

**COMMISSION MEETING  
THURSDAY, JANUARY 12, 2006  
MINUTES**

**Chair Ludwig** called the meeting to order at 1:30 p.m. at the DoubleTree Guest Suites located in Seattle. He introduced the following attendees present:

**MEMBERS PRESENT:**     **COMMISSIONER CURTIS LUDWIG, Chair**, Kennewick  
                                  **COMMISSIONER JANICE NIEMI**, Seattle  
                                  **COMMISSIONER JOHN ELLIS**, Seattle

**STAFF PRESENT:**       **RICK DAY**, Director  
                                  **NEAL NUNAMAKER**, Deputy Director  
                                  **CALLY CASS**, Assistant Director – Field Operations  
                                  **AMY HUNTER**, Administrator – Communications & Legal  
                                  **DAVE TRUJILLO**, Assistant Director – Licensing Operations  
                                  **JERRY ACKERMAN**, Assistant Attorney General  
                                  **SHIRLEY CORBETT**, Executive Assistant

**Director Day** and **Commissioner Niemi** called Chair Ludwig forward to present a service award in recognition Commissioner Ludwig’s 10-years of service to the Commission.

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

**Director Day** the reviewed the agenda for Thursday and Friday, noting that Item 13 was continued to the February meeting at the request of the petitioner, and Item 16 has been withdrawn at staff’s request. The Chair concurred. He then highlighted inserts added to the agenda packet since publication.

**Director Day** announced the Commission anticipated potential quorum problems with the May 11-12, 2006 meeting; and therefore cancelled the May meeting and rescheduled for June 15-16 at the Marcus Whitman Hotel in Walla Walla. He also drew attention to the fact that the June meeting is scheduled on the third Thursday and Friday.

To close out 2005, **Director Day** acknowledged staff’s efforts in addressing the volume of work within the agency by highlighting the following significant accomplishments: a

major reorganization and streamlining of the agency; the Licensing Unit converted thousands of documents into electronic records; our enforcement staff (in tribal gaming and in field operations) handled significant theft, bookmaking, and cheating cases; and a Request for Proposals (RFP) has been issued for a new Information Management System for the Commission. Once a successful contractor has been identified, the specific project to construct a new system for the agency will commence. **Director Day** also commented that there has been increased participation in the agency's tuition assistance program at several levels within the agency, which reflects the desire of staff to improve their education and contributes to a positive environment and progressive future for the agency. Director Day continued with the Director's report.

Adjusted Cash Flow Report – Projected for Calendar Year 2005:

**Director Day** drew attention the Adjusted Cash Flow Report, reminding the Commission that this report is a projection of the calendar year reporting. He pointed out that two additional charitable non-profit bingo operations are identified as being closed. He also noted that at this point, it is projected that one other establishment will be facing possible violation problems relative to cash flow requirements. The projection is based on the actual three reporting periods, with the fourth quarter reporting period remaining. Director Day noted the Commission recently received notification that Sound Institute (Bremerton) plans to close this coming spring. He also made the Commission aware that as an immediate result of the smoking ban, it has been reported that a number of the non-profit organizations are seeing a fairly substantial decline in their gross. Director Day suggested the Commission may need to revisit the adjusted cash rule in the future— noting the “top 40” list is now a “top 25” list and dropping.

2006 Legislative Update:

**Director Day** commented that at the last Commission meeting, staff was asked to develop a letter designed to express the Commission's concern regarding two congressional legislative efforts. U.S. Senate Bill 1295 has already passed the Senate. The bill essentially provides for a substantial increase in the regulatory fee, with collections made possible by the National Indian Gaming Commission (NIGC). The second bill hasn't developed into a bill at this point; however, it would expand the National Indian Gaming Commission's authority to regulate Class III gaming. Given the extensive nature of the regulatory operation and the plus 10-years of development between the Tribes and the state relative to Class III gaming, Director Day believed that both these efforts by the NIGC would duplicate Washington's efforts currently going on—a structure that is very strong. He believed this duplication would detract from the relationship between the Tribes and the state on occasion. The draft correspondence requests the Governor's help in communicating with our congressional representatives and lobbyists to work on both pieces of the legislation; and if at all possible, to exempt Washington and other states that may have strong regulatory operations with their tribes from this legislation.

**Commissioner Ellis** asked whether the Commission has any information regarding the approach that tribes in Washington may be making with regard to these two pieces of

legislation. **Director Day** affirmed the Washington Indian Gaming Association also sent a letter to Senator McCain and Senator Dorgan expressing similar concerns.

**Commissioner Ellis** made a motion seconded by **Commissioner Niemi** that the staff be authorized to send to the Governor's Office the correspondence expressing the concerns of the Commission about the two legislative proposals and to take whatever follow-up action appropriate, including contacting members of the Washington Congressional Delegation. **Chair Ludwig** called for public comments and there were none. *Vote taken; the motion passed with three aye votes.*

**Director Day** drew attention to correspondence from the City of Spokane directed to Governor Gregoire, expressing an interest in accessing a share of any revenue sharing that may result from a Compact Agreement with the Spokane Tribe.

**Amy Hunter**, Administrator, Communications and Legal Division, continued with the Legislative Update. She noted four new bills have been introduced in the 2006 Session, and she briefly reviewed the bills that are technically still alive from the 2005 Session. This year is a short 60-day session which started on Monday, January 9 and should end on Thursday, March 9.

Senate Bill 6301- Compacts Negotiated Under Indian Gaming Regulatory Act (IGRA):  
**Ms. Hunter** reported that two bills have been introduced that deal with the tribal compact process. Senate Bill 6301 was introduced by Senator Prentice with 18 other Senators signing on—the changes on page 1 and 2 of the bill are minor. The most significant change is on page 3; dealing with when a Tribe wants to conduct gambling on land that was acquired after 1988, which was when IGRA was passed. Currently, the only casino in this state, which falls under that provision is in the Airway Heights area—associated with the Kalispel Tribe. Under IGRA, if the Tribe has land like that and they want to have gambling, the Secretary has to determine that it is in the best interest of the Tribe and that it would not be detrimental to the surrounding community. The Governor must then concur. This bill would change that process and require a 60 percent legislative approval for gambling on that land. Ms. Hunter expected a hearing to be scheduled within the next two weeks. Staff recommends that the Commission remain neutral on the bill. One consideration is whether this bill is actually trying to change Federal law, and whether that would cause problems.

**Jerry Ackerman**, Assistant Attorney General, commented that he believed there may be some issues regarding Federal preemption. The power of the state to concur in the determination that land acquired after 1988 is an appropriate location for gambling is under the Federal Indian Gaming Act, and specifically places it in the purview of the Governor. He affirmed it is an issue when this legislation reports to change that legislation by granting the power to the Legislature. Mr. Ackerman advised he has just seen the legislation and needed to think it through and conduct some research. He didn't think it would affect existing compacts—because there aren't any existing compacts that propose gambling on Indian land where it isn't already occurring. However, he suggested that if there is language in a compact that is broad enough to encompass post

'88 lands as a location for gambling, this bill may apply to those lands because those lands may not have undergone the secretarial approval and the gubernatorial concurrence that the legislation and the federal statute discusses. He reiterated his concern regarding federal preemption.

**Commissioner Niemi** suggested the Commission's position should be to say that not only is the Commission neutral on this legislation; but, if the bill is seriously considered, the Commission would be concerned with the idea of the federal preemption. The commissioners concurred.

House Bill 2657 – Approval of Class III Tribal-State Gaming Compacts:

**Ms. Hunter** reported that House Bill 2657 was introduced by Representative Condotta to require legislative approval of compacts by a 60 percent vote. This would be in addition to the Commission approval. Right now, the Legislature is required to hold hearings, but they don't actually have a vote. Under the proposed legislation, if a compact would come forward, the Commission would take the first action, it would then be forwarded to the Legislature for action, and lastly, it would go to the Governor. A hearing has not been scheduled. Ms. Hunter advised that staff recommends the Commission remain neutral on the bill. There is at least one technical correction. Under the existing time lines, it would be very difficult for the Commission to be giving the Legislature comments on what is contemplated because the Commission hearing would potentially be occurring before the Legislative hearings. Ms. Hunter affirmed there are other states that have the legislative approval approach; however, some of those states have run into problems with the process if the Legislature does not approve the compact. As staff reads the bill, no action by the Legislature has been taken as a rejection of the compact, and action must be taken either while they are in legislative session or right after—it really limits the time when a compact could be considered. Ms. Hunter affirmed staff's recommendation to remain neutral and to point out the considerations—meanwhile staff will research other states and their process so the Legislature has the benefit of that information. **Chair Ludwig** affirmed.

House Bill 2508 – Tribal Community Impact Contributions:

**Ms. Hunter** advised that House Bill 2508 requires the Governor, not the Commission, as worded to make a report every year of what the tribal community impacts have been and it's contributions to the standing committees. Staff currently provides an annual report to the Commission which includes the totals of the community contributions, and staff verifies compliance. Staff recommends the Commission remain neutral on this bill and that staff suggest that it might be more direct to have the report come from the Commission rather than the Governor.

House Bill 2547 –Violations of the Open Public Meetings Act:

House Bill 2547 deals with violations of the Open Public Meetings Act. **Ms. Hunter** noted that while it is broad, it would apply to the Commission and makes it a gross misdemeanor if a commissioner has knowledge that a meeting is violating the Open Public Meetings Act and participates in the action violating the Act. Current law provides for a civil penalty of \$100, the proposal would make it a gross misdemeanor.

