

**COMMISSION MEETING  
THURSDAY, AUGUST 11, 2005  
DRAFT MINUTES**

**Chair Ludwig** called the meeting to order at 1:35 p.m. at the Heathman Lodge in Vancouver. He introduced the members and staff present.

**MEMBERS PRESENT:**

**COMMISSIONER CURTIS LUDWIG, Chair**  
**COMMISSIONER ALAN PARKER, Vice Chair**  
**COMMISSIONER JANICE NIEMI, Seattle**  
**COMMISSIONER JOHN ELLIS, Seattle**  
**SENATOR MARGARITA PRENTICE, Seattle**  
**REPRESENTATIVE ALEX WOOD, Spokane**  
**REPRESENTATIVE JOHN SERBEN, Spokane**

**STAFF PRESENT:**

**RICK DAY, Director**  
**NEAL NUNAMAKER, Deputy Director**  
**AMY HUNTER, Administrator-Legal Division**  
**DAVE TRUJILLO, Assistant Director-Licensing**  
**JERRY ACKERMAN, Assistant Attorney General**  
**GAIL GRATE, Administrative Assistant**

**Chair Ludwig** welcomed newly appointed Representative John Serben as ex officio member from the Spokane area. **Representative Wood** advised that Representative Serben, from the 6<sup>th</sup> District, just completed his first term and is on the Judiciary Committee with Representative Wood.

**Staff Accomplishments:**

**Chair Ludwig** and **Director Day** presented to Agent-in-Charge Paul Swortz a ten-year service award for his service to the Gambling Commission. Special Agents Jeremy Wakeman, Jess Lohse, and Darcey Axon recently graduated from the Basic Law Enforcement Academy.

**Director Day** congratulated Mr. Trujillo on his appointment to the position of Assistant Director for the Licensing Operations Division. Recently, through the budget cuts and consolidation process the Licensing Operations Division was formed combining the Licensing Investigations Unit, Financial Investigations Unit, Financial Reporting Services, and Criminal Intelligence Unit.

**Director Day** reported that Staff Attorney Arlene Dennistoun has been appointed to the position of Acting Administrator, Communications & Legal Department during the temporary absence of Ms. Amy Hunter. Ms. Dennistoun will attend the next Commission Meeting and continue in that capacity through December. Ms. Hunter is planning to return in January.

**1. Review of Agenda and Director's Report:**

**Director Day** reported that there were no changes to the agenda and explained that there would be several presentations. He reviewed the agenda and identified inserts to the agenda packet. Director Day explained that on Friday there would be a short presentation on Credit and Pricing, which is scheduled during the section of the rules dealing with credit and pricing restrictions. Also, Representative Curtis requested to address the Commission regarding the benefits charities are receiving from LaCenter card rooms.

Agency Request Legislation:

**Director Day** referred to the proposed amendment to RCW 9.46.0335 relevant to bracket pools & fantasy sports and the documentation necessary for the Commission to move forward with requested legislation. Director Day recalled prior discussion that bracket pools and fantasy sports leagues are a modern form of gambling not directly addressed in RCW 9.46 and that the Attorney General advised these activities are not allowed by law. Washington law does allow for player exception in social gambling activities between private parties where all funds go back to the players, but player exception is directed toward card games, not bracket pools and fantasy sports. The agency gets between 200 to 300 calls each year regarding bracket pools and fantasy sports, indicating the level of public interest and confusion. The recommended amendment to RCW 9.46.0335, would allow bracket pools and fantasy sports with a \$100 limit on the value of the pool. Staff would like the policy issue addressed regarding whether bracket pools and fantasy sports are an authorized activity and the dollar amount allowed. Authorization would be needed from the Commission to submit proposed legislation in September to the Governor's Office. Mr. Nunamaker would contact the stakeholders and prepare the documentation for the Governor's consideration of the proposed concept. So with that Chair Ludwig, we are really at a point where we are open for any questions that there might be and a decision from the Commission if you would like us to move this forward.

**Commissioner Niemi** made a motion seconded by **Commissioner Ellis** for administration to continue working on the proposed legislation to amend RCW 9.46.0335 dealing with sports pools, bracket pools, and fantasy sports pools. *Vote taken; the motion passed with four aye votes.*

**Representative Wood** asked whether this would be formally proposed as request legislation from the Gambling Commission to the Legislature in January. **Director Day** affirmed.

Budget Discussions

**Director Day** reviewed the Summary of Fiscal Year '05 illustrating the estimated revenue, the actual ending revenue, and the foundation for next biennium's budget request. The agency's revenue is generated in part from license fees and tribal regulation fees; there are no general fund tax dollars involved in the administration of the budget program. The chart demonstrates that revenues were slightly above the estimated amount, ending about \$1

million dollars more than anticipated, which could be attributed to unexpected growth in house-banked card rooms connected to Initiative 892 and the potential passage of the “Freeze Bill.”

Director Day then reviewed the Gambling Revolving Fund Revenue, demonstrating the fluctuation of revenue as it enters the system. The month of December is when most of the revenue is received, causing the working capital balance to appear larger than it actually is. Because of that fluctuation, it is important to maintain a reasonable working capital balance. The working capital balance was approximately \$3.9 million at the end of fiscal year 2005, and expenditures were 95.9% of the allotted amount.

**Commissioner Parker** asked how the \$3.9 million working capital balance compared with the previous budget year? **Director Day** responded that the balance is dramatically lower than what it has been in the past, which at one point was about \$8 million. The \$3.9 million is equivalent to three months of operating capital.

**Representative Wood** requested some background on the reason for so much monthly fluctuation during the year. **Director Day** explained that license renewals are staggered; annual licenses for organizations are issued quarterly and annual licenses for individuals are issued throughout the year. The larger license fees occur quarterly, causing the fluctuation.

**Director Day** addressed the budget adjustment request before the Commission, noting that last August the Commission approved a budget of \$28,455,000, with 166.9 FTEs, down from the 197 FTEs allotted in 2002. Director Day reported that there were a number of adjustments made statewide by the legislature that were not included in the approved budget, including pension changes, cost of living (COLA) / salary increases, health insurance increases. The Commission has the opportunity to decline a COLA increase. Although it has never been done, it always remains the Commission's option.

**Director Day** explained the operational budget additions and adjustments being requested for next year. The telephone system upgrade would allow the Commission to upgrade to a new telephone system and replace old telephone equipment statewide over the next two years. An added advantage to the new system would be the ability to eliminate office-to-office scan charges, saving over \$6,000 a year in scan charges. The Policy and Interpretations Staff Attorney Position was approved by the Commission, but hiring was delayed until January. This adjustment would allow the position to be filled promptly.

**Director Day** reported that the five FTE requests include positions in the Budget Office, Licensing Division, Human Resources, and the Electronic Gambling Laboratory. Some of the positions, particularly in the business office and Human Resources relate to new state systems like the HRMS system or the computer payroll system. Civil Service Reform has placed the recruitment and screening burden on our Human Resources office, as opposed to the Department of Personnel. Director Day requested that the Commission authorize extending these positions through 2006. The Public Opinion Survey and a Diversity Audit were included as part of the Agency Diversity Plan.

**Director Day** explained that the adjustments to the Recommended 05'-07' Biennium Budget approved by the Commission in August 2004 includes an increase of 2.5 FTEs over the entire biennium for a total of 169.4 FTEs and \$30,766,000, or approximately \$15 million a year. The beginning working capital balance, revenue, and expenditure plan, if authorized, would indicate about \$1 million in revenues less expenditures for fiscal year 2006. In fiscal year 2007, the revenues less expenditures would be about \$823,000. The Projected Working Capital is anticipated to be \$2.8 million in fiscal year 2006, slightly above OFM guidelines of two-months' working capital, and \$2 million in fiscal year 2007, which is slightly below the guidelines. Director Day pointed out that our revenue projections have been fairly conservative over the years and that it wasn't very risky. What was being proposed was not the bottom line; if the revenue does not come in, it cannot be spent.

Next, **Director Day** reported that, based on the current Revenue Projections and Expenditure Plan, a fee increase in fiscal year 2006 is not anticipated. During fiscal year 2007, it is likely a fee increase would be necessary to cover the additional expenses relative to salary, pension, and benefit increases. Director Day plans to keep close track of revenue and expenditures and if revenues are dropping faster than estimated, a late-year fee increase may be required, but it is not anticipated. Director Day requested approval of a fiscal year 2005-07 biennium budget in the amount of \$30,766,000 and 169.4 FTEs.

**Senator Prentice** observed that, although requested staff increases are very modest, every Governor is very sensitive to the criticism with any staff increases, even though it does not come out of the general fund. The pension policy has been extremely difficult to resolve and the Governor would need to be convinced that staff increases are definitely necessary.

**Director Day** understood that the reduction in the pension amount was a liability as the agency moved forward in the next biennium and felt that he was conscious of the FTE levels. The positions being requested are project positions. To restore those to permanent positions, the agency would have to go back through the biennium process. **Representative Wood** suggested that the Commission remind the Governor, and anyone else who asks, of the recent 22 FTE reductions. They may take that into account. **Chair Ludwig** pointed out that this is a large budget that in reality was cut in half and the Commission and staff need to continually remind people of that. He called for a motion.

