He wasn't sure because the rules are not clear. Mr. Miller believed that any solution needed to have that clarification as part of the solution. The WCCGA's Petition asks for four criteria, and the burden is placed on the licensee to go to the Director who could decide the licensee qualifies, or the licensee could go to an ALJ. If the ALJ decided the licensee did not meet the criteria, then it would come to the Commission as an appeal. If the licensee met the criteria, they would have 12 months to get within 10 percent, and 6 more months, for a total of 18 months, to get into compliance. Mr. Miller emphasized the WCCGA is requesting a dialogue with the Commission and its staff to find a better solution during that period of opportunity.

Mr. Miller summarized the WCCGA's proposal keeps the current variance rule in place, but amends it. If one is out of compliance for two consecutive quarters, and then averaged over four quarters, they then have a right to seek a variance. There four criteria in that variance: was the licensee out of compliance for the third and fourth quarter of 2002; have there been legislative changes or other governmental actions that have affected the licensee; were there were unforeseen issues that are out of the licensee's control that affected their ability to comply, while they had a history of compliance; and, was the inability to comply a result of increased competition within the licensee's surrounding market – and must be demonstrated by a preponderance of the evidence. The variance request would go to the Director, who could issue a yea or nay, or give it to an ALJ. If a variance is granted, the licensee has 12 months (with a plan submitted), to get within 10 percent compliance. If the licensee is within 10 percent, they get six additional months, and if not, revocation steps commence. Basically, there are 18 months to bring it together. The WCCGA's intent was to keep the variance out of the Commission's domain until it had to come before the Commission; it was also to give the organization a chance to sit down with the staff and try to find a good long-term solution.

Commissioner Niemi acknowledged that Mr. Miller's comments. She commented that she thought that what the Commission was supposed to be doing (not for Bingo or nonprofits alone), was to make sure that gambling is carried on in a way that is honest and fair to everybody. Commissioner Niemi addressed the fact that the average amount that goes into the nonprofits is 6.7 percent, and a lot of the licensees are below that average – and that looks like something is wrong. Commissioner Niemi believed the Commission's purpose should be to look at the whole nonprofit issue and assess

why the Legislature did what they did in 1973; and assess how much it costs in FTEs alone for the Commission to go through all the business with the nonprofits, and to have to keep track of everything. She emphasized that she was not in any way favorable of getting rid of Bingo – she has nothing against it, but whether they should go through this whole process was a matter she believed needed to be reviewed. **Commissioner Niemi** wasn't confident that making the variances more and more complicated, or more and more simple, or just doing a variance, would solve the whole problem. **Mr. Miller** agreed that it wouldn't solve the problem – it created a window of opportunity. He advised the WCCGA was not wedded to their language, they are open to meeting with the staff, in hopes to modify the proposal and get to a process that works, the WCCGA was willing to hold their Petition for a month to allow the Commission a chance to consider it. The State Legislature has made it clear that it is in the public interest to utilize gaming for nonprofit and charities – and they are simply trying to utilize what the Commission regulates, and to make the most money they can. Mr. Miller quoted former Commissioner Forrest, “these are responsible organizations, they've got logical people running them, and they are in an environment of survival rather than prosperity.” Mr. Miller thought that was even truer today, and the Commission needed to help the industry find survival.

Commissioner Niemi disagreed with Mr. Miller's last statement and explained that she was concerned about the mix of nonprofits and gambling. Her concern was whether the Commission should be involved in this mix. **Mr. Miller** responded that would be an issue that would require debate at the legislative level. Commissioner Niemi agreed. Mr. Miller explained that in the meantime, the organizations were trying to work with the Commission to find a process that works. He addressed the organizations in the state that are only required to make one dollar in gross receipts – which would get rid of the FTE's, get rid of the auditing, and get rid of the staff required to make sure the organization makes a positive cash flow. He questioned if that was the right solution, or whether there should be a certain compliance level. He emphasized the WCCGA is willing to work with the Commission to see if they can find some compromise – it may be the right level right now, but the organizations need flexibility in the event something goes wrong. Under the Commission's proposed rule, it does away with that flexibility. The Petition keeps specific criteria, which may need to be cleaned up. The WCCGA is willing to sit down and clean up the criteria.