Staff recommends the Commission take no position and staff will continue to track the bill.

Senate Bill 5878 – Prohibition Against Internet Gambling:

**Ms. Hunter** noted the intent of the SB 5878 is to make it absolutely clear that gambling on the Internet is not an authorized activity. An amendment would add that participating in such an activity is professional gambling, and the legislation provides three different degrees of professional gambling. Last year, the bill had two parts—one dealing with prohibiting Internet gambling, and the other provisions dealing with the Lottery Act. Staff recommends supporting the portions of the bill that make the changes to the Gambling Act; and remaining neutral on any changes affecting the Lottery statute. Ms. Hunter believed the intent of the changes with the Lottery statute was to not to have the Lottery Commission involved in conducting gambling over the Internet.

**Commissioner Niemi** made a motion seconded by **Commissioner Ellis** to support Senate Bill 5878, in particular the portion dealing with Internet Gambling and to remain neutral on the points dealing with the Lottery Commission. Chair Ludwig called for public comments and there were none. *Vote taken; the motion passed with three aye votes.*

House Bill 1045 – Creating the Gambling Account:

**Ms. Hunter** addressed HB 1045, the bill dealing with changing the Gambling Revolving Fund to an appropriated account. She reported that staff met with several legislators about this bill last year and it ended up dying in Committee. This is the bill that Commissioner Niemi, Commissioner Ludwig, and Director Day testified about. A position letter was also submitted to Governor Gregoire. Staff hasn't heard anything further about this bill and until there is some indication that it is coming back to life, staff won't do anything. Staff's recommendation is to oppose the legislation if it is raised.

House Bill 1944 – Raffles Conducted by State Employees:

HB 1944 would allow state agencies to conduct raffles as a limited, unlicensed, members-only raffles—they would not be required to have a license and they could only have staff of a state agency involved in the raffles. Staff has not heard that this bill is going to come up again. It ran into some snags last year and the Senate decided that it would be an expansion of gambling and require two thirds vote, which it did get; but, it didn't move any further. Staff recommends the Commission remain neutral on the bill.

Substitute House Bill 2175 – Restrictions on Charitable or Nonprofit Organizations:

**Ms. Hunter** reported that HB 2175 prevents charities from owning commercial gambling activities. The legislation is in part a result of an organization that went to court over whether the Commission's rule prohibiting this was valid or not. A Thurston County Judge struck down the rule that said it was unconstitutional and that it went broader than the law. The legislation died in Rules. Interestingly, the organization that challenged the rule was issued an E-5 license which allows them to have a poker room with five tables. They have not applied for a house-banked card room license, which was what their intent had been. No other charities have applied for a house-banked card room license. The

Commission supported the legislation last year, and there is an existing position statement. Staff recommends the Commission continue to support the legislation if it is raised again.

Engrossed Substitute Senate Bill 5287 – House-Banked Social Card Games:

SB 5287 is expected to be discussed again this year. The original bill would have imposed a state tax on card games. A second bill, Senate Bill 5994 would restrict the number of house-banked card rooms allowed. Last year, all of the tax provisions were amended out of the bill and all of the provisions of 5994 dealing with locations of card rooms were amended into it. The bill is technically alive and called 5287; however, the provisions that are still alive deal with house-banked card rooms and their locations. **Ms. Hunter** anticipated the previous deadline date (March 10, 2005) would change to reflect the current session and that there may be some other amendments as well.

**Commissioner Niemi** noted that there were two different bills and the Commission said something about both of those two bills; now there is one, and she questioned what the Commission's recommendation was last year about the tax bill and about the freezing of house-banked card rooms. **Ms. Hunter** reported the Commission decided to stay neutral on both bills. A fiscal note was issued for SB 5287, and she noted that staff thought some businesses would probably close if there was a tax. Regarding SB 5994, the Commission raised policy considerations which are the same ones staff would recommend be raised this year, noting the licenses could become extremely valuable as licensees close. She reported that it appears that the number of house-banked card rooms may now be steadying. There were 95 at the end of 2004, and 97 at the end of 2005. When the financial statements for the existing house-banked card rooms were reviewed, it appeared that about half of them were in the red—looking at their whole business. She reiterated that staff recommends remaining neutral and to again point out some of the policy considerations. Ms. Hunter expected amendments and advised that if additional concerns are raised as the language is developed, staff would take that into account.

**Commissioner Niemi** advised she was not comfortable remaining neutral. She explained her personal feeling that it is wrong to freeze anything which would allow an advantage to everyone that is in, and exclude everyone that is out, and she would be opposed to the bill as it stands. **Chair Ludwig** requested that Ms. Hunter proceed with her report so the commissioners could ponder the position matter.

Senate Bill 5991 – Zoning Authority:

**Ms. Hunter** stated the Commission was against the zoning bill last year, which was at least the fourth consecutive session that the zoning issues had been addressed. The bill died in committee, and staff has not heard anything about it to date. If the bill is revisited, staff would recommend opposing the bill again. **Chair Ludwig** affirmed the position to oppose this legislation was based on a rather careful and thorough explanation from our Assistant Attorney General and concurred to by Mr. Tull who is now a very public person in this area. Chair Ludwig advised he was confident with the position the Commission provided last year and that it should stand.

Senate Bill 5879 – Prohibiting Out-of-State Contributions to Gambling Ballot Measures: SB 5879 deals with non-licensed out-of-state gambling businesses contributing money towards Initiative measures in Washington. **Ms. Hunter** advised this actually had more to do with some contributions made last year regarding Initiative 892 to allow slot machines. The bill was not scheduled for hearing and died in committee. Staff is not expecting the bill to come up again; although, staff recommends that the Commission remain neutral should the legislation be revisited.

**Commissioner Niemi** questioned if the state prohibits any out-of-state contributions to other kinds of Initiatives or legislation. **Mr. Ackerman** responded not to his knowledge with regard to Initiatives; and, he believed not with regard to other legislation. Commissioner Niemi advised that she supposed it would be nice to remain neutral; however, she questioned how the Commission could oppose only gambling issues and not anything else. **Chair Ludwig** agreed with Commissioner Niemi. He believed that since this didn't specifically pertain to gambling, it wasn't within the Commission's scope of business to even comment. Commissioner Niemi and **Commissioner Ellis** affirmed they were more comfortable with no comment on this legislation.

Senate Bill 6057 – Reporting on Social Card Room Financial Activity:

**Ms. Hunter** noted that Senate Bill Substitute 6057 would require the Commission to once again report quarterly on card room activity. This bill was introduced very late in the session last year. The bill died in rules; but, made it out of the initial committee. She recalled that as a result of rule changes that became effective in July 2005, the Commission was now getting information from most licensees every six months instead of every quarter as previously required. This bill would require the Commission to go back to quarterly reporting. She reported the Commission also now has a rule in effect requiring financial statements from house-banked card rooms. These reports provide more information about the over-all business than the reports previously received. If the bill passes, staff believes the Commission may have to add staff to begin collecting the reports again on a quarterly basis. Ms. Hunter affirmed the Commission has already cut or very soon will have just finished cutting two of the four positions that are in the unit that collects this information as a result of budget streamlining requirements. Staff recommends remaining neutral and if called to testify, staff would explain the current reporting process offers more information, which is good, solid information about the industry.

**Mrs. Hunter** addressed a bill that is anticipated to be introduced that will increase the betting age for all activities from 18 to 21. The bill would pertain to Gambling Commission Licensees as well as the Lottery and Horse Racing. More information will be provided once the bill is introduced.

With no further comments, **Chair Ludwig** redirected the discussion back to SB 5287 dealing with the freeze on house-banked card rooms. **Commissioner Ellis** offered his "gut reaction" that the Commission might be better off not taking a position on the freeze legislation from the standpoint that the freeze wouldn't have that much impact since the growth rate of the house-banked card rooms seemed to be stabilizing. He noted that it is

also possible that the Commission taking a position might not make that much of a difference anyway. He explained that there are strong feelings about the topic in the Legislature, and what might make a difference is the perception that the Commission's opposition to the freeze might be viewed as the Commission favoring the expansion of gambling—which would be unfortunate. **Commissioner Niemi** concurred the points offered were reasonable ideas and she supported the recommendation to remain neutral.

**Director Day** affirmed the last time the bill was addressed the Commission did remain neutral and provided testimony about the potential impact, the value of licenses, and any technical concerns that resulted. He suggested that remaining neutral would be consistent with last year. **Commissioner Niemi** added a final thought noting that while the numbers of house-banked card rooms are now remaining stable, the amount of money they take in will probably not be stable, which was another consideration she hoped the Legislature would think about.

#### Monthly Update Reports:

**Director Day** drew attention to the Congressional Update and noted there is one new piece of federal legislation—House Bill 4411—relating to the Unlawful Internet Gambling Act of 2005. The bill was introduced in the House on November 18, 2005. Director Day noted there have been several efforts regarding Internet gambling initiated in Congress; however, nothing has gone very far at this point.

Addressing the Seizure Case Update dated December 19, 2005, **Director Day** offered a correction pertaining to the note on the bottom of the page that there may be a petition filed regarding the forfeiture decision of the Administrative Law Judge made in that case. He reported that manner has been settled.

