

Gambling Commission Meeting
November 15, 2006
Work Session
Draft Minutes

1. *Introductions:*

- Chair Ellis called meeting to order at 6:10 p.m.
- Participants: Chair John Ellis, Vice-Chair Janice Niemi, Commissioner Alan Parker, Commissioner Keven Rojecki, Senator Margarita Prentice, Representative Alex Wood, John Lane, Director Rick Day, Deputy Director Sharon Reese, Dave Trujillo, Jeannette Sugai, Amy Hunter, Assistant Attorney General Jerry Ackerman. Other staff attended, including Terry Westhoff, Julie Lies, Dan Kuhnly, and Gail Grate
- Approximately twelve members of the public attended, including representatives from the Washington Indian Gaming Association, Washington Charitable and Civic Gaming Association, and the Recreational Gaming Association
- The meeting would not be recorded, but brief minutes would be taken

2. *Agenda review and identify additional topics of interest to be added if time permits*

- Chair Ellis briefly reviewed agenda – very ambitious – may not finish it
- If time permits will touch on the strategic future
- Anticipate an unstructured discussion with a lively exchange of views
- New commissioners will enjoy benefits of views exchanged this evening
- Chair Ellis asked if there were any items the Commissioners/Ex-Officios would like to add – There were none

3. *Review Gambling Act of 1973 and Commission authority, responsibility, and role in relationship to the Legislature and the Governor – Jerry Ackerman*

What is our specific task? What are the legal responsibilities and/or constraints?

State-Tribal relationships

Governor

Legislature

Taxing authority

Policy decisions

Scope of Gambling in Washington

Share a brief historical perspective

Jerry Ackerman provided a historical overview and a brief analysis of laws regarding the Commissioners' authority:

- Commissioners have a varying degree of expertise
- Purpose of meeting is to allow commissioners to have interchange among themselves
- Historical perspective / Timeline on gambling in Washington
 - Before Constitution, gambling was going on
 - 1872 – Horse racing
 - 1889 – Constitution ratified – prohibiting all lotteries
 - 1902 – Second horse racing track opened
 - State constitution came into being prohibiting gambling

- 1933 – Legalized pari-mutuel wagering
- 1937 – Slot machines were allowed by private or nonprofit organizations registered with State Patrol
- 1942 – Legislature decided slot machines were illegal
- 1972 – Constitution amended to allow gambling if 60% vote of people or Legislature
- 1973 – Gambling Act passed – Gambling Commission established
- 1974 – Net receipts were \$33.5 million
- 1976 – Tribal bingo started
- 1977 – Charitable/nonprofits allowed to operate Reno Nights
- 1982 – State Lottery established
Net gambling receipts were \$215.4 million
- 1987 – Authorized satellite off-track betting
U.S. Supreme Court decided Cabazon Indian Tribe case
- 1988 – Congress enacted Indian Gambling Regulatory Act – three classes of gaming – defined type of land authorized
- 1989 – Net receipts were \$344.5 million
- 1992 – Live horse racing ended at Longacres
First Class III tribal casino opened (Tulalip)
- 1993 – Gambling Task Force created; its findings were:
 - Continue to prohibit slot machines
 - State should codify policy to keep illegal gambling out of state
 - Decision made to not merge the Lottery, Horseracing, and Gambling Commissions
 - Continue existing compact approach
 - Explore other options for charitable organizations to raise funds
- 1994 – Net receipts were \$454.7 million
- 1995 – Friendly lawsuit
- 1996 – Emerald Downs horse racing track opened
- 1997 – Legislature authorized house-banked card rooms & limited out-of-state off-track betting
- 1998 – Traditional Las Vegas slots illegal in Washington – but other electronic gaming devices could be included as part of tribal compact
- 1999 – Moratorium placed on mini casinos
Net receipts were \$719.1 million
- 2000 – Authorized promotional contests of chance
State Lottery proceeds to go to education
- 2001 – Expanded scope of out-of-state simulcast
Authorized limited waiver of sovereign immunity – waiver will expire July 30, 2007
- 2002 – \$500,000 dedicated to treatment of pathological gambling problems
- 2004 – I-892, which would have allowed tribal machines at commercial and charitable/nonprofit organizations defeated at polls
Net receipts were \$1.55 billion
- 2005-06 – Problem gambling treatment program passed by legislature
Internet gambling prohibition clarified

- Recent legislative proposals:
 - 2001-2004 – Bills to consolidated gambling related agencies
 - 2003-2004 – Legislature approval for betting limits
 - 2003-2006 – Bills on minimum age; gambling taxes – efforts to reduce tax rate on charitable entities; establish state gambling tax; allow electronic bingo; zoning
 - 2001-2006 – Lottery bills requiring advertising restrictions, prohibiting purchasing advertisements geared toward youth
 - Legislature to approve new compacts & casinos on off reservation land
 - Net receipts were \$1.7 billion

Jerry Ackerman reviewed Constitution:

- Page 1 – Lotteries & divorce
- Page 2 – Shows how gambling has increased from 1974 to today – \$33 million in 1974 to \$1.7 billion currently
- Page 3 – Legislative declaration – first three paragraphs describe Commissioners’ job
- Page 4 – Explains how Commissioners are appointed – Second paragraph most important because it deals with ex-officios
- Pages 5,6,7 – RCW 9.46.070 – Powers & duties to license & regulate various gambling activities – wagering limits
- Page 8 – RCW 9.46.090 – Reports
 - Obligation to make reports to Governor & Legislature / Respond to requests
 - Affirmative grant of power to commission to make recommendations to legislature related to gambling taxes – a power that Jerry Ackerman has not seen the Commission exercise

Much discussion around the ambiguity between 070 and 090 – betting limits:

- What if Legislature changed betting limits – wouldn’t the Legislature have to amend 9.46.070, since Commission does this
- Five-minute Keno – Senator Prentice noted the Legislature was unhappy with the lottery commission and limited keno to once a day
- Commissioner Niemi asked whether the Commission can assess taxes based on 9.46.070(6). AAG Ackerman said it was poor drafting; point is what it says, not whether the Commission has done it. Taxes, fees, & penalties are assessed by Gambling Commission – no taxes are collected by the Gambling Commission, only fees/penalties
- Commissioners have power and make recommendations to legislature. If they have a view on what is appropriate with gambling, those views should be voiced to legislature
- Page 9-10 – RCW 9.46.110 – taxes that can be levied by local towns & how they should be conducted
- Page 11 – Deals with local authority to tax
- Page 12 – Recent tax passed in 2005 to fund problem gambling programs – 0.13% tax
- Page 13 – Taxing authorities are exclusive & local jurisdictions can’t initiate additional taxes on gambling activity
- Page 14 – Establishes licensing & regulation authority exclusions

Page 15 – Exception – scope of regulation

Pages 16-17 – Compact negotiation process

- Negotiate IGRA compacts - initially by Director of Gambling Commission
- Tentative agreement sent to Legislature & Commissioners
- Legislature holds hearing within 30 days (informational) – Legislature doesn't have authority to approve or deny compact – their role is to recommend/advise
- Legislature forwards compact to Commission, who holds hearing within 45 days
- Commission sends proposed compact with recommendation to Governor to sign compact or return to Director with instructions to negotiate further
- Provision that if proposed compact is sent to legislature within 10 days prior to session, timeline changed to 45 days
- Tribe sends signed compact to Department of Interior
- Ex-officio members vote on compacts at Gambling Commission hearings

Page 18 – Waiver of sovereign immunity (passed 2001 – expires June 2007)

Page 19 – Seattle Times editorial – gives idea of conversations had in 1972 – gambling act came on heels of lots of scandals – Legislature's attempt to clean up gambling

Pages 20-22 – Signing & veto message of Governor Evans when he signed gambling act in 1973 – original gambling act authorizing card rooms/Mah Jongg/social card games – Governor vetoed card rooms – Legislature overrode it a couple years later

Pages 23-24 – Article about house-banked card rooms - shows how policy is made – Senator Prentice explained that in 1999 Governor Locke indicated that what he signed was not what he thought he was signing – it was the combination of 15 tables, house-banking, and the advertising that led to this feeling

Pages 25-30 – Documents entire policy setting – chart on statute requirements – prepared for Senate Labor & Commerce and House Labor Committees by John Dziedzic for Oct 3, 2006, hearing

4. *The Commission is expected to implement policy established by the Legislature and the Governor (Alan Parker suggested topic)*

What do we mean by policy when the term is used in this context?

Are there established parameters for the development of policy by the Commission?

Examples to illustrate Commission "policy making" vs simply disposing or deciding items that come before the Commission?

In the process of disposing or deciding items does the Commission make policy?

What is the role and expectations of the Ex Officio members?