Chair Orr appreciated the frustration expressed regarding the Commission spending a tremendous amount of time dealing with people in or out of compliance, and when an organization has a significant amount of time (up to a couple of years) to come into compliance. At the same time, he emphasized that there are a lot of organizations that are in compliance. He commented on how they have expressed frustration -- they are jumping through all the hoops, crossing the T's, dotting the I's, and doing their job, perhaps at a lesser license level; doing exactly what they're supposed to do. Then, there are the organizations working the system for two and half years. The Commission is caught in a dilemma. **Mr. Miller** said he understood. However, he believed a lot of the operators that are now out of compliance are relatively new -- and most of this was a result of the third and fourth quarter in 2002. They instituted new games, expanded the number of nights, and the payouts were paid even though they didn't have enough people at the sessions. The gross receipts stayed the same, but the number of sessions and the number of people in attendance need to be considered. The Commission is not considering those factors. Mr. Miller suggested that if the third and fourth quarter were extracted (one of the criteria in the proposed rule), most of the problems would be gone. Mr. Miller emphasized, "that doesn't mean they're not going to come back, because it's not a

perfect world." **Chair Orr** affirmed Mr. Miller was right to a certain extent. However, the bottom line was the debate concerning the September 11, 2002 crisis. Chair Orr expressed concern that the squeaky wheel was getting the grease; meanwhile, the other licensees were just doing their job.

Commissioner Ludwig addressed agenda Items 14 and 15, and asked whether there was a desire that they be filed for further discussion, or whether the Commission should just continue thinking about the options as they may amend the rule. **Mr. Miller** said they filed their Petition as an alternative. The WCCGA was hopeful that staff would reserve their comments, and object (if they chose), after his organization had had a chance to meet with staff. Staff indicated they oppose the filing of the WCCGA's Petition because staff believed it was a cumbersome, complicated process, and may result in too many hearings. The WCCGA has asked to meet with staff to see if together they could clean up the Petition and offer a viable alternative. If they are able to do that, perhaps the WCCGA could submit an alternative that may do away with the need to remove the variance, or at least have them go hand in hand. Another option would be to amend the Commission's rule. If not, the WCCGA wanted to preserve their right in the Petition because they have another avenue should the Commission turn down the filing. Mr. Miller said the WCCGA hoped to work with the Commission and find a compromise.

Commissioner Ludwig said he favored filing proposals even if he didn't like them because at least they could be discussed, and, it keeps options open. He suggested it might be safer or more practical to file the proposed rules for further discussion. However, the Commission may deny it, or they may adopt it. **Mr. Ackerman** referred to the petitions that are behind Tabs 14 and 15, and said the issue for the Commission today is to decide whether or not to file them for further discussion and further consideration. He noted that staff is saying they are opposed to the substance, and their recommendation to the Commission would be that the Commission not file them because the staff doesn't support them. However, the decision is the Commission's as to whether or not to begin the rulemaking process on those petitions, and the Commission could do that by deciding whether or not to file the Petitions/rules for further review.

Commissioner Ludwig made a motion seconded by **Commissioner Niemi** that the decision on item 11, the proposed rule to eliminate the variance be continued for final action until next month because it was a major issue, and because Commissioner McLaughlin was not present for the discussion. *Vote taken; the motion passed unanimously.*

Commissioner Ludwig made a motion seconded by **Commissioner Niemi** that the decision on filing the two proposed rules as set out in Items 14 and 15 be continued for one month.

Commissioner Parker was not sure what the consequences were of filing or not. **Mr. Ackerman** explained the motion was to table the decision on whether or not to file the petitions behind Tabs 14 and 15 and hear them next month. If the commissioners approve that motion, they will not make a decision today on whether or not to file the petitions for further discussion in rulemaking. They may take public testimony, if there is any, with regard to those petitions to help them make the decision and/or to help formulate their thoughts over the next month. *Vote taken; the motion passed unanimously.* **Chair Orr** called for public input.

Ernestine Varness, Manager, Seattle Jaycee Bingo, and Vice President for the Charitable Nonprofit Voice (CNPV), corrected an assumption that the WCCGA and their attorney represented the entire industry, which was not true. The CNPV submitted an alternative proposal. She also noted the CNPV received a copy of the WCCGA's proposal and they reviewed it with others in the industry. The CNPV feels the WCCGA's proposal was designed specifically for certain organizations that are out of compliance at this time. Ms. Varness explained the organizations she represents are not out of compliance, although they also struggle. She believed the WCCGA organizations were out of compliance because when the Legislature granted the extra days, those organizations added the extra days, which required extra staff, and extra payouts. Now they are asking for a variance for the 3rd and 4th quarters of 2002, which the CNPV believes is unfair to organizations that managed their businesses in such a way as to maintain their compliance. The members of the CNPV do not support the Petition submitted by the WCCGA, and would prefer that the Commission repeal the variance rather than support a specifically designed amendment that would benefit only a few clubs.