Lastly, **Director Day** drew attention to the first news article in the agenda packet referring to a significant bookmaking case the Eastern Region Field Operations pursued. Searches were executed and arrests made in that case which were yielding \$30,000 - \$50,000 per month. With no further reports, **Chair Ludwig** called for public comments.

**Tom Safford**, President of the WCCGA and General Manager of the OIC in Yakima commented on behalf of the WCCGA regarding some initial results in relation to the smoking ban. He reported that seven organizations represented at a meeting on January 11, were showing a downward trend in business compared to last year. Comparative statistics for December to December and then monthly November to December reflected a downward trend from 25 to 40 percent based on the gross revenue. He reported the WCCGA will be centralizing the statistics and providing them to the Commission for informational purposes so they may see the effects the ban has had on their organizations.

## **2. Defaults:**

**Zilla's Market Street Pub – Failure to Timely Submit Quarterly Activity Reports** (Representative not present). **Ms. Hunter** reported Zilla's Market is located in Chehalis. Staff requests that the pull-tab and card room licenses be revoked based on their failure to submit their quarterly activity report. The licensee has been late five quarters in a row.

Charges were brought against the licensee. Staff also called the owner and left a message advising him about requesting a hearing. A Commission agent confirmed that the business was still open. By failing to respond, the organization has waived its right to a hearing and staff is requesting a default order be entered revoking its licenses. The licensee has a Class A Pull-Tab License, and a Class D Card Room license.

Commissioner Ellis made a motion seconded by Commissioner Niemi to enter a Default Order revoking the licenses to conduct gambling activities of Zilla's Market Street Pub substantially in the form of the findings, conclusions, decision, and Final Order of Default included in the agenda, Tab 2(a). Vote taken the motion passed with three aye votes.

**Frontier Tavern, Richland – Punchboard/Pull-Tab Revocation** (Representative not present). **Ms. Hunter** reported the licensee is located in Richland. Staff requests that the pull-tab license be revoked based upon the licensee not deleting winners from flares on three out of the six pull-tab games they had in play. The flares are the posters on the games showing which prizes are available. When the prize has not been properly deleted, it gives the playing public the impression that the winning pull-tab is still in the bowl when in fact it is not. This is a violation of a July 2005 order, which dealt with late activity reports. The Director brought charges against the Frontier Tavern—they were sent by regular mail. The charges were reissued because when staff made the first courtesy call the manager reported that they had not received the charges. Staff placed a second call and spoke with the manager, reminding her of the deadline to request a hearing. The manager reported that the charges had been given to an attorney. It has been confirmed that the business is no longer conducting gambling activities. **Ms. Hunter** advised that the licensee did not provide any other further response and staff is requesting the license be revoked.

Commissioner Ellis made a motion seconded by Commissioner Niemi to enter a Default Order revoking the licenses to conduct gambling activities of the Frontier Tavern substantially in the form of the findings, conclusions, decision, and Final Order of Default included in the agenda, Tab 2(b). Vote taken the motion passed with three aye votes.

**James Lynass – Card Room Employee License Revocation** (Not present): **Ms. Hunter** explained this card room employee was formerly employed at Players and Spectators in Spokane Valley. Staff is requesting that his card room license be revoked based on the licensee taking \$60 from the poker podium while he was employed as a poker dealer. He has been terminated and Theft III charges were brought against him in Spokane District Court—he is scheduled for a jury trial in about another week. The charges were sent by certified and regular mail, and the licensee signed for the charges. When staff made the courtesy call, the licensee indicated that he did not want a hearing. Mr. Lynass has failed to respond and has waived his right to a hearing. Staff requests that his license be revoked.

Commissioner Ellis made a motion seconded by Commissioner Niemi that the Commission enter a Default Order revoking the license to conduct gambling activities of

James Lynass substantially in the form of the conclusions, decisions and final findings of the default included in the agenda, Tab 2(c). Vote taken; the motion passed with three aye votes.

**William Delashmit – Card Room Employee License Revocation** (Not present):

**Ms. Hunter** reported this card room employee was formerly employed at the Crazy Moose Casino in Shoreline. Staff requests that Mr. Delashmit's license be revoked based upon him taking \$80 from the pull-tab cash drawer when he was employed as a security guard. This was recorded on video tape and he was terminated. Charges were brought against Mr. Delashmit. Staff made a courtesy call and left a message on his answering machine reminding him of the deadline to request a hearing. The Commission has not received any response, and by failing to respond Mr. Delashmit has waived his right to a hearing. Staff requests that the Default Order be entered revoking his license.

Commissioner Ellis made a motion seconded by Commissioner Niemi to enter a Default Order revoking the license to conduct gambling activities of William Delashmit substantially in the form of findings, conclusions, decisions, and the Final Order of Default included in the agenda, Tab 2(d). Vote taken; the motion passed with three aye votes.

**Matthew Mitzel – Card Room Employee License Revocation** (Not present):

**Ms. Hunter** reported that Matthew Mitzel was formerly working at the Thunderbird Casino in Yakima. Staff requests that his card room employee license be revoked based on his admission that he took at least \$150 in gaming chips while employed as a dealer. He has been charged with petty larceny and apparently he has a court date some time in February. A summary suspension was personally served. When staff tried to make a courtesy call the telephone simply rang with no answer. Because the Commission hasn't received any additional response from Mr. Mitzel, he has waived his right to a hearing and staff requests that his license be revoked.

Commissioner Ellis made a motion seconded by Commissioner Niemi to enter a Default Order revoking the license to conduct gambling activities of Matthew Mitzel substantially in the form of the findings, conclusions, and the Final Order of Default included in the agenda, Tab 2(e). Vote taken; the motion passed with three aye votes.

**Hau V. Huynh – Card Room Employee License Revocation** (Not present):

**Ms. Hunter** stated that staff is requesting that Mr. Huynh's card room license be revoked based on him removing \$650 in chips from an imprest poker bank to play in a poker game. He was terminated and charges were served by regular mail. They were not returned. When staff made the courtesy call, a recording advised the number was an unlisted number and no other phone number was on file. By failing to respond Mr. Huynh has waived his right to a hearing and staff requests a Default Order be entered revoking his license.

Commissioner Niemi made a motion seconded by Commissioner Ellis to revoke Mr. Huynh's license to conduct gambling activities subject to the findings and conclusions

included in the agenda, Tab 2(f). Commissioner Niemi noted that apparently Mr. Huynh's employer (the Golden Nugget Casino) deducted the \$650 as a deduction under "miscellaneous" and they have gotten their money back. Vote taken; the motion passed with three aye votes.

**Commissioner Ellis** questioned whether it was a fairly standard practice in the local industry when a licensee is short of players to allow an employee to use their own money when he gambles at the table during his shift. **Ms. Hunter** affirmed it is fairly common; however, there has been a lot of discussion on this issue to make it clear that it cannot be the house's money that the employee uses.

### **3. New Licenses, Changes, and Tribal Certifications:**

Commissioner Niemi made a motion seconded by Commissioner Ellis to approve the list of new licenses, changes, and tribal certifications as listed on pages 1-33. Vote taken; the motion passed with three aye votes.

**Chair Ludwig** called for a recess at 2:55 p.m. and recalled the public meeting at 3:15 p.m.

### **4. Rules Simplification Project:**

**Chapter 03 - WAC 230-03-001 through 230-03-340 - Permitting and Licensing**

**Chapter 05 - WAC 230-05-001 through 230-05-035 - Fees**

**Beth Heston**, Rules Simplification Project Manager addressed the first two chapters that have been through the rules simplification process and are ready to be filed for further discussion. She drew attention to the Executive Summary and advised she would be highlighting new changes as she reviewed the two chapters.

**Ms. Heston** thanked the internal and external people most involved in the process: Tina Griffin, Keith Schuster, Kevin Maxwell, Julie Sjöholm, Patrick Parmer, Colleen Engle, and Monty Harmon. She also thanked the following staff "focus group" members: Arlene Dennistoun, Dave Trujillo, Cally Cass, Neal Nunamaker, Roshawna Fudge, and Susan Arland. She reported these were the people that helped bring these rules before the Commission—they worked incredibly hard and came up with "a beautiful product." She reported staff is recommending the Commission file the rules for discussion and filing. Ms. Heston briefly touched on each of the new sections:

#### **Chapter 03 - WAC 230-03-001 through 230-03-340 - Permitting and Licensing:**

Terms used in the Chapter – A completely new rule in the chapter which involves using "we, our, and us" to stand for the Commission and Commission staff. If a rule refers to the duties or rights of the Commissioners the word "Commissioners" is used. If it refers to the duties or rights of the Director, the word "Director" is used; however, everywhere else, we, our, or us stands for the collective Commission.

**Ms. Heston** noted that most of the rules in the next section are permitting rules. They are not new rules; they were simply rewritten, reorganized, and put in one place. She pointed

out a change from the draft copy relating to WAC 230-03-020—Section 4, regarding the requirement that punchboard/pull-tab service businesses must apply for a gambling service license, if the combined gross billings exceed \$20,000 during the permit period. She noted a petition is currently before the Commission to raise the limit to \$25,000. Inadvertently the petition language was used in the draft packet mailed in December; however, the \$25,000 has been changed back to the original \$20,000—until a decision on the petition is approved.