*Commissioner Parker made a motion seconded by Commissioner Ellis to approve the requested 2005-2007 budget adjustments as presented by Director Day. Vote taken, the motion passed with four aye votes.*

**Commissioner Parker** asked for clarification in terms of the working capital, which was a sensitive issue with previous administration. **Director Day** responded that, in prior history, the agency tried to maintain a three to six month working capital balance. The current budget has about a two-month working capital balance, which is what the Office of Financial Management recommends. Commissioner Parker asked what it was based on. Director Day said he didn't have any detail on their policy, but the concept was to have at least two months of expenditures to cover expenditures during a dramatic drop in revenue. **Bob Sherwood**, Business Office Manager, explained that the guidelines for all non-appropriated activities are that you budget and plan for two-months working capital. Then if there are items anticipated

to be above the working capital to meet operational needs, OFM wants to see them. At this point, the agency does not have any anticipated items that go above the working capital budget.

**Director Day** added that past cash fluctuations have been up to \$1.5 million and the recommended budget covers that. Another problem when the agency kept a higher working capital balance was that the balance tended to be viewed as extra money. When that working capital was removed, the agency had to downsize even more. **Director Day** emphasized that, at the Commission's direction, he tried to be more aggressive with budget management to keep the working capital balance smaller, but still provide sound financial management for the agency. **Commissioner Parker** asked whether Mr. Sherwood considered a two-month working capital balance adequate? **Mr. Sherwood** replied that 2 months working capital would be the minimum the agency would need. He added that he has always been conservative when it comes to fiscal matters and felt two and one-half months of working capital would be better than two. It is just a plan and, historically, the health of the industry is such that the revenue has exceeded what our agency revenue model projects. Of course, any piece of legislation can alter that. **Director Day** added that he was confident in this budget and believed it was very credible. **Commissioner Ellis** asked whether all but about \$440,000 of the \$2.3 million adjustment is attributable to decisions concerning state employees salaries, benefits, and retirement benefits that have already been approved by the Legislature. **Director Day** affirmed.

Correspondence:

**Director Day** drew attention to the appointment letters for Dave Trujillo and Arlene Dennistoun that he mentioned earlier, plus Ms. Dennistoun's resume. **Director Day** referenced the letter and memorandum from Senator Honeyford regarding his advice to the Commission on problem gambling and the Nooksack Indian Compact Amendment, plus our response letter.

Monthly Updates:

Administrative Case Update

**Director Day** commented that in 2004 the agency received 226 cases for Administrative Statement of Charges, the second highest in a five-year period. The agency has already received 151 to date, so it is very likely it will exceed that number of cases this year.

**Director Day** reported that the agency is continuing its enforcement emphasis and recently, with the Liquor Control Board, visited 12 licensees from South King County to check for underage gambling. Four of the 12 had gambling violations relative to underage individuals and were cited. There were no liquor violations observed by the Liquor Control Board.

**Director Day** pointed out that if there is an immediate threat to the public he has the authority to temporarily suspend a license. The agency has seen a trend where observations from surveillance have shown an ongoing threat through cheating conspiracy schemes. To ensure that these games continue to be honest and the players in these games are protected, the agency has begun issuing summary suspensions. About ten summary suspensions have been issued within the last few weeks

### The Congressional Update

**Director Day** directed the Commissioners to bill S 1295 sponsored by Senator McCain that was reported to have moved out of committee. The bill amends the Indian Gaming Regulatory Act to provide for accountability and funding of the National Indian Gaming Commission. Director Day stated that the agency will be keeping an eye on these bills because there is always a potential for impact on how gambling is regulated in Washington State. Our agency has a very close and cooperative relationship with the tribes that we would hate to see jeopardized by any regulation put forth federally. **Commissioner Parker** understood that the bill was not acted upon by the full Senate before they adjourned in August. He asked whether the bill would increase funding for the National Indian Gaming Commission by imposing a percentage of their profits on Tribal Class III operations or Class II? Director Day responded that the maximum total of all fees of \$8 million dollars would be replaced with a .08% of gross gaming revenue. Commissioner Parker thought that would be for purposes of significantly expanding the Commission's budget and its scope of operations. Director Day affirmed. Commissioner Parker understood that a proposal had been made on behalf of the Washington State Tribes, through McCain, for an adjustment for Tribes and States where there is an extensive co-management of regulatory functions built into the compacts. The argument is that there is no need for an increase of regulatory involvement by the National Convention in Washington State because of the extensive involvement by our State Commission with Tribes to ensure the regulatory capability exists and up to its standard. Commissioner Parker requested Director Day to research and report back to the Commission in terms of where that stands and if such a proposal has been made. The Commission may want to consider whether we would be in support of or remain neutral on that proposal. **Commissioner Niemi** requested a copy of the bill. **Director Day** stated that it is currently a very short piece of legislation at this point and he would include it in his report in September unless the Commissioners want it sooner. Commissioner Niemi thought that Senator Cantwell was on the Committee and maybe her office could help. Director Day will contact her office and request help.

### Presentation – Charitable and Nonprofit Study Recommendations

**Director Day** explained that about a year ago, the Commission contracted for a study of the Charitable/Nonprofit Gambling to complete a major review of the Commission's regulatory program. One of the results from that review was to reaffirm the strength of the Commission's regulatory program. Based on the study and subsequent presentations, the Commission asked staff to consider potential areas for action by the Commission. Deputy Director Nunamaker has prepared a review of the conclusions and recommendations and will be presenting four areas of suggested action topics for the Commission to decide whether they are interested in having staff move forward with any of the topics.

**Chair Ludwig** called for a recess at 2:45 p.m. and reconvened at 3:00 p.m.

**Deputy Director Nunamaker** provided a presentation on regulations of charitable and nonprofit organizations and requested guidance and direction from the Commission concerning some of the issues raised. He reminded the Commission that last year Sally Perkins was contracted to conduct research and bring back a report with some practical solutions. The report was to discuss the origins of charitable/nonprofit gambling in relationship to state statutes, current economic trends, and how such activities are regulated

in other states. Ms. Perkins was also asked to provide general input as to areas the Commission may want to review to ensure an effective regulatory system and/or assist a struggling market segment. She provided 13 recommendations for consideration and after review and discussion, eight areas were selected for further discussion at a work session in October 2004. Some of those items were being addressed in other initiatives and were removed, and others were combined into other topics. Deputy Director Nunamaker reported that the issues staff felt may merit further action are: the philosophy statement, the qualification review process, financial statements, and adjusted cash flow.

Deputy Director Nunamaker explained the four topics and added that the Commissioners would be asked at the end of the presentation whether they would like to develop a formal philosophy statement that would be quantified as a new rule, whether a change to the current system of reporting qualification reviews would be more helpful, whether the Commissioners are amenable to a change in the language to require all groups to have financial statements prepared by an independent CPA, and whether the Commission is satisfied with the results of the current system or are interested in pursuing adjustments to the current rule. Deputy Director Nunamaker reported on staff recommendations:

**Philosophy Statement** – Staff believe they can pursue a philosophy statement based on the themes that we've found within the statute. .

**Qualification Reviews** – Staff recommends moving from reporting qualification reviews to reporting program reviews. The program reviews are more in depth and provide more information that includes verified financial information.

**Financial Statements** – Staff believe that the \$1 million dollar threshold is appropriate for the businesses the agency regulate. Staff would like to retain that current threshold but recommend requiring an independent CPA.

**Adjusted Cash Flow** – The current adjusted cash flow rules have been in effect for about 18 months. Staff recommends waiting longer to get the full effect of the current rules.

**Deputy Director Nunamaker** closed with a request for guidance from the Commission.

**Commissioner Niemi** suggested staff could work out a philosophy statement quite easily because of the way the statute was originally written, and thought it would be appropriate to bring back a philosophy statement for the Commission to approve.

**Commissioner Niemi** was in favor of changing to program reviews. Program reviews would give better information on the program and the amount returned to the program, and it could help when deciding how to proceed on items like the adjusted cash flow.

**Commissioner Niemi** agreed with staff's recommendation to keep the audit requirements at \$1 million rather than \$500,000 and require an independent CPA.

Regarding adjusted cash flow, **Commissioner Niemi** asked what Sally Perkins recommended and what the average adjusted cash flow of the programs was. **Deputy**

**Director Nunamaker** explained that Ms. Perkins' report does not contain a recommendation on adjusted cash flow, she suggested staff look at other states or their systems for some guidance. Terry Westhoff's previous presentation included information from other states. Deputy Director Nunamaker stated there didn't appear to be any state that was as in depth as our state or that did adjusted cash flow like Washington. Commissioner Niemi thought there was one state, possibly Minnesota, which restricted manager payments of more than \$90,000 a year. Deputy Director Nunamaker recalled one state having a number cap on the manager.

**Commissioner Niemi** requested staff look at how best to handle an organization that brings in millions of dollars gross, pays the manager an enormous amount of money, and returns very little to the nonprofit purpose. She asked what the adjusted cash flow percentage requirement currently was. **Deputy Director Nunamaker** responded that it graduated, from 3 percent up to about 6 percent and includes a calculation for depreciation and other items that are removed from expenses, making it gross minus actual expenses. Commissioner Niemi wanted staff to look further into what can be done with the adjusted cash flow and, after looking at the program reviews, compare gross and net from the program and the amount going to the nonprofit. Deputy Director Nunamaker reported that the Commission prefers more money be returned to the organization, which is why staff came up with the calculations included in your packet. The rule was passed in 2003, but it didn't go into effect until the first full-year period. We are only halfway through the second year period. A number of bingo halls were lost through that period, and one or two are marginal. If the requirement were raised one percent, most of the licensees would be in compliance. It may take a full two-year cycle to develop the program properly. **Commissioner Ellis** asked how specific of direction the staff was requesting with regard to the adjusted cash flow. If the Commission directed staff to come up with a proposed rule that would increase the amount of money going for programs would that sufficient direction? **Deputy Director Nunamaker** replied that more specific would be more helpful. Staff can push the figures and adjust the bottom line, but that does not necessarily bring in more money. Most licensees are already bringing in more money than the agency requires. When defining the goal, staff are looking at raising it across the board, while making sure there is a minimum requirement.