- Can easily be challenged
- Commission has express authority to set policy
- Are there changes in what is expected?
 - ◇ No criticisms from Legislature that Senator Prentice was aware of
 - ◇ According to Representative Wood, there is a good relationship and communication

- ◇ It was good to go back through the history
- Legislature – where there is a lot of money involved, there will be scoundrels
- John Lane was asked for his view on the Governor's thoughts on implementing policy
 - ◇ The Governor has been vocal that she is not a fan of gambling, but respects the process and IGRA & will do what is required under IGRA
 - ◇ The system is working effectively, and the Governor has no recommendations for change at this time
- Washington has compacts for 27 of the 29 Washington Tribes, so we are coming to the end of initial negotiations with individual tribes
- Enormous change in net revenue
 - ◇ 1999 revenue was \$719 million total – \$162 million for tribal casinos
 - ◇ Currently over \$1 billion for tribal casinos
 - ◇ TLS machines came in 1999
- Concern that the Commission may be making policy decisions as they go through routine decision making – what appears to be a basic request can actually be a significant policy decision
- Extremely good that Ex-officios and Legislators let Commissioners know when they are in area of expansion of gambling
- Idea of bringing Governor in at the very beginning was discussed
 - ◇ Early Governors wanted to dignify the process
 - ◇ Didn't want Governor involved in all the negotiations – or getting all the calls
 - ◇ Previous unfortunate experiences with the process
 - ◇ Colville – day before signing ceremony, Governor Gardner withdrew his consent – wanted different things in the compact – may have touched off a decade of illegal activity
 - ◇ The state objected to secretarial procedures – led to negotiation/arbitration process – both sides skeptical it would work
 - ◇ Finely-balanced process
 - ◇ Consensus was that during the process of negotiating, there was sufficient dialogue between the Commission (Rick Day), the Governor's Office (John Lane), and the Legislature
- Sovereign immunity waiver – sunset clause
 - ◇ Not sure how important it has been – had compacts before and compacts after sovereign immunity waiver
 - ◇ Provides some level of comfort
 - ◇ There is no resolution – without it – proposed after Seminole
 - ◇ Director Day said he believed it was pivotal with Shoalwater Bay and may have helped with Colville
 - ◇ Should it be for a discrete number of years or another period of time?
 - ◇ An important piece to the puzzle – perception and trust
 - ◇ Issue of respect isn't always obvious

5. ***In what sense has the policy that there should be no expansion of gambling been established?***

To what extent has this policy been legislated?

Has the Governor articulated her definition or interpretation of this policy?

How does this policy govern our decisions?

- Gambling is going to happen – good to be able to see it & limit it – keep it regulated – have achieved the right balance
- Commissioner Parker discussed the policy of administrative law – the agency has expertise in its areas of responsibility
- Commissioner Parker noted that this presumption has to be overcome [by the petitioners] – may not be apparent to those who come before the Commission
- Commissioners have to take position – the courts may not take the same position
- No statutory provision that addresses the Commission dealing with expansion of gambling – RCW 9.46 says gambling is prohibited except as allowed under this chapter
- Makes sense as a practical matter – or think about it as a credibility decision
- When dealing with staff who have expertise/knowledge – may be outweighed by industry who also have expertise/knowledge – ask them to tell Commission or staff why they are wrong
- Expansion of gambling has occurred
- Staff had a definition – expansion of locations – it is in the eye of the beholder
- Argument with bill/initiative – about 60% of proponents said it wouldn't be an expansion – it was just a shift of gambling
- Historically shows it is not going to happen – do not see non-tribal expansion, see non-tribal decreasing
- Does the Commission differentiate between tribal and non-tribal?
- Recommend the Commission adopt a more formal policy about expansion of gambling? Has been a 60% vote for laws, so expansion has occurred – Commission's role is to exercise its powers (RCW 9.46.070)
- Commission is entrusted with exercising discretion
- Court cases are clear that when an agency is given discretion, it must exercise that discretion
- Compacts & state law
 - ◊ Legislature has authority to say no to state law
 - ◊ IGRA poses different situation – if state has said yes to gambling in any fashion, must negotiate with tribes
 - ◊ Without state compact, state probably has no jurisdiction
 - ◊ 90% of compact is regulation, but negotiation debates are about the other 10%
 - ◊ Reality is that the state can prohibit gambling for non tribal. With tribes, the state has authority to prohibit gambling only if all gambling is prohibited – if the state allows any type of gambling, state-tribes must negotiate
 - ◊ Function of compact is how the regulation/roles look – interplay between federal & state laws
 - ◊ Definition of expansion between tribal and non-tribal gambling discussed
 - ◊ Appendix X has an allowance for sharing machines
 - ◊ Public seems fairly secure on gambling issue
 - ◊ Rule of thumb - If it does not violate law, no reason to vote against compact

- Deputy Director Reese commented that WASPC is one of the partners our agency has – they are the first place people go with concerns – WASPC is very comfortable with our agency and a great partner in terms of public perception
- Comment on house-banked card rooms – said they were going to increase crime, but police report the house-banked card rooms have helped

6. *What were the non-tribal gambling revenues during the past three years for Commercial and Charitable/Nonprofit Licensees? (Commissioner Niemi suggested topic)*

What will they likely be for 2006-2007?

How much have they paid to local communities during these periods?

- Reviewed tables / provided overview
- Netted about \$450 million (not including lottery & horse racing) – has been consistent over years
- In 2005, \$48 million to local taxes – 7% going to the State through B & O taxes
- Missions of three agencies are different – Horse racing promotes and Lottery is to make money –the differences are confusing to the public though
- Discussion on perception of expansion of FTEs – Commissioners have made the point that in 2001, the agency had 191 FTEs and currently the FTEs are at 175 – not an expansion of staff
- Is there a way to pull out FTE numbers – since not funded by General Fund? No, Governor wants to show decrease in FTEs
- Director Day noted that punchboards/pull tabs are the single most significant source of revenue, and are the truest example of commercial stimulant in the industry – picture is not good for punchboards/pull tabs
- Senator Prentice noted that Sumas was largest in punchboards/pull tabs until Canada changed their laws

7. *If the state and tribes were to agree to revenue sharing like other states and tribes have done, how much money might flow to the state? (Commissioner Niemi suggested topic)*

What were the tribes' revenues estimated to be in 2005-2006?

If all tribes had agreed to the formula in the first Spokane draft compact, how much money would the state receive?

- If not be able to get an approved compact with revenue sharing, probably a mute point – staff did a good job putting the information together
- Recommended discussing with Governor's Office to see if something she would favor
- Questioned whether revenue sharing would influence policy
- Our historical experience protects us from problems State of California ran into
- Argument was that revenue sharing would make the state a partner with the tribe – that once the state became dependent on gambling money, it would be influenced by the money aspect
- After friendly lawsuit, Appendix X was created authorizing a total number of machines, a certain number for each tribe, and an allowance for the tribes to lease from each other – because of the cap on the number of authorized machines, eventually there will not be enough machines

- What happens when the authorized number of machines runs out and a tribe wants more machines? Does the Legislature have any role to play in this issue? – No, other than the hearing and their input – it becomes a pure policy call, a negotiable issue that would ultimately be a decision of the Governor – there are practical and legal issues that impact that decision
- The Governor may have to face the issue that there will not be enough machines to meet the requirements because of the allowance – Does the Governor feel it is appropriate to address the issue – or don't address it and have it end up with a federal judge?
- There is mechanism in the compacts to take it to federal court – important to decide whether the Commission wants a role in determining the outcome or leave the decision to federal court
- NIGC Class II rules issue –out of our control if rules are approved

8. *How should the compact negotiation process be conducted?*

Should negotiators continue to work to gain acceptance of a compact by the Governor prior to referral for Commission Action?

How or should the Commission work with the Governor's Office and key legislators to develop goals or objectives to guide the negotiators?

9. *Discuss the strategic future of the Commission:*

How often and how long should the Commission meet?

Should we be proactive or reactive?

What does it mean for us to be "successful" as a Commission?

- This issue comes up with every new commission
- Senator Prentice felt both days were needed – that it was very useful to attend Thursday morning study sessions – that a lot happens at the study sessions
- Chair Ellis felt it helps for travel to have two days

10. *Closing:*

Action Items.

How did the session work for us?

Next Work Session?

- Very productive meeting
- How often to have these work sessions?
 - ◊ Representative Wood suggested annual work sessions
 - ◊ Senator Prentice added especially as Commissioners' terms expire and new Commissioners are appointed

Meeting adjourned at 9:15 p.m.

