

**COMMISSION MEETING
THURSDAY, FEBRUARY 9, 2006
DRAFT MINUTES**

Chair Ludwig called the meeting to order at 1:30 p.m. at the Phoenix Inn Suites located in Olympia. He introduced those at the head table:

MEMBERS PRESENT: **COMMISSIONER CURTIS LUDWIG**, Chair, Kennewick
 COMMISSIONER JANICE NIEMI, Seattle
 COMMISSIONER JOHN ELLIS, Seattle
 COMMISSIONER PEGGY ANN BIERBAUM, Quilcene

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
 GAIL GRATE, Administrative Assistant

Director Day welcomed the Commission to Olympia. **Director Day** and **Chair Ludwig** presented service awards to Travis Vessey for five years state service and to Gail Grate for 30 years state service.

1. Agenda Review / Director's Report:

Director Day reviewed the agenda for Thursday and Friday, noting that there were no anticipated agenda changes. He then highlighted inserts added to the agenda packet since publication.

Presentation – Public Opinion Survey Report:

Director Day introduced Paul Stern, Washington State Social & Economic Sciences Research Center, pointing out that Mr. Stern actually co-founded the research center and has been involved with several other education-related projects and maintains associations with National and Northwest research groups.

Mr. Stern reported that he was commissioned to conduct the Public Opinion Survey with three objectives: (1) To determine the extent and popularity of gambling activities in Washington State (how many people are doing what kinds of gambling activities); (2) To determine Washington resident's knowledge of current regulation of gambling; and (3) To understand current public opinion about a range of current public policy issues, such as Internet gambling and underage gambling. Mr. Stern stated that his staff worked closely with commission staff to develop the public survey instrument and put together the report. With the aid of a PowerPoint presentation, Mr. Stern discussed the methods and findings from the survey. In October/November of 2005, interviews were conducted with adult residents of Washington State. This timeframe was before the series of articles that appeared in the Seattle Times regarding Internet gambling issues, so there was no cross contamination. Homes were sampled using a random digit dialing method, contracted with a company that provided random digit dial, which provides the most random sample and the best quality data. In an attempt to talk to a broader range of people, not just the person who typically answers the phone, the interviewer asked to speak with a person over the age of 18 who had the most recent birthday. Interviewers reached 514 households and asked: "How long have you lived in Washington State?" Those who had lived in Washington State for at least 12 months received the full survey. Fourteen of the 514 had recently moved to Washington and their responses to a shortened version of the survey were not included. Sixteen people refused to give their age, ethnicity, or gender and were excluded. The results of the survey were based on the responses of 484 households and were weighted to better reflect the population in terms of age, gender, and ethnicity. It was not possible to weight across all characteristics. When prior education, household income, and legal force status were looked at, it was determined there was an under representation of households falling into the less than \$25,000 per year range. When discussing statewide results, the survey downplays the voice for low income households, which include retirees, students, other unemployed people, plus persons who do not have a college degree.

Mr. Stern explained that one of the primary functions of the survey was to determine the extent to which Washington residents gambled and what they preferred. Three central questions were asked: (1) Have you ever participated in this form of gambling; (2) Have you done it within the past year; and (3) What is the typical amount that you spend, either in a month or in the past year. Depending upon the amount they spent and the specific type of gambling, they were asked additional questions: (1) When you gamble at a particular activity, do you do so alone or with others; (2) At what age did you start this form of gambling; (3) In a typical 24-hour period, how much time do you typically spend playing (for example when you go to a casino, how long are you there); and (4) For this particular type of gambling, do you think the gambling activities are fair and honest? Fourteen (14) different types of gambling activities were covered in the survey: Lottery, Tribal Casinos, Raffles, Pull-Tabs, Out-of-State Gambling, Cards, Sports, Non-Tribal Bingo, Gambling on Horse Races, Tribal Bingo, Casino Nights, Fantasy Sports, Internet Gambling, and Gambling Over the Phone. Overall, 94 percent of Washington

residents said they had gambled in one of these forms at least once in their lifetime, and 71 percent gambled in at least one of these forms last year. In the past year, 46 percent have purchased a lottery ticket; tribal casinos and raffles each accounted for about 26-27 percent; pull-tabs, gambling outside of Washington, and playing cards had 15-18 percent participation. One non-conformant was out-of-state gambling where 60 percent of Washington residents gambled out of state but only 18 percent had done so in the past year.

Residents who said they had participated in more than one type of gambling were asked the question: Thinking about all the types of gambling you have done, which one is your favorite type of gambling activity? While the survey shows that lottery was the most popular, more people answered that tribal casinos were their favorite.

A higher percentage of Washington residents spent at least \$300 at tribal casinos than in any other form of gambling. One out of four card players spent \$300 or more per year. The survey showed that residents of rural counties were more likely to spend more than \$300 a year than residents of urban counties. Of the people who spent \$300 or more at a casino, 96 percent felt casinos were fair and honest and 13 percent went alone. Of all the residents surveyed, 40 percent stated they had played the Tribal Lottery System machines (commonly known as "slot machines"). Approximately 45 percent of adults stated they had gambled at a tribal casino at least once in their life and 27 percent within the past year. Card games were next at 20 percent, tribal bingo at 14 percent, and each of the other types of gambling were 10 percent or less. Women were more likely to have played slot machines. Men preferred card games, roulette, and dice games. Keno was preferred by players over the age of 55. Of those who said they have played in a tribal casino, 85 percent have played slot machines, 42 percent have played cards, 29 percent have played tribal bingo, 21 percent have played Keno, 20 percent have played roulette, and 17 percent have played dice.

Pull-tabs were the fourth most popular form of gambling with 41 percent of adults having played pull-tabs at least once in their lifetime and 18 percent in the last year. Pull-tabs are a low expenditure game with very few spending \$300 or more in the past year. Pull-tabs are more popular among non-white residents. Of those who spent at least \$300 a year on pull-tabs, 16 percent played alone and 90 percent believed that the games were fair and honest.

Of the people who said they played some form of bingo, 55 percent played non-tribal bingo, 40 percent played tribal bingo, and 5 percent played both. Approximately 24 percent of those surveyed have played non-tribal bingo for cash or prizes, but only 5 percent have played within the past month. One in six respondents estimated they have spent at least \$300 in the past year. Non-tribal bingo was preferred by non-whites, students, retired people, unemployed people who are not looking for work, and those from households with less than \$25,000 in annual earnings. Non-tribal bingo appears to

be more popular in rural Eastern Washington. Tribal bingo shared many of the same characteristics, but was a much higher expenditure game. Roughly half of those who played in the past year spent \$300 or more. Similar to non-tribal bingo, 12 percent of the residents with household incomes below \$25,000 played tribal bingo compared to less than 4 percent of residents in any other income category. Tribal bingo was very popular among the lowest income residents in the state. One of the sub-questions asked was: Do you prefer to play, traditional bingo with a caller in the hall or use an electronic bingo machine? The preference seemed to be traditional bingo with a caller in the hall, with only 11 percent exclusively playing electronic bingo and about a third playing both.