**Commissioner Niemi** suggested tying the program reviews in with this. There are some organizations that are very successful, but very little goes to the nonprofit. Program reviews may help the Commission decide how to deal with a deficit cash flow. **Deputy Director Nunamaker** agreed the program reviews will be very helpful in determining what the organization is really doing, how they might be bringing in other funds, and how they might be utilizing those in combinations of partnerships they can use to make more successful programs around the state. **Commissioner Parker** asked about the contributions requirement and whether that is treated as an expense. If a licensee is operating a charitable gaming operation, and there is the minimum requirement the state imposed upon licensees, could that not be treated as an expense that is charged every month and put into an account. The organization is going to be audited so there would need to be some documentation that those dollars go to the charitable side of the organization. Commissioner Parker considered rather than trying to come up with a formula, treat it as something that just has to be paid lose the license. **Deputy Director Nunamaker** stated that the organization would put the 3 percent in the account and keep the other 5 percent in back for a slush fund for the bingo

operation. What is currently required is for 100 percent of the money made has to go over. Whatever the net figure is, it better be at least the minimum figure. Commissioner Parker understood that it would be better for 100 percent of all net profits to go into the charitable function. But to ensure that is accomplish, staff have to be involved in the oversight, and auditing and negotiation in terms of what was allowable as an expense before reaching that net figure. Commissioner Parker was undecided whether it was appropriate for the Commission to be that extensively involved, as opposed to the choice of saying there is a flat figure that is the net amount. It is the organizations' Boards of Directors, who are the responsible parties, and they should make the decision whether anything above that minimum was treated as something that goes into some other type of account, like a savings or investment account. Commissioner Parker felt it was not the Commission's responsibility.

**Deputy Director Nunamaker** was concerned that unaccounted funds could easily become excessive reserves, which under IRS and agency rules, charitable/nonprofit organizations are not allowed to have. Just allowing that money to build is not desirable, staff want the money being used toward the purposes for which they qualified as a charitable/nonprofit organization. Currently, licensees make their money, take care of their expenses from bingo, and put 100 percent of that money into their programs. The agency is currently involved to ensure the money is utilized properly and going toward program services and is not being built up in reserves. **Director Day** added that staff initially considered a flat percentage, but decided to take some of the regression out of a flat percentage because an adjusted cash flow increases the requirements as an organization gets larger. The original concept with a flat percentage is that it is more attractive and a simpler application, but it causes even less moving to the charity instead of more. There are two approaches, one is the requirement of the adjusted cash flow that establishes a minimum an organization has to have available, and two is the significant progress requirements that states the available money has to at least be 60/35. In the design of this adjusted cash flow, the combination attempts to maximize the amount going to the charities, and establishes a pretty good base. Any lower and they appear to be in the business of gambling, not in the business of supporting the charitable purpose. The concern staff are dealing with is whether the floor the Commission has established in adjusted cash flow is high enough that these businesses are in the business for the charity. Director Day said the question is how much does the Commission think the minimum from these operations should be available for the charity or nonprofit activity, or is it already at a good level?

**Commissioner Niemi** noted that the whole idea of nonprofit gambling has changed over the years she has been on the Commission. Bingo is dropping, not because of the adjusted cash flow, but because what they are doing to raise that cash is no longer as popular. Commissioner Niemi added that she would like staff to come back with a couple of recommendations on how to deal with the adjusted cash flow, using figures rather than examples. **Deputy Director Nunamaker** explained that the list provided as examples are actually all the licensees that are over \$1 million, just the names of the licensees were removed to.

**Commissioner Parker** asked if the agency had staff qualified to conduct the program review function if the Commission decides to engage in a program review function. **Deputy Director Nunamaker** affirmed. Staff currently prepare program reviews on an ongoing

basis. Each nonprofit organization is scheduled to have one every three to five years. They are not done as often as the qualification reviews but are done in more depth. All the figures are checked, the information provided in the financial statement is checked, and interviews and investigations are performed. The program reviews are already scheduled and are an ongoing program. The only difference would be that staff would report those to the Commission. **Director Day** added that the program review process would replace the qualification review process. **Deputy Director Nunamaker** explained that the qualification reviews report presented to the Commission is required by rule. Staff would suggest removing the requirement from the rule. The process of reviewing the financial statements would continue, but the requirement of reporting to the Commission would be removed and language substituted about program reviews. **Commissioner Parker** asked whether it would necessitate increased staff capability? **Deputy Director Nunamaker** replied that staff have been doing these program reviews for many years. **Director Day** added that the net result would be more complete information to the Commission.

**Chair Ludwig** pointed out that there were several bingo operators in the audience that may want to give limited input. He announced that any formal action would be held until Friday. **Chair Ludwig** called for public testimony.

**Ric Newgard**, Seattle Junior Hockey and a member of the Washington Charitable and Civic Gaming Association, agreed that program reviews would give the Commission better insight into what the organization does, how much money from the bingo hall goes to the organization, and what the organization does with those funds. Mr. Newgard stated that his organization works diligently every day to maximize profits and that 100 percent goes to the organization. He would like to see the industry work with the program reviews. Mr. Newgard asked for clarification on whether the audit statements being prepared by a CPA was an audited statement or an independent CPA preparing the statement. **Deputy Director Nunamaker** replied that it would require an independent CPA, that the three types of statements are not changed.

**Don Kaufman**, Chief Executive Officer of Big Brothers Sisters of Inland NW and President of the WCCGA, testified that regulating net return is a difficult issue and that his organization is making as much money as possible for their charitable purposes. Mr. Kaufman stated that a million dollars is a lot of money, but in bingo about 75 percent is given away in prize money, which drops profit to \$250,000. Spread over 52 weeks it is \$4,800 a week, and when spread over four days of bingo it becomes \$1,200 a day. The organization funds 8 to 12 staff and pays overhead, taxes, rent, electricity, and air conditioning from that \$1,200 a day.

**Commissioner Ellis** asked Mr. Kaufman if he was generally opposed to any increase in the adjusted cash flow requirements. Mr. Kaufman responded that as time goes on, the state is losing more and more nonprofits. These are minimum requirements and, as staff reported, most nonprofits are doing beyond the minimum, so even if the minimum were raised one percent, most licensees would make that requirement. The perception is that when a minimum is set nonprofits drop to that minimum. Mr. Kaufman stated that his organization monitors the issue constantly. The organization is buying the building they are located in, and there is always the concern of whether to sell the building and put the money into the

endowment and try to return 5 percent. The amount the organization is currently giving is about \$200,000 a year. In 1992, that amount was \$700,000 a year. Because the organization is losing ground in bingo, it has to find other resources to just hold our own. Bingo is not a huge competitor and the organization has had to raise a half million dollars to replace the money it used to get in bingo. The customer count is about 20 percent of what it was in 1992 and it is open an extra half-day. Commissioner Ellis pointed out that there are two themes in what Mr. Kaufman said. One being that the organization is dealing with a product that may have a dwindling audience, and the second being the possibility of increasing the required percentages in adjusted cash flow. Commissioner Ellis asked if the numbers in the three options that staff presented were unreasonable and whether increasing the numbers by one percent or reducing the threshold down to \$500,000 from \$1 million produce unreasonable minimal results for the charities. Mr. Kaufman responded that it is very difficult to operate at the current level, that seasons are a big factor in Spokane. His organization can be off 50 customers a day between the peak quarter and the down quarter, and 50 customers a day translates to the total profit in bingo. Payoff cannot be adjusted that quickly. As the crowd diminishes, if payoffs are decreased too quickly, the customers would find a different place to play bingo. The current system is working. It is the responsibility of the Board of Directors to say whether it is a good or bad place to be. At some point, the Board is going to have to justify being in business and whether to sell the building and put it into the endowment. The organization is very creative and rents space in the bingo hall for postal service testing and parking spots to county employees. The organization is doing all it can in their business model, to be in the bingo business, and provide revenues for our nonprofit purpose.

**Chair Ludwig** closed the public testimony and stated that any action or recommendation to staff would be delayed until the following morning to allow time to absorb the information given.

**Director Day** introduced Cathy Harvey, Supervisor of the Tribal Gaming Unit's Central District.

Presentation - Tribal History:

**Special Agent Supervisor Cathy Harvey**, also a member of the Port Gamble/S' Klallam Tribe, provided some history on Washington Indian Tribes. She explained that many new agents with the Gambling Commission had not worked with tribes before and had questions about tribes, tribal relations, and tribal history. This presentation was Ms. Harvey's attempt to fill that void and answer the questions.

