

**COMMISSION MEETING  
THURSDAY, JULY 13, 2006  
MINUTES**

**Chair Ellis** called the meeting to order at 1:30 p.m. at the Hilton Hotel located in Vancouver. He introduced the following members and staff present:

**MEMBERS PRESENT:**     **COMMISSIONER JOHN ELLIS, Chair**, Seattle  
                                  **COMMISSIONER JANICE NIEMI, Vice Chair**, Seattle  
                                  **COMMISSIONER PEGGY ANN BIERBAUM**, Quilcene  
                                  **SENATOR MARGARITA PRENTICE**, Renton  
                                  **REPRESENTATIVE JOHN SERBEN**, Spokane

**STAFF PRESENT:**       **RICK DAY**, Director  
                                  **GARY DRUMHELLER**, Acting Ast. Director–Field Operations  
                                  **DAVE TRUJILLO**, Assistant Director – Licensing Operations  
                                  **AMY HUNTER**, Administrator – Communications & Legal  
                                  **JERRY ACKERMAN**, Assistant Attorney General  
                                  **SHIRLEY CORBETT**, Executive Assistant

**Director Day** and **Chair Ellis** presented Special Agent Supervisor Jeannette Sugai with a service award for 15-years of dedicated service to the State of Washington and the Gambling Commission.

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

**Director Day** addressed the agenda for Thursday and Friday and highlighted inserts added to the agenda packet since publication.

**Chair Ellis** reported the Commission received a letter from Sharkey’s Sports Bar & Grill requesting their Petition for Reconsideration be conducted telephonically. He noted the Commission has tried to conduct telephonic hearings in the past somewhat unsuccessfully; therefore, the Commission denied that request and continued Sharkey’s Petition to the August Commission Meeting.

**Chair Ellis** noted the Commission also had a request for an agenda revision relating to the ZDI Petition up for review, suggesting that the matter of the petition for a new rule

considering cash cards be heard before the Petition for Review of the ALJ's declaratory order. He agreed there was a certain amount of logic in that request. However, since notices were already sent to the public regarding the hearing on the declaratory order and the petition for the cash card rule, the Commission concluded it made more sense to adhere to the current agenda structure.

**Chair Ellis** reported that Mr. Thompson, the petitioner for Item 9, requested the rule concerning card room employees who play in games with player-supported jackpots be moved from Friday to Thursday. Again, because public notice was given that the rule would be addressed on Friday, the Commission choose to adhere to the published agenda.

**Director Day** proceeded with the body of the Director's Report and he addressed the Commission's successful endeavors in recruiting and obtaining an excellent Deputy Director for the Commission. The new Deputy Director, Sharon Reese will assume her duties on Monday, July 17. Deputy Director Reese has 12 years work experience with the Commission, she began her career as a Special Agent and promoted to the position of an Assistant Director. She also served as a Deputy Director for the Criminal Justice Training Commission. In her role as Deputy Director with this Commission, Ms. Reese will primarily be responsible for the agency's administrative units and will gradually move into the role as lead tribal negotiator for the Commission as the Director's designee.

Budget Presentation:

**Director Day** introduced the agency budget staff members in attendance: Business Office Administrator Terry Westhoff, Cam Dightman, and Judy Pittelkau. He advised that staff's goal was to present and request approval of adjustments to the Commission approved 2007 budget; and then to also talk about the budget proposal for the next biennium. Director Day explained that staff attempts to line the Commission's resources with the agency's mission, vision, and values. The mission is to protect the public by ensuring gambling is legal and honest, and to operate under the values of integrity, professionalism, respect, and diversity. Offering background information, Director Day noted the Commission is funded through an account called the Gambling Revolving Fund. The Commissioners are the sole authority for disbursements out of the Gambling Revolving Fund, and he emphasized there are no general funds involved in the Commission's budget. The budget is achieved from license fees, fines, penalties, and hourly rate assessments for services provided by the Commission. Essentially, if the Commission doesn't collect the projected revenues, the Commission can't exercise the projected expenditures, which impacts the agency's operations.

**Director Day** briefly reviewed the budget process and how it is submitted to the Office of Financial Management; noting that when budgeting issues come before the Legislature there isn't a Gambling Commission line item budget because the Commission is non-appropriated. He emphasized the importance of the Commission's power and duty to establish a schedule of fees in order to provide costs to cover all of the licensing enforcement duties.

**Director Day** advised the he would be providing a brief glimpse of the status of the 2006 financial information and then discussing the revenue estimates in order to project a budget

that derives sufficient funds to pay for the various budget requests. He planned to discuss the requested revisions for 2007, and how that might impact the working capital balance, the carry forward level, and decision packages for the new biennium.

**Director Day** reviewed the budget revenue figures through May, noting revenues came in higher than estimated—staff estimated \$14.1 million and achieved approximately \$14.6 million. He anticipated that expenditures would be an equivalent amount (\$500,000) under expended, and hoped the Commission would review some of the staff cuts made and consider restoring some of the positions. Director Day addressed the Commission's working capital balance graph noting it is not a savings account—it is revenue that is used to address cash fluctuations, ensuring that when additional expenses come in, the Commission has the resources to pay for them—necessary expenditures such as pension and salary increases, and professional charges such as Attorney General's Office expenses.

**Director Day** explained that the Commission's budget staff uses historical licensee trends and revenue trends from agency billings to project the future. He noted that one thing the facts and figures didn't reveal related to a group of card room employees that are licensees; however, they are not necessarily actively working. That was a revenue source that staff had not been counting—and staff has now added those figures back into the revenue projections. The staff also had to do some downward adjustments because the tribal licensing certification system has changed dramatically. Tribes are primarily responsible for licensing and the State, for the most part, is primarily responsible for licensing vendors and manufacturers. The State continues to have an interest in who is involved in each establishment.

**Director Day** noted that license fees haven't been increased in four years; and, in order to recover costs, staff anticipates a need to increase license fees and hourly billing rates. He explained the Commission charges Tribes hourly for any investigation work conducted. He acknowledged that fee increases requires going through the rule making process to establish a new fee schedule which is set by rule. Director Day noted fee increases are limited by Initiative 601, which means they don't result in much of an increase. In fiscal year 2007, staff is proposing just over 3 percent. In terms of expected revenue, Director Day pointed out that the increases in 08' and 09' are largely due to the projected increases via license fee increases and the hourly rate increases—absent that, the graph depicts a steady revenue line.

**Director Day** reviewed a graph identifying revenues by source and percentage. Currently, 31 percent of the Commission's revenue is derived from pull-tabs, 18 percent is house-banked card rooms, and etc. He commented that it was interesting to note how much this has changed over the years, noting that in 1996, pull tabs generated 56 percent of the Commission's revenue.

**Representative Serben** addressed the decrease in revenue from the punchboard and pull-tabs, and asked if the staff had taken into consideration the fact that every one of the places that have punchboard and pull-tabs has seen dramatic reduction in their pull-tabs since I-601 passed. He inquired if staff looked at that information while making the budget allocations and projections. He noted they have gone down from 20 percent to 25 percent. Director

Day affirmed that staff has been aware of the decline in the market for quite some time, which is why the agency has only requested a fee increase when it was truly needed to fund expenses; and why there hasn't been an increase in four years. Staff has been very cautious and carefully reviews historical and current trends to project what might affect the number of active licenses. Staff is projecting a continued decline in pull-tab licensees and makes projections as the budget is built—staff continues to look at expenses and monitors the budget. If the revenues aren't coming in, then the leadership knows they cannot hire staff or add expenses to the budget.

**Director Day** reviewed a slide depicting the Commission approved budget for the last biennium in the amount of \$15.5 and 166.4 FTE's. He then addressed a slide describing the requested revisions to the 2007 budget. Staff looked at the ability to reallocate funds to higher priority areas, areas where there is consistent spending of the entire balance devoted to the specific functions, to ensure the budget is managed as effectively as possible before asking for additional funding. He noted that even though budget managers in the agency are a little concerned about how much flexibility there is in this budget, they have gone through a process of decentralizing the budget accountability and moving it to those staff members that are closer in line to help make appropriate budget decisions and to make sure managers have a realistic allotment.

The budget must also include statewide adjustments approved by the 2006 Legislature, which includes increases in employer contributions for pension costs, and the salary increases they approve. Additionally, it includes the request to restore and extend seven agency positions. **Director Day** noted these are not new ventures, they are people and positions that already exist within the Commission. If the positions are not extended or restored, the Commission will be required to move forward in laying the people off. At this point, Director Day affirmed the Commission has plenty of work and has the funding available. He believed that it wouldn't make any practical sense not to continue these positions.

Regarding new initiatives, **Director Day** advised that he has been in the process of investigating Internet gambling and taking a more aggressive stance on Internet gambling. The Commission has approximately nine cases open at this point. He clarified the effort is not directed at people that are gambling from their home, it is directed at illegal Internet service providers piping into Washington, which is an unauthorized activity in this state. **Representative Serben** asked if the Commission expected the new enforcement of Internet gambling to generate some revenue in the future since this is a net zero operation. Director Day responded that it would be interesting to see—he commented about two recent federal level cases resulting in \$6.2 million dollars in settlements. He suggested it would depend on the kinds of seizures and forfeitures that might take place; however, he cautioned there would also be a lot of legal expenses that could affect the profit/loss column.

Another new initiative involves contracting with the Washington State Patrol (WSP) to provide statewide radio services for emergency communications purposes and other necessary communication, particularly during the off hours. In some locations, cellular telephone coverage is not completely reliable, and by contracting with the WSP it provides a

backup safety assurance that agents have the ability to communicate regardless of where they working. The State Patrol offers a “pay as you go system” and they are willing to supply the services for a charge fee.