Chair Orr responded that his previous comments were meant to convey his concern about the organizations in compliance, and who were doing what was necessary to survive, even at lesser license levels. He suspected they would wonder why they were being punished for making the right choices in order to comply, while the others that did not were now looking for a safety net.

Commissioner Parker also appreciated the point that Ms. Varness made; the issue of fairness. He believed that like any other business, operators monitored their day-to-day expense in relation to net income and made adjustments on a day-to-day, week-to-week, or month-to-month basis. If the manager determined half way into a month that their income is not what they thought it would be, or the expenses they took on because they thought they were going to be in a better position as a result of the change in the statute; then they also had the opportunity to make the necessary adjustments.

Ms. Varness commented that staff had difficulty interpreting the Petition submitted by the CNPV, due to the CNPV's inexperience in writing petitions. **Commissioner Niemi** asked if the people Ms. Varness talked to were all in compliance. Ms. Varness affirmed, and noted those licensees didn't really want the variance repealed, however, they might support amendments that apply for all organizations. Ms. Varness concurred that sometimes there are circumstances where it should be okay to give consideration. Commissioner Niemi verified they wanted to give consideration occasionally, but they don't endorse the WCCGA's proposal. Ms. Varness affirmed.

Clyde Bock, representing the WCCGA, believed the two organizations were asking for the same thing—the only difference is that the WCCGA requested that the third and fourth quarters be disregarded. He hoped everyone could appreciate the fact that every organization now in compliance is one circumstance away from being out of compliance. The industry has seen the very largest game in the state fall out of compliance suddenly—others could follow suit. Mr. Bock emphasized the industry is anxious to find answers; they want a chance to sit down and identify solutions. He thought he could guarantee that in five years, they may be revisiting this issue again because of the complex nature of this industry.

Commissioner Parker asked if it would be helpful in this debate to think of the 6.5 percent net return requirement as a form of tax; an expense that absolutely had to be paid. In most businesses, if one doesn't make their bottom line, they go out of business. In the case of our licensees, the difference would be that there is an option available to operate at a reduced level. **Mr. Bock**

responded they could assume it's a tax, however, if it was a municipal tax, they would have many sources of revenue, of which this could only be one. He was uncomfortable treating it as a tax because of the potential impact to the individual organizations. It's a fluctuating situation; some of the dollars coming into them through gambling is only 10 percent. **Mr. Bock** emphasized that every dollar the gambling entity makes goes to the organization. **Commissioner Parker** affirmed it could be looked at that way, or, that the gambling entity is a standalone subsidiary that has a budget. Mr. Bock disagreed, he stated the organization is the responsible body—it is not a standalone entity. Commissioner Parker said he was talking about it from the point of view of the financial analysis.

Chair Orr addressed Commissioner Parker's comment regarding the cost of doing business—noting that if someone couldn't pay their utility bill, they don't get a hearing, and they don't get a variance—they either pay the bill/tax, or, go out of business. It's a responsibility associated with doing business. **Mr. Bock** responded that they already pay local gambling taxes. Chair Orr understood, however, his frustration was that organizations can have variances for two and a half years, or longer, while another organization is complying, paying their bills, and paying back into their organization. Chair Orr noted the debate is: how is the Commission going to make sure that no matter how big or small you are, that you are contributing an adequate proportion to the organization. He emphasized this was supposed to be a philanthropic organization, and that's why it was accepted in 1973. Mr. Bock said he hoped they would be able to visit the issue of how much is enough, because that was why the variances were established. The licensees are asking the Rules Committee and the Commission for an opportunity to have a roundtable discussion so they can identify and appreciate what makes sense in today's marketplace.