One impact to the tribes was the Land Claim Law passed in 1850 authorizing citizens to come to Washington and put in claims for between 320 and 640 acres. None of the land had been negotiated by treaty or ceded by the tribe, so settlers would come to the area and put in a claim for property that the tribes had lived on for generations. At the same time, Washington became a territory and Governor Stevens was appointed Governor. By 1853, after the Land Claim Act, settlers poured into the area and the population increased from 200 to 2,000 in a matter of two or three years. Governor Stevens was also appointed Superintendent of Indian Affairs with an order from the President to negotiate treaties with all the tribes.

Another impact to the tribes was the loss of tribal culture through the boarding schools created for young Indian children to help assimilate them into the mainstream of America. Government agents enforced rules that allowed no practice of tribal religion, culture, gaming, or spiritual dancing or healing ceremonies. The schools enabled the children to speak, read, and write English, but at the expense of not coming home or communicating with their families. The children lost the ability to speak their native language.

In addition there were many federal laws, acts, or cases that impacted the tribes or their sovereignty, like the American Indian Religious Freedom Act, which allowed the tribes their traditional religion. The Indian Gaming Regulatory Act was passed in 1988 that allowed the tribes to negotiate tribal-state compacts and to conduct gaming on their reservations.

**Commissioner Parker** interrupted to point out that in 1987 the Supreme Court decided the Cabazon Band of Mission Indians vs. California Case, recognizing that the tribes had a right to be free of state control and gambling laws that would restrict the tribe's ability to have the same gambling allowed to people with state licenses off the reservation. It was the Cabazon Case that actually set the stage for the 1988 law, and then the 1988 law took back what the tribes had won in the Cabazon Case. If Congress hadn't enacted it in 1988, there would not be any role for the states to play in regulating tribal gaming. But Congress was persuaded by those who wanted to repeal that Cabazon Case to take a middle ground and say there needed to be requirements for regulation. The requirement requiring compacts to negotiate was an attempt to balance the tribal interests with the state's interest in regulating gambling where most of the customers were not tribal members. Commissioner Parker added that the Indian Gaming Regulatory Act is very relevant to this Commission and it has worked.

**Ms. Harvey** reported that in 1989, the Tribes and the Governor executed a Centennial Accord to improve relationships between the government and the sovereign nations. In 1999 the Centennial Accord was reaffirmed, and in 2005 Governor Gregoire reaffirmed it. The Washington State Gambling Commission has its own Washington Centennial Accord Plan. A report is provided once a year identifying the programs, the contact information, and that there is a consultation process, procedures, and a dispute resolution process. The Gambling Commission has a policy on Centennial Accord that is available on our website

**Senator Prentice** addressed the 1924 voting rights to tribal members. Congress felt very strongly that, even though they were a sovereign nation, the contribution the tribes made in World War I entitled them to have the right to vote.

**Commissioner Parker** added that the Centennial Accord, which in 1989 was 100 years after Washington State was admitted into the Union, was an extraordinary thing for the tribes in this state to be able to come to an agreement to respect each others rights as political sovereigns and decide ways to work together. No other state in the Union has been able to go as far or be as progressive in its relationship with the tribes as Washington State has with this Centennial Accord Initiative. Commissioner Parker added that it was one of the reasons he was proud to be a member of this Commission.

#### **(4. Consideration of a Class III Gaming Compact taken out of order.)**

**(5. Phase II Review taken out of order.)**

2. Qualification Review

Domestic Violence and Sexual Assault Services of Whatcom County

**Assistant Director Trujillo** reported that the organization is currently authorized to operate bingo, punchboards/ pull-tabs, amusement games, and raffles. The organization was first formed in 1979 to provide support and emergency services for people experiencing domestic violence, abuse, sexual assault, and sexual harassment in the Whatcom County area. Based upon the analysis of the audited financial statements for the period ending December 31, 2004, staff recommends that the Domestic Violence and Sexual Assault Services of Whatcom County be approved as a charitable organization authorized to conduct charitable activities in the state of Washington. Assistant Director Trujillo explained that Executive Director Catherine Marshall had been here and plans to attend tomorrow's meeting for any questions the Commission may have.

In 2004, the organization provided a bi-lingual legal advocate for their clients and services, held a workshop focusing on Washington laws as they relate to sexual harassment and workplace violence, and held a conference focused on schooling for domestic violence in the healthcare field. Staff recommends that the Domestic Violence and Sexual Abuse Services of Whatcom County be approved as a charitable organization authorized to conduct gambling activities in the state of Washington.

**Chair Ludwig** pointed out that the correct name of the organization is Domestic Violence and Sexual Assault Services of Whatcom County.

**Commissioner Ellis** made a motion seconded by **Commissioner Niemi** to approve the Domestic Violence & Sexual Assault Services of Whatcom County as a charitable organization authorized to conduct gambling activities. *Vote taken; the motion passed unanimously.*

**Director Day** suggested that Chair Ludwig open the meeting on Friday by asking Ms. Marshall if she had anything to add.

3. **New Licenses and Tribal Certifications:**

**Director Day** explained that the house-banked card room applications are now included in the New Licenses Report. Staff included a separate report for the Commission showing the detail on each house-banked application, but it does not require a separate vote. In the future, they will not be listed separately on the agenda.

**Commissioner Niemi** made a motion seconded by **Commissioner Parker** to approve the new licenses, changes, and Class III tribal certifications as listed on pages one through 34 on the approval list. *Vote taken; the motion passed unanimously.*

#### **4 Consideration of a Class III Gaming Compact:**

##### **Fourth Amendment – Nooksack Indian Tribe**

**Director Day** explained that the normal process is that the agency makes a presentation regarding the compact amendment. Because of the time involved, Director Day introduced members in attendance from the Nooksack Tribe. Bill Coleman is a member of the Tribal Council; Pat Check is in the Business Council; Kent Caputo is their legal counsel. Director Day provided introductory information relative to the Indian Gaming Regulatory Act explaining that the Act has specific policy areas that encourage economic development of the tribes and keeping the criminal element out of the tribal gambling. The agency enters into these compacts in good faith negotiations on behalf of the state. There are three types of tribal gambling: Class I, Class II, and Class III. Basically, Class I is all forms of traditional-type gambling, which the state does not regulate. Class II is punchboard/pull-tabs and similar types of gambling, which the state does not regulate, but is between the tribes and the National Indian Gaming Regulatory Commission. Class III gaming is allowed through Compacts and the state has a regulatory role. Absent a compact, the state would have no direct jurisdiction or role in the regulation of Class III gaming. Class III gaming is anything that is not Class I or II. Class III is the traditional casino style gaming from machine gaming to blackjack. Before the tribes can enter into Class III gaming, the state must permit the activity in some form, the tribe has to have a Tribal Ordinance, there has to be a Tribal-State Compact, and the gaming must be conducted on Indian lands.

**Director Day** reported that the agency is required to notify the Legislature, the Gambling Commissioners, and the Governor in the negotiation process. The Legislature reviewed and held a hearing between both the House and Senate on the Nooksack Compact Amendment on July 26. The Commission has 45 days to complete a hearing and the Commission's role in this process. **Representative Serbin** asked if the legislative hearings are usually with the Commerce and Labor Committees of both houses. Director Day affirmed that it was before the committees unless a compact is enacted when the Legislature is in session. The Commission is responsible for conducting a hearing, not to approve the Compact but to decide whether to forward it to the Governor or to return it to the Director for further negotiation. So essentially that is the context of the hearing today and of the Commission is whether or not to forward it on to the Governor. According to state law and the Compacts, the ex officios are also voting members relative to Compacts. The Governor is responsible for final execution of the compact and the tribe is responsible for sending the compact to the Department of the Interior for signature and publication. The Compact is not effective until after publication by the Department of the Interior.

**Director Day** reported that 27 of the 29 Washington Tribes are compacted, and that 20 tribes operate 24 casinos. In late 1988/1989, the tribal lottery system began operating in this state. The Compacts allow a total of 18,225 machines in their present structure and close to 16,000 are already in play.

**Director Day** explained that the tribes are required to have a separate independent regulatory agency. The tribes actually have triple regulation: (1) They have their own Tribal Gaming Agency onsite, that in addition to regulating, licenses and conducts surveillance. (2) The federal government (the National Indian Gaming Commission) is often onsite and regulates. (3) The Gambling Commission also regulates those facilities and

provides licensing background checks, and has a cooperative role relative to monitoring and compliance with the compacts. The compacts carry a transfer provision that allows non-gaming tribes to lease machines to other tribes and allows for a transfer of some revenue from gaming to the non-gaming tribes.

**Director Day** reported that Nooksack facility opened in 1993, went through Phase II approval in 1995, and are presently in a Tribal Lottery expansion. The casino is located approximately 15 miles east of Bellingham.

**Director Day** summarized the Nooksack Amendment, pointing out that it includes items almost identical to the amendments of the Muckleshoot, Tulalip, Puyallup, and Quinault Tribes. The Nooksack Amendment is a modernization of their Compact to pick up the most favored nation provisions and is patterned after several other compacts that are already in existence. The Amendment allows the Tribe to have two facilities (although they have no plans for a second location at this time), increases the number of Tribal Lottery System machines allowed, increases the number of gaming stations allowed, increases the number of hours of operation, clarifies that the Tribe's own Tribal Gaming Agency will be primarily responsible for regulation and integrity of gaming, section on renegotiations is simplified, and Appendix X is modified to identify the Department of Social and Health Services (DSHS) Division of Alcohol and Substance Abuse (DASA) (for problem gambling services) as a potential recipient of funds designated for charities. The problem gambling issue was brought to the table with the Nooksack negotiations to ensure there was a specific provision making it clear that the State DASA, the DSHS program responsible for the administration of problem gambling, could have access to those funds.