**Director Day** noted that staff is also requesting a reallocation of money (around \$440,000) already in the budget to reduce allotments in areas of consistent under spending and as a measure to support the decision packages for FY 07 and future years. The supplemental budget passed by the 2006 Legislature as enacted by the Governor impacted the Commission in four ways: significant increased costs for employer contributions to pensions (the actuary increases the Legislature has already dealt with and those that the actuary is predicting for the future), increased charges from central services agencies, funding for a monthly minimum pension payment, and a \$4,000 cost related to a statewide personnel settlement through the University of Washington involving a scenario of equity between general service employees inside general state government and at the University level. **Director Day** noted that the Public Safety Employees Retirement System (PSERS) is a new retirement system which was created two years ago for public safety employees. Commission agents are covered under this section and it offers retirement options at 20-years of service, 20-years service and age 53 (or older), or retirement at age 60 with 10-years of service. The earlier retirement age option for public safety type employees is an advantage. Current agents will have an opportunity to switch to that retirement system; however, they must make that decision by the end of September this year. Any new employee will automatically enter the new retirement system. **Director Day** affirmed the pension contribution rates for the PSERS pension are higher than the existing PERS pension contributions. Staff is projecting the potential rate being as high as 8.5 to 9.89 percent in the future years. Budget staff also anticipates that most of the Commission’s younger agents will switch to the new pension system.

The fourth decision package restores or extends the following positions: the Deputy Director (which has already been approved), a licensing project position, the continuation of the Rules Simplification Project Manager, a Special Agent Supervisor in field operations, a Fiscal Technician in the business office, a Human Resources Consultant Assistant, and an Information Technology Technician. **Director Day** briefly highlighted the functions of each position. **Director Day** noted that as presented with the adjustments requested the preliminary budget proposal totals \$16,150,000 with 173.9 employees. **Chair Ellis** drew attention to the fact that in 2006, the total number of FTEs was 172.4. The 173.9 proposed reflects a modest increase.

**Director Day** proceeded with a preliminary review of the 2007-09 biennium budget, noting that staff is aware some of the numbers will change slightly as revenue numbers come in, and as staff refines the pension plan increases. He noted this presentation is intended to offer a preview of the new biennium and to offer time to consider the information between July and August and ask any questions or provide feedback regarding what staff is requesting, and to provide further direction. He explained the carry-forward level is a declared budget level based on the two previous biennium’s budgets—and the Office of Financial Management and the Commission worked very well to reach an agreement on that carry forward level. The carry-forward amount is \$30 million as a base level.

Staff is proposing three decision packages for the 07-09 biennium: biennializing the costs of the FY07 adjustments, adding some staff for growing work loads, and improving the infrastructure of the agency. Director Day displayed slides highlighting the financial impacts of each of the three proposals, and affirmed the figures would be reviewed again next month.

The first decision package biennializing the costs of the FY07 adjustments include the following: it adjusts and continues the negative allotment adjustment, it continues the seven positions and projects added in FY07, and, it covers the additional pension and lease rate increases. The second decision package adds staff for growing workloads in the following areas: one special agent in the Tribal Gaming Unit in anticipation of the additional compacted tribal facilities in the new biennium; and a permanent part-time staff attorney and secretary to meet the workload demands in the Communications and Legal Department. The last decision package to improve the agency infrastructure addresses: implementing Phase II of the special agent compensation plan, provides for the upgrade of the agency's Microsoft Office Suite software on all agency computers, and, it allows for the expenses associated with the publication of a new edition of the Agency Rules Manual.

**Director Day** cautioned the preliminary figures are being introduced for as a thought process. The proposed 2007-09 Biennium expenditure plan as projected totals approximately \$32,300,000 with an average total of 176.25 FTEs. Staff anticipates having to use some of the working capital balance in 2007-08. Director Day reported the Commission prefers to maintain approximately two months of operating funds as a working capital balance per the guidelines established by the Office of Financial Management. He addressed the Gambling Revolving Fund chart and noted that while the funds may dip slightly lower in 2008, it is anticipated they will come back up again in 2009; depending on the Commission's ability to collect revenue and to collect the hourly rates as projected. Budget staff continues to balance revenue and expenses with the intent for the Commission to have the ability to pay for the programs proposed.

**Director Day** reported that staff is requesting of the Commission approve the 2007 budget adjustments bringing the total 2007 budget to \$16.15 million and an authorized level of 173.9 FTEs. **Chair Ellis** called for public comments on any of the items included in the Director's Report, and there were none.

**Commissioner Niemi** made a motion seconded by **Commissioner Bierbaum** to approve the proposed FY07 budget at \$16,150,000 with 173.9 FTEs as presented by staff. *Vote taken; the motion passed with three votes.*

#### 2005 Bingo Adjusted Cash Flow Report

**Director Day** noted that the adjusted cash flow reports for non-profits recently changed from being required quarterly to an annual filing. The report in the agenda packet provides actual data for the first quarter in 2006. Data for the second quarter isn't anticipated until August. Director Day drew attention to the fact that five large licensees have ceased

operations. He affirmed charitable non-profits were struggling prior to the non-smoking ban going into effect and that it has at least initially had an impact on their revenues. Commission staff continues to work with the licensees and monitor their progress on the required cash flow. At a future point staff will consider whether it might be appropriate for the Commission to take action relative to the cash flow requirements.

#### Gambling Information Management System

**Director Day** pointed out that the commissioners previously authorized \$500,000 for a new information system in this biennium and the Department of Information Services has provided their approval to move forward with the development of that data system.

#### Correspondence

**Director Day** addressed a letter dated March 21 from the National Association of Attorneys General signed by 49 of the 50 State Attorney Generals regarding Internet Gambling. They offered many key points, noting that Internet Gambling transcends state jurisdictional boundaries and that it requires that all segments of the law enforcement (community, state, and federal) combat its spread. The last paragraph of their letter reflects that Internet gambling is a threat to a carefully crafted system ... that it poses many potential problems associated with the availability of gambling on the Internet. The Attorney Generals believe that game integrity, the ability to resolve consumer disputes, minors gambling, cash control, money laundering, and problem gambling are just some of the policies that are threatened by Internet Gambling. The letter also recites moral attitudes toward gambling, and notes that each state has made its own decision on whether or not to allow gambling. Director Day emphasized that Internet gambling doesn't respect jurisdictional boundaries. He noted that last year, the Commission asked staff to facilitate a multi-state approach to Internet gambling. A Task Force and a Law Enforcement Work Group has been established—currently there are 13 states and four federal agencies as well as the Royal Canadian Mounted Police involved. Director Day anticipated this group would be much more effective in enforcement and education regarding Internet gambling.

#### Monthly Updates:

**Director Day** addressed a letter dated June 26 to Senator John McCain from the National Indian Gaming Commission (NIGC) regarding Senate Bill 2078 (S. 2078). The letter states that there should be uniform nationwide regulation of Class III Gaming. Without NIGC Class III authority, there would be no uniform way to monitor and enforce regulations such as the MICS. The letter states the NIGC would defer to tribal and state regulators to regulate Class III gaming in particular situations where the NIGC has determined that there is adequate oversight and regulation of Class III gaming.

Prior to S. 2078 bill being filed, the Commission sent a letter to Governor Gregoire expressing the Commission's concern relating to the extension of the federal government's Class III jurisdiction and expressing concern regarding the preemption of state authority and the ability of each state to regulate gambling that occurs within their boundaries. The Commission's letter to Governor Gregoire affirmed that in some states there is not active regulation, and as a result, the Commission could understand the federal government's interest in at least getting some regulation forward. Accordingly, if SB 2078 was necessary,

the Commission's letter encouraged the bill sponsors to somehow carve out the State of Washington and other similar states that have existing regulatory structures in place, which would allow the appropriate states to continue the relationships that have existed for many years. Director Day reported that he has been working with Senator Cantwell's office regarding an amendment providing that ability for the NIGC to recognize states that already have an effective regulatory structure in place. He asked the Commission to authorize the Chair to work with staff to compose correspondence reemphasizing with Senator Cantwell and Senator Murray the Commission's belief that the ability to continue the state's regulation and enforcement as also identified in IGRA is important and that the Commission would maintain that position as staff moves forward with the discussion. The Commission affirmed it would be appropriate for Commissioner Ellis and staff to compose and send the correspondence requested.

**Jerry Ackerman**, Assistant Attorney General commented that the House passed House Bill 4411, a combination of the Leach Bill and the Goodlatte Bill. It passed 317 to 93 and is on its way to the Senate. It provides sweeping prohibitions at the federal level against Internet gambling and against the use of various financial documents and various mechanisms for payment of the gambling debts such as credit cards and other financial means of transacting financial business during gambling activities. Senator Kyle of Arizona will be the leading the effort to get this bill passed in the Senate.

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

**Commissioner Niemi** made a motion seconded by **Commissioner Bierbaum** to approve the list of new licenses, changes, and tribal certifications as listed on pages 1-26. *Vote taken; the motion passed with four aye votes.*

## 3. **Raffle Approval:**

**Assistant Director Dave Trujillo** addressed a request from the Boys and Girls Club of South Puget Sound to conduct a raffle. Commission rules require that any raffle in excess of \$40,000 must be approved by the Commission in advance and the organization must submit good cause in writing. The raffle will include a car valued at approximately \$57,000. Staff believes the Boys and Girls Club have submitted good cause and supports approval of the raffle as proposed. Two representatives from the Boys and Girl's Club were present and introduced: **Jinnie Hanson**-Communications and Marketing Assistant, and **Jacque Keating**-Associate to President/CEO.

**Commissioner Niemi** made a motion seconded by **Commissioner Bierbaum** to authorize the Boys and Girls Club of South Puget Sound to conduct a raffle up to a maximum of \$60,000 as presented. *Vote taken; the motion passed unanimously.*

Chair Ellis called for a recess at 2:55 p.m. and recalled the meeting at 3:10 p.m.

#### 4. **Petitions for Reconsideration:**

##### **Nga Tran, Card Room Employee:**

**Assistant Attorney General Bruce Marvin** was present for the State as well as **Petitioner Nga Tran**. Ms. Tran and Mr. Marvin provided their testimony in the matter for reconsideration of the Final Order in Default. A recording and a transcript of the hearing is available upon request.

**Commissioner Niemi** made a motion seconded by **Commissioner Bierbaum** to vacate the default order issued to Nga Tran. *Vote taken; the motion passed unanimously.*

**Commissioner Niemi** made a motion seconded by **Commissioner Bierbaum** to continue the Nga Tran Summary Suspension and to place this matter on the August 10 calendar for a hearing on the merits of the revocation of Ms. Tran's license—if for any reason the criminal matter hasn't been resolved, the parties may discuss a continuance or other disposition. *Vote taken; the motion passed with three aye votes.*

**Chair Ellis** explained to Ms. Tran that until this matter is fully resolved, Ms. Tran's license will be suspended and that she will not be able to continue to act as a card room employee. **Ms. Tran** responded that she understood.