Two questions were asked about five different types of gambling to determine how knowledgeable people were about regulation: (1) To the best of your knowledge, is this form of gambling regulated? and (2) Who do you think regulates this form of gambling? Of those surveyed who answered the first question correctly, 78 percent said they believed the state lottery was regulated, 50 percent felt tribal casinos were regulated, 59 percent believed that pull-tabs, card rooms, and bingo were regulated by someone, 48 percent responded that Internet gambling was not regulated, and 64 percent knew that horse racing was regulated. Males, adults over the age of 25, and people with a graduate degree were more likely to answer these questions correctly. When asked who regulates each form of gambling, very few knew the correct answer.

Eleven different policy questions were asked that fall into four general categories: (1) The general availability of gambling, the roll of gambling supporting charities, and current state laws being adequate; (2) Concerns about underage gambling, unregulated Internet gambling, etc.; (3) Concerns about their own gambling habits, and (4) The overall honesty and fairness of gambling in Washington. Of those responding, 47 percent wanted gambling to be less available, 15 percent believed that gambling should be more available, and 38 percent believed that current levels were about right. Males were more likely to express an interest in expanding gambling. Public opposition to gambling weakened when the activity supported charities and nonprofit organizations. Seventy-one (71) percent of the survey respondents agreed that laws regulating gambling should be strengthened in some way. The survey did not follow up with a question of how they should be strengthened.

Five questions were asked regarding how concerned people were: (1) about the risk that underage people might be gambling; (2) that Internet gambling is not regulated; (3) that individuals seeking money for gambling might commit crimes; (4) about the possible influence of organized crime in gambling activities in Washington State; and (5) about unregulated betting on sporting events. The topic of greatest concern was underage gambling, with almost half of those surveyed being very concerned and 25 percent somewhat concerned. Overall 58 percent of those surveyed were concerned about the lack of Internet gambling regulation and another quarter were somewhat concerned. Females, adults between the ages of 45 to 54, and adults over the age of 65 were more

likely to be concerned. In addition, 40 percent of those with household incomes below \$25,000 per year were very concerned about Internet gambling.

Commissioner Ellis commented that in the area of Internet gambling, there appeared to be quite a disparity between the amount of attention Internet gambling gets versus the actual level of participation in this state. The survey data shows a high degree of concern, but only 2 percent of the population had ever gambled on the Internet and only 1 percent gambled last year. **Assistant Attorney General Ackerman** pointed out that the survey results rely upon a voluntary answer to the question about Internet gambling. Internet gambling is the most regulated form of gambling in this state; it is illegal and a criminal violation. Some respondents may have been concerned about potential incrimination. There is no way of knowing if those surveyed answered the question truthfully about whether they were gambling on the Internet. **Mr. Stern** explained that everyone surveyed was assured the survey was anonymous, but agreed people tend to under-report gambling activities given the social stigma in some areas to gambling.

When asked about whether people seeking money for gambling might commit crimes and if that was a concern of Washington residents, more than half were somewhat concerned. Females, non-whites, adults between the ages of 35 and 44, and adults over 65 were most concerned. Less than half of the respondents were somewhat or very concerned about the influence of organized crime. People not in the labor force were more concerned than those in the labor force or looking for work. It was also a greater concern for individuals over 55 years old. Unregulated sports betting was of least concern, with about one in five adults being very concerned. It was slightly more important to non-whites and people over the age of 55.

Respondents who said they had gambled at least once in the past year were read a list of reasons why some people chose to gamble and were asked if any of the reasons included their own reason to gamble. Almost three quarters of residents answered they gamble for social or recreational reasons; particularly residents in Eastern Washington. Only 7 percent felt that gambling was a way to make money. Of that 7 percent, 13 percent were non-white, 6 percent were Caucasians, and 18 percent were from households with annual incomes below \$25,000.

When asked the question about how concerned the person was about the time or money they spent on gambling, 74 percent were not concerned at all, 19 percent were not very concerned, 4 percent were very concerned, and 3 percent admitted they were somewhat concerned. Surprisingly, there were not many differences with regards to how many types of gambling they were involved with and the types of games where they spent more than \$300. The survey found that people who were in one of the three smaller pie slices (not very, somewhat, or very concerned) were more likely to have spent \$300 or more in the past year in at least one form of gambling. One out of five adults who were not concerned spent \$300 or more on gambling; 45 percent of people who were not very

concerned, somewhat concerned, or very concerned spent more than \$300 on gambling in the past year.

Commissioner Ellis pointed out that in Appendix C – Data Tables, the category of those respondents between the ages of 18 to 24 showed that 21 percent were somewhat or very concerned about their gambling, indicating a much higher level of concern among the youngest group of respondents. Commissioner Ellis added that he was interested in that number because of the attention at the moment on gambling in the younger age groups. **Mr. Stern** pointed out that there were only about 11 respondents under the age of 25 in the sample. Commissioner Ellis added that while looking at some of the other numbers in the data charts, he noticed that 67 percent of the respondents in the Eastern rural category played cards at mini casinos and 33 percent played cards in card rooms, but there were only three respondents, so two preferred mini casinos and one preferred card rooms. Mr. Stern agreed that care needed to be taken when interpreting the percentages. Even though 484 respondents is a fairly large number, when you start breaking that down to look at specific games, the sample size can become very small and be misleading.

Mr. Stern reviewed some of the patterns that developed with people who were concerned about their own gambling. The respondents were more likely to play cards on a weekly basis at tribal casinos and to go by themselves. In the past year they played cards in mini casinos and in card rooms, and bet on sports. Of those spending more than \$300 in the past year, 17 percent spent the money on the lottery and 26 percent spent the money at out-of-state gambling locations. Compared to 8 percent of the overall state population, 13 percent of those concerned about their own gambling reported they liked to gamble because their family liked to gamble.

When the respondents were asked the question about what degree they thought gambling in Washington was honest and fair, 64 percent responded that gambling was mostly honest and fair and 12 percent felt gambling was very honest and fair. Women, non-whites, people under the age of 24, and the lower income households were more likely to say that gambling was not honest and fair.

Chair Ludwig asked if Mr. Stern had made this information available to any other agencies or groups. **Mr. Stern** replied that this was the only public presentation of the data. Chair Ludwig thanked Mr. Stern for the presentation.