**Commissioner Ellis** asked about the alternative type of TLS. **Director Day** explained that it is also known as the Colville Appendix. During the Colville negotiations there was much discussion about the Tribal Lottery machine and whether the Colville Tribe should be allowed to develop their own system. An agreement was made to allow another machine to be developed so long as it stayed within the legal parameters described in the Friendly Lawsuit relative to the TLS machines. That option is incorporated within the Nooksack Amendment. At this point there is no other machine being proposed.

**Chair Ludwig** called for public testimony.

**Bill Coleman**, Nooksack Tribal Council Member, greeted the Commission in his language and thanked them for their consideration of the Amendment. **Representative Serben** asked about the 2½ percent community contribution listed in the Nooksack Compact instead of 2 percent mentioned earlier. Was that something the State had negotiated or was that something the Tribe had volunteered to increase from the standard 2 percent? **Director Day** responded that the Nooksack Tribe has an agreement with the county about what is equitable for distribution, and it is primarily directed to law enforcement. This compact is unique, but works out pretty much the same as the others.

**Senator Prentice** made a motion seconded by **Representative Wood** to recommend to the Governor approval of the Nooksack Compact Amendment as presented by staff. *Vote taken; the motion passed unanimously.*

5. **Phase II Review:**

Stillaguamish Tribe

**Special Agent Kelly Main** reported that several members from the tribe were in attendance and introduced them as Shawn Yannity, Tribal Chair; Jhan Smith, Tribal Gaming Agency Director, Rath Kaikala, Operations Manager; Dan Robbins, Director of House Operations; Dave Seafurt, General Manager of the casino; Janet Darrah, Chief Financial Officer; and Kevin Parker, Director of Gaming. Special Agent Main provided some background on the Stillaguamish Tribe, including some of their successes and the struggles they have faced through their generations. The word Stillaguamish means “river people,” and the river provided spiritual as well as economic resource for the tribe. Special Agent Main described the Phase II Review Process. After six months of operation, the Tribe can request the State to conduct a Compact Compliance Review to determine whether they are in compliance. It is a comprehensive review and takes about two months to complete. Upon successful completion of the Review, the casino can increase its hours of operation from 112 hours to 140, increase its wagering limits from \$250 to \$500, and increase its gaming stations from 31 to 50 plus 2 charitable tables. Staff recommends the Commission approve the Stillaguamish Tribe’s Angel of the Winds Casino to be granted Phase II status.

**Chair Ludwig** called for comments from the Tribe.

**Shawn Yannity**, Stillaguamish Tribal Chair, thanked the Commission in his native language. He stated that their casino is very important to their tribal government as well as to the tribal people.

**Senator Prentice** made a motion seconded by **Commissioner Niemi** to grant Phase II status to the Stillaguamish Tribe. *Vote taken; the motion passed unanimously.*

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

**Dolores Chiechi, Executive Director, Recreational Gaming Association** welcomed Representative Serben to the Commission and requested a copy of the card room statistical update. **Director Day** said he would provide her with a copy of the report.

**Chair Ludwig** announced there would be no executive session & adjourned the meeting at 5:25 p.m.

Minutes submitted by:

Gail Grate  
Administrative Assistant

**COMMISSION MEETING  
FRIDAY, AUGUST 12, 2005  
DRAFT MINUTES**

**Chair Ludwig** called the meeting to order at 9:35 a.m. at the Heathman Lodge located in Vancouver and introduced the members and staff present:

**MEMBERS PRESENT:**                   **COMMISSIONER CURTIS LUDWIG, Chair**  
**COMMISSIONER JANICE NIEMI, Seattle**  
**COMMISSIONER JOHN ELLIS, Seattle**  
**SENATOR MARGARITA PRENTICE, Seattle**  
**REPRESENTATIVE ALEX WOOD, Spokane**  
**REPRESENTATIVE JOHN SERBEN, Spokane**

**STAFF PRESENT:**                   **RICK DAY, Director**  
**NEAL NUNAMAKER, Deputy Director**  
**AMY HUNTER, Administrator-Legal Division**  
**DAVE TRUJILLO, Assistant Director-Licensing**  
**JERRY ACKERMAN, Assistant Attorney General**  
**GAIL GRATE, Administrative Assistant**

**Director Day** clarified information he provided at Thursday's meeting regarding the compact approval process. Even if a compact is heard during the legislative session, the process remains the same. The compact would go to the standing committee not the full legislative body. The only change would be that the timelines increase from 30 and 45 days to 45 and 60 days.

**Chair Ludwig** reminded the Commissioners that they needed to decide on the actions to be taken on the Charitable and Nonprofit Gambling Report presented on Thursday by Deputy Director Nunamaker that was carried over to provide time for deliberation. Chair Ludwig called for a motion.

**Commissioner Niemi** made a motion to include among the rules simplification process a project to 1) pursue the development of the philosophy policy, 2) change the qualification reviews to program reviews, 3) require an independent CPA to prepare an audit, and 4) to slowly change or have rules on the adjusted cash flow. **Commissioner Ellis** seconded the motion. *Vote taken; the motion passed with unanimously with three aye votes.*

**Commission Niemi** requested staff bring to the next meeting, if possible, a few recommendations for handling any change in the adjusted cash flow.

**8. Approval of Minutes – June 9-10, 2005:**

Commissioner Niemi made a motion seconded by Commissioner Ellis to accept the minutes of the regular meeting of June 9-10, 2005. Vote taken; the motion passed unanimously with those present.

**9. Motion to Vacate Default Order:**

**Kuhnles Tavern, Marysville:**

**Assistant Attorney General Sara Olson** was present for the State, as well as **Petitioner S. JoAnn Kuhnle, President**

**Assistant Attorney General Olson** explained that charges were issued by Director Day on April 13, 2005, and mailed to the licensee at her current address on April 14, 2005. The cover letter that went with those charges explicitly stated that Ms. Kuhnles was to request a hearing by May 7, 2005, or a default would be entered. Ms. Kuhnles did not request a hearing and in fact did not contact the Commission in any way until June 9, 2005. It is staff's position that the default order was entered appropriately and should stand.

Petitioner S. JoAnn Kuhnle and Assistant Attorney General Olson presented their cases. A copy of the hearing transcript is available upon request. At the conclusion of the testimony, Chair Ludwig recessed the meeting at 9:55 a.m. for an Executive Session to deliberate the case and then recalled the public meeting at 10:05 a.m..

Commissioner Niemi made a motion seconded by Commissioner Ellis to deny the motion to vacate the Default Order regarding Kuhnles Tavern. Vote taken; the motion passed with three aye votes.

**10. Defaults:**

**Timothy Quaschnick, Spokane, Card Room Employee** (No representative present)

**Arlene Dennistoun**, Staff Attorney, Communications & Legal Division, reported that staff is requesting that Timothy Quaschnick's license be revoked. This is based on his admitted theft of \$15,000 from the casino where he worked in April of this year. Mr. Quaschnick was arrested by Spokane Police and the case has been forwarded to the Prosecutor. The Director summarily suspended Mr. Quaschnick's license. Mr. Quaschnick had an opportunity to request a hearing and he did not respond. By failing to respond, Mr. Quaschnick has waived his right to a hearing and staff requests a default order revoking Mr. Quaschnick's license be entered.

Commissioner Ellis made a motion seconded by Commissioner Niemi to enter into a default order revoking Timothy Quaschnick's license to conduct authorized gambling activities. Vote taken; the motion passed unanimously with three aye votes.

**Julius Stacy, Card Room Employee** (Mr. Stacy was not present)

**Ms. Dennistoun** reported that staff is requesting that Mr. Julius Stacy's license be revoked based on his conduct while dealing cards at The Wild Goose Casino. After he peeked at a card, he instructed the player not to double his bet because the card was not good. The Director brought charges against Mr. Stacy, which were sent by regular mail, and no

response was received. A courtesy call was made to Mr. Stacy reminding him of his right to request a hearing and informed him of the deadline. By failing to respond Mr. Stacy has waived his right to a hearing and staff requests a default order revoking his license be entered.

Commissioner Ellis made a motion seconded by Commissioner Niemi to enter into a default order revoking Julius Stacy's license to conduct authorized gambling activities. Vote taken; the motion passed unanimously with three aye votes.

**Pockets, Lynnwood** (No representative was present)

**Ms. Dennistoun** reported that staff requests the punchboard/pull-tab license for Pocket's be revoked based on its failure to timely submit quarterly reports for the second, third, and fourth quarters of 2004, as well as the first quarter of 2005. The licensee has not timely submitted its quarterly activity reports since the license was first issued in May of 2004. The second quarter report due on July 30, 2005, has not yet been filed, and Pockets has also been delinquent with its local gambling taxes.

A courtesy phone call was made to remind the licensee of the deadline to request a hearing. No response was received. By failing to respond, Pockets has waived its right to a hearing and staff requests that a default order be entered.

Commissioner Ellis made a motion seconded by Commissioner Niemi to enter into a default order revoking Pockets' license to conduct punchboard and pull-tab gambling activities. Vote taken; the motion passed unanimously with three aye votes.