##### **Sharkey's Sports Bar and Grill – Lynnwood:**

**Chair Ellis** noted the Petition for Reconsideration relating to Sharkey's Sports Bar and Grill has been continued until August 10 in Wenatchee, and the Commission has written confirmation from the owner of Sharkey's that he and his attorney will be available at that hearing.

##### **Petitions for Review:**

##### **Think V. Bui – Card Room Employee – Vancouver**

**Assistant Attorney General Bruce Marvin** was present for the State, Interpreter Thuy Vu, Director of the Refugee Center was present, and **Petitioner Think Bui** was not present. **Mr. Marvin** advised that Mr. Bui was not to be found anywhere in the building and recommended the Commission enter an order issuing a final order upholding the initial order issued by the Administrative Law Judge (ALJ).

**Commissioner Bierbaum** made a motion seconded by **Commissioner Niemi** to deny Mr. Bui's petition for review based on his default.

**Mr. Ackerman** asked for clarification if the motion was intended to enter an order of default on Mr. Bui or from the Administrative Law Judge's initial order. He noted the Commission may either default Mr. Bui and not reach the merits, in which case he could come back and move to vacate the default at some later date, or make a motion to reconsider the default; or, the Commission could decide the matter upon the merits and simply affirm the initial order by the ALJ—in which case if Mr. Bui wanted to challenge this, his motion for reconsideration would be on the merits of the Commission's decision rather than the vacation.

**Commissioner Bierbaum** responded that she was very much in favor of always giving people an opportunity to be heard. If the Commission orders a default, then the burden is still on the petitioner to move to vacate the default and to be heard. She didn't believe the Commission would err by giving people an opportunity to be heard, and affirmed her motion as stated. **Chair Ellis** noted that in his experience, the Commission has treated the burden of a person trying to vacate a default as a very low burden and has been very willing to allow a person with almost any reasonable explanation to be able to get the default vacated and to address the merits of the underlying license revocation.

**Chair Ellis** called for a vote on the original motion. Vote taken; the motion passed unanimously.

#### **ZDI Gaming, Inc., Declaratory Order**

**Assistant Attorney General Paul Goulding** was present for the State. **Petitioner Jay Gerow** and **Melanie Keyser** being represented by attorney **Joan Mell** were also present. Ms. Mell and Mr. Goulding provided their testimony. A recording and a transcript of the hearing is available upon request. At the conclusion of testimony **Chair Ellis** called for an executive session to deliberate the case, and at 5:30 p.m. the public meeting was recalled.

**Chair Ellis** commented that in the matter of the ZDI and staff petitions, and Mr. Goulding's concern about material that has been submitted that may relate more to the rule making proceeding and whether that material might be deemed as evidence by the Commission. Chair Ellis advised the Commission would not include in the record as evidence any material that has been submitted since the filing of the petition.

**Commissioner Bierbaum** made a motion seconded by **Commissioner Niemi** to deny the motion brought by the State Gambling Commission staff to strike ZDI's response to the cross appeal and reply to the petition for review. *Vote taken; the motion passed unanimously.*

**Chair Ellis** reported that with regard to the merits of the petition and cross appeal, the Commission would take the matters under advisement and that it would be the Commission's intent to issue a ruling at the August 2006 Meeting.

#### **5. Defaults:**

**Amy Hunter**, Administrator for the Communications and Legal Division advised the Commission would be addressing three defaults with several commonalities. They are all against pull-tab operators for not submitting their activity reports when due. In all three cases, staff found that the businesses were still open; however, two of the owners said they didn't want to have pull-tab activities anymore. All three businesses have let their Class A license lapse as of June 30.

**Pow Wow Tavern, Springdale – Revocation** (No representative present)

**Ms. Hunter** reported that the Pow Wow Tavern did not submit two different reports. Charges were sent by certified mail and regular mail. The certified letter was returned as being unclaimed. The letter sent by regular mail has not been returned. Staff placed a courtesy call to the licensee; however, the phone simply rang and was not answered. By not responding to the charges the licensee has waived their right to a hearing. Staff recommended the Commission revoke Pow Wow Tavern's pull-tab license.

**Commissioner Niemi** made a motion seconded by **Commissioner Bierbaum** that the Commission order Pow Wow Tavern's license to conduct authorized gambling activities be revoked based upon the findings and conclusions and the fact that they have a history of not submitting, or submitting very late reports. *Vote taken; the motion passed unanimously.*

**Beacon Pub, Seattle – Revocation** (Representative not present)

**Ms. Hunter** reported this licensee has never submitted its reports on time since getting a license in July of 2004. The charges were sent by certified mail and regular mail. The certified letter was returned as unclaimed. The letter sent by regular mail was not returned. The Legal Secretary made a courtesy call and left a message with the bartender letting him know of the hearing request deadline. Beacon Pub did not respond to the charges, and by failing to respond the licensee has waived its right to a hearing. Staff recommended the Commission revoke Beacon Pub's Gambling license.

**Commissioner Bierbaum** made a motion seconded by **Commissioner Niemi** that the Commission enter an order of default revoking Beacon Pub's license to conduct authorized gambling activities in the State of Washington and enter findings and conclusions and a decision substantially as staff presented. *Vote taken; the motion passed unanimously.*

**Seniah Inc., d/b/a Blue Dolphin, Oak Harbor – Revocation** (Not present)

**Ms. Hunter** reported that Blue Dolphin failed to submit five reports when they were due and she noted they have not paid almost \$2,000 in taxes due to the Department of Labor and Industries. Charges were brought by certified mail and regular mail and they were signed. Staff placed a courtesy call reminding the licensee of the deadline and left a message. The Blue Dolphin did not respond to the charges, and they have waived their right to a hearing. Staff recommended that Blue Dolphin's gambling license be revoked.

**Commissioner Niemi** made a motion seconded by **Commissioner Bierbaum** that the Commission revoke Seniah Inc., d/b/a Blue Dolphin's license to conduct authorized gambling activities based upon the findings and conclusions of their failure to submit their reports in each of the four quarters of 2004 and 2005 and the fact they owe Industrial Insurance taxes. *Vote taken; the motion passed unanimously.*

**6. Summary Suspensions:**

(None)

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

**Chair Ellis** called for any other business or public comments.

**Representative Serben** noted invitations had been extended to the Commissioners to visit a local bingo hall in the Vancouver area and he suggested a visit may be a valuable experience as the Commission considers some of the related petitions.

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

With no further business, at 5:46 p.m. **Chair Ellis** called for an executive session—the open public meeting was recalled at 6:00 p.m., and Chair Ellis adjourned the meeting.

Minutes submitted by,

Shirley Corbett  
Executive Assistant

**COMMISSION MEETING  
FRIDAY, JULY 14, 2006  
MINUTES**

**Chair Ellis** called the meeting to order at 9:30 a.m. at the Hilton Hotel located in Vancouver. He introduced the following attendees present:

**MEMBERS PRESENT:**     **COMMISSIONER JOHN ELLIS, Chair**, Seattle  
                                  **COMMISSIONER JANICE NIEMI, Vice Chair**, Seattle  
                                  **COMMISSIONER ALAN PARKER**, Olympia  
                                  **COMMISSIONER PEGGY ANN BIERBAUM**, Quilcene  
                                  **SENATOR MARGARITA PRENTICE**, Renton

**STAFF PRESENT:**       **RICK DAY**, Director  
                                  **GARY DRUMHELLER**, Acting Ast. Director–Field Operations  
                                  **DAVE TRUJILLO**, Assistant Director – Licensing Operations  
                                  **AMY HUNTER**, Administrator – Communications & Legal  
                                  **JERRY ACKERMAN**, Assistant Attorney General  
                                  **SHIRLEY CORBETT**, Executive Assistant

**8. Approval of Minutes:**

Commissioner Bierbaum made a motion seconded by Commissioner Parker to approve the minutes of the regular meeting of June 15 and 16, 2006 as amended with a correction to the spelling of Quilcene. Vote taken; the motion passed with three votes, Commissioner Niemi abstained because she was not present at the meeting.

**9. Petition for Rule Change – Card Room Employee:**

**WAC 230-40-610:**

**Amy Hunter**, Administrator, Communications and Legal Division advised the rule is up for final action. It was filed at the April Commission Meeting by petitioner Cory Thompson who explained that he is a dealer that works for an employer who does not require him to play in card games; however, he brought this petition on behalf of other players. Ms. Hunter explained that when a poker game is getting started and there are only a few players, a card room sometimes requires their employees to participate in the game as game starters. The employee has their own cards and makes

betting decisions like any other player except they wear their name tags so that other players know that they are in fact on duty and working.

**Ms. Hunter** noted that poker games sometimes have player supported-jackpots (PSJ) attached to the game, typically an additional \$1 or \$2 per hand that goes into funding the PSJ. Mr. Thompson's petition deals with the additional jackpots. Commission rules do not allow an on-duty employee to win a PSJ. They may win their regular hands; but they cannot win the additional jackpot. Mr. Thompson is asking that if an on-duty employee wins, that the PSJ rake be returned to the employee/player, or that they be eligible to win the prize. When Mr. Thompson submitted his petition he did not submit specific language, and in such cases, staff may draft language and send it to the petitioner to confirm their intent—which is what happened in this case.

**Ms. Hunter** explained that while Mr. Thompson's request seems fair and simple, the details in execution get a lot more complicated. An on-duty employee is not contributing the full amount of the rake. If there are five players (including the employee/player) and a \$2 rake, each player contributes 40 cents to the rake. If a sixth player is added, the \$2 rake contribution amounts to 33 cents per hand per player. Returning and accounting for the employee/player contribution (either the 40 or 33 cents) would get complicated as players in each hand have the potential to increase or decrease. Staff has a concern regarding the accounting and tracking of such transactions. Commission WAC's were written to protect the integrity of card games and to allow players to win the PSJs. On-duty employees were not allowed to win because of the concerns about collusion; and, in part about the appearance of fairness.