Applying for a License – walks the applicant through the process. The salmon colored page identifies a proposed repealer that would require the Commission to ask applicants for less information. Existing applications ask for employee’s social security numbers and other information. The effect is that staff will no longer have to review, store, and maintain information and follow-up collecting this information if it is missing from the application. It is a slight change—the date of birth and social security number have been taken out because staff doesn’t want to collect that information, it is obtained in other ways. **Chair Ludwig** questioned if there was a misprint or an omission at the top of the salmon color page where it states, “(1) requires staff collect” – when it should say “requires staff to collect.” Ms. Heston concurred. She noted this also exempts cities and towns from providing certain pieces of information as well. **Commissioner Ellis** questioned why the provisions were subject to a separate proposed rule change rather than being incorporated into the overall package for 03 and 05. Ms. Heston explained that staff felt this was a big enough change that it needed to be pointed out—because the information no longer required is information that has to do with identity theft and that sort of thing.

**Ms. Heston** advanced to WAC 230-03-085, the section on denying, suspending, or revoking a license permit (Page 11) that had a section that said one had to abide by the RCW, and since the RCW states the same thing, the staff felt that was repetitive. Additionally, what is now Section 8 of that rule, “knowingly provides or provides goods or services to an entity that illegally operates gambling activities” was rephrased. A section was added for things that had occurred in the past, so there would be no question whether someone had provided goods or services, or were providing them, or have provided them in the past—their license could be suspended or revoked.

Charitable/Nonprofit Licensing Requirements - **Ms. Heston** drew attention to another salmon colored sheet (behind page 16), which involves a change that was made to the WAC because of an ALJ’s decision about charitable and non-profit organizations. The new rule states, “If a licensed charitable or non-profit organization manages or operates an authorized gambling activity, it must not manage or operate a commercial gambling activity, authorized under RCW 9.46.”

Commercial/Amusement Game Licensing Requirements - **Ms. Heston** explained this separated the amusement games and provides a chart of information that is required from licensees.

**Ms. Heston** flipped through the Commercial Stimulant Licensing Requirements section, which was followed by the Card Room Licensing Requirements section, followed by the

Manufacturer/Distributor/Supplier Licensing Requirements, which also contained salmon colored pages (behind page 27).

**Chair Ludwig** drew attention to the salmon colored page and identified a potential misspelling or omission where it addresses, “Charitable and non-profit organizations may see...” he questioned if that shouldn’t say seek. **Ms. Heston** affirmed; however, she suggested that may have been an interpretation of the sentence—the author might have “envisioned” ownership of commercial stimulant gambling operations as a new fundraising. She acknowledged that seek seemed to work better. **Commissioner Ellis** commented that changing see to seek would essentially reverse the impact of the desired change. He believed the purpose of the rule was to prevent charitable and nonprofits from operating commercial gambling activities. As originally drafted under licensees directly impacted, the rule originally said that the purpose for this rule was because charitable and nonprofits may see ownership of commercial gambling as a new opportunity. Under this rule they would not be allowed to pursue that alternative; however, if see is changed to seek, it seemed to be permitting them. **Commissioner Niemi** concurred. Ms. Heston acknowledged the comments.

Addressing the next salmon colored page (behind page 27), **Ms. Heston** noted the rules were pulled out because they were moved from Chapter 30 which was formerly the punchboard/pull-tab chapter, and moved into the licensing chapter because it has to do with the requirements of marketing levels that applicants for licenses need to be aware of, as well as staff, as they process a license. It was moved into the permitting and licensing section so there wouldn’t be a need to hunt for the requirements.

**Ms. Heston** identified the next four sections as: Individual Licenses – Charitable Nonprofit - Commercial Gambling Managers – Card Room Employees and Representative Licensing for Manufacturers, Distributors, Gambling Services, which concluded Chapter 03, with the exception of two salmon colored sheets which identified repealers that staff felt were important to note. The first repealer, WAC 230-04-030 was a rule that applicants had to post a notice on their premises stating that they were applying for a gambling license. That requirement is no longer a focus of compliance for enforcement and is therefore being repealed.

WAC 230-03-05 is about charitable nonprofit organizations and their classification purpose—they now self-select their charitable or nonprofit purpose, which is why this rule is being repealed. **Ms. Heston** asked if there were any questions before she proceeded to Chapter 05. There were none.

#### **Chapter 05 - WAC 230-05-001 through 230-05-035 – Fees:**

**Ms. Heston** explained that staff worked through this section quite extensively and simply reconstructed the sections. Some fee related rules were added in the beginning followed by sections that look very much like the original rules with charts of how much it costs to get which license. She noted there weren’t any repealers or subsequent changes in Chapter 05. She again called for questions or comments on Chapter 05, and there were none. She reiterated that staff recommends the entire package be filed for discussion.

Ms. Heston advised she would be bringing further chapters forward every month. They too will be submitted for discussion and possible filing while Chapter 03 and Chapter 05 continue to move forward through the usual rules process. **Director Day** clarified that staff also requests January 1, 2008, as the effective date for the rules—that is intended to be a date when staff will complete the rules simplification process. Ms. Heston affirmed and advised that staff will continue to go forward with regular petitions and recommended changes, and that she would be tracking them, and, when the final product becomes effective in January 2008, everything will have been incorporated. It is also designed to consider that staff and licensees will have received the necessary training.

**Mr. Ackerman** verified that if the packet of materials before the Commission is filed for discussion today, it will have to be acted upon within six months of the date of filing. The Commission could make an extension with the 2008 effective date in order to allow all of the proceeding chapters to be dealt with by the Commission. Nonetheless, within six months the Commission must vote for or against this portion of the rules simplification process. The 2008 effective date gives the Commission the chance to go back and revisit this if later chapters call into question something that has been put forth in the pending 03 and 05 chapters.

**Commissioner Ellis** commented that if there is an inconsistency about what the Commission did within the six month period on these two chapters within the context of later chapters, there would be time to make corrections. **Ms. Hunter** advised they would be processed as amendments or proposed rule changes. Commissioner Ellis advised that he has not read these two chapters word for word; although he did go over them fairly carefully to get a feel for what staff was doing in the overall framework. He acknowledged it was a very impressive product and has a plain language feel to it. Even as a lawyer, he reported that he didn't find himself gritting his teeth too often. He advised that it should be one of staff's primary accomplishments; to not get the Commissioners gritting their teeth whenever possible.

**Commissioner Ellis** made a motion seconded by **Commissioner Niemi** to file Chapter 03 – Permitting and Licensing Rules, WAC 230-03-001 through 230-03-340, and Chapter 05 – Fees, WAC 230-05-001 through 230-05-035 substantially in the form included in the agenda, Tab 4, for further discussion. *Vote taken; the motion passed with three aye votes.* **Chair Ludwig** called for public comments.

**Dolores Chiechi** on behalf of the Recreational Gaming Association expressed a “thank you” to the staff for involving the industry in this grueling process and for being open and receptive to the input the industry provided. She advised the RGA would look forward to the next phase of this grueling and challenging process. Ms. Chiechi again acknowledged Commission staff.

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

**Chair Ludwig** called for other public comments and there were none.

**6. Executive Session to Discuss Pending Investigations, Tribal Negotiations and Litigation/ Adjournment:**

At 3:45 p.m., **Chair Ludwig** called for an Executive Session to discuss pending litigation/possible future litigation, and tribal negotiations. He advised no action would be taken subsequent to the Executive Session. The open public meeting was called back to order at 4:45 p.m. and immediately adjourned.

Minutes submitted by,

Shirley Corbett  
Executive Assistant

**COMMISSION MEETING  
FRIDAY, JANUARY 13, 2006  
DRAFT MINUTES**

**Chair Ludwig** called the meeting to order at 1:30 p.m. at the DoubleTree Guest Suites located in Seattle.

**MEMBERS PRESENT:**   **COMMISSIONER CURTIS LUDWIG, Chair**, Kennewick  
                                  **COMMISSIONER ALAN PARKER**, Olympia  
                                  **COMMISSIONER JANICE NIEMI**, Seattle  
                                  **COMMISSIONER JOHN ELLIS**, Seattle  
                                  **SENATOR MARGARITA PRENTICE**, Seattle

**STAFF PRESENT:**       **RICK DAY**, Director  
                                  **NEAL NUNAMAKER**, Deputy Director  
                                  **CALLY CASS**, Assistant Director – Field Operations  
                                  **AMY HUNTER**, Administrator – Communications & Legal  
                                  **DAVE TRUJILLO**, Assistant Director – Licensing Operations  
                                  **JERRY ACKERMAN**, Assistant Attorney General  
                                  **SHIRLEY CORBETT**, Executive Assistant

(Agenda Item #7 and #8 were taken out of order)

**8. Petition for Review:**

**Nguyet Pham – Revocation of the License to Conduct Gambling Activities:**  
**Bruce Marvin, Assistant Attorney General** representing the Commission, and **Licensee Nguyet (Gwen) Pham** representing herself, were present and provided testimony. The petitioner distributed written comments. A recording and a transcript of the hearing is available upon request.

At the conclusion of the testimony, **Chair Ludwig** called for an Executive Session at 9:55 a.m. to deliberate the case. The open public meeting was reconvened at 10:15 a.m.

**Commissioner Ellis** made a motion seconded by **Commissioner Niemi** to deny the petition for review and to affirm the Administrative Law Judge’s Initial Order revoking the petitioner’s license to conduct gambling activities. *Vote taken; the motion passed with four aye votes.*

**7. Approval of Minutes – November 17 and 18, 2005:**

A consensus of the Commissioners approved the minutes of the November 17-18, 2005, meeting minutes as written.