## **11. Recreational Gaming Activities:**

### **WAC 230-02-505**

**Amy Hunter**, Administrator, Communications and Legal Department explained this is the fourth time that this rule has been on the agenda and it is up for adoption. Staff is recommending that Amendment Alternative #2, which was filed at the June meeting, be adopted. Two minor changes were made to the rule based on comments received from Commissioner Ellis regarding inconsistencies in the language in the rule. Also changed was the word "a" to "all" to make it clear that an equipment provider needs to double check with the person conducting the event to see if they have had any prior events, which would include from "all" past distributors. Ms. Hunter explained that RGAs are fun-raising events not fund-raisers and are commonly held at holiday parties. The reason the Commission is involved is because professional gambling equipment is used. Equipment providers are asking to be allowed to hold two events per year when they are working with a large organization. Staff recommends final action be taken on Amendment Alternative #2 with an effective date 31 days after filing. The rule would allow poker and two events per calendar year per organization, business, association, or department thereof. The licensed distributor who is supplying the equipment must send the Commission a monthly schedule of their contracted activities and must identify any prior recreational gaming activities conducted by all licensed distributors on behalf of that licensed organization.

**Chair Ludwig** called for public comment. There was none.

Commissioner Niemi made a motion seconded by Commissioner Ellis to adopt the amended alternative #2 to WAC 230-02-505 with the date of application 30 days after filing. *Vote taken; the motion passed unanimously with three aye votes.*

**Commissioner Niemi** thanked both the audience and staff for their contributions to this rule change.

## **12. Problem Gambling Fee:**

### **WAC 230-04-208**

**Ms. Hunter** explained that this is the repeal of this rule and is up for final action. It was filed after the June Commission Meeting and is the second time it has been on the agenda. Because there was no Commission Meeting in July, we were able to meet the filing requirements that have to be met with the Code Reviser's Office to have it up for final action today. The Commission passed the rule authorizing the fee last fall, which was to be affective June 30. The rule had a sunset clause included in case legislation was passed to fund problem gambling. That legislation included a clause repealing any rule the Commission had passed. Staff recommends final action with an effective date 31 days after filing

**Chair Ludwig** called for public testimony. There was none.

Commissioner Ellis made a motion seconded by Commissioner Niemi to repeal WAC 230-04-208 effective 31 days from filing . *Vote taken; the motion passed unanimously with three aye votes.*

## **13. Raffles:**

### **WAC 230-20-325 and WAC 230-20-335**

**Ms. Dennistoun** explained there are two similar rules. WAC 230-20-325 addresses the manner of conducting the raffle and WAC 230-20-335 addresses the procedures and restrictions on members only raffles.

Staff recommends filing both rules for further discussion. These were discussed at the June Commission Meeting and recommended changes were made. The amended rules would support a reduced budget by simplifying raffle procedures.

**Chair Ludwig** called for public comments.

**Ric Newgard**, Seattle Junior Hockey Association, noted that WAC 230-20-325, Section 8, states that members or volunteers of the organization must not be paid for selling tickets, managing, or operating. Seattle Junior Hockey runs a number of raffles and when volunteers are used to manage and reconcile the raffles, it is very hard to have accountability. Mr. Newgard said he had been considering using some of his paid staff to do the accounting, the deposits, and the reconciling, which needs accountability to make sure the cash gets where it needs to go. Mr. Newgard suggested he work with Mr. Trujillo and staff, and look at just the managing section of the rule, not the selling section.

**Chair Ludwig** closed the public testimony and explained these rules would be on the agenda next month.

**14. Presentation - Changes in the Regulatory Program for Manufacturers and Distributors**

**Deputy Director Nunamaker** reported that at the June Commission Meeting, the Commissioners requested some history on the credit and pricing rule. In 2004, Gambling Commission staff prepared a proposed budget for the fiscal period 2005 to 2007. Revenue for that period, combined with our available working capital, did not support an agency of 188 FTEs, so the proposed budget reduced FTEs to 169. Part of the agency's ability to reduce the FTEs came with the suggestion that staff bring before the Commission some regulatory changes. The changes to the credit and pricing rules are part of that package. Previous testimony has claimed that the proposals before the Commission will deregulate the industry, but staff think that is an exaggeration. Many of current rules concerning prohibition of price fixing and exclusive supply agreements will remain.

Effective January 1978, an addition was made to WAC 230-12-200 that said that manufacturers and distributors shall make such items available to all persons without discrimination with the same price and terms. That rule was in effect for 20 years until 1998. In the early 1990s a number of manufacturers had allowed distributors to become millions of dollars in debt. The manufacturers felt that WAC 230-12-200 which required them to sell at the same prices and terms to everyone caused the problem. In the early 1990s, when the situation first surfaced, staff suggested that the agency get out of the business of regulating prices. The agency received a lot of reaction from the industry, and negotiations were held with the manufacturers and distributors and the rules that are before the Commission are what came out in 1998. Manufacturers and distributors have testified that repealing the rule would result in the loss of small operations and the centralization of product availability. Ms. Magnuson claimed, in her letter of April 4, 2005, that large distributors would command bargain-based pricing.

Discounts for large purchases are already authorized in the rules and are pretty much industry practice. Many of the small distributors will buy their products from larger distributors, who have been able to get the volume discounts, because the small distributor can get the product cheaper than the manufacturer. Another concern was that competition would be adversely impacted. In 2004, the manufacturers market was about \$22 million. Of the nine licensed manufacturers, three control 80 percent of the market and two control 68 percent of the market. Deputy Director Nunamaker did not see how the market would change that much. In 1990, there were 15 licensed manufacturers; currently there are nine. In 2004, four distributors controlled 66 percent of the sales for about \$35 million. The top two distributors have controlled 40 percent of the market since the 1970s.

Another concern expressed was that the current rule forces a separation between manufacturers and distributors and requires they both be independent and financially responsible. Without credit restrictions, it would be possible for manufacturers to effectively own a distributor. Although the agency does not have rules regarding marketing levels, there is an exception that manufacturers may also be licensed as distributors. The gambling market has changed drastically over the past 15 years. In 1996, punchboards and pull-tabs comprised 36 percent of the total market. Today they comprise 9 percent. While the

agency's motivation to consider these changes began based on budget considerations, staff would not have moved this change forward if they believed these changes would cause regulatory problems. **Commissioner Niemi** commented that the written reports received through the Internet were very good. **Commissioner Ellis** agreed and added that it appeared these changes would not affect the Commission's regulatory abilities regarding its core mission. He asked if there were any advantages as far as the Commission staff were concerned in keeping organized crime out of gambling in this state by having smaller rather than larger businesses. **Deputy Director Nunamaker** responded that staff attempt to address those issues fundamentally within our licensing program. Whether they are a large business, small business, sole proprietorship, or a major publicly-funded corporation, it is more a factor of how much investigation is involved, and the agency does a thorough job investigating. These rules cover transactions between licensed entities that staff have already determined to be properly run and properly owned. The agency also an ongoing program of inspection and financial review of existing licensees, and staff look for hidden ownership and infiltration of organized crime. Commissioner Ellis said he appreciated the extent of the financial analysis staff conduct with regard to licensees. His question addresses the argument being made that the Commission should preserve these rules in order to protect small distributors and small businesses from being crushed by larger competitors. Commissioner Ellis questioned whether it is a legitimate function of the Commission give preference to either small businesses or large businesses so long as they are otherwise complying with the law. He added that his question really concerns whether it will be useful to the Commission in conducting its legitimate activities, such as analyzing the books of licensees to make sure that money is being properly accounted for and not being fed to organized crime. Deputy Director Nunamaker replied that the agency prefers to consider all our licensees as legitimate; although we not only trust but also verify.

**Chair Ludwig** called for public comment.

**Roger Franke**, Director of Governing Affairs for Urban International Association of Fund Raising Ticket Manufacturers (NAFTM) and President for the Association of Fund Raising Ticket Manufactures testified that NAFTM opposes the proposed changes and supports the status quo. Mr. Franke emphasized the good relationship NAFTM has with the distributors and with the activities of this industry and the state, and stated it would like to maintain it.

**Mr. Franke** addressed some points Assistant Director Cally Cass raised in her response to the supporting letter that he sent. The first point was the goal of the Commission in doing business as simply as possible. The manufacturers or distributors send in notices to the State, which get filed and responded to when issues come up. It could not be much more simple than that. The next point concerned distributors having millions of dollars of debt. In conflict with that, Ms. Cass wrote that the distributors felt they were only using the tools and terms provided by the manufacturers in a prudent business fashion. Mr. Franke asked whether staff thought distributors going in debt for over \$5 million was a prudent business fashion. If so, then Mr. Franke differed with staff. It appears what is important is to maintain the status quo so the people involved in this business get a fair shake from everybody. Another point Ms. Cass raised was that it was not the duty of the Commission to regulate debt, to which Mr. Franke agreed except that regulating the debt is a by-product or safeguard of these rules. Ms. Cass wrote that the current market is very good, better than it

was before. Mr. Franke agreed that was true, but what is happening is the pie is getting larger but the charitable gambling portion is not. Ms. Cass wrote that less than a handful of notices of delinquencies were sent to manufacturers over the past couple of years. That seems to indicate that businesses are doing better at self-regulation in controlling the debt. Ms. Cass went on to say that it seemed logical these business practices would continue without the rule. Mr. Franke asked if it was logical that business practices would continue without the rule, then why did these business practices occur in the first place. That doesn't appear logical. Mr. Franke added that Ms. Cass suggested no one from the manufacturer or distributor licensees have been able to suggest how this would be a negative. Mr. Franke asked why they have to prove it is a negative. If staff want to check on negatives, look in the history books. What happened before this rule was enacted? If that is the condition the agency is asking for in the future, that is the condition it is going to get.