**Ms. Hunter** addressed past discussions where statements have been made indicating this is an employer issue rather than being a problem with the Commission's rule. Employees don't want to use their own money when they can't win the jackpot and employers are wanting the employees to play to get the games started. Commission staff has concerns that if money is returned to the employee/player, the Commission will get complaints from people who do not understand the employee/player rake exemption. Subsequently, staff considered simply allowing the employee/player to be eligible to win the jackpots; and agreed they felt just as strongly about the appearance of fairness and collusion issues as the staff did when the WACs were written. Staff contacted five other states regarding their practices and found there isn't one standard across the nation.

Since the last meeting, Doug Hoffman, a poker floor dealer at Parker's Casino submitted correspondence supporting the petition. Staff recommends the rule as currently presented not be adopted.

**Cory Thompson**, petitioner and card room employee at the Golden Nugget Card Room in Tukwila responded to staff's presentation. He noted that he is a poker dealer and dealers take the money out of the pot from the winning player—he affirmed not everyone participates in every pot; therefore, everyone does not contribute to every

pot for the jackpot. He emphasized the only person that contributes to the jackpot for the hand is the person that wins the hand—it is taken out of their winning pot—it is not taken from each person individually—it is not subdivided into whoever decides to play the hand. Money is taken at the end once the winner is determined. They pay the jackpot monies as well as the rake monies. He believed accounting for the money was very simple. The jackpot monies are simply returned to the pot when the pot is pushed to an on-duty card room employee that wins because they are not eligible to win the pot.

**Mr. Thompson** addressed staff's concern about the integrity of the games, noting that returning the money to the employee doesn't change the integrity of the game simply because they are still not eligible to win that jackpot. If there isn't a jackpot for the employee to win, there is no integrity to be lost. He explained that if an on-duty employee is winning it is very easy to explain when the \$2 is returned that this is an instance where an on-duty employee is involved and they can't win the jackpot; therefore they aren't required to pay for a jackpot they can't win.

**Mr. Thompson** referenced the five other states contacted by staff and noted that none of the states that allows employees to play doesn't allow them to win the jackpot—they either have rules where the employee cannot play when they are on-duty, or they are eligible to win the jackpot when they are on duty. He emphasized that it was not fair to make someone pay for something they cannot win, especially when a lot of the employers are requiring their employees to play. He clarified his intent was to achieve some fairness for the employees when they are required to play.

**Chair Ellis** responded that the point has been raised by staff that on the one hand they understand the fairness issue; but, at the same time while an employee of the casino may understand the overall context of things, less sophisticated players may not understand why the \$1 or \$2 is raked out. He suggested that it makes more sense to preserve the appearance that there is no special treatment for the employee that wins the jackpot. **Mr. Thompson** understood; however, he emphasized the on-duty employee wears a badge and that it is very common knowledge that the employee can not win the jackpot at this point. He noted the people that play poker are generally the same people playing poker every day—so the appearance of any impropriety doesn't exist. The players understand the workings—they read the letters on how jackpots are divided; and, if the dollar amounts don't seem right on the board, they are typically right on top of things.

**Commissioner Bierbaum** agreed with Mr. Thompson that the majority of the people probably understand the process; however, she explained the concern being expressed by the Commission related to the group of players that might have a hard time understanding the exchange of money. She asked staff if there was any greater appearance of collusion when an employee wins a jackpot than when an employee wins a hand. **Ms. Hunter** responded that part of the concern has to do with the amount of money involved. The thought is that the more money available for winnings, it might be a bigger enticement--versus a regular hand of cards with small

jackpots. **Commissioner Bierbaum** verified that other states that allow employees to play in the PSJs apparently don't share that view. **Ms. Hunter** concurred.

**Mr. Thompson** clarified that off-duty employees are allowed to win the jackpots rather than on-duty employees. He explained that when a game is short, employees may punch off the clock and play in their uniform without their badge, and be allowed to win the jackpot. He advised there was no greater risk of collusion with on-duty versus off-duty employee/players because of the cameras and the regulations in place with the shuffle machines, and etc. He suggested it would be almost impossible, if not impossible, to set up a hand so that someone could win a jackpot.

**Director Day** explained that some of the controversy comes from employees playing in games at their own business in the first place, and the rule was in part the art of compromise developed over the history of this whole rule. From staff's perspective he affirmed the games with player supported jackpots can get very sophisticated—sometimes \$10,000 or more, which is built up by the contributions that go into the games. While staff would prefer from a regulatory basis that employees not be involved in those games, it has been allowed because it was a traditional practice with poker games. The new provision to allow the jackpots to be developed over a period of time and built up and then won adds a new set of parameters to the game that is much more significant, and it adds a great deal more of potential motivation for people to cheat to win the hand. He agreed that the concept of allowing the employer to either play or not play was somewhat of a double-sided sword. On the other hand, he noted this was a compromised position to allow an industry standard and still maintain as much game integrity as possible.

**Senator Prentice** commented that even if a game is completely honest, she could envision a sore loser claiming collusion. She inquired if off-duty employees were allowed to play in the same place they work. **Mr. Thompson** explained that with the competition in the poker industry, in a lot of places, if an employee plays somewhere other than where they work, they may get less days on the schedule. If an employee plays on a day off at the casino where they work to keep the games going, they are given more time to work. The managers want employees to play where they work—it is highly encouraged.

**Commissioner Parker** inquired if this was considered like a cost of doing business from the point of view of the employee—working in an establishment where management expects the employee to play as a calculated part of the employee's salary, or as an additional condition of employment. The employee could take their services somewhere else, or they may bargain with the employer to add it back on to their compensation rate. **Mr. Thompson** advised that all of the employers pay their dealers minimum wage, and there is no compensation added. The employee makes \$7.53 an hour—if they were to play poker for one hour, on average, each person at a table may win a little over three hands per hour. Based upon dealing about thirty-five hands per hour at the table, when the player pays the \$2 jackpot rake and the \$3 to the house—the \$2 to the jackpot rate alone for those three hands equals \$6.00 per hour

they are paying back into the jackpot rake in comparison to their \$7.53 hourly wage. **Commissioner Parker** asked if dealers receive tip income. **Mr. Thompson** advised not when playing cards; however, they do when they are dealing.

**Chair Ellis** questioned whether the employees required to play when their presence was needed at a table tended to become very skilled players because of their employment or whether they were just average players. He also asked if the Commission should be looking at this issues of when the employee is losing money by having to do this, or if they are more likely to be winning money; or if it was impossible to say. **Mr. Thompson** advised there were a few excellent dealer/players; but, as a general rule people looked for the “white shirt tables” because the dealers wear white shirts and they tend party more and tend to give a little more action so that the players feel like it’s a good place to play. He believed dealers are usually very poor players and usually lose more money than the average player.

**Mr. Ackerman** verified that Mr. Thompson did not submit actual suggested changes to the WACs. **Ms. Hunter** affirmed the language was submitted by staff. They worked with Mr. Thompson and tried to design the rule around his initial intent. However, if the intent is to follow Mr. Thompson’s revised desire that only on the winning hand would the \$2 be given back; then the proposed language is broader than Mr. Thompson’s intent. She noted staff has some additional language that could be provided if there is an interest in keeping this limited. Ms. Hunter believed there may be some disagreement between Mr. Thompson, the industry, and staff relating to contributing to and winning the rake—because it has been explained a couple of different ways. Staff believes if a player is playing, they are giving money towards the rake.

**Commissioner Parker** noted there hasn’t been any other testimony from anyone representing the industry, and he inquired if the owners have taken a position on this issue. **Ms. Hunter** indicated that it has been split. Some believe the proposal made sense and others believe it will lead to questions from other players if money is returned to the employees.

**Commissioner Bierbaum** advised she would make the motion; however, she clarified that it was not because she didn’t agree with Mr. Thompson’s perception of the inherent unfairness. She emphasized this was a cumbersome process and that she would personally support either a change in the rules that would allow the employee to win the jackpot, or a rule that prohibits them from playing in PSJ poker games altogether.

**Commissioner Bierbaum** made a motion that the Commission deny the petition for rule change regarding on-duty card room employees contributing to player supported jackpots. **Commissioner Parker** seconded the motion, and also expressed his willingness and interest in considering an alternative rule proposal; however the alternative proposal should be submitted from an affected party, not from the Commission. *Vote taken; the motion passed with four aye votes.*

#### **10. Petition for Rule Change – Game Tech. Inc.:**

**WAC 230-12-340 and WAC 230-20-244:**

**Ms. Hunter** reported this rules package was submitted by Game Tech. Inc, who manufactures bingo card daubers, which are electronic machines. They allow a person to play 66 electronic bingo cards at once and then an unlimited number of paper cards. Under the current rule, the fees for the daubers can only be based on the number of times the dauber machine is used or the number of bingo sessions. It can't be based on a per card fee. The rule prohibits the manufacturer from charging based on the number of cards sold, the percentage of sales, or the amount spent by the bingo player. Game Tech wants to be able to have a fee based on the number of cards actually purchased. Ms. Hunter explained there is an existing RCW that states that the bingo proceeds cannot inure to the benefit of anyone other than the organization; however, it is not considered inurement if an expense is found to be necessary. Commission rules explains and lays out a test as to whether an expense is necessary; and it has been determined to be necessary if it improves the overall profitability of the activity by increasing the gross receipts more than the increase in the expenses. Another RCW prevents the lease or rent of the premises being based on a percentage of gross gambling receipts. Commission rules do not allow per card fees, and staff believes that rulemaking staff at the time the initial rule was developed also felt the per card fee was similar to having a lease based on a percentage of sales. Staff believes a per card fee is viable as long as it could be demonstrated that it was a necessary expense.

Staff asked Game Tech to provide additional information about why this pricing method was a necessary expense and to explain the types of games they planned to use. Game Tech's response indicated player selection games and something they are calling special games. Mr. Schwenk stated that Game Tech wants to use the pricing method only on the limited types of games; however, the proposed rule doesn't limit its use.