**Chair Ludwig** invited Executive Director Dolores Chiechi forward to address a letter the Commission received from the Recreational Gaming Association. **Ms. Chiechi** affirmed the RGA just submitted a letter requesting that the four petitions put forth by the RGA be held over for consideration. The RGA believed that having all five of the Commissioners present to hear the petitions and to add their input as well as take a vote on the issue was important. Additionally, since the Legislature is currently in session and because there has been some discussion as to whether the Commission should take into consideration the Legislature's direction on these issues, the RGA wanted to afford the Legislature an opportunity to take a look at the issues. Lastly, Ms. Chiechi advised the RGA didn't have all of the petition presenters present because of the shortness of the Commissioners present. She respectfully requested that the four rules packages be held over for further consideration. Chair Ludwig suggested that the RGA could take the decision out of the hand of the Commission by withdrawing the petitions and re-filing them when the RGA believed it would be a more appropriate time. Ms. Chiechi responded that would not be the RGA's desire.

**Commissioner Ellis** advised that while he understood the points that Ms. Chiechi made, he was concerned that the Commission couldn't guarantee that all five members would be present at the March meeting. Secondly, he explained that the Commission has no way of knowing if there is going to be any help from the Legislature that would relate to the petitions. He noted the petitions have been pending before the Commission since August 2005. He believed that it would be appropriate for the Commission to proceed to decide the issues today. **Commissioner Niemi** affirmed it was reasonable to want a reaction from the Legislature; however, since the Commission hasn't done anything, she didn't know what their reaction could be. Commissioner Niemi thought it would be more important to do whatever the Commission was going to do. She agreed the Commission has had the petitions and has been thinking about them for months and months. She believed the Commission should make a decision now and if the Legislature was upset with the actions taken, it would be good that they are in session and could do something. **Commissioner Parker** concurred with the views expressed. He stated that he was not persuaded to defer action because there is a full record on which to act, in addition to accepting further testimony today. Commissioner Parker advised he was in favor of acting upon the rules today. **Chair Ludwig** advised that in consideration of the comments, the Commission would go forward with the petitions.

**9. Petition – Increasing Administrative Fees for Player-Supported Jackpots from 10 percent to 35 percent.**

**WAC 230-20-610:**

**Assistant Director Cass** explained that Items 9 through 12 are the petitions originally filed in September of 2005. At the request of the RGA and because of the Code Reviser's

cut-offs, the petitions are before the Commission for the fourth time. All four petitions are up for final action.

Item 9 is WAC 230-40-610 regarding player supported jackpots. This petition was submitted by the Recreational Gaming Association requesting that the PSJ administrative fee be increased from 10 percent to 35 percent. She explained a PSJ in a poker jackpot is where a separate amount of money is placed aside by the player and there is a second jackpot with a separate opportunity to win based on pre-determined criteria. The 10 percent administrative fee is intended to allow licensees to recoup administrative expenses incurred with keeping the separate PSJ account, including banking fees and record keeping. Since the petitioner has yet to provide justification to support this increase, Ms. Cass advised that staff believes the 35 percent administrative fee is extremely high, and opposes this petition. The Commission may approve the petition, or deny the petition with explanation, or the Commission may do nothing and hold the matter over.

**Commissioner Parker** asked Ms. Cass to express succinctly the basis for staff's opposition. **Ms. Cass** responded that staff would like to see some justification on why the RGA feels 35 percent is an adequate amount—staff feels that is high because it shouldn't take 35 percent of the player's money to cover banking costs. **Chair Ludwig** called for public testimony.

**Gary Murray** on behalf of the Recreational Gaming Association reported that there were several reasons the RGA has asked for a 35 percent level. An increase in the amount of the administrative fee is needed due to the higher cost of banking and such. He explained the RGA thought parity amongst other rules; rules for certification and standardization were important. He noted there are other games where a jackpot is held and the licensee is allowed to take up to 35 percent as an administrative fee for running the game, for banking, and for the computer systems. He emphasized the extraordinary costs are not just the banking fees of having a bank account; some of the other costs relate to accountant and auditors expenses. Regarding the staff position that it is the player's money, and with the attention that has been put upon the licensee to assure that this money is well cared for and entrusted, Mr. Murray explained licensees have been forced to hire more people to ensure those funds are properly accounted. Licensees audit those funds now in addition to the audit for the Commission staff. He noted that in some markets the jackpots are lower on a dollar basis and that it takes more of a percentage to cover the same base costs. Mr. Murray emphasized that just because the industry may be allowed to take 35 percent doesn't mean that all licensees would take the full 35 percent. In Pai Gow poker, licensees are allowed to take up to 5 percent; however, many clubs take zero percent. He advised it would be an operational decision based on the players and what they want.

**Mr. Murray** stated "the players vote with their feet, and if you take too much and the guy next door takes less, they'll play where they can get the best service, the best game, and the best jackpots available. Players are there for entertainment and to play a game,

and they basically set the parameters for what is acceptable in the card room for the player supported jackpot.”

**Chair Ludwig** verified there are other games or other situations where licensees are permitted to take a 35 percent fee. **Mr. Murray** affirmed there are jackpot games such as Progressive Black Jack and Caribbean Stud—generally a dollar is taken for the players that want to participate, and that money is put on a meter. If the player achieves a certain predetermined value of hand, then they win the jackpot. **Mr. Murray** affirmed that in order to keep track of that and to administer the bank costs, the house is allowed 35 percent.

**Chair Ludwig** advised that he was having a difficult time understanding why the industry overlooked asking for the 35 percent for all games. **Mr. Murray** explained the games were introduced at different times, which is why there is such a disparity. Player supported jackpots came about in 1995 -1996, under a different regulatory approval from the Legislature and prior to house-banking. At the time 10 percent was adequate because it was a smaller venue. There were less people involved and poker wasn't as popular as it is now. Poker has an added feature that the players really want and demand, and **Mr. Murray** explained the house must pay closer attention to the features. **Chair Ludwig** emphasized that it was important to note that we are talking about player supported “players” money. **Mr. Murray** explained the way a player supported jackpot works in poker—noting that for each player that participates, a small portion is taken out of the pot, part of it for the house rake to pay the dealers, the table, the rent, and such. There is an optional player supported jackpot that some poker games have and some poker games don't. **Chair Ludwig** emphasized that it was optional on the part of the house, not the player—that it is mandatory for the player that the house is going to take a rake and put it into trust for him and the other players. **Mr. Murray** affirmed.

**Chair Ludwig** stated that rake used to be \$1; however, the Commission just doubled it to \$2 at the last meeting. At the time that issue was pending, the industry was only asking for 35 percent of the \$1 rake that went into the pot. Since that has doubled, he inquired whether the industry still wanted 35 percent of the doubled pot. **Mr. Murray** pointed out that the reason the industry is asking for up to 35 percent was to reach parity or consistency with other fees in other games. He didn't believe that most of the card rooms would go to the maximum. **Mr. Murray** commented that if the Commission would be more comfortable with or wanted something less, he believed it would be in the Commission's ability to do so. **Chair Ludwig** responded that it strikes him as being a little bit greedy to want 35 percent of the recently doubled pot. **Mr. Murray** indicated the RGA would be open to a lower number more acceptable to the Commission—they simply picked a number that already existed in other rules. **Chair Ludwig** responded that it was the RGA's petition, not his, and he didn't want to doctor up the RGA's petition for the RGA. **Chair Ludwig** called for additional public comments and there were none.

**Commissioner Niemi** made a motion seconded by **Commissioner Ellis** to follow staff's recommendation to deny the petition to amend WAC 230-40-610 Subsection 3.

Commissioner Parker advised that he supported the intent of the motion makers. *Vote taken; the motion passed with four aye votes.*

#### **10. Petition – Card Games Rules of Play.**

##### **WAC 230-40-010:**

**Ms. Cass** explained that Item 10 is a proposed amendment to WAC 230-40-010. The rule currently authorizes certain types of card games, and the rules for those types of card games. A petition was submitted by the Recreational Gaming Association in September requesting a change to card room rules of play so card rooms would no longer be required to receive their own hand at cards. Instead, the players would be responsible for their own decisions regarding the game. This change would allow many types of games such as Mini Baccarat and Craps style games played with cards, and other games played in card rooms with one or more decks of standard playing cards. Ms. Cass advised that staff believes this is a policy decision for the Commission. However, if the proposed policy is adopted, the petitioner is requesting it becomes effective 31 days after filing. Commission options are to approve, deny, do nothing/or hold over.

**Commissioner Parker** asked staff to express their position on this proposal. **Ms. Cass** responded that staff is not taking a position because staff believes it is a policy decision. She noted this may be perceived as an expansion of gambling as it will add new card games where players are not required to have their own hand of cards. The Commission's regulatory considerations include the increasing complexity of the games and the additional wagering options, which may take closer scrutiny. **Chair Ludwig** called for public comments.