2006 Legislative Update – Summary of 2006 Legislation:

Amy Hunter, Administrator, Communications and Legal Division, reported the cutoff for bills to get out of committee was February 3, unless the bill had fiscal impact. The cutoff for bills with fiscal impact was February 7 and for bills to get out of the house of origin is next February 14. Ms. Hunter said she would focus on those bills that are still alive and offer staff recommendations on positions. **Commissioner Niemi** requested Ms.

Hunter to inform the Commissioners of those bills that appear to be dead but where revisions could possibly show up in other bills.

House Bill 1944 – State employee raffles:

Ms. Hunter reported that Substitute House Bill 1944 dealt with allowing state employees to conduct raffles. The original bill allowed state employees to conduct unlicensed members-only raffles, with a cap of \$5,000 in gross revenue per year. The substitute bill has some interesting language that states raffles by state agencies are not considered to be gambling and changed the cap to \$3,000 in gross revenues per raffle, rather than per year. Staff recommends the Commission take a position against this Substitute Bill for a couple reasons. If raffles are no longer considered gambling, it is unlikely the Commission would have jurisdiction to follow up on complaints related to them. Also, the threshold amount is not consistent with other threshold amounts within the statute. Unlicensed raffles have a cap of \$5,000 per year; this substitute allows \$3,000 per raffle with no cap for the year. The purpose of Commission rules and other state laws is to make sure that games are conducted fairly, that prizes are awarded, and that money is accounted for. That is not going to happen with this substitute bill because the raffles are not considered to be gambling. Ms. Hunter mentioned that she has an appointment next week with the sponsor of the bill, Representative Hunt, to discuss staff concerns. **Commissioner Niemi** asked whether the agency had testified on this bill. Ms. Hunter replied that she had testified that the agency had concerns about some of the provisions in the substitute bill. Commissioner Niemi asked whether the substitute made it out of Committee. Ms. Hunter affirmed, adding that she anticipated the bill would get out of the House. Commissioner Niemi asked whether there was anything similar from the Senate. Ms. Hunter responded there was no Senate Bill.

Chair Ludwig called for public comment and there was none.

Commissioner Niemi made a motion seconded by **Commissioner Ellis** to authorize staff to notify the Legislature that the Commission opposes Substitute Senate Bill 1944. *Vote taken; the motion passed unanimously.*

House Bill 2508 – Tribal community impact:

House Bill 2657 – Tribal-state gaming compacts:

Ms. Hunter advised that House Bills 2508 and 2657 were both dead and not expected to be back this session.

House Bill 2872 / Senate Bill 6523 – Minimum age for gambling:

Ms. Hunter reported that House Bill 2872 and Senate Bill 6523 would increase the minimum age to gamble from 18 to 21. Amendments were made by both the House and the Senate. Substitute House Bill 2872 amends the social card game definition to restrict house-banked card games to participants who are 21 or older. The substitute bill also requires the Commission to work with the appropriate Legislative committees over the

next year regarding policy issues related to establishing a minimum age to gamble for all activities the Commission regulates, with a report due December 1, 2006. The substitute bill passed out of the House committee, and staff recommends supporting the bill as amended with a suggested technical improvement that the age requirement be put in a new section rather than in the definition section.

Commissioner Niemi made a motion seconded by **Commissioner Ellis** to support **Substitute House Bill 2972** with the suggestion to move the age requirement to a separate section.

Commissioner Bierbaum asked Commissioner Niemi what her reasons were for supporting this bill. **Commissioner Niemi** answered that most house-banked card rooms serve liquor, making it difficult for Commission staff to regulate. **Chair Ludwig** added that, in addition to making it easier for staff, it would be more enforceable by the licensee or the owner of the card room. Commissioner Niemi recalled that staff had done an inspection that showed there was some underage drinking going on in a few card rooms. **Assistant Director Cally Cass** responded that staff had found there was underage playing, but also found some younger people who were drinking.

Chair Ludwig called for public comments.

Gary Murray, representing the Great American Gaming Corporation as well as on behalf of the RGA, testified that they do not support the bill in its present form because it singles out card rooms as a gaming environment outside the entire gaming environment in Washington State. Those under 21 would still be allowed to play pull-tabs at a bowling center where alcohol is served. Almost any form of gambling in the state of Washington would be legal at the age of 18 except for card rooms. Why single out one small sector – under 30 percent of the population? Mr. Murray reported that when he talked to the Legislature, many were concerned that our children could vote at 18 and be sent off to fight for our country, but not be allowed to gamble. Mr. Murray pointed out that his mini-casino doesn't allow 18 to 21 year olds, but that was a business choice of theirs.

Chair Ludwig agreed that it had always been a concern of his that at 18 a person is of legal age except when it comes to drinking, and if this bill passed, gambling. **Mr. Murray** corrected that it is only to gamble in a card room. A person under 21 could still buy a lottery ticket; gamble at a tribal casino, a bingo hall, or a racetrack; or play pull-tabs. The only restriction would be gambling at the 82-84 card rooms in this state.

Commissioner Ellis asked Mr. Murray whether the card rooms represented by the RGA had developed any information as to the actual impact on card rooms of raising the age to 21. **Mr. Murray** replied that the RGA had not conducted any formal research, that their concern was more a statement of being put into a separate category of gambling activity

and being segregated by who they are and what they offer, when it can still be offered at other places. Commissioner Ellis commented that the data from the public opinion survey showed that the restriction would only affect two or three of our respondents in the rural part of Eastern Washington. One reason to focus on card rooms could be because the area of gambling activity that was the most prevalent in the area of the 18 to 24 category was cards. There was a striking recognition in the 18 to 24 category of concern about their time and investment in gambling; although the data showed that about 88 percent of them usually played in somebody's home. Mr. Murray noted that when looking over the questions, he felt some of them were misleading; some people do not know the difference between a tribal casino and a mini casino. Mr. Murray believed that if you have a problem with teenagers and gambling, those problems are not normally within the confines of regulated gaming activities, it is at the home. Mr. Murray was concerned most of those people may be pushed to the unregulated, illegal activities, and felt it would be better to keep them in a regulated activity where staff can watch for problems.

Director Day pointed out that the tribal casinos actually have a variety of approaches in their compacts. The majority have language similar to the restriction in the house-banked card rooms that allow those 18 and above to gamble, but are not allowed to drink alcohol. As a matter of practice, the majority of the tribal casinos do not allow those under age 21 on the gaming floor. State law is not very clear, so from an enforcement aspect, clarifying an age limit would be helpful. The national trend has been that states are restricting casino style gambling to participants 21 and over. The only non-tribal casino-style game that we deal with in Washington is house-banked games. Director Day explained that the Senate Bill is worded a bit differently in that it would restrict wagering and would not allow people under the age of 21 to wager where alcohol is served.