**Ms. Hunter** reminded the Commission that one of the concerns mentioned by the charitable nonprofits at the last meeting was that if the rule is passed as is, there isn't anything that prevents Game Tech from changing the whole structure of how they charge the licensees and this rule allows them to potentially charge fees on all of the games. She acknowledged that may not be the intent; however, Game Tech's information was not clear, and as the rule is worded, it could allow a total change in the pricing structure. Since the last meeting staff contacted Game Tech and Ronnie Strong and suggested that they work together to propose alternative language to limit the rule. Staff recommends the rule in its current format be denied because staff feels that as presented, it is not a necessary expense.

**Jeremy Schwenk**, General Manager for Game Tech International, testified and affirmed he has been working with Ronnie Strong and a few of the other charities. He reported that he drafted a letter in an attempt to avoid the opening of the full change in pricing structure and distributed copies to the Commission. In response to

the necessary expense, he advised that Game Tech tried to justify the expense by noting the games that were being added aren't currently available in the electronic dauber. He affirmed the basis behind the electronic dauber in bingo was to improve the profitability of bingo for the charities. The electronic dauber allows players to play more cards than they would physically be able to play if they were playing manually. The entire premise of the electronic dauber is to be able to play more cards, and the win for the player is that they increase their chances of winning, and the win for the bingo hall operator is a higher income. He explained this rule would allow the pricing on extra games that aren't currently available, which would then be passed down to the player and by allowing them to play more cards than they could manually play; it increases the profitability more than the expense. **Mr. Schwenk** hoped the wording in the statement he just distributed would be acceptable to the charities. **Chair Ellis** thanked Mr. Schwenk for working with the representatives of the charities in an attempt to develop language that satisfies all of the concerns.

**Jerry Ackerman**, Assistant Attorney General commented that he had very quickly compared the new language to the section and subsection that the Commission has been considering and he didn't think it was a substantial change for APA purposes. The subject matter under consideration, which is the amount of the fee that can be charged for this type of activity, and the manner in which it can be charged has not been changed.

**Commissioner Bierbaum** asked specific questions regarding paper cards versus charges for bingo daubers. **Mr. Schwenk** clarified bingo players essentially pays for each card—paper manufacturers sell paper to the halls and the halls then sell the cards to the players. He further explained that bingo halls aren't allowed to charge a different price for the electronic version of the paper process; therefore, players pay the exact equivalent of what they would play in paper. Commissioner Bierbaum inquired why charging for as many times as the dauber cards were used was any different from the paper manufacturers charging for paper bingo cards. Mr. Schwenk speculated that with the advent of electronic daubers, there were paper manufacturers that didn't support electronic daubers because of the fear that it would cut into their profits. He suggested the rule was passed at the request of paper manufacturers in order to limit revenue from electronic manufacturers.

**Chair Ellis** verified if there wasn't a theoretical concern that allowing the dauber distributors to participate in the proceeds on the basis of the number of cards sold, it would eventually have the comparable firms participating in the proceeds of a non-profit corporation. **Mr. Schwenk** agreed; however, he pointed out the same thing could be said about the paper manufacturers because the paper manufacturer was charging per card.

**Commissioner Bierbaum** and **Commissioner Niemi** agreed they were having a hard time seeing the difference between charging per card and for the dauber process, and why one is participating in the proceeds of gambling and one is not. **Mr. Schwenk** explained the original logic behind the rule proposal was that charges would only be

for the new game that were just recently been put into the electronic dauber and recently made available industry wide. Essentially, the new game was engineered so that distributors could sell it in the market place. Some of the charities had concerns that it would open the door for other manufacturers to charge on a per card basis. Mr. Schwenk noted that one of the advantages of having a per use charge is that if there is a player that spends a lot of money, they don't have to pay the electronic manufacturer any more to play that unit. He noted that as a manufacturer he was also trying to sell this concept to the same people who have the problem with the rule, and he hoped the new language that he was offering as an alternative would cover their concerns.

**Ronnie Strong**, Bingo Manager of Am Vets - Tacoma explained the bingo card and electronic purchase and payment process noting that 12 paper cards or 12 cards on the dauber costs \$10. However, the distributor (such as Game Tech) charges Am Vets a fee for the electronic dauber. Mr. Strong described the electronic dauber and how it worked and affirmed it was very popular with a lot of the elderly people because they can see the machines better. Am Vets has approximately 144 daubers that they lease out to players—Am Vets doesn't get charged if the dauber isn't being used, only when it goes out to play. The player can get up to 66 cards per game in the machine and they are charged at a set rate. He explained that it was two different concepts, a player can purchase a packet of hard bingo cards, or they can purchase an electronic dauber loaded with soft cards in effect which allows them to play more cards at one time. **Director Day** verified the daubers are usually more profitable. **Mr. Strong** affirmed and indicated that if operators didn't have the daubers, they would probably all be out of business. Because games can be played much quicker, each electronic dauber is like having one more player in the building. He emphasized the technology really was an asset for the industry.

**Chair Ellis** inquired if Mr. Strong received a copy of the July 12, 2006, letter from Mr. Schwenk with the proposed amended language. **Mr. Strong** advised that he received a draft yesterday and that he had just received a copy of the correspondence the Commission received. Mr. Strong advised that he hasn't had a chance to talk to the other charitable nonprofit managers because they didn't get the correspondence in time. He thought there would probably still be some concerns. He thought it might be fine if there was language that said everything would stay how it is now; and, if places chose to use the new game (Crystal Ball) it would be an up-sell. He emphasized the charitable nonprofits were trying to stay away from being charged per card. Chair Ellis asked Mr. Strong if the Commission decided not to take action and continued this matter, whether he would go back and provide this language to other members of the industry and get their input. Mr. Strong responded that he would.

**Mr. Ackerman** affirmed the Commission has until October to act on this rule, which would allow further interaction between the industry and the petitioner and it would also allow staff time to review the amendment since they have also not seen this language in advance. **Chair Ellis** called for other public comments.

**Linda Smith**, Seattle Jaycee Bingo Manager, emphasized that when Mr. Schwenk provided her with a copy of his letter this morning, she advised him that she didn't totally agree with the language. She affirmed it's a great concept; however, she believed his concept should have a totally different rule and stand on its own because it is a totally different thing. It is not in addition to the rental or the lease of the machine itself. She emphasized the desire of the nonprofits to stay away from the per face charge because it would get expensive. She reported that operators pay a couple of hundred dollars for the paper cards, which lasts about a half of a month. She advised she pays approximately \$1,000 a week on her dauber machine lease. Game Tech isn't the only electronic dauber. Ms. Smith advised she had 72 Game Tech daubers and 176 Patina daubers—noting that Patina does not do what Game Tech does, and Game Tech does not do what Patina does.

**Mr. Schwenk** advised that there are quite a number of charitable organizations and unfortunately they are not coming forward to support this rule—a number of them can't afford because of the state of their businesses right now. He reported that Game Tech isn't bringing this game to the state as a means of a profit center; however, they will charge pennies per card for this game. The idea with this game was to cover the expense of the special hardware to play the game. This is an attempt to keep the charities alive in the state and to give them more games to offer their players to increase their profitability. Mr. Schwenk advised that Game Tech would not allow him to give the game away for free—they have to recover the costs for the readers required for the game. He affirmed this was an optional game. He also explained that if his company changed their pricing structure to a per card fee and the operators didn't like it, they could go to the competition—so it would be like cutting one's own throat to increase the prices. He encouraged the Commission to approve the rule as soon as possible because there were charities waiting for the game. He also acknowledged that he was trying to sell the game.

**Chair Ellis** inquired if Mr. Schwenk would have any objection if the matter were continued for a month with the expectation that he would work with Mr. Strong and Ms. Smith and others in the industry to come up with language that is ideally satisfactory for all concerned. **Mr. Schwenk** advised he would not object; however he expressed concerns regarding further time delays. He encouraged passing the rule based on the concept of a pricing per electronic card vs. paper card.

**Chair Ellis** announced this item would be continued for one more month so that staff may study the proposed changed language and so that the affected members of the industry have an opportunity to further discuss the rule. Hopefully a proposal agreeable to all of the members of the industry and to staff will be presented in August.

**11. Allowing Credit between Operators and Manufacturers/Distributors:**  
**WAC 230-12-340 and WAC 230-12-350:**

**Ms. Hunter** reported the rules package to repeal the credit restrictions between the operators and the distributors/manufacturers are up for final action. The credit rules

between distributors and manufacturers were repealed last fall. At that time, the Commission asked the staff to look into whether or not the rules preventing credit between operators and distributors could also be repealed. The staff concluded the regulations could be repealed—staff does not have regulatory concerns with allowing this type of credit. Repealing these rules would allow operators to pay on credit. Item 11 (b) deals with very specific information about how checks have to be presented for payment. If credit is allowed, the restrictions on checks aren't necessary. Staff checked with other states on whether they allow credit: in New Mexico the rules don't address it, in Alaska operators have 30 days to pay, and in Idaho and Oregon, they buy the pull-tabs from the state and are billed through an electronic funds transfer that happens about three weeks after they get the product.

Letters were sent to all of the manufacturers and distributors letting them know of this proposal and the Commission didn't receive any response. Staff recommends final action. **Chair Ellis** called for public comments.

**Dolores Chiechi**-Recreational Gaming Association (RGA) reiterated their request for an effective date 31-days after filing. She noted that since the other credit purchase rules for manufacturers and distributors has been repealed since last October, the RGA was hopeful this package could become effective sooner than January 1.

**Commissioner Niemi** made a motion seconded by **Commissioner Bierbaum** to repeal WAC 230-12-340 and WAC 230-12-350, to become effective 31-days after filing. *Vote taken; the motion passed with four aye votes.*

## **12. Rules Simplification Project:**

### **WAC 230-06-005:**

**Beth Heston**, Project Manager explained that at the June meeting, it was suggested that staff change the language of 230-06-005 dealing with accepting checks in gambling activities. Mr. Murrey raised some questions about whether payroll checks and government type checks could be accepted and the rule has been clarified to show those kinds of checks would be acceptable.

**Chair Ellis** commented that when he read the reference to a check issued by the government, he had an instinctive response that it should preferably say a government agency. **Mr. Ackerman** agreed that would be appropriate, he believed that has been the way the rule has been interpreted as a practical matter.