**Mr. Murray** spoke on behalf of the Recreational Gaming Association. He explained this petition has come about from the standpoint of the players demand. Players understand Baccarat, they go to many venues that offer table games and card games throughout other jurisdictions in the state and they like the game and have asked the RGA licensees to also provide such games. Mr. Murray advised the rule changes are fairly simple, they still fall within what is a social card game—by creating a social atmosphere to play cards. There are still seven players at the table, they still interact with the dealer, and they still use chips and cards. It is just slightly different in terms of how many cards a player gets and where they go. It does not change the number of bets a person has, or how many betting schemes can be on the felt at one time. It simply adds a few more choices of games. He noted that since the time house-banking was allowed, many (approaching 100) new games had been presented for the Commission's approval. They were put in play and then disappeared because they weren't popular—many only lasted in one or two venues for a couple of months and then disappeared because they just didn't work; however, they fit within the regulatory frame presented.

**Mr. Murray** emphasized this is a game that has been a popular game throughout history. It is fairly standard, it is easy to play, and draws interest by many players and other regulatory agencies. He reported that most of the other agencies don't have a problem with Mini-Baccarat itself. Although it may considered an expansion of gambling by some, he reported the RGA didn't consider it to be an expansion of gambling—there are

still 15 tables whether it's Pai Gow Poker or Baccarat, there are still the same number of spots with the same venue, with the same number of games, and the same betting limits. It is simply allowing one game like Mini-Baccarat to fit within the rules.

**Commissioner Niemi** referred back to the RGA's letter asking the Commission to continue this request until after the legislative session, and inquired if the RGA thought they would be better off going to the Legislature and asking them to clearly identify what an expansion of gambling would entail. **Mr. Murray** responded it was his understanding of the law that expansion of gambling is defined as something new that wasn't there before. This is simply an adjustment of rules, which happens at the Commission all the time. He explained this is a card game, just like our other card games, and he didn't think this petition fell within the legal definition of expansion—it was simply adding a different game and adjusting the rules slightly to add to the arsenal of games the public wants.

**Senator Prentice** realized there is a difference of opinion as to what constitutes an expansion of gambling; and she stated that while she couldn't speak for the entire Legislature, she acknowledged that over the years their definition for expansion of gambling has been the increased number of occurrences, and the increased number of venues. **Mr. Murray** responded, noting this rule would not change any more occurrences of gaming if it simply allowed switching a Pai Gow table to a Baccarat table; or the number of venues, because the rule itself wouldn't open up additional clubs. Senator Prentice suggested that it may have been before her time on the Legislature that Baccarat needed to be approved by the Legislature—or it may have been something she had always heard. She advised she addressed the Baccarat issue just before the industry decided they needed the machines to survive; and the subject was simply dropped over the years.

**Mr. Ackerman** advised it predated him as well and he was not aware of the historical issue. In terms of whether the Commission has the legal authority to approve; he advised it is a card game and he believed the Commission does have the authority to approve the card game if it chooses to do so. However, as a legal matter he advised this may be construed not to violate the constitutional prohibition against expanding gambling absent a majority vote of the Legislature. He emphasized that in the public mind and certainly in the minds of some Legislators and other public officials, it could be construed as an expansion of gambling.

**Senator Prentice** shared her understanding of the history—some of the card rooms already had the equipment and then it was a decision of the Gambling Commission at that time that it could only be done by the Legislature. Senator Prentice advised that through the years she has been asked if the Legislature could do that and while she always thought maybe they could, they weren't ready to take it on, and they have not interfered.

**Neal Nunamaker**, Deputy Director and staff member with the Commission for 30 years, affirmed it has been a controversy. He reported that he could not remember the original definition of social card games; however, when the house-banked card games opened, Mini-Baccarat was allowed. The interpretation of the Director at that time was that he thought it wasn't a social card game. The statute as it reads now doesn't address it in any

form; therefore, it would fall within the rules. The rule got changed to match the statute, which changed and no longer supported the rule, which left it up to this body. **Director Day** concurred that a lot of the discussion and the orientation of the director at the time also had to do with the concept of a social game involving whether the player has their own hand; and it has been confirmed there is no such language within the statute.

**Mr. Murray** stated that Mini-Baccarat was allowed as the original card games were in the pilot program and while the rules were developing. Once the final rule making was addressed, Director Bishop felt that having your own cards was one of the key elements. This was never addressed with the Commissioners when the rules were finalized. Now the industry feels it is time to go address the policy; the industry feels that it is a social game and fits within the parameters.

**Chair Ludwig** questioned if the Commission adopted the next rule (#11) on the agenda, whether it would apply to this rule. **Mr. Murray** responded in the negative saying it wouldn't; the Mini-Baccarat is a house-banked game and fits within the house-banked rules and card games, it is not a poker game. Chair Ludwig verified it would not be included because it is a table game. **Chair Ludwig** clarified that Item #12 was the standardization of house-banked card game betting limits, and asked again if that would apply to Baccarat. **Mr. Murray** said yes.

**Commissioner Ellis** commented that the issue presented by this petition might be more difficult because it had been filed at the same time as the next two petitions proposing to increase betting limits. He agreed that staff is correct that it would be viewed as an expansion of gambling, and he cautioned that the reputation of the Commission in the public's eye in limiting gambling as we are statutorily required to do is important. For that reason, Commissioner Ellis made a motion seconded by Commissioner Niemi to deny the proposed amendment to WAC 230-40-010 as presented in the agenda, Tab 10.  
*Vote taken; motion passed with four aye votes.*

#### **11. Petition – Increasing Poker Wagering Limits.**

##### **WAC 230-40-120:**

**Ms. Cass** reported that Item 11 is an amendment to WAC 230-40-120 relating to the limits on wagers in card games, on poker. The petition was submitted by the Recreational Gaming Association and filed at the September meeting. This petition is requesting wagering limits for poker games at house-banked card rooms only to be increased from \$25 to \$100. Non-house-banked card room poker wagering limits would remain at \$25. She stated that whether or not to allow this is a policy decision before the Commission. The petitioners are requesting that if approved, the rule be effective 31 days from filing. The Commission's options are to approve, deny, or hold over.

**Chair Ludwig** noted the staff report indicated that stricter controls might be necessary. **Ms. Cass** advised stricter controls may be needed since there will be more cash on the table; and that staff would probably want to see tighter controls over the surveillance. Chair Ludwig inquired if that was really such a big deal, and he addressed the fact that

there was a tribal casino not too many miles away with a lot of cash on their table. He inquired if they are required to have tighter controls. Ms. Cass responded that they are required to have similar internal controls and surveillance. **Commissioner Ellis** commented that having been given a guided tour of the surveillance equipment at several card rooms and the Muckleshoot Casino, he had great assurance that the surveillance equipment at the Muckleshoot Casino is highly sophisticated and pervasive—that it was a very impressive system.

**Chris Kealy**, Iron Horse Casino spoke on this issue on behalf of the RGA and revisited the history around betting limits. He reported that the social card rooms, enhanced card rooms, and house-banked card rooms that the industry exists under today came about through the 1996 and 1997 legislation. The betting limits at that time were a \$25 limit and then a \$100 limit on a Phase II. Once an establishment proved their rules were in place, the \$100 limit was approved. Poker at that time was overlooked, both in the betting limit requirements and how it was connected simply because poker had been in card rooms since the 70's. The betting limit for poker essentially stayed at the \$25 level.

Meanwhile, cards and card playing entered into the state from two different directions; from a tribal perspective it came in via IGRA because of the Reno nights. The Tribes started out on the house-banked side of things and basically ignored poker. Most tribal venues maintain the position that it didn't even fall under the Gambling Commission's regulatory mission over tribes. They were allowed up to 52 tables at one point. In fact, the Muckleshoot Tribe at one time ran 52 house-banked games plus 18 poker games, contending that the tables in the poker area didn't count as the games. Their poker betting limits always stayed consistent with their table betting limits.

**Mr. Kealy** went on to say that the connection was never made because the industry got the two different products at two different times from two different legislative means. House-banked card rooms with poker tables exist today under an antiquated or outdated betting limit because the structure of the game changed and people like to play the game. The RGA wants to achieve the one, two, no limit game—and it won't really be no limit; it will be \$100 limit maximum bet. He provided a description of the betting structure and noted the tribal venues are allowed up to a \$500 bet on a poker game. He also noted that never or rarely happens because the consumer isn't at that level. The RGA's desire is to offer the game from the \$1 to \$100 level.

Related to expansion issue, **Mr. Kealy** advised his establishment is two miles from the Muckleshoot Casino and he addressed Freddie's in Fife, noting the products are here and the betting limits already exist within those demographic regions. He advised the RGA was just trying to catch up with all the new non-smoking poker-players that are visiting the newly non-smoking facilities; however, they don't find the game they want and they leave. He indicated that he was missing 25 percent of his revenue in the last month and he hoped this would help him capture some players that are looking for a different place to be—he was just trying to have a product mix that works.

**Commissioner Parker** commented that if he understood Mr. Kealy right, he was referring to expansion of gambling as an issue of the number of establishments; and then also referring to the fact that now there is a wagering limit that exists for tribal casinos and there is a lower wagering limit that exists for house-banked card rooms with respect to poker. He commented that since we were just talking about poker, if the Commission were to approve this proposal, then it seemed the Commission would be creating a new definition of expansion—in other words, the sort of tit for tat version of expansion. If there is a form of gaming that is authorized in one sector of the market and the Commission then expands that and authorizes that type of gaming in the other sector of the market, by definition the Commission has expanded gambling. **Mr. Kealy** responded that he didn't follow that line of thought at all. He believed that an expansion of gambling would be increasing the number of tables, which the industry is not getting. It is still 15 tables; and/or expansion was a new product in the market place, which this would not be because it is already in the marketplace. He commented that in the greater gambling revenue pie it may be a market share shift; but, it is not going to be expansion of gambling because it is a competitive difference. This would provide a unique opportunity to capture players that would rather sit in a non-smoking venue and play the same activity.