Minutes prepared by
Gail Grate, Administrative Assistant 4

**COMMISSION MEETING
THURSDAY, NOVEMBER 16, 2006
DRAFT MINUTES**

Chair Ellis called the meeting to order at the DoubleTree Guest Suites located in Tukwila. He introduced the following members and staff:

MEMBERS PRESENT: **COMMISSIONER JOHN ELLIS, Chair**, Seattle
 COMMISSIONER JANICE NIEMI, Vice Chair, Seattle
 COMMISSIONER ALAN PARKER, Olympia
 COMMISSIONER KEVEN ROJECKI, Tacoma
 SENATOR MARGARITA PRENTICE, Renton
 SENATOR JEROME DELVIN, Richland
 REPRESENTATIVE ALEX WOOD, Spokane

STAFF PRESENT: **RICK DAY**, Director
 SHARON REESE, Deputy Director
 JEANNETTE SUGAI, Acting Ast. Director–Field Operations
 DAVE TRUJILLO, Assistant Director – Licensing Operations
 AMY HUNTER, Administrator – Communications & Legal
 JERRY ACKERMAN, Assistant Attorney General
 GAIL GRATE, Administrative Assistant

Director Day explained the agency’s Partnership Program and introduced the participants in attendance: Keith Schuster, Special Agent Supervisor in Financial Investigations, started with the agency in 1998; Stephanie Hamilton, Special Agent in Financial Investigations, started with the agency in 2006; Tom Garden, Financial Analyst in the Business Office, started with the agency in 2005; Elisa Casana, Fiscal Tech in the Business Office, started with the Agency in 2005; and Jim Koran, Special Agent with the Tribal Gaming Unit, started with the Agency in 1998.

Chair Ellis and Director Day presented Representative Alex Wood with a certificate and a pin, and thanked him for his seven years service as an ex officio with the Commission.

1. Review of Agenda and Director’s Report:

Director Day reviewed the agenda for Thursday and Friday and highlighted inserts added to the agenda packet since publication. Director Day asked the Commissioners to accept the withdrawal request from Leading Edge Software for Items 14, 15, 16, and 17,

explaining that Leading Edge Software would like the opportunity to review their petitions, work with staff, and then resubmit the petitions. **Chair Ellis** asked if there were any concerns about granting the request; there were none, and the request was granted.

Director Day referenced the request for a continuance by Dave Swyter, commenting that Mr. Swyter's petition for review was continued from last month. Director Day reported that staff oppose Mr. Swyter's second request for a continuance, adding that Bruce Marvin would be presenting for staff and would properly address the details when the Commission gets to Item 5 on today's agenda.

Director Day provided an introduction of Mark Harris, who was appointed as the Assistant Director for Field Operations, replacing Cally Cass. Mr. Harris is currently a supervisor in the Northwest Region and has 12 years with the agency. Mr. Harris is a certified public accountant and a certified fraud examiner, and is well respected by staff. Director Day reported that Mark Harris would report to duty in Lacey on December 4 and would attend the January Commission Meeting. Director Day thanked Greg Thomas, Gary Drumheller, and Jeannette Sugai for their excellent service as Acting Assistant Director. **Chair Ellis** added his thanks.

Director Day reported that the Governor's Office has conditionally approved the agency request legislation dealing with temporary licensing, summary suspension, and active military authority. The agency continues to work with the Governor's Office on two other requests for consideration.

House-Banked Card Room Financial Statement Report

Director Day explained that in 2004 this Commission strengthened the requirements for financial statement reporting by the house-banked card rooms. As Special Agent Supervisor Keith Schuster described in his memorandum, all house-banked card rooms are required to submit an audited review or a compilation dependent on their particular gross receipts. Director Day noted that the report shows 52 licensees (54%) reported net income and 31 licensees (32%) reported net losses. During the review, staff wrote 11 case reports and initiated administrative violations that included late reporting, accounting not in compliance with Generally Accepted Accounting Principles, and unreported loans. The Commission focused on strengthening this section to improve control and earlier identification of any problems with financial records.

Chair Ellis pointed out that in comparing this report to the previous year's report for fiscal years ending after July 1, 2004, the previous report showed 48 card rooms reported a net loss whereas this year there were only 32 card rooms that reported a net loss, which appears to reflect that the industry is fairly healthy. **Director Day** observed that the net receipts pie charts that were provided at the work session last night showed that house-banked card rooms did experience a drop from 2005 to 2006. It appears there is a double effect there that the card rooms are losing money but several card rooms closed during that period and overall there are less net receipts. **Chair Ellis** noted that the previous year's report showed a total of 87 card rooms reporting compared to 86 card rooms on

this year's report; one net loss of a card room over the course of a year. **Director Day** added that very few card room applications have been coming in, and the number of card rooms has been stable.

Executive Summary of the Agency's Diversity Audit

Director Day explained that in 2003 the agency completed a major division of the diversity plan in an effort to strengthen the agency's commitment to the importance of diversity in the workforce. When that plan was presented to the Commission there was discussion around doing an agency diversity audit, which has been completed. Overall, the audit was positive. The memorandum in the agenda packet summarizes the findings and recommendations, but the complete diversity audit and a lengthy analysis table are available if the Commissioners wanted to look at it. There were about 39 recommendations that agency leadership reviewed and decided what action to take to move forward with the recommendation. A recommendation is one thing but what to do about it is always an entirely different thing. Director Day directed the Commissioners to page two of the memorandum "Agency Actions In Response." The bullet points list the primary steps targeted for completion next year, most of which have already been accomplished. The agency's diversity team will update the diversity plan and decide what steps still need to be taken to further integrate diversity into the agency itself. Some of the steps broaden the agency's recruitment to ensure promotions and hiring processes are as inclusive and open as possible. The Audit Plan is a continuing process, but provides foundational steps toward improvement and how to integrate diversity more permanently in the institution itself.

Commissioner Parker asked how Director Day assesses the agency's progress in achieving a diverse representation in the upper management. **Director Day** replied that progress has been made, particularly in the area of gender-based diversity. The agency is still working on improving race-based diversity, especially in the recruitment process. Director Day added that he has seen a problem in the affirmative action statistics of most enforcement-based agencies showing the percentages in those areas are low. Our agency is in compliance with the affirmative action percentages, but continues to strive to increase the numbers within the agency to provide more opportunity and potential for advancement. It is definitely a challenge. **Chair Ellis** agreed that the challenges of recruitment are consistent with other state agencies and in many areas of diversity there were a relatively small number of people in the pool, with a lot of agencies competing for qualified candidates.

Correspondence:

Director Day explained that the letter from Chair Ellis to the Honorable Jim Peters of the Squaxin Island Tribe responds to testimony and letters received regarding the agency's testimony at NIGC on Class II Rules. Paragraph two in the letter acknowledges that it was unfortunate that Deputy Director Reese's remarks were interpreted to imply that Washington Tribes are operating in violation of the law. The letter attempts to assure the Tribes that was not the intent of Deputy Director Reese's comments, that her perspective on some Class II machines was national and not focused on the state of Washington. The agency's concerns with the proposal of the Class II classification standards have been

consistent and well documented. The next paragraph goes on to say the test of our mutual respect is not when we agree, but rather are the few times that we have a difference of opinion. As an independent regulatory agency the Gambling Commission continues to support NIGC's efforts to develop Class II regulations that provide a clear enforceable distinction between Class II and Class III machines. The Governments have worked well together in the past to ensure Class II activities are legal and honest and the Commission would like that to continue. Director Day and Chair Ellis volunteered to sit down and discuss this issue with any Tribe. **Commissioner Parker** asked if the agency had any idea on when the NIGC may make a decision on the Class II standards and what the NIGC is considering. **Deputy Director Reese** responded that November 15 was the last day for final remarks on those proposed regulations. She assumed the Department of Justice would then weigh in and that it would be several weeks before anything was heard.

Logerwell Petition to Amend WAC 230-02-412

Director Day reported that Mr. Logerwell requested in a letter dated October 21 that the Commission reinstate his previous petition regarding amending the gambling equipment WAC on the January Commission meeting agenda. Director Day explained that staff opposed this petition when it was previously submitted and recommended the Commission not place this petition back on the agenda in January. Director Day added that if the Commission believes there is a change needed, the gambling equipment section of the rules is not the appropriate spot for that change – it might be best to make it a separate rule. Although Mr. Logerwell raised a valid question, which staff continues to consider, staff does not believe the appropriate venue would be to continue with this petition. **Chair Ellis** recalled that Mr. Ackerman's procedural advice was that in order for the petition to be placed on the agenda, there needed to be a motion and a second by a Commissioner and approved by a majority of the Commission.