**Chair Ellis** called for public comments and there were none.

**Commissioner Bierbaum** made a motion seconded by **Commissioner Niemi** to adopt WAC 230-06-005 with the change to add issued by a government "agency". *Vote taken; the motion passed with four aye votes.*

Before moving to the next agenda item, **Chair Ellis** noted that Item 13 - a proposal submitted by Harmon Consulting concerning the definition of cash, and Item 14 -

staff's alternative proposal on gift cards and gift certificates are up for final action, and while Item 15 - ZDI's petition for a rule change concerning cash cards was not up for final action, Chair Ellis believed it made sense to deal with all three proposals since they all deal with the same subject matter. He asked Ms. Hunter to make a single opening presentation presenting each of the proposed rule changes. He advised other speakers would be allowed to address the rule changes following Ms. Hunter's presentation.

**13. Petition for Rule Change – Harmon Consulting, Inc.:**

**WAC 230-02-101:**

**14. Gift Cards and Gift Certificates:**

**WAC 230-12-050:**

**Ms. Hunter** noted that Item 13 is the petition for rule change by Monty Harmon of Harmon Consulting. It was filed at the October 2005 meeting. Staff does not support Mr. Harmon's petition. In February 2006, staff asked the Commission to file staff's alternative which is Item 14. Staff is recommending final action on Item 14. Item number 15 is the petition by ZDI Gaming, which was filed at the June Commission meeting. This item is up for discussion only and the rule will appear on the agenda for four months (because of the filing and Code Reviser's Office requirements), and will not be up for final action until September.

Regarding Item 13, Mr. Harmon is asking for a definition of cash to be created to include guest or gift cards and that these gift cards would be able to have gambling winnings added back on them. Although Mr. Harmon may have started his petition process only with the intent of adding pull-tab winnings to cards, his new definition would actually apply to all gambling activities, which would include card room winnings, bingo winnings, and pull-tab winnings. Winnings from any of those activities could be added back on to a gift card and then the player would use that card for purchasing either more gift cards, other types of gambling activities, or buying food at the facility restaurant. Any expenditures would have to occur at that specific place of business.

**Ms. Hunter** advised that staff has different concerns with the proposal. The petition would require the Commission to approve an accounting system, yet the proposed rule doesn't set any standards for the accounting systems. If the rule was passed, there would need to be some additional regulatory oversight to make sure that everything is accounted for properly. Mr. Harmon also used the term "other cashless systems" in his rule. Using this term seems to indicate that something other than gift cards or guest cards might be contemplated. That term is not defined or explained.

The agenda packet contains a memorandum from Director Day that explains cash is used in at least 61 other Commission rules and three Gambling RCWs. Right now, cash is used in a clear way in those rules. Changing the definition of cash could have implications on all of the rules, and in some instances. Changing the definition is simply not needed at this time.

**Ms. Hunter** suggested that approving the gift cards may impact pull-tab readers and dispensing devices. Right now, a person who wins at a pull-tab game has to take their ticket and get it cashed out, or they may obtain a new pull-tab. It isn't one process, so it is easy to anticipate that if a gift card is used that it will be connected with another type of pull-tab reader.

Originally there was no dollar limit on gift cards. At the April meeting, in response to the concerns expressed about money laundering, Mr. Harmon handed out Alternative (C)5, which limited the customer balances to \$5,000. The Commission did not take action to file that alternative.

**Ms. Hunter** explained that staff had policy concerns with allowing gift cards. Gift cards will encourage players to continue to spend their gambling winnings versus collecting their cash and leaving the establishment. Staff also believes that gift cards for gambling activities are not like other existing gift cards such as Star Bucks or Home Depot. Those businesses are much different from gambling businesses. When a card is purchased there, the customer may only use it for that purpose only, they don't have anything like a replay of credits put back on the card—there isn't some kind of bonus to get an extra latte. Allowing gambling winnings/credits to be put back on a gift card which then requires it to be used at that specific business is different.

Staff recommends final action on staff's alternative Included in Item 14. Staff's alternative does not create a new definition of cash. Instead it makes a change to the rule dealing with credit and the consideration that is required when someone participates in a gambling activity. It simply allows a gift card or a gift certificate as one of the forms of consideration that may be accepted before a person participates in a gambling activity. It does not allow credits to be placed back on the card. Staff doesn't have regulatory or policy concerns with allowing pull-tabs or bingo cards to be played with gift cards.

**Ms. Hunter** addressed Item 15, the petition filed by ZDI Gaming, which is similar to the petition by Harmon Consulting in dealing with the replay of credits. ZDI proposes changing two rules. The second rule proposes changes identical to staff's alternative; therefore, staff supports that part of the ZDI petition.

Staff does not support the first part of the ZDI petition. While it doesn't make a change to the definition of cash, it allows prizes to be awarded in cash, gift certificates, and, that any cash prize of \$20 or less may be awarded on a gift card. Staff has concerns about this alternative. Currently, pull-tabs come in sets of several thousand—and the majority of winners are \$1 winners. By allowing all cash prizes of \$20 or less to be awarded on a gift card, it would result in the majority of the pull-tab prizes to be won on a gift card, which essentially allows the replay of those credits. By allowing the combining a gift card and pull-tab readers, staff anticipates it will

cause the creation of a machine with more features that are more like slot machines. A key feature of a slot machine is the replay of the credit.

**Ms. Hunter** affirmed that as with the Harmon petition, staff would also have concerns about ZDI's petition relative to money laundering, and a policy concern about encouraging players to continue to gamble by spending their winnings on the gift card rather than cashing out and leaving the establishment.

**Ms. Hunter** acknowledged the discussion about whether the Commission has the ability to regulate this activity. She advised this matter was a policy decision; and she commented that just because something can be regulated and technology might aid in that activity, it doesn't mean it is necessarily the best policy decision. In summary, Ms. Hunter reiterated that on the Harmon petition, staff recommends denial. Regarding staff's alternative, staff recommends final action. Regarding the ZDI petition, staff recommends further discussion.

**Monty Harmon**, Harmon Consulting, a licensed supplier clarified that he was not present as a service supplier representing ZDI. His initial concern stemmed from hearing about Buzz Inn when they lost their rights to add their prizes back on their system. He advised he was looking out for the industry in general. He advised he was contacted last month by Donovan, a cash card provider, to help them address regulatory concerns so that they may be able to bring their system to Washington and to that end he may end up with some personal benefit.

**Mr. Harmon** reported that for almost a year he has discussed the issue with staff. He noted that prior to his proposal Commission staff had reviewed and authorized the use of a cashless system at the Buzz Inn, and for two years that system allowed for the adding back of prizes. There were no issues reported to staff. When the ZDI machine came into existence and the Director was made aware that there was such a system in the state, Buzz Inn was requested to cease putting prizes back on to the cards. That action discounted the difference between an accounting system and automated gambling devices. Mr. Harmon reiterated the Commission was created in 1973, and he couldn't recall if there were any ATMs in existence at that time. However, he affirmed that society and banking conveniences have changed along with the threats of fraud and the need for greater detail on transactions.

**Mr. Harmon** suggested that typically people that gamble or go out for entertainment probably spend 60 percent of their dollars in their favorite location. He believed they make a conscious decision at the beginning of the month on how much money they want to spend. He commented that if a spouse has a gambling problem and the other spouse wants to allocate money to that spouse; they may simply add a certain amount of money on to the card at their favorite place, just to prevent domestic problems. He believed the card was a good tool. If the person wins, the winnings go back on to the card and they are free to play longer.

Regarding the term other cashless systems, **Mr. Hamon** explained that he uses that terminology because currently staff allows people to take a winning pull-tab and give it to the operator. The operator doesn't pay in cash, they don't pay in merchandise, they return in kind by giving more pull-tabs to the player. He stated that was illegal in Commission rules, but it is tolerated by staff. Mr. Harmon advised his wording eliminates that conflict. Approval of this rule would simply mean that staff will have to use their good judgment in determining what other cashless systems are available. He reported that technology continues to change and the future possibility of using cell phones to do banking transactions is a reality—there won't even be a card. He suggested that if staff reviews a cashless system and approves it under this rule, it would be allowed.

**Mr. Harmon** agreed that by changing the definition of cash in this rule, it would apply to all gambling activities not just pull-tabs and it would allow winnings to be added back. That was the reason his rule proposal was different from staff's along with the accounting system. He affirmed it is unclear how the gift cards (if approved) would relate to pull-tab dispensing devices or other similar devices. He agreed that dispensing devices are clearly approved by the Commission and by staff; however, he believed that was a separate issue. Mr. Harmon advised that he did not see how this rule impacts a separate rule that has nothing to do with cash; it deals with dispensing devices. This is an accounting system not a pull-tab device, and while there is a parallel he advised that he was asking the Commission to make a clear distinction on the cashless system.

**Commissioner Bierbaum** inquired if Mr. Harmon agreed or disagreed that if the Commission were to pass his proposed rule change, that the machines viewed yesterday would necessarily be okay. **Mr. Harmon** responded that he viewed the machine as eye candy and as an accounting system. Staff's position is that the key element of a slot machine had to be the taking and giving of money. He clarified that a slot machine has a random number generator—and that was the key. He viewed the ZDI machine as a very creative marketing approach to an activity. He believed that staff has the flexibility to decide what they want, and if they believe that machine is the perception of a slot machine and that it will cause problems for the public; then he also believed that may be a policy call. Commissioner Bierbaum inquired if it was Mr. Harmon's position that if someone submitted a proposed game and it met all of the Commission's requirements that the staff could still say they didn't want the Commission to approve it because they didn't like the way it looks. Mr. Harmon responded that may be exactly what the Commission is doing with the ZDI proposal.

**Chair Ellis** responded that the Commission didn't mean to reargue the issues that were discussed yesterday concerning ZDI's petition for a declaratory order. He commented that the essence of Commissioner Bierbaum's question goes to the fact that Mr. Harmon's proposal does in fact allow winnings to be added to the gift card. He recalled that former Chair Ludwig asked Mr. Harmon at the very first meeting when this proposal was discussed if he intended for winnings to be read by a machine and added by the machine to a gift card. He also recalled that Mr. Harmon indicated

that he would be addressing that issue, and there might be ways to avoid that language in his proposal. That has not been done. **Chair Ellis** noted that today's testimony indicated that Mr. Harmon does intend that a machine would be intended to add the winnings to a gift card under his proposal.