**Commissioner Niemi** commented on what was referred to as the “level the playing field” idea. She said she understands how Mr. Kealy feels because he has some Native American Casinos in his general area, and she noted there are quite a few of them on this part of the Interstate 5 corridor. She pointed out that the Commissioners are required to represent the whole state. While she believed Mr. Kealy's argument was certainly genuine and she understood it; she advised she was not sure it would be the same throughout the state. Commissioner Niemi stated that she was very concerned about doing this in this area where there are choices—and, it would be very different in other areas. She noted there may be no problem with the Auburn local community; however, she recalled the recent Kenmore situation where the people decided they didn't want card-rooms and gambling anymore. She emphasized this is a much more complex area than just raising limits, and she was not ready to make this kind of decision without looking into how it would affect the rest of the state. **Mr. Kealy** agreed that some jurisdictions have issues with what is going on, and those jurisdictions are fighting the battles on the merits of the whole of the issue. However, he didn't believe the betting limit related to poker was an issue in those particular areas. He believed the Commission has the ability to regulate, and since they already regulate \$500 betting limits in tribal venues, he suggested the Commission could regulate the \$100 poker limit. Mr. Kealy addressed another new market regarding Internet gamblers, that he hoped would become more aware that Internet gambling was illegal.

**Commissioner Ellis** asked if Mr. Kealy and Ms. Chiechi were really prepared to go to the Legislature and try to convince them that the Commission was wrong in deciding that an increase in the limit in poker from \$25 to \$100 was not an expansion of gambling. He personally thought that would be a really tough sell. He commented that he was interested in the references to the loss of revenue in connection with Initiative 901 and the historical references to 1996 and 1997 when the Legislature expanded gambling in

several ways. Commissioner Ellis advised he reviewed documentation to see what it was that provided the justification at that time for increasing the number of tables and for authorizing house-banking. He affirmed the non-tribal card rooms had new competitors from the tribes; and he pulled together some rough figures on the changes in income and the changes in revenue in that time, which told Commissioner Ellis that back in 1997 the average card room was receiving a total revenue of about \$200,000 and total income of about \$60,000. As of 2004 statistics he noted the average card room was receiving a total revenue of more like \$2.7 million and an income of about nearly \$440,000. He emphasized the picture has changed greatly and while he could understand the rather dire straights the industry experienced in 1996-97 to justify those kinds of expansions, he didn't see a basis for that now. Commissioner Ellis advised he was aware of the effect of Initiative 901; but, the experience in other parts of the country has been that after the initial drop in revenue, places that formerly relied on smokers find the smokers coming back again.

**Mr. Kealy** reported that the job levels in the industry have the card rooms at approximately 10,000 employees and he was hoping that somewhere in the greater scheme of things that mattered. He reiterated the industry was just trying to perfect the products they have, and they were not reaching at the products they don't have—they are trying to perfect their ability to have card games at the level desired by the consumer's wants, which was the underlying basis for the remaining two petitions. He emphasized the RGA was trying to perfect card games for the existing places, not increase the number of tables and not increase an activity they don't have. Mr. Kealy advised he was not talking about leveling the playing fields on products they don't have; the RGA was only asking the Commission to make a determination on the products they already have.

**Mr. Kealy** reported the RGA's strategy wouldn't involve going to the Legislature because this was not their issue. He stated the Commission was brought about to make the process a nonpartisan non-politicized determination process, which is why the RGA is in front of the Commission addressing products that exist and asking for assistance from the Commission. He noted the RGA would probably re-file the petitions in years to come.

**George Teeny** spoke on behalf of the RGA and weighed in on the historical comments. He explained that when gaming first came to the state, it was at the \$2 limits. It held at the \$2 limits for a period of probably nine or ten years. A request was brought before the Commission to raise the limits, and the Commission saw that because of inflation, the \$2 bet ten years later was actually like an 80 cent bet. Through 1996, '97, and '98 the Commission saw a need to raise the betting limits from \$2 to \$5, and \$5 to \$10. In 2000, the Commission approved a raise from \$5 to \$25 and the justification was along the same lines. He affirmed the Commission obviously does have the right, whenever, to do that. He agreed the words regarding the expansion of gambling were also muttered back then, and that the definition is as spurious today as it was back then. Mr. Teeny believed that Mr. Maleng and some of the other individuals who have provided media responses on this topic certainly have an effect on the general public and possibly the Commission. He suggested that if the expansion of gambling is defined as anything new, other than what

exists today, then no matter what would be presented to the Commission, it would be an expansion of gambling—if it is a different game, a different limit, an extra player at the table, and even adjusting not the limit; but, perhaps the way clubs take money from the games, either through a rake or a change in the odds in how house-banked cards are played—it would all be an expansion of gambling. Mr. Teeny explained that today, the demand for poker has increased immeasurably. Black Jack or house-banked games used to be the gold mine—it was where the money was made and poker was something set aside. In fact, the majority of the rooms took poker out of their establishments. With the addition of the TV coverage, poker has escalated to the point where people are now taking out the Black Jack tables in order to put poker back in, and with that comes a demand for more than a \$25 limit, which can again be attributed to inflationary aspects. Mr. Teeny explained the RGA is not asking to have parity with tribal facilities; they just want the ability to satisfy and service their customers—the house doesn't make any more money if the limits are raised.

**Mr. Teeny** addressed the surveillance issue and defied the Commission to find a tribal casino that has better security than the non-tribal facilities. He concurred they may have more modern (digital) equipment; but, that is because they can afford it. Regarding regulation, he advised that he had great faith in Director Day and Commission staff to regulate the businesses.

**Mr. Teeny** acknowledged the Commission's concern about the expansion of gambling; however, he believed this petition falls in line with the Commission's purview based upon what has been done in the past. He suggested that if there is heat given because an expansion of gambling is taking place ... the Commission just has to accept that whatever decision is made will not make everybody happy. With no further comments, **Chair Ludwig** closed the public hearing.

**Commissioner Parker** made a motion seconded by **Commissioner Ellis** to deny this petition on the basis of a policy decision that in the view of the Commission adopting this petition would constitute an expansion of gambling.

**Commissioner Ellis** commented in response to Mr. Teeny's last point that any change in the industry would be viewed by the Commission as an expansion of gambling, noting he may have an argument. However, he reminded the audience that just at the last meeting the Commission approved an increase in the rake for player-supported jackpots from \$1 to \$2. He suggested that certainly there are some that would view that as an expansion of gambling, and he advised that he was not a bit apologetic about making that decision. Commissioner Ellis also stated that he didn't think the other Commissioners that voted in support were a bit apologetic either. He emphasized that the Commission will probably continue to consider each proposal that is made on its own merits; and he certainly didn't feel that under the circumstances facing the industry today that there was a basis for this package which essentially would be viewed as an expansion. *Vote taken; the motion passed with four aye votes.*

## **12. Petition – Increasing House-Banked Card Game Wagering Limits.**

### **WAC 230-40-120:**

**Ms. Cass** reported that Item 12 is a request to change the wagering limits on limited tables to \$200 on all games at house-banked card rooms. She explained the last wagering limit increase structure. If the facility was licensed for five tables or fewer tables, they may have \$200 wagering limits at one table. If the establishment was licensed for six to ten tables, they may authorize \$200 wagering limits at two tables; and if they have more than ten tables, they may offer \$200 wagering limits at three tables. Staff believes this is a policy decision for the Commission. She noted if the amendment is adopted, the petitioner is requesting the rule become effective 31 days from filing. **Chair Ludwig** called for public testimony.

**Chris Kealy** speaking on behalf of the RGA, noted this petition differs from the previous petitions because the industry already has the \$200 betting limits at their facilities and they are allowed on three tables if the establishment has 10-15 tables. He explained facilities have anywhere from seven to nine different types of games, and that it is a bit confusing to the customer when the \$200 betting limit sign moves to different tables. He acknowledged that practice has caused problems when signs have been left up on closed tables. There has been some confusion related to how many tables were operating at the \$200 limit at any given time—it has been a management problem. He reported approval has been granted for \$200 betting limits on three tables and the industry would appreciate having it standardized in all facilities, which he believed would be easier to manage from a regulatory standpoint as well.

**Chair Ludwig** commented that he did not view this proposed rule change to be an expansion of gambling. He affirmed that players in non-tribal casinos may now bet \$200 on a Black Jack or other table game, and this didn't raise that limit one iota, and it didn't add any new games. It would simply make it a little simpler for the operator by not having to worry about moving the sign from table to table. Commissioner Ludwig also reminded the audience (for the record) that when the \$200 limit was approved it was on a 4-1 vote and that he was the one that voted against the original increase. Right now, his desire was to simplify the practice.

**Commissioner Niemi** asked staff for the reasoning behind the wagering structure when it was approved. **Director Day** responded that it was a compromised proposal, and by offering the compromise the Commission preserved the \$100 limit; but, also allowed a limited number of tables in the interest of what the industry presented to be bet at a higher limit. **Chair Ludwig** added that Commissioner Liz McLaughlin offered the compromise proposal in response to the original petition which asked for \$300 betting limits. Commissioner Niemi recalled that Commissioner McLaughlin also wanted a sunset provision. Director Day affirmed the concept was that it would return to \$100 on all tables. Commissioner Niemi asked why and how the Commission could go back to the \$100 limits. **Mr. Ackerman** explained there was a great deal of discussion, and, essentially the Commission did not want to go to \$300. Ultimately, Commissioner Orr drafted the compromise the current rule reflects, without the sunset provision, which preserved the \$100 tables for everyone rather than \$200 betting limits across the board.