Chair Ellis asked if there was a motion to place the petition back on the January agenda. *No motion was made; the petition will not be placed on the January Commission meeting agenda unless staff feel there is a mutually agreeable approach reflected in an amended petition that should be placed on the agenda either as an amended petition or as a new petition for initial filing.*

Amended House-Banked Card Room Criminal Incident Analysis Report

Director Day reported that when the report was presented at the October Commission meeting an error was pointed out that one sentence in the report had data not supported or based on information relating to police service calls reports. That sentence has been removed from the amended report included in this month's agenda packet.

Monthly Updates:

Director Day noted that the President signed the Unlawful Internet Gambling Act of 2005, on October 13, changing the federal law on Internet gambling. **Chair Ellis** commented that the Seizure Case Update showed on December 22 and 25 there were substantial equipment seizures from a business that was running illegal gambling. **Chair Ellis** asked Director Day to add some details as to what that represented. **Director Day**

replied that he understood it was a house-banked card room that had gone out of business. A certain length of time is provided for a business to legally dispose of their gambling equipment once their license has been revoked, suspended, or they have gone out of business. The agency attempts to work with the business owner to ensure the gambling equipment has been disposed of legally, but when the business does not comply, it is illegally in possession of the gambling equipment and staff are required to seize the equipment.

2. New Licenses and Tribal Certifications:

Commissioner Parker made a motion seconded by Commissioner Niemi to approve the list of new licenses, changes, and tribal certifications as listed on pages 1-19. Vote taken; the motion passed unanimously.

3. Defaults:

Amy Hunter, Administrator for the Communications and Legal Division, reported there were four defaults: three against organizations and one against an individual. The three defaults against the organizations were for not submitting activity reports when due. About a year and a half ago, the Commission passed rules changing the requirement of quarterly reporting for organizations to only reporting twice a year, and significantly reducing the number of categories of information to be reported.

Palace of China Restaurant, Seattle, Revocation

Ms. Hunter reported that Palace of China Restaurant has a long history of not submitting their activity reports on time and served a 30-day suspension just over a year ago. The charges were sent by certified mail and regular mail. The certified mail was returned, but the regular mail was not. Staff attempted to make a courtesy call to the licensee and the number had been disconnected. An agent went by the premises, confirming that the business was no longer operating. By failing to respond, the licensee has waived its right to a hearing and staff is requesting a default order be entered revoking the pull-tab license. **Chair Ellis** asked if anyone was present representing the Palace of China Restaurant. No one stepped forward.

Commissioner Niemi made a motion seconded by Commissioner Rojecki that the Commission enter the default order revoking Palace of China Restaurant's license to conduct authorized gambling activities. Vote taken; the motion passed unanimously.

Dew Drop Inn/Restaurant & Lounge, Shelton, Revocation

Ms. Hunter reported that the Dew Drop Inn/Restaurant & Lounge has a long history of not submitting reports on time. The organization signed for the charges and when staff made a courtesy call to the owner reminding him of the date to request a hearing, the owner said he would send in his request for hearing, but did not. By failing to respond, the organization has waived its right to a hearing, and staff are requesting that a default order be entered revoking his pull-tab license. **Chair Ellis** asked if anyone was present representing the Dew Drop Inn Restaurant and Lounge. No one stepped forward.

Commissioner Parker made a motion seconded by Commissioner Niemi that the Commission enter the default order revoking Dew Drop Inn Restaurant & Lounge's license to conduct authorized gambling activities. Vote taken; the motion passed unanimously.

Corner Bar & Grill, Bow, Revocation

Ms. Hunter reported that the Corner Bar & Grill has a history of not submitting its reports on time. This particular incident was actually an Agreed Order violation; charges had previously been issued and one of the conditions of the settlement was that the licensee submits future reports on time, which has not been done. The charges were received; the certified mail was signed for. Staff contacted the owner reminding her of the deadline to request a hearing. The owner said she would send in a request and did not. Staff is requesting a default order be entered revoking the pull-tab license. **Chair Ellis** asked if there was anyone present representing the Corner Bar & Grill. No one stepped forward.

Commissioner Niemi made a motion seconded by Commissioner Parker that the Commission enter the default order revoking Corner Bar & Grill's license to conduct authorized gambling activities. Vote taken; the motion passed unanimously.

Daniel P. Sullivan, Class III Employee, Revocation

Ms. Hunter reported that Daniel Sullivan has a Class III certification as well as a card room employee license. Staff requests that both the certification and the license be revoked based on Mr. Sullivan pressing bets while working as a dealer at the Stillaguamish Tribal Casino. Mr. Sullivan was taking bets that should have been dropped, which the rules prohibit. Ms. Hunter explained that the Tribe licenses individuals for work and the State certifies those individuals. In this case, the Stillaguamish Tribe revoked Mr. Sullivan's license and both his license and certification expired on November 8. The agency had jurisdiction when the charges were issued. The charges were signed for; although the signature is illegible. Staff attempted to contact Mr. Sullivan and the telephone was not in service. By failing to respond to the charges, Mr. Sullivan waived his right to a hearing and staff requests the default order be entered revoking both his Class III certification and his card room employee license. **Chair Ellis** asked Mr. Hunter if the reason for revoking the license, recognizing that the license has expired, was simply to create a record of the fact that there was a basis for revocation. **Ms. Hunter** affirmed, adding that once the Director has issued the charges, there is no magic way to close that case unless there is a final order entered. **Chair Ellis** asked if Daniel P. Sullivan were present or anyone present on his behalf. No one stepped forward.

Commissioner Parker made a motion seconded by Commissioner Rojecki that the Commission enter the default order to revoke Daniel P. Sullivan's Class III certification and gambling license to conduct authorized gambling activities according to the findings of fact and conclusions. Vote taken; the motion passed unanimously.

Commissioner Parker commented that he was impressed with the detail in the facts presented.

4. **Request for Summary Suspension:**

James G. McMurray, Card Room Employee, Summary Suspension

Ms. Hunter reported that while working as a card room employee for Hollywood Casino, James McMurray took \$350 worth of chips by concealing the chips on his person. Mr. McMurray has admitted to the charges, which were captured on surveillance, and he was terminated. Mr. McMurray is not currently working; however, if no action is taken, he could start working again. Orders of Summary Suspension are only done in very serious cases, and because of the seriousness of them, a licensee is entitled to two hearings. One is a State hearing where the individual is asking the judge to give them a statement of relief with the Order. The Director is not currently authorized to issue Orders of Summary Suspension against individuals. Part of the agency request legislation that has been conditionally approved by the Governor's Office is authorization for the Director to issue Summary Suspensions. If the Commission signs the Order, an agent would personally serve the Order. **Chair Ellis** asked if James G. McMurray were present or if there were anyone present on his behalf. No one stepped forward.

Commissioner Niemi made a motion seconded by **Commissioner Parker** that based on the finding of facts and conclusions of law, the Commission enter an order summarily suspending James G. McMurray's card room employee license to conduct authorized gambling activities, pending an opportunity for a formal hearing by an Administrative Law Judge. *Vote taken; the motion was adopted unanimously.*

5. **Petition for Review:**

Dave Swyter, Card Room Employee, Revocation

Chair Ellis explained that Mr. Swyter submitted a request for a continuance. **Chair Ellis** asked if Assistant Attorney General Bruce Marvin were present. **Director Day** pointed out that the meeting is about an hour ahead of schedule. **Chair Ellis** stated that, subject to suggestions by other Commissioners and staff, in looking at the situation concerning Mr. Swyter's petition for review and his request for a continuance, it appears there are four potential courses of action:

1. Have the continuance and set the matter over to the next meeting.
2. Rule against Mr. Swyter on the basis of his failure to appear; if we denied the continuance and entered a default order sustaining the ALJ's initial revocation order.
3. Reach the merits and rule on the basis of the pleadings that have been submitted – both a brief on behalf of staff, as well as a fairly extensive petition for Mr. Swyter in which he makes his arguments.
4. Reach the merits and allow oral argument, which assuming that Mr. Swyter does not appear, simply means hearing Mr. Marvin's oral argument.

Chair Ellis felt the Commission would be best served by discussing those possibilities in the context of an Executive Session, which is currently scheduled for the end of today's meeting. **Chair Ellis** stated that because the meeting was ahead of schedule and, theoretically, Mr. Swyter could appear at the scheduled time of 3:30, the most efficient

way to handle this would be to proceed to Item 6 on the agenda, Other Business, General Discussion, Comments from the Public; then convene an Executive Session to discuss how to handle Mr. Swyter's petition and discuss other matters relating to investigations, tribal negotiations, and litigation. At the end of the Executive Session, depending on what is decided regarding Mr. Swyter's petition, the meeting would be reconvened to proceed with whatever the Commission decided to do with regard Mr. Swyter's petition, including potentially having oral argument by Mr. Marvin, and then adjourn the meeting. Those members of the audience not interested in Mr. Swyter's petition would be done for the day. **Mr. Ackerman** clarified that Chair Ellis' recommendation was procedurally sound and the Commissioners could discuss in Executive Session the possibilities just outlined for dealing with Mr. Swyter's petition, but any decision regarding his request for continuance would need to take place in the open session when the meeting is reconvened. **Chair Ellis** added that the Commission would need to respond to Mr. Swyter's request for a continuance with a motion to grant or deny the continuance, and to address the other possibilities based upon what is decided. If the continuance is granted, that is the end of the matter for this month.