**Mr. Harmon** responded that he did not want to provide wording that would limit what the Commission was going to decide relating to a machine that was under review. He emphasized that the reason he did not remove the prizes from the issue was because of the fact that there is a huge internal control problem when employees are sent into cash sensitive areas unnecessarily. He advised he didn't understand why that internal control had to be violated when all the transactions could very easily be swiped on a card and subsequently tracked if needed. He offered an example of his personal transactions at the Buzz Inn with activities from September of 2005.

**Mr. Harmon** addressed staff's alternative rule and expressed his concerns. Regarding an accounting system, he believed if the Commission wasn't involved in the approval process it could lead to systems that have potential losses and impair the integrity of the industry. He believed Commission approval of the systems was essential. He commented that this petition was not about machines, it was an alternate cash system that could offer detailed automated records showing the employee, customer, amounts, and dates and times of various transactions. In reference to pull-tab activities, Mr. Harmon noted that actual paper tickets and flares must be retained and recorded. Tickets have to be retained. He said the dispensing device would be a benefit for the pull-tab activity. On a machine (versus the fish bowl technology), there has to be lines marking how many tickets are remaining, or the machine itself has to indicate how many tickets are remaining in the machine. This is a huge benefit to the player. He thought the added information from the dispensing devices was good for the public, and cash cards would be better information for the operator. Mr. Harmon advised that he was looking to modernize and update the activity for greater security and protection of the activity. He emphasized that he was not proposing a new activity; he was simply recommending a rule change to facilitate an existing activity and improve the regulation, control, and accountability.

Addressing staff's point that people will tend to spend more money gambling at the designated location, **Mr. Harmon** countered that the cards were good for food and all of the other products available at any given location. They may also be cashed in at any time. He noted this is the best way for people to budget their entertainment dollars—when the amount is done, they get a reality check—unlike a checking account or credit cards, which can result in bills or NSF checks at a much later time. He believed this process offered more good than potential harm.

He addressed a previous comment that at a blackjack table chips are paid out on winning wagers, not cash. Additionally it has been noted there are instances where chips are being awarded on a pull-tab device, which is not cash; however, staff approved it. **Mr. Harmon** pointed out that his issue was that there are other cashless

systems for making payments. Lastly, **Mr. Harmon** advised the he would appreciate approval of the rule 31-days from filing, which is in agreement with what staff has proposed on their rule. There were no further questions or comments for Mr. Harmon.

**Ron Buel**, CEO and managing partner of Donavan, a Portland, Oregon sales and marketing company—a licensee of a card processor, RBA International of Vancouver, Washington; working with West Coast Bank which is a Visa card issuing bank of \$2 billion dollars in assets and 53 branches in Oregon and Washington. Mr. Buel advised he had a letter of approval from the Gambling Commission to offer their Visa debit cards with mobile banking account programs—which means there is a virtual account behind Donavan’s debit cards, to patrons and employees of Washington’s card rooms. He reported that Donavan currently has proposals for their debit cards before several card room chains in Washington. As of May 26, Donavan’s became an associate member of the RGA. Mr. Buel stated that he would like the Commission to approve the rule that Mr. Harmon has proposed. If approved, Donavan’s would seek to offer a closed loop card system. Such a card system would be good for use in a card room or a group of jointly owned card rooms and their adjacent restrooms and other facilities.

**Mr. Buel** offered some background information on electronic cash and card systems, noting that Visa currently does three trillion transactions per year. It expects to do seventeen trillion transactions five years from now. The majority of merchant transactions in the U.S. are currently done on plastic; not checks or cash. Because Americans have 800 billion dollars in debt on credit cards today, debit cards have been growing faster than credit cards. Donavan’s offers debit cards. With the Donavan debit card, patrons may only spend what is put on their card account. There is a virtual federally insured account behind Donavan’s Visa debit cards—there is no line of credit, and no bounced check fees; which makes Donavan’s cards attractive to the “un-banked” members of society. Mr. Buel noted that approximately 40 percent of the American work force doesn’t have a checking account or plastic at this time. When an individual swipes their card, they can only access the money that is on the card, the balance is kept in real time.

**Mr. Buel** believed that a closed loop card system was good for the patrons of Washington card rooms because it would be a great tool for budgeting for the player—when the cash is gone, it’s gone and there is no credit available. Secondly, if someone loses their cash or it is stolen, it is gone. However, if someone loses a card they can report it and within 48 hours they will get their money back. The cards can be toggled on or off by telephone—it can be disabled so no one else can use it, and then re-enabled when desired.

**Mr. Buel** noted that in the proposed system, the card room would hold the money on the cards in an audited account. The card room cannot access that account, only the cardholder may access the funds by using the card in a card room or adjacent facilities such as a restaurant. He advised this is much like a gift card, and contrary to

staff's comment, he reported many gift cards do have bonus and reward systems attached. He also noted the card is re-loadable and may be cashed out at any time, or the patron may choose to keep money on the card for later use. The cardholder may obtain a new card to load with cash at any time they want, it is given in real time with a new account number and magnetic stripe. He affirmed this is an auditable system. **Mr. Buel** noted the system can keep a transaction database for up to a year detailing each transaction level, dollar amounts, and it includes a date and time stamp. He emphasized the system was very secure for the player.

**Chair Ellis** addressed WAC 230-12-050 which indicates that the consideration required to participate in the gambling activity should be collected in full by cash, check, or electronic point-of-sale bank transfer. He questioned if that was a debit card. **Director Day** affirmed and then clarified that patrons may access an on-site ATM at a gambling facility to get cash and then gamble; however, the use of credit cards for the direct purpose of gambling activities is not permitted. **Mr. Buel** agreed noting an electronic transfer would be either a debit transaction or a credit transaction. Chair Ellis suggested clarifying that section—the existing heading makes it clear that the purpose is to prohibit the use of credit to purchase gambling opportunities.

**Commissioner Parker** commented that a part of the argument made by staff in opposition to Mr. Harmon's petition is that this could create a system that is outside of the regulatory responsibility of banks. He believed this was essentially the same thing. If there were various and different types of institutions issuing cards, none of that would be subject to any governmental agency's ability to monitor or otherwise regulate the activities. **Mr. Buel** responded that the money on the cards would be held in a bank. In order to make the system work and to have security on the funds, there wouldn't be monies accessible. Donovan's would not participate in a system in which a bank wasn't holding the funds for the card room. The card room could not have a separate non-banking account somewhere because that would create other problems. Therefore, the monies would be held in the bank account and not accessible by the card room itself. They would be auditable by the regulatory authority (the Commission). Commissioner Parker affirmed that might be Mr. Buel's interpretation; however, it could also be interpreted that Mr. Harmon's proposal doesn't require that. Mr. Buel replied that he didn't know how one could make an electronic card work without a bank doing the transactions. He affirmed while it isn't stated in the rule, he believed it was definitely implied.

There were no further questions and **Chair Ellis** called upon the ZDI presenters.

**Joan Mell**, Attorney representing ZDI Gaming stated for the record that ZDI had no objection to Mr. Harmon's petition because it accomplishes ZDI's objectives, which would be approval of the technology and to eliminate the contention that cash card technology does not meet the requirements of pull-tab gaming to be conducted with cash. She advised that ZDI has submitted an alternative option as a separate rule proposal and she recommended that the Commission give careful consideration to amending staff's proposal to add ZDI's proposed amendment to WAC 230-30-070 to

include in Subsection 1 the following language; “all prizes from the operation of punchboards and pull-tabs shall be awarded in cash, gift certificate, or in merchandise” – and then an additional change that “any cash prize of \$20 or less may be awarded on a gift card.” **Ms. Mell** explained the benefit of this approach would be that the Commission would have the opportunity to examine and explore the application of cash card technology in a limited area of authorized gaming (pull-tab gaming). It would avoid the concerns that somehow there is a broader implication that can’t be predicted with a definition change of cash.

Addressing the concerns raised by staff with respect to the gambling arena being somehow different than the Starbucks or Costco, **Ms. Mell** felt that was not warranted. The product being sold in these businesses is a pull-tab—inherent to pull-tabs is the award of a prize, if it is a winning ticket. That is the product that is being bought and sold. When that prize is added back to a cash card, that action is no different than adding a \$20 value onto a card for the products in the facility. **Ms. Mell** felt that to suggest that action is a unique consideration for the Gambling Commission defied common sense and logic. She stated that it was almost like suggesting somehow taking the gambling out of pull-tabs. **Ms. Mell** emphasized that pull-tabs are an approved gambling activity; they are a social past time that the Legislature has specifically directed the Commission to protect and not to regulate in a way and manner that would prevent players from enjoying that social past time. Specifically, she addressed RCW 9.42.010, which she suggested precludes the Commission from consideration of staff’s concern that players may spend more of their gambling revenues on pull-tabs. She said the statute specifically provides that this Commission is not to be regulating pull-tabs in a manner that would restrict a player’s opportunity to engage in that social past time.

**Chair Ellis** verified that the language that **Ms. Mell** read was the language that is part of the ZDI proposed rule. **Ms. Mell** affirmed and noted that in essence if the Commission amended the staff’s rule as she suggested, it would be ZDI’s proposal and in doing that, she didn’t believe there would be any substantive issues that would require any delay in terms of notice. The rule would be consistent with the consideration of cash card technology and getting the added regulatory benefit of cash card technology by doing both the purchase and the prize.

**Commissioner Bierbaum** reacted to some of the comments **Mr. Mell** made, likening gambling to Starbucks and suggesting that the analogy was just a matter of common sense. **Commissioner Bierbaum** disagreed. She noted there isn’t a Coffee Commission set up by the State of Washington to regulate the dispensing of coffee—and there were some very serious reasons why. She advised that she didn’t find it very persuasive to say that Starbucks does it, so gambling service providers should too. **Ms. Mell** responded that she respected the Commission’s need to consider cash card technology in the context of gambling. However, she pointed out that it is still just a product, and the product in the gambling arena that is being bought and sold is a pull-tab—an inherent pull-tab is a prize—and that is approved—that is legal.

With no further questions of Ms. Mell, **Chair Ellis** called for other testimony.