Commissioner Ludwig said it sounded to him like Mr. Bock was saying the Commission shouldn't be approaching the variance; they should be approaching the net return again. **Mr. Bock** said they should be looking for a requirement that both parties are comfortable with. He addressed the one-dollar return criteria for certain size organizations and the praise they receive for doing well. Commissioner Ludwig said he didn't like that, noting that if an organization is only making one dollar, they should be out of business. Commissioner Ludwig agreed with Commissioner Parker's comment that the business managers ought to be looking at their returns daily and making necessary adjustments. Commissioner Ludwig also suggested that they ought to run their operations like a business.

Linda Smith, Seattle Jaycee Bingo, and CNPV member, noted they are a fairly new organization, formed a few months ago because they felt there was a need for Bingo operators and organizations to get together and get feedback from people that attended the meetings. She reported this was one of the first times they received direct notification of rules up for final discussion. Their organization called commission staff to find out what to do, and they were advised to submit their written suggestions. They did the best they could under the short turnaround circumstances and they realize that some of their suggestions may not have been appropriately written. She noted the WCCGA and the CNPV do not speak for all of the organizations. **Ms. Smith** affirmed that each group serves its own members, and she reiterated that the WCCGA does not speak for the organizations that belong to the CNPV. In response to Mr. Bock's comment that everyone was potentially one circumstance away from noncompliance, the CNPV did not disagree. The CNPV (whose members are all in compliance, except one), believed that someday one of their members may need an opportunity, and if they were within the 10 percent factors, which is how their Petition is written, they should be

allowed to petition for a variance instead of going through the administrative law judge. Many of the CNPV members felt there were many different views that could help get people on the right road to recovery.

Matt Blondin, Sno-King Amateur Hockey Association, believed that any safety net should be for all operators, not just for a specific group, and that it should be consistent.

Ron Risnikey, Paradise Bowl & Casino, Tacoma, advised that he has spent 30 years in the food business and has seen several industries totally changed by regulation. In the food business, the grocery store makes less than two percent, which is why there are no local grocers. Mr. Risnikey suggested that by setting hard number expectations for a nonprofit to make, the Commission would be setting a standard that only allows groups who can capitalize large amounts of money to be able to perform on a marketing basis and on an administrative basis. He believed the Commission's job really was to maintain the benefit for the people—whether it's for a profit or nonprofit organization, and while it is an administratively elegant to set hard numbers, no one knows where the economy is going to go, or what the cost of business is going to be. Therefore, he thought locking the numbers down would be detrimental and short sighted.

There were no other public comments. **Director Day** asked whether it was the Commission's desire to work with the two petitions as submitted. **Commissioner Parker** was in favor of holding off on any action on the two petitions. He noted the Commission deferred action on making the rule permanent to disallow variances and set up an alternative process, and, until the Commission takes action on that, it would not make sense to have other matters on the table. The other commissioners concurred.

Frank Miller said his organization hoped for a continuance with the hope that they could sit down with staff and clean up some of the concerns they have with their Petition. **Commissioner Parker** affirmed that it would be up to the organizations and the staff, if they want to attempt to work out variations on what has been proposed. Mr. Miller hoped they could come to an agreement and be willing to recommend filing the rule and continuing the discussion. He also hoped the WCCGA could have a proposal next month that may convince the Commission that their proposal was better than the Commission's. **Mr. Ackerman** emphasized that while staff may try to help Mr. Miller's proposal be the best it can be, that didn't necessarily mean that staff would think it is advisable in the end.

RULES UP FOR DISCUSSION

12. Financial Reporting by Licensees:

WAC 230-12-305:

Cally Cass-Healy, Assistant Director, reported there have been no substantive changes since last month when the Commission chose to file this rule. The introduction has a change, which reads: "Submit any new or updated documents or information including but not limited to the following." Under subsection 3, changes were made to clarify that all agreements must be submitted whether oral or written. In subsection 4, a change was made so that all cash or asset contributions draws from lines of credit and loans were required to be reported, so staff is fully informed on all of the licensees' financing activities. Finally, the \$2,000 threshold for the reporting of loans was increased to \$10,000 as \$2,000 was no longer material in today's environment.

Chair Orr called for questions and public testimony, there were no responses.

13. Equipment Review and Approval Process:

WAC 230-12-315, WAC 230-12-316, WAC 230-02-412 and WAC 230-04-110:

Cally Cass-Healy, Assistant Director, reported this is a package of four rules. Staff asks that these rules be tabled for another month due to legal advice from our Assistant Attorney General. (There are additional issues staff would like to address.)