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

Chair Ellis called for public comments.

Gary Murrey, Great American Gaming Association, noted that there were several issues within the Logerwell petition that staff had addressed. Mr. Murrey testified that another important issue needs addressing: under current rule, if customers leave with a single chip, even though they purchased the chips, they are in violation of a WAC rule because they are in possession of gambling equipment that they are not licensed to possess. Mr. Murrey added that he had yet to come up with or reach a consensus among staff and himself as to how to deal with the problem. Mr. Murrey did not think it was the intent of the Commission to cause someone to be in violation of a Washington State law because they took home a chip which was purchased at face value. Mr. Murrey pointed out that a large portion of our population was in violation of the WAC rule, and he was not sure where to proceed to adjust the rule. **Chair Ellis** mentioned that Mr. Murrey had discussed his concerns with staff and, at this point, no one has a good idea on how to address the issue without affecting other parts of the rule staff may wish to retain. **Mr. Murrey** affirmed that it was the current situation and felt something should be brought forward. He was very uncomfortable that many customers are inadvertently committing a violation. **Chair Ellis** said he understood Mr. Murrey's concern, but unless someone has a different idea, the Commission would have to wait for a petition or other procedural mechanism to be presented to address the issue. Chair Ellis added there was a procedure established for approaching those types of issues.

Chair Ellis pointed out that Assistant Attorney General Bruce Marvin had arrived. Mr. Ackerman offered to advise Mr. Marvin on the Commission's plans.

Chair Ellis adjourned the regular meeting at 2:30 p.m. for an executive session to discuss the action to take on Dave Swyter's petition and pending investigations, tribal

negotiations, and litigation. Chair Ellis reconvened the meeting at 4:14 p.m., calling for a motion on Dave Swyter's request for a continuance on his Petition for Review.

5. Petition for Review:

Dave Swyter, Card Room Employee, Revocation

Assistant Attorney General Bruce Marvin was present for the State, Mr. Swyter was not present.

Commissioner Niemi made a motion seconded by **Commissioner Parker** to deny Mr. Swyter's request for continuance of his Petition for Review, adding that this matter has been continued several times and the Commission would be within its rights to proceed to dispose of this matter. **Commissioner Niemi** recognized for the record that Mr. Swyter's last motion to continue was based upon his health, apparently surgery of some kind. The second motion to continue is based upon his job application to be employed in the gambling industry in Nevada and New Mexico. *Vote taken; the motion passed unanimously.*

Chair Ellis informed Mr. Marvin that during the Executive Session, the consensus was to proceed to address the merits of Mr. Swyter's petition, without oral argument, since Mr. Marvin had briefed the matter and Mr. Swyter submitted a very extensive Petition for Review presenting his arguments. Since Mr. Swyter was not present, the Commission did not feel it was necessary to provide one side the opportunity for argument. Chair Ellis asked Mr. Marvin if there were any matters or issues the Commission should be aware of that might change the Commission's view on the petition. **Mr. Marvin** responded that he had nothing further to add beyond what had been presented in his written brief and the material in front of the Commissioners, but would be glad to answer any questions the Commission members had.

Commissioner Niemi made a motion seconded by **Commissioner Rojecki** to approve the initial order of the Administrative Law Judge revoking Mr. Swyter's license with the understanding the Commission has a transcript of the hearing, has looked at all the evidence in front of the ALJ, and has no further questions about the ALJ's findings and conclusions. *Vote taken; the motion passed unanimously.*

Chair Ellis adjourned the meeting at 4:20 p.m.

**COMMISSION MEETING
FRIDAY, NOVEMBER 17, 2006
DRAFT MINUTES**

Chair Ellis called the meeting to order at the DoubleTree Guest Suites located in Tukwila. He introduced the members and staff, noting that Commissioners Bierbaum and Parker were not present but there was a quorum of the Commission:

MEMBERS PRESENT: **COMMISSIONER JOHN ELLIS, Chair**, Seattle
 COMMISSIONER JANICE NIEMI, Vice Chair, Seattle
 COMMISSIONER KEVEN ROJECKI, Tacoma
 SENATOR MARGARITA PRENTICE, Renton
 SENATOR JEROME DELVIN, Richland

STAFF PRESENT: **RICK DAY**, Director
 SHARON REESE, Deputy Director
 JEANNETTE SUGAI, Acting Ast. Director–Field Operations
 DAVE TRUJILLO, Assistant Director – Licensing Operations
 AMY HUNTER, Administrator – Communications & Legal
 JERRY ACKERMAN, Assistant Attorney General
 GAIL GRATE, Administrative Assistant

7. Approval of Minutes:

Commissioner Niemi made a motion seconded by Commissioner Rojecki to approve the minutes of the regular meeting of October 12-13, 2006, as presented. Motion passed unanimously.

Rules Up for Final Action

8. Gambling Service Suppliers

WAC 230-02-203, WAC 230-02-204, WAC 230-02-205; and Rules Simplification Companion Rules: WAC 230-03-211, WAC 230-03-212, and WAC 230-03-210

David Trujillo, Assistant Director – Licensing Operations, reported that the Gambling Service Suppliers Rule Packet was before the Commission in August and September. In October staff requested the entire packet be held over until November to allow time to review some last minute communications regarding a request to change language in one of the proposed rules. Because these rules are up for final action today, Mr. Trujillo recommended the Commission consider items a), b), and c) together, and then the

companion rules, items d), e), and f), together. Mr. Trujillo explained that WAC 230-02-203 clarifies the definition of “lending agent, loan servicer, or placement agent.” In today’s market place, third party financial services such as these can allow a third party a significant role in the gambling operation. Staff believes this definition will draw attention to these services and those contemplating such actions will know that a license is required before entering into such a relationship. There have been no statements against this new section, and staff recommends adopting new rule WAC 230-02-203 to be effective January 1, 2007. **Chair Ellis** asked whether Mr. Trujillo would like to proceed to present each of the staff recommendations before taking public testimony. **Mr. Trujillo** concurred.

Mr. Trujillo explained that new section WAC 230-02-204 defines “regulated lending institution” and expands the list of institutional lenders not required to be licensed under the Service Supplier Rule. Presently the Service Supplier Rule excludes financing by banks, mutual savings banks, or credit unions regulated by the Department of Financial Institutions or any federally-regulated commercial lending institution. Both staff and applicants have struggled with the practical application of “federally-regulated commercial lending institution” given the different types of federal oversight that may be involved and staff felt adding this definition would clarify the practical application of the Service Supplier Financing Exclusion. Mr. Trujillo pointed out that this definition does not change the fact that the agency can investigate the lending institutions and if any actual or potential influence is found, staff has the authority to intervene. The language in this rule was modified in Amended #1 and the modified text has been either underlined or stricken. The most significant change is to 1 (c) which required owners and officers to undergo criminal history background checks. Because that authority is covered under RCW, staff concurred with the removal of that section and recommends adopting Amended Version #1

Mr. Trujillo explained that Amended Version #2 of WAC 230-02-205 clarifies the definition of gambling service supplier and should prevent ambiguity. At the September Commission meeting, Monty Harmon suggested alternative wording to this section. Staff discussed the alternative wording and thought the wording was clear on its face. Section 1(d) refers to the new definition of “lending agent, loan servicer, or placement agent,” 1(f) adds clarification about entering into ongoing financial arrangements for gambling-related software with licensed manufacturers, and 1(g) adds clarification about those performing the testing and certification of tribal lottery systems. Section 2(e) adds clarification to those providing game features that do not affect the outcome of the game and do not require licensure. This has been problematic because the definition of gambling equipment includes gambling-related software, and this broader wording can be applied to components that have no impact on the game. Subsequent to the September Commission meeting, International Game Technology (IGT) suggested additional wording regarding patent use, which was added to the amended version. Staff recommends adopting WAC 230-02-205 to be effective January 1, 2007. **Chair Ellis** asked whether the three companion rules in Items 8 d), e), and f) were part of the rules simplification project; two reflect the definitions that are covered by items 8 a) and b) and the third provision relates to gambling service supplier licenses covered in 8 c). **Mr.**

Trujillo affirmed. **Chair Ellis** asked whether the Rules Simplification Project Rules under Item 8 d), e), and f) had already been adopted and did not require action today by the Commission. **Director Day** responded that because there were changes made to part of the Rules Simplification Packet that the Commission previously adopted, these three rules have been filed, but not adopted, and will need to be adopted by the Commission.