**Commissioner Parker** asked staff if there has been a record of regulatory issues regarding the impact of that rule change. **Ms. Cass** reported that initially there were a couple of cases where staff discovered some accidental incidents with signs not being removed. One case went forward for having too many tables for their wagering limit; however, there have not been any problems since that time.

**Commissioner Niemi** asked if there any indication that this has allowed the house-banked card rooms to make more money or not. **Ms. Cass** advised that she didn't have any way to answer whether this particular rule has impacted revenues. Commissioner Niemi acknowledged the difficulty in measuring that impact and suggested that since card rooms are still increasing their revenue, it may be a confusing regulation; however, she wasn't sure that should be why the Commission should change the rule.

**Commissioner Parker** offered his perception that this rule change is not an expansion of gambling; it's a simplification of the compromised rules adopted. Based on a record that it does not raise regulatory issues, he believed simplification was worth it and that it would be the appropriate thing to do.

**Commissioner Ellis** reminded the audience of the staff report at the October meeting that of the then existing 93 house-banked card rooms only 71 were taking advantage of the \$200 limit in any fashion, and that a number of card rooms were not using it at all. **Ms. Cass** affirmed. With no further comments, **Chair Ludwig** closed the public hearing.

**Commissioner Parker** made a motion seconded by **Commissioner Ellis** to approve the petition for rule change under Item 12. *Vote taken; the motion passed with four aye votes.*

### **13. Petition – Cash Defined.**

#### **230-02-101:**

**Chair Ludwig** noted Item 13 has been continued at the request of the petitioner who could not be present.

**Chair Ludwig** called for a recess at 11:30 a.m., and recalled the meeting at 11:50 a.m.

### **14. Activity Reporting – Bingo, Raffles and Amusement Games:**

#### **WAC 230-08-120, WAC 230-08-125, WAC 230-08-180 and WAC 230-08-250:**

**Dave Trujillo** reported all four rule amendments are up for discussion and relate to activity reports for bingo, raffle, and amusement games. In 2005, the Commission began a series of clarifying and streamlining rules for licensee reporting requirements. These four rules are simply a continuation of that process and they will make the amended rules consistent with prior changes made.

Item 14(a) is proposed to amend WAC 230-08-120, specifically quarterly activity reports by operators of Bingo games, Class C and above. Current rules require very specific

requirements to be included on the reporting forms. Staff is proposing that the specific requirements be removed from the rules so that as the licensing reporting needs change in the future, the instructions on the forms may be amended instead of having to amend the rule. Staff believes that this will help set the stage for on-line reporting.

Item 14(b) is a proposed amendment to WAC 230-08-125 dealing with annual activity reports for certain activities operated by charitable and nonprofit organizations. Staff proposes this rule be changed for the reasons cited in 14(a).

Item 14(c) is a proposed amendment to WAC 230-08-180 regarding annual activity reports by commercial game operators. Staff proposes this rule also be changed for the reasons cited in 14(a).

Item 14 (d) proposes an amendment to WAC 230-08-250 relative to annual activity reports submitted by agricultural fairs and other bonified nonprofit organizations with special locations with licenses to conduct bingo, raffles and amusement games. Staff proposes this rule be changed for the reasons cited in 14(a). Staff recommends further discussion. **Chair Ludwig** called for questions and comments and there were none; he affirmed the rules package will be scheduled for final consideration in February.

#### **15. Petition for Rule Change – Punchboard and Pull-tab Service Businesses:**

**WAC 230-02-205, WAC 230-02-208, and WAC 230-04-133:**

**Mr. Trujillo** reported that staff received the petition for a rule change which affects punchboard and pull-tab service business providers. Current rules allow the providers to have a license as long as they don't bill more than \$20,000 in total gross billings in a year. If the licensee exceeds that by even \$1, they are required to become a service supplier. He addressed the difference in costs for an initial license and subsequent renewals. An annual service supplier license is \$630, the renewal for a punchboard and pull-tab service provider is \$53. **Mr. Trujillo** noted that generally speaking, a punchboard and pull-tab service provider is a very small operation, probably a single proprietor and probably a very small partnership because the gross earnings cannot exceed \$20,000. The petition proposes increasing the billings from \$20,000 to \$25,000. This petition impacts WAC 230-02-205 Subsection 2(d) Gambling Service Supplier Defined, WAC 230-02-208 Subsection 3 Punchboard and Pull-Tab Service Business Defined, WAC 230-04-133 Subsection 4(b) Punchboard and Pull-Tab Service Business Registration Required Procedures and Restrictions. At the present time this rule change will only impact the petitioner's business. There are six other punchboard pull-tab business service providers that have billings in excess of \$25,000; they are in fact in excess of \$40,000 so this rule would not impact them. Staff recommends filing the rules package for further discussion.

**Chair Ludwig** called for questions and public comments. There were none and it was determined the petitioner was not present.

**Commissioner Ellis** suggested the petitioner be advised that someone should come and advocate to the Commission the merits of this proposal, otherwise the Commission will spend three meetings operating in a vacuum trying to determine whether this has merit or not; and, if she doesn't care or other proponents don't care to discuss it, it could be difficult to make an informed decision on the petition.

**Commissioner Ellis** made a motion seconded by **Commissioner Niemi** to file WAC 230-02-205, WAC 230-02-208, and WAC 230-04-133 for further discussion as submitted under Tab 15 of the agenda packet. *Vote taken; the motion passed with four aye votes.*

**16. Transporting and Displaying Gambling Devices at Trade Shows and Conventions:**

**WAC 230-12-337:**

(Rule withdrawn at the request of staff)

**17. Petition for Rule Change – Card Room Supervision:**

**WAC 230-40-815:**

**Cally Cass** reported that Item 17(a) is a proposed amendment to WAC 230-40-815 regarding administrative and accounting controls for house-banked games. Petitioner **Larry Wheaton** submitted a petition for rule change requesting that the number of tables a floor supervisor is authorized to supervise be increased from five tables which the current rule states regardless of the total number of tables open in a card room. Currently, the rule requires a floor supervisor in a house-banked card room be assigned the responsibility of supervising a card-room in gaming with no more than five tables in a gaming pit. However, the number of tables supervised may be increased to seven tables if there are no more than seven tables open in a card room and the layout is pre-approved by the Commission. **Ms. Cass** explained this petition is very particular to the petitioning licensee. Under the current rules, if a licensee has two gaming pits opened and one has two tables open and one has five tables open, the licensee is required to have two supervisors. In the petitioner's scenario, two would be required in the six-table pit and one on the five-table pit for a total of three supervisors. The petitioner is claiming that the additional floor supervisors are costing him over \$75,000 a year. Under the proposed change the licensee would only need to have two supervisors on duty per shift. Each establishment has their pits configured differently so this rule would have a slightly different effect on each of the card rooms.

**Ms. Cass** reported the change would not have an effect on the Commission's regulatory program; however, staff is making inquiries to determine what other states are doing in regard to this issue. The results will be presented at the February meeting. She reported that staff doesn't support this change as worded because it is specific to the pit layout at Goldies Casino. Alternative wording will be submitted in February if the petition is filed for further discussion. She noted the petitioner is requesting the change be effective 31 days from final approval filing.

**Commissioner Niemi** commented that as it stands it seemed that staff would not approve this change, rather than trying to find some phrasing that would work. She questioned if it would be easier for staff if the Commission didn't file this petition, or if it would be easier for staff if the petition is filed for further discussion allowing staff to do the research. **Ms. Cass** responded that staff is planning on doing the research either way. The difference would be if the petition isn't filed it wouldn't move as quickly because there are time constraints when a petition is filed.

**Larry Wheaton** stated that he didn't understand why the Commission needed to regulate how many tables one floor supervisor can watch. He reported that the casino he represents is not a unique situation and that there are quite a few casinos that have a six-table pit and a five-table pit. He explained that when he opens the casino, he can open with six tables in the one pit with one supervisor. However, as soon as he opens up two tables in another pit—on another side of the table, he is required to get another floor supervisor in pit one, which is an additional cost of \$75,000 on two shifts. He suggested it is an added expense that he really couldn't afford especially with the current smoking ban. He reiterated that he didn't understand why the Commission needed to regulate how many floor supervisors he needed, and he suggested it should be a business decision at each property.

**Mr. Day** noted that from a staff perspective, it would be beneficial to file this petition. He acknowledged the rule is somewhat confusing and difficult to manage. Staff believes there may be a solution that has a broader application, which is what an amendment would be intended to address. There were no further comments or questions.

**Commissioner Niemi** made a motion seconded by **Commissioner Ellis** to file the petition relating to WAC 230-40-815 for further discussion. *Vote taken; the motion passed with three aye votes.* (Commissioner Parker was absent for the vote.)

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

With no further comments **Chair Ludwig** adjourned the meeting at 12:10 p.m. and noted the February meeting will be held at the Phoenix Inn in Olympia on February 9-10, 2006.

Minutes submitted by,

Shirley Corbett  
Executive Assistant