**Mr. Franke** expressed his concern about the .5 FTE and stated it did not appear to be a financial or staffing burden, that it would cost less than \$30,000 in an annual budget of over \$14 million. Mr. Franke pointed out to the ex officio members an organization called the National Council of Legislators from Gaming States that has model legislation for charitable gambling. Mr. Franke declared that within that model legislation is the exact program that the state of Washington has.

**Commissioner Ellis** asked why the Commissioners should be concerned about competition in this industry. Competition is the lifeblood of the American economy and free market competition is normally how markets regulate themselves. The Commission has important functions to play in keeping out organized crime, but when discussing the pricing and credit practices that are the issue in these rules, why should the Commission be concerned about more competition. **Mr. Franke** referred back to a statement made by Deputy Director Nunamaker at a previous commission meeting regarding not controlling widget operators. Mr. Franke said that if widgets were being manufactured, fingerprints and background checks on the administration would not be done.. Mr. Franke stressed that gambling is a different kind of activity that requires oversight. Commissioner Ellis responded that the Commission should be concerned if organized crime is operating your company from the back room, but why should your prices be a concern of the Commission.

Mr. Franke replied that it is the natural drive of a business person to do everything possible, within the limits, to compete and succeed. If there are no limits, who knows what happens. Mr. Franke said he did not like what happened before there were limits, and pointed out that if the rule was removed, someone would come forward in a few years and petition for another rule on pricing. When that happens, NAFTM will be there to support that rule.

**Commissioner Ellis** said Mr. Franke and his organization were very helpful in providing a legal analysis by Mark Jacobson, from Lindquist and Venum, concerning the legal and anti-trust implications with repealing these rules. Commissioner Ellis questioned how far the analysis was carried by Mr. Jacobson, who emphasized that manufacturers and distributors could be subject to anti-trust litigation for exchanging price or credit information if these rules were to be repealed. Commissioner Ellis commented that there is nothing in the existing rules that would allow manufacturers anti-trust immunity for exchanging price information among themselves. The price information must be filed with the Commission, who retains that information as proprietary and confidential. Commissioner Ellis asked Mr.

Franke if he thought it operated differently and that the existing rules would provide immunity for exchanges of price information between manufacturers. Under existing rules, manufacturers are required to notify the Commission and other manufacturers when a distributor is in default under the trade credit. Mr. Jacobson referenced in his letter the immunity that is provided for exchanges of information about credit terms. Commissioner Ellis did not think current rules allow manufacturers to provide the actual credit terms being used with their distributors, as opposed to simply the fact of a default. Commissioner Ellis requested clarification, possibly at the next meeting, on how the immunity works and if it is being done differently than Commissioner Ellis thought. **Mr. Franke** said he would contact Commissioner Ellis to find out specifically what information he wanted and provide a response at the next meeting.

**Monty Harmon**, Harmon Consulting, reported that he was a former Gambling Commission agent and verified that testing on credit pricing is a complicated and time-consuming process. Mr. Harmon stated that pricing information on file with the Commission is actually available through public disclosure. Mr. Harmon testified that he was in support of this particular rule change.

**Gary Murray**, Recreational Gaming Association (RGA) testified that the RGA supports the intentions of all these rules. The free market society provides the ability to run a business like a business should be run. Mr. Murray commented that it wasn't the Gambling Commission's job to protect a business from going into debt, if that is part of their business plan, or to save them from their bad business practices. Buying something on 30-day net is standard business practice. Having different offerings of the same product from different distributors and knowing that business owners were going to get the best deal for their business is sound business practice. Competition creates a healthy industry. Mr. Murray addressed WAC 230-12-340, stating it was his understanding that the credit restriction was going to be eliminated, but that restriction is still in the rule. Next, under capital leases the word "licensed" was eliminated. Was the Commission's intent to get involved in regulating the leases for non-gambling equipment or non-licensed manufacturers who provide equipment? Mr. Murray thought the Commission was only interested in licensed manufacturers that are providing licensed gaming equipment to licensed operators and urged the Commission to look at the logic behind eliminating the word "licensed."

**Dan McCoy**, McCoy's Distributing, reported that McCoy's Distributing is a mid-size company that distributes pull-tabs and bingo supplies in Eastern Washington. Mr. McCoy voiced his opposition to the proposed repeal of the pricing and credit rules. He referenced two letters he had written describing the benefits and importance of these rules to the health and well being of the pull-tab industry and the chaos that could ensue in the pull-tab industry if these rules are repealed. Mr. McCoy said that the Commission is not being asked to regulate or collect debt, just to leave the credit rules as they are. As required, when distributors are out of compliance, the manufacturers communicate with each other. It is in their best interest to do so, and they will continue so long as the rules in place. Mr. McCoy quoted from the response letter he received from staff: "It is unclear to say that the current market would become unstable if we withdraw the rules." Mr. McCoy expressed his concern about the potential of repeating the past. Mr. McCoy commented that the percentage of the industry focused on pull-tab sales has declined 35 percent. It is an undeniable fact that

increased competition for the gaming dollar has caused a decrease in pull-tab sales. Equally undeniable is the fact that the top agency revenue source is generated by pull-tabs. Which for 2005 was nearly double that of card rooms. Dedicating 1/3 to 1/2 of an FTE to manufacturers and distributors of pull-tabs, does not seem excessive. Mr. McCoy asserted that changing the pricing rules would force small businesses out of business, and pointed out that the only two voices for distributors speaking in favor of de-regulation were two of the largest four distributors in this state. It is only these four distributors, out of the twenty, that are likely to benefit from de-regulation at the expense of smaller distributors. Mr. McCoy reminded the Commission of their discussion on the health of the industry as it relates to anticipated revenue for the Commission budget. It is important for everyone to be working in a healthy industry. These pricing and credit rules have been critical in creating and maintaining a healthy pull-tab industry in Washington State. Regardless of what is happening in other states, this system is working exceptionally well in Washington. It is truly remarkable that we have such an orderly, problem free manufacturing and distribution network at a cost of only 1/3 to 1/2 of an FTE. Mr. McCoy urged the Commission to reject the proposal to repeal these rules.

**Walt Antoncich**, Tri-Focus Enterprises, has held a distributors license since 1988. Mr. Antoncich testified in opposition to the change in these rules. He commented that there is no comparison between the gambling industry and other industries in the state. Mr. Antoncich stated that competition in this industry is very important because of the tax dollars generated by pull-tabs. He argued that dollar-for-dollar, pull-tabs equal or exceed any tax dollars generated for this state. Mr. Antoncich agreed with Deputy Director Mr. Nunamaker's figures showing two of the manufacturers controlling 66 percent of the market at present and four distributors at 65 percent. Mr. Antoncich felt that if this proposal is passed, there would be two manufacturers in the 90 percent range and four distributors in the 90% range. Operators have no control over the cost of their product, so when the cost goes up, there will be a decrease in licensees, which will cause a decrease in gambling tax to local municipalities and a decrease in sales and B&O taxes to the states, in addition to loss of jobs. Mr. Antoncich argued that even today there are different credit limits existing for different distributors. Mr. Antoncich referred to a statement made by Mr. McCoy that two distributor licensees testified that deregulation would help them, but what was not said was that nine other distributor licensees wrote or endorsed letters against deregulation. What could happen if this rule is removed is an increased cost to the operators, fewer licensees, less tax dollars, and possible collusion and manipulation that do not now exist. Mr. Antoncich stated that his speculations are based on fact, on history of other states, and on his 20-years of experience in this industry. He did not think all the ramifications were thoroughly considered by the staff of the Gambling Commission.

**Commissioner Ellis** asked Mr. Antoncich if his comments were about the increased competition in the pull-tab industry or the overall gambling industry. **Mr. Antoncich** responded his comments were directed strictly to pull-tabs and punchboards. Commissioner Ellis asked whether Mr. Antoncich thought a manufacture and a distributor of all pull-tabs and all punchboards would have their ability to increase prices at the consumer level be constrained by the availability of consumers to go to a casino and have access to pull-tabs and punchboards. Commissioner Ellis thought Mr. Antoncich's focus was rather limited as to what constitutes the industry? Mr. Antoncich agreed that he was testifying for the pricing

from manufacturer, distributor, and the free market pricing in pull-tabs and punchboards. He added that the pull-tab and punchboard business is the most recreational form of gambling and that it helps support many small businesses, like taverns, lounges, restaurants, and bowling alleys. The customers in their business that play \$5 or \$10 a day are usually not going to leave if that business loses that industry, that business just loses that particular sale. Commissioner Ellis wondered at what point, if the industry raised the cost of a pull-tab or a punchboard chance to \$10 or \$15, the consumer investing \$5 in pull-tabs or punchboards would decide it would be more fun to spend the money at a tribal casino or card room. Mr. Antoncich responded that the operators of the pull-tabs would be the ones that would give it up, not the players. He asked Commissioner Ellis if he was familiar with the tax structure of the gambling tax this year on pull-tabs? Commissioner Ellis replied that he was familiar with the revenue figures alluded to earlier between pull-tabs and punchboards vs. card rooms. Mr. Antoncich explained that a 5 percent tax on pull-tab gross ends up being closer to a 20 percent tax for the operator because of the definition of gross receipts. It's an arbitrary definition and the margins for the operators are pretty small. They are not making the money reflected by the figures. Commissioner Ellis commented it was another reason the monopolistic manufacturers and distributors were going to be limited on increasing prices to the consumer. They are not only going to potentially lose the consumer, but they may also lose the operator. By raising prices, they would be cutting their own throats, which is a part of our free-market economy and how we ensure the prices remain competitive at the consumer level.