Chair Ellis called for public comment – there was none. Chair Ellis pointed out that in the absence of the Assistant Attorney General, the Commission would take a conservative approach and have separate motions on each of the proposed Items 8 a), b), and c). Chair Ellis thought the Commission could safely have a single motion on the Companion Rules under Items 8 d), e), and f).

Commissioner Niemi made a motion seconded by **Commissioner Rojecki** to adopt the new section WAC 230-02-203 as presented by staff to be effective January 1, 2007. *Vote taken; the motion was adopted unanimously.*

Commissioner Niemi made a motion seconded by **Commissioner Rojecki** to adopt the new section WAC 230-02-204, amended version #1, as presented by staff to be effective January 1, 2007. *Vote taken; the motion was adopted unanimously.*

Commissioner Niemi made a motion seconded by **Commissioner Rojecki** to adopt the amendatory section to WAC 230-02-205, amended version #2, as presented by staff to be effective January 1, 2007. *Vote taken; the motion was adopted unanimously.*

Commissioner Niemi made a motion seconded by **Commissioner Rojecki** to adopt the new sections WAC 230-03-211 and WAC 230-03-212 and amendatory section to WAC 230-03-210 to be effective January 1, 2008. *Vote taken; the motion was adopted unanimously.*

Rules Up for Discussion

9. Petition for Rule Change – Seattle Jaycee Bingo WAC 230-20-055

Mr. Trujillo reported that the petition for rule change submitted by Seattle Jaycee Bingo was based upon current events with the Internal Revenue Service. Last month, the Commission heard how the IRS had previously allowed for 100 percent deduction of the tax on punchboard/pull-tab gambling income. According to a 1999 IRS Technical Advisor Memorandum, this deduction was allowed because WAC 230-20-110 stated that net gambling income was to be used exclusively for the lawful purposes of the organization. The Commission repealed this particular rule in 2000 because the language was redundant with WAC 230-20-055, which says the net gambling income shall be used by the organization for the stated purposes and those purposes set out in RCW 9.46.0209. The RCW sets forth qualifications for a charitable/nonprofit organization, and staff considered this the same as lawful purposes for the organization. This year the IRS learned of the rule repeal and does not consider the current language sufficient for its purposes. The petitioner is seeking to have the lawful purpose language inserted into

WAC 230-20-055 so that the 1999 Technical Advice Memorandum will remain in effect and allow the 100% deduction on punchboard and pull-tab net income.

There have been no statements opposing this proposed rule change and staff recommends further discussion on WAC 230-20-055.

Chair Ellis called for public comment. **Senator Prentice** commented that she learned of this problem during a study session and had been tracking the rule change because she felt it was really valid. Among other things, it shows that businesses sometimes suffer other things they could not possibly know about. Tukwila City Council has asked for a deferral of a couple months to help them get back on their feet. They have a good location and can make it if they can just hang on for now. Sound Transit is going to be going through there and the Boeing Company is north of there. Senator Prentice said she does not usually butt into these, but has been watching this one. **Chair Ellis** thanked Senator Prentice for providing her insight. **Commissioner Niemi** commented that this was explained quite thoroughly last month and although it appears confusing, those who were at the Commission meeting last month understand it and will be ready to vote on it next month.

10. License Fee Increase

WAC 230-04-202, WAC 230-04-203, WAC 230-04-204; and Rules Simplification Companion Rules: WAC 230-05-020, WAC 230-05-025, WAC 230-05-030, and WAC 230-05-035

Mr. Trujillo reported that the fee increase was featured prominently in the Director's Budget Briefing earlier this year. The proposed change would increase license fees by approximately 3 percent beginning June 30, 2006. The last fee increase for all licensees was effective December 31, 1999 and fees for commercial organizations and individuals were increased January 1, of 2002. There have been no statements opposing the rule change and staff recommends further discussion. **Chair Ellis** called for public comment – there was none.

11. Card Room Tip Procedures

WAC 230-40-855

Jeannette Sugai, Acting Assistant Director – Field Operations, reported this amendment would require more detailed procedures for the accountability of tips received by card room employees. Ms. Sugai pointed out a change made to the rule after the October Commission meeting removing the language “and documented” from subsection 4 of the rule. In the early drafts of the rules, there were requirements for documenting tips made by card room employees, which were subsequently removed from all sections except for cage cashiers. Staff is recommending that those words be removed so the documentation requirements are consistent for cashiers and dealers. This proposed rule change would codify tip accountability requirements, provide for consistent enforcement by staff, and help ensure that licensees have a consistent understanding of what the requirements are. Clarifying the rules would also reduce the amount of time staff spends explaining tip requirements and addressing consistency concerns by the licensees. Staff recommends further discussion on Amended Version #1 with a proposed effective date of 31 days from filing. **Senator Prentice** asked what the removal of the words “documentation”

would consist of – would documentation be required. **Ms. Sugai** explained that when staff was working on prior drafts of this rule change, the rule required more documentation of the tips received by card room employees. In working with the industry, and before staff presented the final version to the Commission, the documentation requirement was removed; but because the cage cashiers were addressed in a separate subsection, the language was missed. The documentation requirements are now more on the employee receiving the tips as opposed to the operator.

Chair Ellis called for public comment.

Gary Murrey, Great American Gaming Corporation, testified that he has been working with staff on this issue for some time and done quite a bit to work to come up with legal language that works with regards to the documentation. Mr. Murrey explained that the IRS sends out standards for tip reporting and the employee is required to meet those standards. Mr. Murrey objected to the Gambling Commission getting involved with federal income tax issues that do not have direct correlation to the gambling activity itself. Mr. Murrey understood the Commission's point that it is within the gaming environment, but felt any theft problems resulting from employees not reporting tips at the federal level should be reported to the correct authorities and let them deal with those issues. They are not gambling funds, although they may have been derived from a tip from a gambling activity. If employees are not reporting their tips, that is federal tax fraud not theft from the patrons or the employer. Mr. Murrey did not believe tips received by the employee were gambling funds.

Chair Ellis noted that in the petition for review and its underlying fax that the Commission had before them yesterday, one of the allegations was that the card room employee, who was also a supervisor, counted the cash and chips at the end of his shift and when there was an overage, treated the overage as his tip and put it in his pocket. Chair Ellis asked whether Mr. Murrey thought that was something the Commission should be concerned about and would properly be the subject of a rule on how tips are handled. **Mr. Murrey** felt these were two different issues: the supervisor saying the overage was his tip and putting it in his token box was a theft from the organization; tip money once it is in the token box is no longer a concern of the employer. For instance, if a player leaves a tip for a dealer, it is no longer gambling funds – the money goes in a tip box and belongs to that employee. Mr. Murrey agreed there should be rules and regulations and protections by the operator in place to stop theft, but felt tips given to a person belonged to that person and were not part of a gambling fund. Mr. Murrey felt federal tax protection issues were being mixed with gambling activities in a gray area. Mr. Murrey was concerned that if the Commission continued to look at all the possible things that could go wrong in the gambling industry, all the illegal activities that happen in life, the Commission would have difficulty concentrating on the important things to the Gambling Commission, which are gambling activities.

Senator Prentice commented that there has been general public acceptance for the security placed in the parking lots; when there is a body dump or a shooting that happens in the parking lot, it is not a gambling activity and yet the security is utilized. Senator

Prentice was concerned with what happens to the money before it makes it to the token box and reminded Mr. Murrey of the discussion they had about who tips. Mr. Murrey seemed to think that it was an appropriate requirement for the employer and Senator Prentice objected because it was not the organization's money, it was the employees' money. Senator Prentice did not think it was too onerous to require the money be under camera and accounted for to ensure the money goes where it belongs. Senator Prentice recalled that Mr. Murrey thought the rule required another room, but Senator Prentice did not think that was the case, just a camera. **Ms. Sugai** clarified that staff is asking for requirements that the tips be placed in a locked token box that remains under camera coverage until the tips can be cashed out in the cashier's cage. **Mr. Murrey** indicated the points were well taken and the cameras rigged outside of the building were not required but were placed there as an extra precaution. The operators believe the cameras increase safety, but the cameras are not required by the Commission. Mr. Murrey felt the same applied with the extra room, but did not know where that comment came from. Senator Prentice reminded Mr. Murrey that he had asked at the study session whether staff was requiring the organization to build an extra room. Mr. Murrey said he was just looking at the difference and did not think he would change what was done to account for those tips or require those employees to account for those tips, including the documentation. Mr. Murrey added that it appeared the Gambling Commission was requiring a situation that protected the federal government from a tax issue, and his concern was over crossing lines of jurisdiction. **Mr. Ackerman** said he did not see anything in the proposed rule or the rules summary that dealt with taxes and asked Mr. Murrey if he was objecting to a specific portion of the proposed rule or if he were objecting to the notion of the Commission dealing with the issue of tips at all. **Mr. Murrey** replied that he did not feel the rule was needed because tip reporting is not a gambling activity and the Gambling Commission, although concerned, should not be regulating what happens to tips. **Mr. Ackerman** clarified with Mr. Murrey that his concern was not about the changes to the existing rule, but that he did not like the existing rule, period. **Mr. Murrey** affirmed, adding that the RGA made the point that the changes were acceptable and that if there was going to be a rule, this was the best way to go about it. Mr. Murray disagreed with having the rule at all. **Chair Ellis** noted that in the amended version and the original petition, the existing subsection 5 of the rule included a provision stating that accounting and reporting of tip income shall be in sufficient detail to meet federal income tax requirements – that provision is being stricken from the rule and staff would no longer be enforcing federal income tax law under this proposal.