**Chris Kealy**-Iron Horse Casino, and a board member of the Recreational Gaming Association (RGA), spoke on behalf of the RGA, and noted the industry supports the use of cash card technologies in a multiple array of forms that have been showing up in this particular rule. There have been different supporters of this process—Mr. Buel’s closed system and ZDI’s machine. Mr. Kealy advised that he was looking at an open loop systems specifically because he was trying to get away from checks. The transactions in checking that are causing operators a great deal of problems in the operational level relate mostly from people taking the checking account numbers and misusing the account. He advised that he was pursuing cash card technology from the security standpoint because it provides an accounting of by whom, when, and where the transactions are occurring. Most banks have surveillance systems on their ATM machines, and electronics are very able to close in on who is trying to cheat systems. Mr. Kealy affirmed that from a security standpoint, the electronic card transfer of cash is much safer to track, which should be a very supportable solution from a regulatory standpoint. In response to Commissioner Parker’s question of whether this allows the ZDI machine, he replied in the affirmative. He commented that the ZDI machine would be approved today if it dispensed cash; however, they are only trying to get the Commission to add cash cards as the equivalent of cash.

**Pat Tompkins**-Sound Amusements advised that he represents a handful of amusement companies in Washington. Currently amusement operators can issue gift certificates as merchandise prizes in amusement games. He reported that changing the definition of cash to include gift cards and possibly gift certificates would not allow amusement operators to issue gift certificates as merchandise prizes; therefore, the amusement companies opposed the proposal as currently written by Harmon Consulting. Mr. Tompkins advised that he supports staff’s alternative to the rule. Regarding ZDI’s petition, he indicated the amusement companies would remain neutral on that issue.

With no further comments on agenda Items 13, 14, or 15, **Chair Ellis** closed the public hearing and elected to address Items 13 and 14 individually.

**Ms. Hunter** clarified that WAC 230-02-101 cash defined, is the published rule the Commission took action on—the Commission did not take action on Alternative C and Alternative C5. **Mr. Ackerman** agreed; however, he advised that it was not clear to him which of the three options Mr. Harmon was currently advocating for—he affirmed these were not substantial changes that would require a new notice under the APA. **Mr. Harmon** responded his proposal was Alternative C.

**Commissioner Parker** made a motion seconded by **Commissioner Niemi** to deny the Harmon Consulting petition. Commissioner Parker advised he was persuaded by the analysis of staff and their reasoning. He didn’t believe the Commission needed a new definition of cash, and he believed the definition being proposed opened up all kinds of possibilities for the use of devices and accounting systems that he considered

a Pandora's Box in terms of a regulatory approval of something that the Commission was not really sure on how it would work. He noted that the thing that most persuaded him was that the Commission simply didn't need a change. He suggested the old saying of "if it ain't broke, don't fix it" would apply. He thought the system and regulations in place serve the public and allow the Commission to perform its mission of keeping gambling safe, and for those reasons supported denying the petition. Vote taken; the motion passed with four aye votes.

Commissioner Niemi made a motion to accept the staff's proposed amendments to WAC 230-12-050 regarding the extension of credit and that the rule be effective 31-days after filing. **Commissioner Parker** commented that prior to seconding the motion, he was not persuaded this additional change was needed and he asked staff to articulate the primary reason for the rule change. **Ms. Hunter** explained this rule would allow purchases to be made with gift card in all areas of gambling. Currently it is allowed in bingo, but not in pull-tabs. Staff thought that allowing a gift card to be used for the purchases would bring in consistency.

**Commissioner Bierbaum** inquired if Mr. Harmon had not made the original petition whether staff would have independently brought this petition before the Commission. **Director Day** advised that staff would not have brought it forward. He affirmed there has been a lot of discussion about what the staff has approved and didn't approve prior to the petitions coming forward. He affirmed that it was accurate that one of the agency's supervisors had commented that Commission codes do not restrict cash cards or gift certificates. As reported there was a business that used gift certificates in good faith. When staff took a look at it again, staff couldn't see a particular reason not to allow a prepaid set gift card to be used to purchase pull-tabs, and with that consideration, permission was given to that business as a limited application. While staff felt that using a gift card without the ability to put credits back on would not be a regulatory concern and would not provide for additional opportunities; Director Day agreed there was no limit as proposed in this rule.

Commissioner Bierbaum seconded the motion. Vote taken; the motion passed with four aye votes.

#### **15. Petition for Rule Change – ZDI Gaming, Inc., Cash Cards:**

**WAC 230-12-050 and 230-30-070:**

**Chair Ellis** advised Ms. Mell that given the amount of time that has been devoted to the consideration of these items and recognizing that the Commission's past practice would have been to place the ZDI petition for rule change on the August Meeting, in addition to recognizing the rule is not up for final action until the September Meeting because of the filing requirements and time periods required, as Chair he was inclined to not include the ZDI petition on the August agenda, and move it directly to the September meeting. He inquired if Ms. Mell any objection and she responded in the negative.

**16. Petition for Rule Change – Don Logerwell, Logo Chips and Cards:**

**WAC 230-02-412:**

**Ms. Hunter** reported that at the last meeting Mr. Logerwell asked questions about who staff had contacted and he wondered whether staff had accurate information from Nevada in particular. Since then, staff followed up with Nevada and confirmed that although their regulations say that they may approve another method of destruction, in practice they have not approved any other method of destruction rather than through shredding. They do not allow logo chips that have been sold after a business has been sold or closed. In fact, the Nevada Gaming Control Board just this week sent a letter to Mr. Logerwell telling him that his request for having chips sold was being denied. Staff is still looking into whether or not a rule could be created that might be patterned after the Nevada regulations—a recommendation will be presented at the August meeting.

Since the June meeting the Commission received additional correspondence on this matter. One from Nicholas Bates opposing the petition; and letters from Steve Michaels, Chris Kealy, and Dolores Chiechi recommending approval. **Ms. Hunter** advised the rule was up for discussion only this month.

**Chair Ellis** called for public testimony and there was none. **Ms. Hunter** noted this is another case where the rule will not be up for action until the September meeting because of the filing deadline. **Chair Ellis** asked staff to notify Mr. Logerwell that his petition will be placed on the September agenda for final action, and will not be heard in August.

**17. Financial Statements for House-Banked Card Rooms:**

**WAC 230-40-821 and WAC 230-40-823:**

**Mr. Trujillo** reported that to his knowledge the rule proposals in Item 17 were uncontested. Item 17 (a) relates to WAC 230-40-821 Accounting Systems For House-Banked Card Rooms, and staff has proposed this change to ensure that accounting transactions are in accordance with Generally Accepted Accounting Principals (GAAP) for house-banked card rooms. Staff also proposed this change to ensure that all of the accounting transactions include all of the incremental expenses for the business entity, and that the facilities have their systems in place prior to licensure. GAAP requirements are an industry standard. GAAP requirements will help staff ensure that the Commission knows who is involved, who is benefiting, and how transactions are flowing. To date the Commission has not received any stakeholder statements opposing the proposed rule change. Staff recommends further discussion.

Item 17 (b) also relates to financial statements. Staff proposed this change and recommends adding language to clarify that house-banked card rooms must include receipts from all of the card games offered by the licensee. The proposed language provides more information about what the licensee is required to submit and offers a definition for an “Independent Certified Public Accountant.” To date there have been

no stakeholder statements opposing the proposed rule change. Staff recommends further discussion.

**Chair Ellis** called for public testimony and there was none. [Commissioner Niemi left the meeting at 12:15 p.m.]

**18. Rules Simplification Project:**

**Chapter 230-11 Raffles:**

**Beth Heston**, Project Manager reported that the simplification process resulted in the overall word count in this chapter being reduced by 25 percent. The process involved clarifying the directions for alternative drawing formats. She advised there weren't any substantive changes to the chapter. Ms. Heston advised the Commission has already received some positive feedback from an organization that mistakenly believed these rules were already in effect and complimented the Commission on the clarity of the rules.

**Chair Ellis** called for public comments and there were none.

**Chair Ellis** called for public comments on the rule proposals identified in Agenda Item 19, 20, and 21. There were none. Since there were no comments; and because of the lateness of the hour and the fact that the remaining rules packages on the agenda were all staff proposals that could easily continued to the next meeting, Chair Ellis declared the three agenda items would be held over until next month.

**19. Gambling Service Suppliers:**

**WAC 230-02-205, WAC 230-02-203, WAC 230-02-204, WAC 230-02-210, WAC 230-03-210 (Rules Simplification Companion), WAC 230-03-211 (Rules Simplification Companion), and WAC 230-03-212: Item Tabled until August.**

**20. Two-Part Payment Plan for House-Banked Card Room License Fees:**

**WAC 230-04-190 and WAC 230-05-015: Item Tabled until August.**

**21. Rules Simplification Project:**

**Chapter 230-09 Fund Raising Events: Item Tabled until August.**

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

**Chair Ellis** called for any other public comments.

**Dave Malone-** Miller, Malone, and Tellafson, followed up on the approval of Item 14 which essentially codified the items the Commission has already approved with regard to merchandise and gift certificates. He clarified whether that meant that the field interpretation issued by the Gambling Commission that gift certificates are an equivalent of merchandise prizes is still in effect and has not been repealed by implication. He advised there are certain rules that allow bingo operators to give

merchandise prizes, which includes gift certificates. However, last year a field interpretation was issued saying that gift certificates equated to merchandise prizes as well. He asked for clarification on what was being codified and whether according to the rule which will become effective within 31 days, pull-tabs may be purchased with gift certificates. He also verified that there was no intent to change the field interpretation of rules on the books that gift certificates may be issued as prizes—that the new rule was consistent with the merchandise interpretation as it applied to bingo.

**Mr. Ackerman** advised Mr. Malone to contact the field staff for their interpretation of the new rule and whether or not it bears upon the issue that he was raising. He didn't think it was fair to ask the Commission to repudiate or affirm a field interpretation that he suspected none of them has even seen at this point.

**Commissioner Bierbaum** affirmed the commissioners didn't know the answer to Mr. Malone's question; however, they would get together with the staff and provide an answer.

With no further comments, **Chair Ellis** adjourned the meeting at 12:30 p.m.

Minutes submitted by,

Shirley Corbett  
Executive Assistant