Chris Kealy, Iron Horse Casino in Auburn, testified that if the age limit is increased to 21, then the activity would probably move to the Internet. He stated that when the math is done, \$2 million is spent a year on gambling – \$360 per adult. Mr. Kealy felt there was a lot of misinformation in the public opinion survey; that the whole picture was not there. The decision has to be made statewide or it really doesn't accomplish anything.

Max Faulkner, representing Keglers Incorporated and other service suppliers, testified that many of his clients are bowling centers that are used to selling beer and other alcoholic beverages out on the lanes. The servers are highly trained to tell the age difference. Mr. Faulkner thought this was a complicated issue that might be something for the task force.

Commissioner Bierbaum felt that before enacting any type of legislation, it was important to know what the legislation was trying to target or fix. If gambling were restricted to people over 21 because it was felt that people under 21 don't have sufficient maturity across the board, that would be a legitimate course of action and Commissioner

Bierbaum felt she could support it. But this bill targets one small part of the gambling industry. If the Legislature is attempting to target underage drinking, that is not the purview of the Gambling Commission but of another agency. If there are concerns about underage drinking in house-banked card rooms, the agency that regulates underage drinking needs to do something about it. For those reasons, Commissioner Bierbaum would not want the Commission to support this.

Chair Ludwig called for a recess at 2:50 p.m. and reconvened the meeting at 3:05 p.m.

Vote taken; Commissioners Ellis and Niemi voted aye, Commissioner Bierbaum and Chair Ludwig voted nay.

Ms. Hunter addressed Substitute Senate Bill 6523, which is technically dead but may be introduced in some form. A couple amendments were made; one that states if a business serves alcohol, the age to gamble is 21 or over. The amendment very clearly sets out the penalties, making it a misdemeanor for the person under 21 who is gambling and also for the person who is allowing them to gamble. Staff's concern is with language in the second amendment dealing with amusement games. The amendment removes the definition and the authorization of amusement games from the Gambling Act and leaves the Gambling Commission in a position to license a gambling activity that is no longer authorized or defined. Amusement games include the crane games found in a Safeway store and the games that you see at carnivals and fairs and are regulated by this Commission. This bill was referred to Ways and Means and died in Committee. From what staff has heard, it may be introduced as some type of an amendment. If this bill, with the provisions dealing with amusement games, comes up in some other bill, staff recommends the Commission oppose those parts dealing with amusement games.

Chair Ludwig called for public testimony.

Monty Harmon, Harmon Consulting, testified that his understanding of the amendment or the intent of the amendment, was with regard to the age of the participants that would be involved in the amusement game activities. Mr. Harmon stated that if all gambling were restricted to people 21 years and above, it would basically kill the activity of the crane machines. He thought the amendment intended to remove the age restriction for amusement games so children would be allowed to play carnival games and crane machines. Mr. Harmon added that it was his understanding the amusement game industry felt the activity should be regulated.

Director Day explained that Senate Bill 6573, as first introduced, would have made it illegal for anyone under the age of 21 to gamble at amusement games, the lottery, horse racing, house-banked, etc. After testimony, some of which concerned the age limit around amusement games, Substitute Senate Bill 6523 was adopted by the Commerce Committee, which would only require anyone gambling in a place that served alcohol to

be 21 or over. The majority of amusement games are not in locations that serve alcoholic beverages. At the same time, the Commerce Committee adopted an amendment that deleted the definition of amusement games and deleted amusement games as an authorized activity under RCW 9.46. Director Day understood there were concerns relevant to licensing issues, but the amendments had no effect on the age limit problem. The easiest way to correct the age limit for amusement games would have been to say "except for amusement games." Staff's concern is that the amendments do significant damage to RCW 9.46 and the regulation of amusement games by removing amusement games as an authorized activity and eliminating the definition of an amusement game. The amendment leaves amusement games in the code, so the Commission can license them but have no direction as to what is being licensed. Regardless of the intent of those provisions, the practical versions of the amendments are problematic and if the intent was to solve the age limit for amusement games, it did not do that. Staff recommend the Commission testify against these amendments in the form that takes amusement games out of the statute.

Mr. Nunamaker added that he felt taking the authorization of amusement games out of the statute would make the activity illegal in the state of Washington, which wasn't the intent. **Commissioner Niemi** pointed out there are a lot of questions about this bill and doubted it would pass. She added that the age limit would not be affected by how the Commission would vote on this bill, whether to endorse it or not. **Mr. Harmon** said he was concerned that, if the Commission decided to oppose any amendments in relation to the age limits, amusement games would be part of that factor. Commissioner Niemi pointed out that amusement games were gone in this bill. Mr. Harmon agreed.

Chair Ludwig closed the public comment and called for a vote.

Commissioner Ellis made a motion seconded by **Commissioner Niemi** to authorize staff to convey the opposition of the Commission to Substitute Senate Bill 6523 to the extent that it includes provisions amending RCW 9.46 by removing the definition and authorization for amusement games from that chapter. *Vote taken; the motion passed unanimously.*

House Bill 3129 / Senate Bill 6301 – Off-reservation tribal gaming:

Ms. Hunter noted that House Bill 3129 is dead. Ms. Hunter explained that in Substitute Senate Bill 6301, if a tribe has acquired land after 1988 and they want to have gambling on that land, the tribe has to go through a two-part process. The Secretary of the Interior determines whether gambling on that land is in the best interest of the tribe and not detrimental to the surrounding community. The Governor has to concur with the Secretary of the Interior's determination. The original bill required a 60 percent vote of the Legislature if a tribe wanted to conduct gambling on land that was acquired after 1988. The substitute bill adds a section dealing with the Governor's powers, stating that the Governor cannot make a concurrent determination to the Secretary of the Interior for

land that the Tribe acquired after 1988 and wants to conduct gambling on it, unless the Legislature has taken a 60 percent vote. The concept is similar, but it would be done under the Governor's power section. The Commissioners at the January meeting decided to remain neutral on the bill and to just point out some possible concerns about whether there was Federal pre-emption, whether federal law had already spoken on this, and whether state law could do so. Staff recommend continuing with that position.

Chair Ludwig asked if there was a word missing in the second paragraph of Section 1. where it says in part "... the Governor to concur in the secretary's determination as to those lands shall be made unless specifically authorized by a sixty percent vote of both houses of the legislature." **Commissioner Niemi** suggested "... shall not be made ...". **Commissioner Ellis** pointed out that if you concentrate on the first few words, "No concurrence communication from the Governor ... shall be made unless specifically authorized by a sixty percent vote of both houses of the legislature." **Ms. Hunter** agreed that it doesn't read well because of the large number of words in between. Chair Ludwig said the language did what it was intended to do and agreed that a vote was not needed.

House Bill 3176 – Changing taxation on punch boards and pull-tabs:

Ms. Hunter advised that House Bill 3176 was dead.