Commissioner Parker made a motion seconded by **Commissioner Ludwig** to table the package rules in WAC 230-12-315 and 316, WAC 230-02-412, and WAC 230-04-110 for another month.

Vote taken; the motion passed unanimously.

14. Petition for Rule Change Submitted by the Washington Charitable and Civic Gaming Association Regarding Adjusted Cash Flow Petition and Variance Process:

WAC 230-20-059:

(A motion was made, seconded, and approved earlier in the meeting that the decision on filing the proposed rule set out in Item 14 be continued for one month.)

15. Petition for Rule Change Submitted by the Charitable Nonprofit Voice Regarding Adjusted Cash Flow Petition and Variance Process:

WAC 230-20-059:

(A motion was made, seconded, and approved earlier in the meeting that the decision on filing the proposed rule set out in Item 15 be continued for one month.)

16. Other Business/General Discussion/Comments from the Public:

Chair Orr called for public comments. **Don Kaufman**, General Managing Director, Big Brothers/Big Sisters, Spokane, believed there was a misunderstanding on the waiver issue and how fast a business in this kind of an industry could make adjustments. He explained that if something suddenly happened and the business lost 20 percent of their crowd, it would be very difficult to cut 20 percent of the expenses, or to cut 20 percent of the payout overnight. As one cuts 20 percent of the payout, the businesses could lose 30 to 40 percent of their crowd. He cautioned that it takes time to make the kinds of adjustments in a game structure, which is why the waiver process is desirable. Mr. Kaufman also expressed concern regarding the comments about nonprofits being in the gambling business. He reminded the commissioners that the third paragraph of the RCW clearly states that it is to the public advantage for nonprofits to be in the gaming business. Talk has been generated in terms of a 6 percent net return, and in terms of it being a comparison to a charitable dollar. **Mr. Kaufman** clarified that charitable dollars ought to have a very high net return and money going to the purpose of the nonprofit. He believed the gambling dollar was totally different. People have chosen this as their form of entertainment, and as a licensee, he felt it was his obligation to try to work his profit margin up as high as he could get it (and that 6 percent was no disgrace).

Mr. Kaufman advised he's competing against other groups that are using the same process he has for raising money as a lost leader—he's returning 6 percent; they're returning 105 percent in payouts to their customers because they can make it up in other things that are going on in their facility. He can't make it up in the kitchen or in pull-tabs; he has to keep his payouts below market value. Market payouts are running 75 percent. His games are at 66 or 69 percent in order to try and return the 6 to 10 percent profit margin.

Mr. Kaufman advised that he recently wrote a letter to the Commission, and he received a reply from Director Day (copy in agenda packets). He clarified that he participated in the last process with staff to develop the existing charitable net return requirement. Mr. Kaufman reported that he asked very specifically, at that time, whether a long-term obligation included a mortgage. He was told it did, and for the record, he advised that he had witnesses if necessary. Mr. Kaufman asked, if he refinanced his operation to gather some more money from a mortgage process (he could save money), to do some needed physical upkeep to his building, would that negate his opportunity for a waiver in the future under the current law. He also inquired why the Commission isn't negotiating this process. He acknowledged that based on today's testimony it appears there will be an opportunity to meet with staff, and he believed that by working together the various groups could find some common ground on this issue, and bring back a proposal everyone could live with.

In response to Mr. Kaufman's first question, **Chair Orr** said he believed the answer was yes, but it seemed that if a licensee refinances, and puts the operation in a different environment, then the licensee loses their opportunity for a waiver in the future. Chair Orr suggested that might be a point to debate. **Mr. Kaufman** responded that in that case, the Commission has a rule that doesn't allow a licensee to make sound business decisions. There has been a lot of discussion about running the Bingo operation as a business, and needing to make sound business decisions; however, the industry finds themselves behind a rule that doesn't allow them to do that.

Commissioner Ludwig noted Mr. Kaufman's question was timely given the financial situation right now and he suspected they needed a rule change. He cautioned that it was hard to compose an appropriate rule especially if the Commission is on the verge of repealing the variance. He agreed the rule should be cleaned up again because there is still a disagreement on whether it includes mortgages, and if the intent is to make it leases, then the rule should say just leases. There were no other comments.

With no further business, **Chair Orr** adjourned the meeting at 12:05 a.m. The next meeting is scheduled for May 8 and 9, 2003, in Wenatchee.

Minutes submitted by:

Shirley Corbett
Executive Assistant