**Chair Ludwig** called a recess at 11:25 a.m. and reconvened the public meeting at 11:35 a.m. Commissioner Niemi stepped out during the break.

**Lane Gourley**, Arrow International, representing one of the two large manufacturers that Mr. Antoncich referred to. The Commission should understand that both of those manufacturers have locations in Washington State and provide more variety than any of the other manufacturers. Mr. Gourley addressed the opportunity for the four large distributors to buy at volume pricing or volume discounts, which current rules allow so long as they are on one invoice and paid with one check. He also explained that some smaller distributors are able to buy their product at less cost from another distributor as opposed to the manufacturer because they can pick one game at a time off the shelf and make the delivery. Those smaller distributors are typically paying 5 to 10 percent more than if they bought the full case from a manufacturer.

#### **15. Credit and Pricing Restrictions:**

**WAC 230-12-330, WAC 230-12-340, WAC 230-12-345, WAC 230-12-350, and WAC 230-12-320**

**Deputy Director Nunamaker** reported that these rules are up for discussion. WACs 230-12-330, 12-345 and 12-320 are for repeal and WACs 230-12-340 and 12-350 are to be amended. Deputy Director Nunamaker pointed out that there had been much discussion on these rules and they would be on the agenda again next month and would have an answer to the question raised about public disclosure of pricing information. Deputy Director Nunamaker explained that the .5 FTE included only the duties of the coordinator's position and did not include the time spent by the agency's special agents in checking the manufacturer and distributor price lists and the comparisons. There is considerably more

time involved than the .5 FTE. Deputy Director Nunamaker explained that the portion of the rule prohibiting division of territories remains on the books. The rules being revised in this package primarily involve the terms of sales between manufacturers and distributors. **Chair Ludwig** asked about the suggestion Mr. McCoy had made regarding the coordinator position and a simpler way to get information to the involved agency's field agents involved. **Deputy Director Nunamaker** explained that when information is submitted, staff have to do more than just file it. So, even if the mechanics of how the agent receives the information is simplified, the work still needs to be done, like verifying the information is accurate, checking price lists, and the condition of sales. Some distributors have multiple price lists and different conditions of sale, which have different prices. .

**Lane Gourley**, Arrow International, asked which marketing level was under discussion, between manufacturer and distributor, or between the distributor and the operator. **Deputy Director Nunamaker** replied that the rule covers both. Mr. Gourley said if the rule covers both then how the rule is written needs to be looked at. Most of the people testifying are arguing that this is going to cause upheaval in the industry, which it will. Mr. Gourley was not sure how staff decided that these revisions would not cause any change or instability in the industry because there will be major changes from the manufacturer/distributor side. Mr. Gourley suggested staff take another look at the issues between the operator and the distributor and how those rules can be made more efficient. He felt the issues need to be divided and added that it would probably address some of the concerns of the card room and recreational clubs. Mr. Gourley reported that Arrow International has not had a price increase in the nine years he has been there. They have had to do things more efficiently, have discounted their products, and created more games than ever before. Mr. Gourley explained that the assumption that the rules protect the manufacturers from distributor debts is misplaced. If distributors cannot pay their bill to the manufacturer, they are not going to do it, and the current rule does not stop that. What the rule does is keep the honest distributor and the competitive nature of the industry in place. Mr. Gourley took exception to the opinion that this was just a minor change, and he hoped that with all the testimony heard, the Commission understood that this is a big deal that requires more thought and another look at the approach being taken.

**Gary Murray**, Recreation Gaming Association, stated that WAC 230-12-230 allows credit for distributors and manufacturers but now excludes the operators from being allowed to pay on credit. The licensed gaming operators are not afforded the same conditions as licensed manufacturers, distributors, or charities. It is only the commercial operators that have been left out of being allowed to buy their licensed gaming equipment on credit. .

**Chair Ludwig** closed the public testimony and repeated that this will be on the agenda again next month for testimony and final action

## **16. Petition for Rule Change**

### **Increasing a Card Room Rake from \$1 to \$2.**

#### **WAC 230-40-610**

**Deputy Director Nunamaker** reported this petition is up for discussion and possible filing by the Commission today. This petition was filed on June 20, 2005, by John Mitchell of the Drift On Inn. Currently card rooms can collect up to \$1 per hand or game per each player-

supported jackpot using a rake method of collection. The petitioner requests that the rake be increased from \$1 to \$2. , Licensees are allowed to retain a portion of the money collected by the PSJ for administrative expenses related to maintaining the PSJ funds. The administrative fee is currently set at 10% of the amount collected. This proposed change would increase revenue to licensees in the form of increased administrative fees.

**Mr. Ackerman** pointed out that the Commissioners no longer had a quorum. Information can be received from the proponents of the rule, but no vote can be taken. Mr. Ackerman suggested setting the filing over until next month.

**Chair Ludwig** declared the rule would be set over until next month because it cannot be filed without a quorum present.

#### **17. Other Business/General Discussion/Comments from the Public:**

**Chair Ludwig** called on Representative Richard Curtis.

**Representative Curtis** thanked the Commission for opportunity to speak about four card rooms within his district in LaCenter that are doing a great job for our community. They are Chips, The Palace, The Last Frontier, and the New Phoenix. Representative Curtis reported that he is chairman of their Charity Committee, which was started about four years ago with citizens leading the committee and deciding where within the local community the contributions would go. Representative Curtis explained that the card rooms chose to start the Charity Committee, and they have been able to give \$72,000 back to our community every year. That contribution is above and beyond the approximately \$3 million in taxes they pay every year to the city. Representative Curtis reported on a few of the programs the Charity Committee funds. He explained that the card rooms in LaCenter are respected in their community, have operated in the most responsible fashion, and have given much back to the community. These card rooms have gone above and beyond and have set an example for most businesses to follow. The city of LaCenter is proud to have the card rooms as businesses within the community. **Chair Ludwig** added that he had heard that 75 percent of the police budget comes from those four commercial card rooms. **Representative Curtis** replied that it was actually a little higher than that. People feel safe in LaCenter, even with the large card rooms, and one of the reasons for that is because LaCenter has such a great police force, which is paid for by the card rooms. LaCenter has virtually no crime and what crime there is has been kept to a minimum. Representative Curtis stated that being Chairman for the Charitable Committee has been the most moving experience he has ever been able to do. **Senator Prentice** commented that, at any given time within her district, there are eight to ten different card rooms that she knows well. Senator Prentice remarked on Representative Curtis's comment that trouble has been kept to a minimum. She recalled that there had been some very serious problems in LaCenter that had not been duplicated in Senator Prentice's district.

**Chair Ludwig** announced that the rule petition on raising the rake for a card game would be carried over to the September meeting in Pasco because there was no longer a quorum to vote on the rule change.

**John Mitchell**, Drift On Inn Casino, requested to speak at this time because he was the petitioner for this rule change and would be unable to attend the meeting in Pasco. In 1996, the Commission allowed us to take one dollar out of each pot, put it in a drop box under surveillance and put that money in a separate account to offer better prizes. Mr. Mitchell urged the Commission to raise the rake to \$2 so card room operators could offer more frequent and larger prizes to their customers, stating that the customers support the increase.

**Gary Murray**, Recreational Gaming Association, testified that there are normally eight to ten players at the table who put money into each pot and the winner of the hand gets the full pot. Occasionally players like to play for a larger prize or a different way for them to get money in the game of poker. That's how the player-supported jackpot was started. The dollar rake has been there since 1997. Mr. Murray urged that there not be any limit on how much goes into which pot because it is still the players' money and all of the money goes back to the players, once the administration fee is taken into account. Mr. Murray thought the card room operators should be allowed to respond to their customers' wishes.

**Commissioner Ellis** asked if Mr. Murray's proposal was that the rake not be increased from \$1 to \$2 dollars, but rather there be no limit on the rake. Mr. Murray felt that would be appropriate.

**William Hubbell**, Club Hollywood Casino testified in support of the proposal to raise the rake to \$2 on player-supported jackpots to improve promotions, to ensure strong guest relations, as well as continuing the growth in the player base. Mr. Hubbell pointed out the gaming sites that are all over the Internet. There are over a million players playing on the Internet at any one time and these sites are unregulated by any governing body. They take large dollar amounts out of the state economy because those funds are not taxed. The additional dollar for the rake will not directly affect profitability outside of the small administration fee that we will receive. It will give the card rooms a larger spectrum of additional bonuses that can be offered to their player base. Mr. Hubbell requested the Commission's consideration for approval at the September meeting.

**Chair Ludwig** announced the next meeting will be September 8 and 9, 2005, at the Red Lion in Pasco and adjourned the meeting at 12.10 p.m.

Minutes submitted by,

Gail Grate  
Administrative Assistant