House Bill 3191 / House Bill 3285 – Exemption for nonprofit bingo operations from gambling tax:

Ms. Hunter reported that House Bill 3285 is still alive and is identical to House Bill 3191, which is dead. House Bill 3285 exempts charitable and nonprofits from paying gambling taxes, which they pay through local governments on bingo and amusement games, if the net receipts for those activities are less than \$200,000 per year. The current threshold amount is \$5,000. The bill would help about 90 charitable organizations and would save them about \$130,000 per year. The House Commerce and Labor Committee had a hearing on the bill and Chairman Conway was interested in hearing the Commission's position on the bill. Staff recommends taking a neutral position on the bill because taxation issues do not directly impact the Gambling Commission.

Commissioner Niemi asked if the Commission had been requested to prepare a fiscal note. **Ms. Hunter** affirmed, adding that because there was no fiscal impact, the fiscal note was not included in the Commission packet. **Chair Ludwig** asked if a motion was needed on either bill. Ms. Hunter replied that if the Commission wanted to remain neutral and just provide factual information, a position or vote was not needed. If the Commission wants to take a position to support or oppose the bill, then a motion would be helpful.

Commissioner Ellis asked about the significance of the amendment striking the language that the organization has no paid operating or management personnel. **Ms.**

Hunter responded that the language was removed because organizations with \$200,000 in net revenue a year are large enough that they have paid personnel.

Commissioner Bierbaum commented that she felt even more strongly about this particular piece of legislation than the one she voted no on. Commissioner Bierbaum felt that when the Gambling Commission evaluates the merit of pending legislation, they should evaluate it in terms of whether it impairs the Commission's ability to meet our Mission of ensuring that gambling is honest and fair and whether it affects our ability to enforce gambling regulations. This bill is a taxation issue and would not affect either the Commission's ability to meet that Mission or to enforce regulation. Commissioner Bierbaum recommended not taking a position one way or another. Chair Ludwig concurred.

House Bill 3209 / Senate Bill 6615 – Social card games:

Ms. Hunter reported that the companion to House Bill 3209 is Senate Bill 6615. House Bill 3209 did not have a hearing and is dead. The Senate version is alive and a substitute was made to it. The bill deals with limiting the house-banked card room locations. Substitute Senate Bill 6615 changes the cutoff date for when the Commission received the application or the applicant had to be licensed to January 31, 2006. Plus the substitute bill deleted some language regarding transfers of locations. At the January meeting, the Commission decided to remain neutral on the original bill and to point out that value would be added to licenses if locations are limited and that the number of card rooms in this state seems to be leveling out. Ms. Hunter stated that the substitute would not likely change those two points, so staff recommends continuing with the neutral position.

Senate Bill 6613 – Internet gambling:

Ms. Hunter reported Senate Bill 6613 is the Internet gambling bill. The Senate Committee heard the bill and passed a substitute because of concerns raised by credit unions and banks about being criminally liable for transactions that they did not have direct knowledge of. The substitute removes the professional gambling amendments from the bill and amends the RCW to change the penalty to a Class C felony. At the January meeting, the Commission recommended supporting the bill, but remain neutral on the provision dealing with the Lottery Commission. Staff recommends that the Commission continue with that position.

SB 6856 – Indian gaming regulatory act:

Ms. Hunter explained that Senate Bill 6856 deals with a sunset clause. A bill was passed in 2001 that provided a limited waiver of sovereign immunity by the state in lawsuits brought by tribes over compact negotiations and whether the state acted in good faith. The sunset clause was only applied if the tribe already had a compact. The bill provided an avenue of relief and has been productive in relieving arguments about whether the state is acting in good faith. Senate Bill 6856 removes the sunset clause that

was set to expire in 2007. Ms. Hunter thought the Commission was in support of the original bill when it passed in 2001. Staff recommends supporting this amendment. Because the bill is a rule, it is still alive.

Commissioner Bierbaum asked Mr. Ackerman if he agreed. **Mr. Ackerman** replied that, as a lawyer, he was in favor of sovereign immunity for the state whenever possible. However, as Ms. Hunter pointed out, the Commission decided in 2001 that as a policy they wanted to support the waiver of sovereign immunity to facilitate the resolution of disputes that might occur. Mr. Ackerman thought the law was intended to provide sovereign immunity only where a compact was in place. The Commission has never had litigation surrounding one of the compacts, so the effect of the statute has not been subject to any court decision. Mr. Ackerman added that he had pointed out to the Commission that they were giving up an absolute defense. All that is happening now is the original sunset clause is being removed, and will continue indefinitely unless amended by the Legislature. **Commissioner Niemi** commented that she was opposed to the general idea of sovereign immunity getting into every part of the State's ability to legislate, and that she was in favor of the sunset clause and not waiving sovereign immunity.

Director Day explained that the sovereign immunity language has been an effective mechanism in stimulating cooperation between the tribes and the state. At this point, all the compacts have dispute resolution language that authorizes both sides to engage in dispute resolution as well as with the federal authorities. Allowing compacted tribes to file lawsuits has been an effective argument that the State was dealing in good faith. Allowing the waiver of sovereign immunity has demonstrated that both sides agree to move forward with the compacts and deal with each other in good faith. Both sides know the option of going to court and getting a resolution from a neutral party is available.

Commissioner Bierbaum asked whether by not taking a vote, the earlier position just continues. **Chair Niemi** added that in her opinion this bill would be taking away the sunset clause and giving the tribes an unlimited waiver of our sovereign immunity. **Ms. Hunter** explained that part of the reason staff brought up the issue was because the bill passed in 2001 and staff recognized that the Commission had changed since then. **Director Day** added that it was important when staff testify on a bill that they represent the current Commission's viewpoint.

Commissioner Ellis sympathized with Commissioner Niemi's viewpoint, but felt the discussion was about a situation where a tribe entered into a compact and waived its sovereign immunity in that compact. Since the compacts include dispute resolution provisions, it appears to be a small step by the Commission to agree to eliminate the sunset clause and waive sovereign immunity in that context. Commissioner Ellis said he would be in favor of legislation that eliminated the sunset provision.