12. **Rules Simplification Project**

Chapter 230-15 – Card Room Rules.

Beth Heston, Project Manager, reported that Chapter 15, Card Game Rules, of the Rules Simplification Project would be broken into thirds and discussed over the coming months. Chair Ellis and Assistant Attorney General Ackerman had recommended that the Commission wait until the end of the three presentations and make one motion, with the understanding that at any time any Commissioner may pull a rule for further discussion, reconsideration, or rewrite. **Chair Ellis** agreed that by breaking the Chapter into thirds it would allow the members of the Commission to be able to focus on a smaller group of the rules being discussed or ultimately up for final action. It would also help Ms. Heston

make her presentation based on a smaller volume of proposals. **Commissioner Niemi** asked whether the Commission would vote only once in March – or vote in January, February, and March. **Ms. Heston** replied that the Commission would vote only in March.

Ms. Heston reviewed each rule summary, noting the changes and explaining the reasons for the changes. She pointed out that the rule summaries were categorized: eleven (11) are repealers for redundancy; ten (10) are rule interpretations that clarify existing policies; twenty-one (21) clarify terms or add definitions that work towards consistency in the chapter; and thirteen (13) are considered significant changes. The first rule summary Ms. Heston addressed was the Director's delegations and exceptions language that was discussed at length at the October Commission meeting. Ms. Heston reported that she had met with Director Day to review the packet and decide whether the rule should say: the Director, the Director's designee, or a staff delegation.

Ms. Heston explained the rule summary on page 79 proposes adding the rule interpretation on tournaments regarding how to decide who gets an extra seat in a tournament. **Senator Prentice** asked for clarification. **Ms. Sugai** explained that this rule addresses the requirements for a card tournament and how to decide who gets to move forward to subsequent rounds. When there is an empty seat in the tournament, licensees have asked to have a drawing to determine who would go to the next round; but a drawing is not allowed in determining who moves to a subsequent round of the tournament. **Chair Ellis** asked what would be the industry practice on how to fill the empty seat. **Ms. Sugai** replied that some method of play, like the number of chips that the last person out has, would need to be used to determine who moves forward, as opposed to a drawing. **Ms. Heston** noted that the rule summary on page 83 adds a rule interpretation to the rule clarifying that entry to tournaments could be restricted to certain groups so long as all restrictions for entry are posted in the tournament rules. **Chair Ellis** called for public comment.

Gary Murrey, Great American Gaming Corporation, testified that it would take days to get through these rules if not for the time spent by both agency staff and the small group in wordsmithing each rule. The Recreational Gaming Association will discuss any concerns they have and will bring those concerns and recommendations forward at the January meeting. Mr. Murrey thanked commission staff for including the RGA in this process. **Chair Ellis** appreciated the role the industry has played in developing these rules. **Senator Prentice** admired Ms. Heston's patience during the process of wordsmithing these rules and was sure the agency appreciated the efforts of Ms. Heston, agency staff, and the small group. **Chair Ellis** added that Mr. Murrey and the industry were aware of the schedule for the rules simplification project Ms. Heston has presented today, and pointed out that the time to present any concerns or recommendations on these rules would be when they are up for final action.

**13. Scheduling Reconsideration Hearings
WAC 230-50-562**

Ms. Hunter reported that WAC 230-50-562 was a procedural rule authorizing the Commission to automatically schedule petitions for reconsideration on Final Orders issued by the Commission. The proposed change clarifies the process for petitions and is up for further discussion. **Chair Ellis** called for public comments – there were none.

Rules Up for Discussion and Possible Filing

**14. Petition for Rule Change – Leading Edge Software
WAC 230-40-821**

**15. Petition for Rule Change – Leading Edge Software
WAC 230-40-865**

**16. Petition for Rule Change – Leading Edge Software
WAC 230-40-870**

**17. Petition for Rule Change – Leading Edge Software
WAC 230-40-895**

Items 14, 15, 16, and 17 were withdrawn.

**18. Petition for Rule Change – Washington Charitable and Civic Gaming Association
WAC 230-20-059**

Ms. Hunter reported that this petition for rule change by the Washington Charitable and Civic Gaming Association (WCCGA) was up for discussion and possible filing. Commission rules require that a certain amount of money, called cash flow, gets back to an organization's stated purpose. The WCCGA had a petition before the Commission last month that the Commission did not file, so the WCCGA submitted this new petition, which is significantly different from the previous petition. The previous petition requested a moratorium on the cash flow requirements for a two-year period. This petition would allow the Director to grant a waiver of up to 50 percent for the calendar year 2006. By the February Commission meeting, the reports will be available showing exactly who was in compliance. The Association is requesting the change because bingo operators are having trouble meeting their cash flow requirements. The WCCGA decided the smoking ban, which went into effect last December, was the reason the operators were unable to meet their cash flow requirements. This change would assist 15 bingo operators. If the organization is within 25 percent of the cash flow requirements, the Director would automatically grant a waiver, which could happen once every four years. This request is a twist on that concept. **Ms. Hunter** pointed out that this variance would be in addition to, not a substitute for, the 25 percent waiver relief. The Commission has three options with the petition: they can file it, deny it and state the reasons for denying the petition, or file an alternative. Staff recommends filing the petition for further discussion.

Ms. Hunter noted a couple policy considerations listed in the rule summary. One is that a reduction of up to 50 percent could reduce the amount of money that the organizations return to their stated purposes; the flip side would be if there was no relief, the agency

would end up revoking licenses and no money would be going back to the stated purposes. Based on questions received at last month's meeting, additional statistics were included in this month's packet, which Ms. Hunter briefly highlighted. The pie charts show how the market share for bingo has changed over the years: in 1996 bingo was 10 percent of the market, in 2001 bingo was 4 percent, and in 2005 bingo was down to 1 percent of the market. The line graphs show how the number of bingo licensees has decreased over the years from 450 in 1996 to just over 200 currently and the projection is for bingo to continue to decrease.

Ms. Hunter explained that pie charts were prepared on three organizations, chosen because they testified at the October meeting about the different proposals: Seattle Jr. Hockey, Seattle Jaycees, and Tacoma AMVETS. Ms. Hunter explained this information was included in response to the question about how their expenses had changed as a result of the smoking ban. As Mr. Trujillo pointed out, their wages stayed the same percentage, and although their gross receipts were going down, the organizations were still able to make adjustments during that time. Ms. Hunter noted that their payout percentages have increased. As the Commission heard from the licensees last month, the prizes have to be advertised before the bingo game begins and the advertised prizes have to be awarded whether 20 people are playing in that game or 2 people are playing in that game, which makes bingo different from some other games. **Chair Ellis** asked whether that was a fixed rule requirement. He noted in another context with similar situations, like in golf, prize pools would be advertised for club tournaments, but the club would qualify the amount of the prize with an asterisk noting the prize depended upon a full field and if there was less than a full field, the prize would be less. **Ms. Hunter** explained that with bingo, WAC rules require that once a prize is advertised, it must be awarded – players must have fair notice of the prize to be awarded.

Chair Ellis pointed out that the revised draft report of gross bingo receipts showed actual gross receipts for the third quarter of 2006. **Commissioner Niemi** noted that the gross receipts dropped significantly in the first quarter, but from then on seemed to go back to regular; the smoking ban did not seem to have any effect. Commissioner Niemi wondered if the problem was that the quarter that usually has the largest gross receipts was the quarter that did not go up. **Ms. Hunter** affirmed that the first quarter was traditionally the best quarter, adding that the organizations use the first quarter to help carry them over through the rest of the year. **Commissioner Niemi** agreed that the first quarter was a bad one, but what was to say the first quarter of next year would not also be a bad one with just a regular smoking ban.