Commissioner Niemi asked whether the tribes actually waive their sovereign immunity. This bill does not say that if the Tribes waive their sovereign immunity, the State waives its immunity. **Director Day** replied it was by mutual consent. **Mr. Ackerman** clarified that there are both compacts that predate the enactment of the 2001 legislation and compacts signed subsequent to 2001. The earlier compact language regarding dispute resolution typically stated that the parties agreed that if they are beyond mediation or arbitration and into the litigation stage, the matter would be heard in a court of competent jurisdiction. The later compact language reflected the mutual waivers of sovereign immunity as part of the dispute resolution clause. Mr. Ackerman added it was important to remember that from the state's perspective what was being discussed was a waiver of sovereign immunity in federal court. The reality is that a tribe, even without this provision, can choose to sue the state in a state court. Mr. Ackerman said the real argument has been whether the state agreed to give federal courts jurisdiction over these disputes because the state waived sovereign immunity. Commissioner Niemi understood that the language helped with negotiations with the tribes, but thought the Supreme Court was saying that the state was pretty much waiving sovereign immunity across the board – nothing to do with the tribes. Washington is one of the few states in that position and it is an incredibly offensive and difficult position for the state to be in. Commissioner Niemi added that if the issue came up again, it would be easy for the people who wanted to continue to waive sovereign immunity in regular court cases to say "Well you waived it for the tribe, then you waived it across the board for the tribe." There would be no reason to go back on any sovereign immunity for any other case. Commissioner Niemi was concerned about the issue of sovereign immunity, not the IGRA part of it. Director Day hoped the Commission understood that the bill is conditioned on the tribe entering into a compact and providing similar consent.

Chair Ludwig called for public comment.

Kent Caputo, representing Jamestown S'Klallam Tribe, testified that when this legislation was introduced a few years ago, it was done in coordination with tribes. The feeling was that for the state to go forward in good faith with the tribes and the tribes to go forward with the state, there was a desire to ensure that tribes would not be dragged into state court or that tribes would not try to drag the state into various tribal courts. To be able to go into federal court gave credence to the good faith efforts between the tribe and the state. The sunset clause was to see what happened for a few years, whether this would prevent lawsuits or enforce whether the relationship was understood between the state to prevent that. Mr. Caputo stated that in his experience over these past few years, the feeling with key legislators and others involved was that the experiment was a success. Mr. Caputo felt the concern was that if that sunset point is reached, there will be lawsuits. His concern was that if the state did not want to go forward with this good faith model, the tribes would feel the same way and possibly not go forward with language that the law recognizes now. The state would only be waiving its sovereign immunity to enforce compacts to the same degree that a tribe has done. Mr. Caputo testified that from

the Jamestown S'Klallam Tribe's perspective, going forward with this model would be in the best interest of the ongoing good faith compact negotiations and relationships between the tribes and the state.

Chair Ludwig asked what position the Commissioners wanted to take. **Commissioner Ellis** commented that he was mindful of what Mr. Caputo just testified regarding existing legislation and without this amendment artificial pressure could be put on tribes to file lawsuits by July 1, 2007, concerning any then pending disputes. The tribes want to avoid having the state usurp sovereign authority to resolve the disputes outside the context of settlement or dispute resolution. Commissioner Ellis felt it was important for the Commission to support this legislation. The impact the amendment would have on the state's position overall on sovereign immunity is a significant difference between how we resolve litigation with other tribes versus the issue of sovereign immunity in the context of other court suits. It is more logical for the state to be waiving sovereign immunity in this very limited context.

Commissioner Ellis made a motion seconded by **Commissioner Bierbaum** to authorize staff to advise the Legislature that the Commission supports Senate Bill 6856.

Commissioner Bierbaum shared Commissioner Niemi's concern about forever waiving sovereign immunity, but wondered why the Legislature could not just amend the statute to extend the sunset clause out farther, which seems less hostile than to not have a sunset clause. If one day the state decides it does not want to waive our sovereign immunity, it would actually have to appeal this act versus having a sunset clause that allows the state to review it periodically. **Commissioner Niemi** commented that this bill appears to be very tightly written and only for federal court actions, for compacts and IGRA, and is probably appropriate. Commissioner Niemi added that she would rather not vote on the motion.

Chair Ludwig asked whether all compacts have a general rule giving some method of resolving compact issues, and if so, does that dispute resolution provision provide for any court action if a resolution is not reached. **Mr. Ackerman** explained that the compacts vary somewhat in their specific language, but typically set out a process that starts with informal mediation when there appears to be a potential dispute. If the informal mediation does not resolve the dispute, it moves to formal mediation. If formal mediation does not resolve the dispute, there is the option to go to arbitration, and if that does not resolve the dispute then the final remedy available is litigation. Prior to the enactment of this legislation, the question was where, after litigation, could the unhappy party take the dispute. Prior to 2001, many of the compacts said that litigation would occur in a court of competent jurisdiction. The reason that language was general and vague was because the state contended that a court of competent jurisdiction meant a state court and the tribes contended that it could mean a tribal court or a federal court. Once the sovereign immunity cases came down, the federal court was less likely to be an

appropriate form. This legislation deals with that last step in the dispute resolution process where there was disagreement. Now the compacts reflect the mutual waivers of sovereign immunity that are contemplated here, and federal court would probably be the forum that would be selected; although, parties could agree to have the litigation in a state or tribal court. The tribes do not currently waive their sovereign immunity to state court, nor does the state currently waive its right to litigation in tribal court. The tribes with compacts after 2001 mutually waive sovereign immunity into federal court. The significance of this legislation is it would allow either party to take the case to federal court. Chair Ludwig stated he was inclined to support this proposed statute so staff know where to go on compact issues.

Chair Ludwig called for a vote. *Vote taken; the motion passed with three aye votes. Commissioner Niemi abstained from voting.*

Senate Concurrent Resolution 8417 – Establishing a committee on gambling policy setting:

Ms. Hunter reported that Senate Concurrent Resolution 8417 would establish a Gambling Task Force. A substitute was filed to decrease the number of voting members from 12 to 8. The Commission would have one non-voting member appointed by the Governor. Ms. Hunter explained that this task force would involve a lot of support from staff, but could provide a good educational tool. As shown today, there are a lot of gambling issues that tend to be complicated, and because of that staff recommend supporting this resolution. Ms. Hunter noted that this resolution has passed out of committee.

Commissioner Ellis made a motion seconded by **Commissioner Niemi** to authorize staff to advise the legislature that the Commission supports Substitute Senate Concurrent Resolution 8417. *Vote taken; the motion passed unanimously.*

Correspondence:

Director Day drew the Commissioners' attention to the correspondence regarding Senate Bill 1295, dated January 13, 2006, and addressed to the Governor. The Legislation has been introduced and in Senate Committee to provide additional regulatory authority for the National Indian Gaming Commission. Director Day confirmed that staff are currently following up with contacts and will include information in next month's agenda packet.

Monthly Update Reports:

Director Day addressed the Seizure Report, pointing out that in December commission agents seized over \$58,000 in currency from cheating and bookmaking. **Commissioner Bierbaum** asked what happens to the seized vehicles. **Mr. Nunamaker** responded that if the vehicle meets the standard for use we may keep it and use it in our undercover program. Most vehicles do not meet the standard and are processed through the state surplus program, and the agency keeps the money from the sale.

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

Assistant Director Dave Trujillo explained that the February 2006 Commission Approval List is 20 pages long and includes a pre-licensing report for a house banked card room. Mr. Trujillo requested Rochester Management Company be added to the Commission Approval List as a service supplier

Commissioner Niemi made a motion seconded by **Commissioner Ellis** to approve the list of new licenses, changes, and tribal certifications as listed on pages 1-20, to include Rochester Management Company as a service supplier. *Vote taken; the motion passed unanimously.*

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

Chair Ludwig called for public comments.

Jerry Callen, General Manager of Mickey's Casino in Port Angeles, testified that Senate Bill 6615 restricts gambling licenses and the movement of casinos, which restricts a casino's ability to do business. A situation can arise at any casino at any time. For instance, if a landlord decides to substantially increase the rent on the building being leased for a casino, according to this bill, the business cannot move. A casino is tied to its present location forever. Mr. Callen asked the Commission to take that into consideration before deciding to vote to not take a position. **Chair Ludwig** added that a building fire could be another example of the need for a business to relocate.

Commissioner Niemi commented that the Commission discussed this at the January meeting and although she had doubts about the constitutionality of the bill, it was not the Commission's issue. By voting to not support nor oppose the bill does not mean that the Commission approves it. **Commissioner Ellis** asked Mr. Callen whether he had discussed his concerns with the sponsors of the bill. Mr. Callen responded that he had hoped to meet with Senator Prentice today. Commissioner Ellis suggested Mr. Callen contact Senator Prentice through her office in the Legislature. **Director Day** added that once the bill moves out of the Senate, it would move over to the House Commerce and Labor Committee. **Commissioner Bierbaum** stated that she understood this gentleman's concerns, but felt it would not be appropriate for the Gambling Commission to lobby for the industry. **Ms. Hunter** pointed out that the concerns about landlords was brought up at the Senate Hearing.

4. **Executive Session to Discuss Pending Investigations, Tribal Negotiations & Litigation:**

At 4:15, 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:

Gail Grate

Administrative Assistant 4

**COMMISSION MEETING
FRIDAY, FEBRUARY 10, 2006
DRAFT MINUTES**

Chair Ludwig called the meeting to order at 9:30 a.m. at the Phoenix Inn Suites located in Olympia.

MEMBERS PRESENT: **COMMISSIONER CURTIS LUDWIG**, Chair, Kennewick
 COMMISSIONER JANICE NIEMI, Seattle
 COMMISSIONER JOHN ELLIS, Seattle
 COMMISSIONER PEGGY ANN BIERBAUM, Quilcene

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
 GAIL GRATE, Administrative Assistant

5. Approval of Minutes - January 12-13, 2006, Seattle:

Commissioner Niemi made a motion seconded by **Commissioner Ellis** to approve the meeting minutes of the January 12-13, 2006, regular meeting. *Vote taken; the motion passed unanimously.*

6. Petition for Rule Change – Cash Defined – WAC 230-02-101:

Ms. Cass explained that Item 6 is a petition originally filed by Monty Harmon, a licensed gambling service supplier, at the October 2005 Commission Meeting. The petitioner requested that cash be defined in our rule. The new definition would expand the methods players could use to participate in gambling activities and receive their winnings. The petitioner indicated to staff that the intent of the change was to allow patrons to use guest cards to purchase pull-tabs and allow pull-tab winnings to be added to those guest cards.

The patron could also purchase food, beverages, and other gambling activities with these cards. The petition was held over at the January meeting at the request of the petitioner. Staff are bringing forward an alternative that adds the words gift certificate or gift card to the current rule to allow gift certificates or gift cards as authorized forms of payment to participate in gambling activities. The amendment would not allow gambling winnings to be added back to those cards. Staff recommends the petitioners petition be continued, but that staff's alternative be filed as an amendment to that petition.

Chair Ludwig asked why, in this instance, staff are calling it an alternative rather than an amendment. Is that because it is a petition? **Ms. Cass** replied that it was a matter of semantics; staff call it an alternative because it is a completely different rule. **Ms. Hunter** explained that it was an alternative because it is very different from what was originally proposed. It was easier to have an alternative rather than attempt to amend the petition. **Commissioner Niemi** said she thought staff had initially opposed the petition and were now offering an alternative; however, that is not the case, this alternative is in lieu of the petition. Commissioner Niemi asked whether the recommendation was to continue the petition and make a final decision on March 10. Ms. Cass affirmed. Chair Ludwig asked where on the staff's alternative was the language about not allowing credits to be posted back to the gift card. Ms. Cass explained that the alternative does not specifically disallow it, but just adds the opportunity of using gift certificates and gift cards to participate in the activity, in order to purchase the activity. Ms. Cass explained that initially staff was going to recommend denying the petition and re-filing the alternative separately. Because of code reviser requirements, staff are recommending that the Commission continue Mr. Harmon's petition and file the staff alternative as an amendment to that petition. Ms. Hunter added that staff are asking the Commission to file the staff alternative today. At the March meeting, the Commission will consider both Mr. Harmon's petition and staff's alternative. Then, the following month, it would be up for final action.

Commissioner Ellis asked Ms. Cass to elaborate on staff's concerns about adding the winnings to gift cards. Would it be difficult for staff to verify whether winnings are credited accurately to gift cards? What is the practical significance of that area of concern? **Ms. Cass** replied that from a practical perspective, staff would have to audit the accounting systems and cash receiving systems for the gift cards themselves, which would not routinely be done. Staff normally concentrate on the gambling activity, so this would add an additional workload burden. **Commissioner Ellis** asked whether it could be tied into the surveillance systems used for table games to determine whether customers are receiving the proper winnings. **Ms. Cass** explained that surveillance systems are only required in house-banked card rooms. The gift cards and certificates would be allowed in practically any gambling establishment, including those without surveillance systems. **Chair Ludwig** was concerned about delaying Mr. Harmon's petition and wondered why this petition could not just be amended with this alternative. **Mr. Ackerman** explained that staff are attempting to comply with the APA

requirements. When an alternative or amendment to an existing petition is proposed that includes a substantial change from the original proposal, the alternative must be filed so the public are notified that it is under consideration by the Commission.

Chair Ludwig asked if Mr. Harmon would like to comment.

Monty Harmon, Harmon Consulting, testified that he was not concerned with the extension to allow staff time to follow the APA procedures. Mr. Harmon provided a copy of an article from the Wall Street Journal that addressed how widely used the gift cards have been incorporated into society. Mr. Harmon offered to spare any other testimony at this time; however, if the Commission decided to address his petition today Mr. Harmon requested the opportunity to speak further on his petition.

Chair Ludwig suggested that to follow the APA guidelines, the petition be set over to next month.

Commissioner Ellis made a motion, seconded by **Commissioner Niemi** to have staff proceed with filing the alternative provision relating to gift certificates and gift cards as an amendment to WAC 230-05-050. *Vote taken; the motion passed unanimously.*

7. **Activity Reports - Bingo, Raffles & Amusement Games:**
WAC 230-08-120, WAC 230-08-125, WAC 230-08-180, WAC 230-08-250

Mr. Trujillo described the four rules in Item 7 up for final action. In 2005 staff undertook streamlining and clarifying rules for licensee reporting requirements. These four rules are a simple continuation of that process. The current rules require instructions for reporting, then specifically lists the required items to be reported. Staff proposals remove the list of requirements and include details in the instructions. If licensee reporting requirements change, staff need only change the instructions instead of seeking an amendment to the Administrative Code. Staff has not received any statements against the proposed rule changes and is recommending adoption of the four rules with an effective date 31 days from filing, or March 13, 2006, if the rules are adopted today.

Chair Ludwig called for public testimony. There was none.

Commissioner Niemi made a motion seconded by **Commissioner Ellis** to adopt WACs 230-08-120, 230-08-125, 230-08-180, and 230-08-250 as amended with an effective date of March 13, 2006. *Vote taken; the motion passed unanimously.*

8. **Petition for Rule Change – Punchboard & Pull-Tab Service Business:**
WAC 230-02-205, WAC 230-02-208, and WAC 230-04-133

Mr. Trujillo explained that Item 8 is a petition for a rule change for punchboard and pull-tab service businesses that will affect three rules. Presently a punchboard/pull-tab service business is required to pay an initial license fee of \$217 with an annual fee of \$53. A service supplier is required to pay a \$630 annual fee every year. The punchboard/pull-tab supplier is allowed to bill up to \$20,000. If a bill is \$20,001 the punchboard/pull-tab supplier is required to become a service supplier. The petitioner has requested that the threshold be increased from \$20,000 to \$25,000. Last month there was discussion as to whether the petitioner should be at the meeting to speak about the petition. Staff have been in contact with the petitioner, who is a school teacher, and the petitioner provided another letter, dated January 31, 2006, that mentions providers who have turned down business because it would put them over the threshold amount. At the January meeting, it was reported that one licensee would be impacted, but actually there are two licensees impacted by this rule change. There are 13 businesses that hold punchboard/pull-tab permits that may also be impacted. Staff recommends this petition be filed for further discussion.

Chair Ludwig called for public testimony. There was none.

**9. Petition for Rule Change – Card Room Pit Supervision:
WAC 230-40-815**

Ms. Cass reported that Item 9 is a petition filed by Larry Wheaton of Goldie's Shoreline Casino. Mr. Wheaton submitted a petition requesting a rule change increasing the number of tables a floor supervisor is authorized to supervise from five to six tables regardless of the number of tables open. After discussions with the petitioner, Mr. Wheaton has agreed to a staff alternative to his petition. Staff recommends setting the maximum number of tables supervised to no more than seven, so long as it is pre-approved in their internal controls. It is difficult to draft an administrative rule that revolves around the specific circumstances of each operator; for example, the experience level of the supervisor or the layout of the floor. Seven tables was considered by staff to be a comfortable baseline and allows the operator more flexibility. This change does not affect the agency regulatory program. Staff took a survey of seven other gambling regulatory agencies and found that three agencies had a rule limiting the supervision level to six or fewer tables; one had no limit, but also had no establishments with more than seven tables; and one enforced their rule requiring there was adequate supervision in a manner that determined the licensee had inadequate supervision if pit bosses supervised more than five or six tables, with two tables having no limits. Staff recommends filing the staff alternative as an amendment to the petition.

Chair Ludwig called for public testimony.

Larry Wheaton, General Manager of Goldie's Shoreline Casino, testified that the rule change he requested the Commission to consider has to do with the number of tables one

floor supervisor can watch at a certain time, which currently is five. For economic reasons Mr. Wheaton would like the number to be increased to seven. **Chair Niemi** asked Mr. Wheaton if he had talked to commission staff about the alternative staff have recommended. Mr. Wheaton admitted he had, but requested to demonstrate on a whiteboard how his casino was laid out. Mr. Wheaton drew a diagram for the Commissioners on the whiteboard and explained that when the casino opens at 10:00 a.m., there is one floor supervisor for six tables. At 12 noon, three tables are opened in pit two with one supervisor, but the Gambling Commission rules require adding another floor supervisor. When the casino opened, it was good enough to have one floor supervisor in this pit, but at noon when two or three additional tables were opened, another floor supervisor had to be added, at an expense of approximately \$75,000. **Chair Ludwig** asked whether one floor supervisor was enough for those six tables until Mr. Wheaton opened up two other tables. Mr. Wheaton affirmed. Chair Ludwig asked about the logic behind the rules requiring adding another supervisor to pit one. **Ms. Cass** explained that currently the requirement is five tables for one supervisor and Mr. Wheaton has six tables in one pit. If Mr. Wheaton opens two or more tables in another pit, he is required to add two supervisors. **Commissioner Bierbaum** asked Mr. Wheaton if he had an opportunity to look at the staff's alternative to his recommendation and whether that would solve his particular problem. **Mr. Wheaton** agreed it would.

Commissioner Niemi made a motion seconded by **Commissioner Bierbaum** to file staff alternative to the amendment to WAC 230-40-815. *Vote taken; the motion passed unanimously.*

10. Rules Simplification Project – Chapters 03 and 05:

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, reviewed the first two chapters of the Rules Simplification Process that were presented at the January meeting. Ms. Heston reported that the changes recommended by the Commissioners at the January meeting were made. Staff recommends continuing the discussion on both chapters of these rules at the March Commission Meeting.

Chair Ludwig asked what the effective date would be for these rules. **Ms. Heston** explained that the effective date for all the rules would be January 1, 2008. The current WAC rules will need to be repealed and the new rules packet printed and training provided on the changes. All the current rules will remain in effect until that time. **Commissioner Ellis** commented that he had an opportunity to read the rules packet in more detail and felt it effectively accomplished the intended goal to express the rules in plain language. Commissioner Ellis added that, from an attorney's viewpoint, there were a number of changes built into the packet that are somewhat revolutionary, effective, and very well done. Commissioner Ellis suggested that the first use of the abbreviation RGA,

referring to Recreational Gaming Activity, should be defined, with RGA in parenthesis. Ms. Heston agreed, explaining that after the rules packet was prepared for this meeting, that change had been made. **Ms. Heston** reported that this packet of rules would be up for final action at the March meeting, with an effective date of January 1, 2008.

Chair Ludwig called for public comment. There was none.

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

With no further comments, **Chair Ludwig** adjourned the meeting at 10:20 a.m., noting that the March meeting will be held at the Red Lion Hotel in Olympia on March 9-10, 2006.

Minutes submitted by:

Gail Grate
Administrative Assistant 4