Ms. Hunter explained that the table entitled "Overview of Gambling Trends" compares the first quarter of 2006 with the first quarter of 2005 and shows bingo down by about 27 percent, charitable/nonprofit pull-tabs down 22 percent, commercial pull-tabs down about 19 percent, and card rooms down 12.5 percent.

Ms. Hunter pointed out that the excerpt from the report on charitable and nonprofit gambling (prepared by Sally Perkins, the consultant the agency hired to look at the industry) explained how the cash flow requirements had been decreased over the years.

Ms. Hunter noted that whether it is called net income or net return, the concept is still the same: how much money has to be returned to the organization. Ms. Hunter reported that staff recommends filing this for further discussion. **Chair Ellis** noted that the revised draft of the bingo adjusted cash flow status report presented this month reflects actual third quarter gross receipts and shows three bingo organizations projected to fall short of their required cash flow. The draft presented at the previous meeting estimated the gross receipts for third quarter and showed five bingo organizations projected to fall short of their required cash flow. Chair Ellis thought that showed an improvement in the actual gross receipts for the third quarter versus what staff estimated. The table also indicates that if the projected fourth quarter receipts are similar to the third quarter receipts, only one organization, Spokane Youth Sports Association, would need the relief subject to the petition. Chair Ellis remarked that if this petition was filed, and the 50 percent reduction was granted applicable to 2006, even the Spokane Youth Sports Association would have sufficient cash flow.

Ms. Hunter thanked Mr. Trujillo's staff who worked so hard to put all of these statistics together. **Chair Ellis** added the Commissions' appreciation for the detailed reports. Chair Ellis called for public comment.

Ric Newgard, representing Washington Charitable and Civic Gaming Association (WCCGA) and Seattle Junior Hockey, thanked Senator Prentice for her comments on the Seattle Jaycees. Mr. Newgard agreed the Seattle Jaycees are a wonderful nonprofit organization that has provided many services for the Seattle area and he would like to make sure they stick around. Mr. Newgard testified he has been in the industry for 29 years and has been testifying in front of this Commission for approximately 20 years. As of November 1, the industry will have lost 9 of the top 25 charitable/nonprofit organizations, which is a travesty for the communities and the youth in those communities. In November of 2005, which is the month before the smoking ban went into effect, Seattle Junior Hockey Bingo netted for the youth activities a little over \$80,000 for the month. In the first three months of 2006, the game netted \$52,000 for three months, down from a normal first quarter net receipts of close to \$400,000. Mr. Newgard believed the industry had seen the worst of it and the organizations are all working diligently to bring the bingo games back. Mr. Newgard agreed that second quarter improved over first quarter, but when the first quarter is removed from the equation, it was hard to make up that deficit over the following quarters. Mr. Newgard added that the first quarter for Seattle Junior Hockey Bingo is predominantly 40 percent of the net receipts for the entire year, and Mr. Newgard asked the Commission for an opportunity for organizations to rebuild their businesses. Mr. Newgard hoped none of the bingo games would need to use the variance, that the third and fourth quarters would be better, and that players changed their smoking habits. Mr. Newgard explained that his staff had conducted a study across the United States and Canada in October 2005, which showed a year to two year process for people to change their gaming habits. Mr. Newgard reported that 60 percent of his clientele were smokers and when they come to play bingo, they are in the facility from three to six hours. It is hard for the smokers to stay inside without smoking for that length of time, and in Washington's environment it is not easy to go outside for a cigarette. When 60 percent of your clientele are alienated,

it is difficult to get them to return, especially when they have numerous options within the gaming environment. Seattle Junior Hockey has seen the bottom moving back up and people changing their habits, but the game may not be able to make up that loss from the first quarter of 2006. Mr. Newgard pointed out that this petition was only for the calendar year 2006 and allows up to a 50 percent variance; that if a particular bingo game needs a variance, the organization only gets the percentage of variance actually needed. Mr. Newgard responded to Chair Ellis's comment, indicating it would be nice if bingo games had the luxury of putting an asterisk on their advertisements stating that if there were not a certain number of players, the prize would not be awarded, but the players would riot, and the organization would be in violation of state law. Once the bingo game advertises a prize, by state law that prize amount has to be awarded – the players have to know what they can win before they pay to play. Mr. Newgard requested the Commission file this petition for further discussion. **Senator Prentice** clarified that this was not a permanent request, but just something to tide the bingo games over this extraordinary period as they are adjusting to the smoking bans. Senator Prentice said she was hearing that clientele may have left a bingo game but then miss their buddies and return to the game, and once back people prefer to remain where they were. **Mr. Newgard** agreed – the clientele are readjusting their habits. At first it was a protest, but then players missed the social aspect they had gotten used to.

Ronnie Strong, AMVETS Bingo Manager, testified that the third quarter for AMVETS Bingo was terrible and fourth quarter was looking to be worse. Mr. Strong stated that AMVETS was a very good organization that has been around for a long time supporting Veterans. The bingo game just needs a cushion to help it over the edge, and Mr. Strong urged the Commission to file this petition for further discussion.

Linda Smith, Seattle Jaycee Bingo Manager, noted that last month's list showed five bingo halls and one of those has closed – it is not that the bingo games improved, the list just got shorter. Ms. Smith reiterated that her game was up to 50 percent, but she did not know what fourth quarter would bring. She added that the bingo managers have been working very hard to bring the games back up to accommodate the current attendance level by making changes and adjustments. Ms. Smith stated the organization could be within 27 percent, just missing the 25 percent mark, but because it is a WAC rule, the Director would be required to comply with the WAC rule. Seattle Jaycee Bingo asks the Commission to file this relief package for further discussion.

Clyde Bock, Big Brothers/Big Sisters Bingo Manager, commented that when analyzed on an individual basis, some of the games would show improvement from 2005 to 2006, but that usually indicated there was a demise of a game in that market area – what benefited one game, killed another. **Commissioner Niemi** noted that Mr. Bock's bingo game appeared to do quite well that first quarter. **Mr. Bock** responded that the Imperials went out of business, adding there is no longer a charitable bingo game north of 200th Street. Mr. Bock felt some of the statistics were a bit diluted; that some games are doing better but the cost to others has been very high.

Monty Harmon, Harmon Consulting, testified he had been involved in the drafting of the rule changes regarding the cash flow concept, commenting that Vito Chiechi has a statement he says “if you are not paying attention to the laws and regulations of the land, with a stroke of a hand you can put out a business.” The impact of the smoking ban has been devastating to this industry, and Mr. Harmon applauded the industry’s ability to adapt and change. Mr. Harmon thought the industry deserved a chance to adjust to a change in law and felt the request was very reasonable. Mr. Harmon encouraged the Commission to accept this petition and give the industry the chance to adjust to this year’s impact of the smoking ban.

Commissioner Rojecki made a motion seconded by **Commissioner Niemi** to accept for filing and further discussion amendatory section to WAC 230-20-059, as presented by staff. *Vote taken; the motion was adopted unanimously.*

19. Petition for Rule Change – Recreational Gaming Association

WAC 230-40-835, WAC 230-40-865, WAC 230-40-870, WAC 230-40-885

Ms. Heston reported that this petition was submitted by the Recreational Gaming Association (RGA) as a follow up to changes made in the Rules Simplification Project. RGA is requesting that the Commission change rules dealing with when accounting functions for machine receipting have to be done, adding language stating “provided if the accounting department does not work on weekends or Federal or State holidays they must complete these duties on the next day that they work.” RGA is requesting that the changes in the accounting rules be put into effect more quickly. Staff has some concerns with the wording in the petition and plans on working with the RGA on some ambiguity in language regarding cashier daily duties and accounting daily duties. Staff recommends filing all four amendments for further discussion.

Chair Ellis asked Mr. Ackerman if the four proposed amendments could be treated as one package in the context of the proposed acceptance for filing and further discussion. **Mr. Ackerman** responded that the decision at this point was whether to file for further discussion, and so long as no Commissioner wished to pull any out for separate discussion, the amendments could be taken as a package. **Chair Ellis** called for public comment.

Dolores Chiechi, Executive Director of the Recreation Gaming Association, testified that the Association presented this petition based on comments Ms. Heston made relating to the changes that will be part of the rules simplification project, to be effective January 1, 2008. Ms. Chiechi thanked staff for working with the RGA to get the language to match what will be approved for 2008. Ms. Chiechi urged the Commission to file the petition for further discussion and support for the industry.

Commissioner Rojecki made a motion seconded by **Commissioner Niemi** to accept for filing and further discussion amendatory sections to WACs 230-40-835, 230-40-865, 230-40-870, and 230-40-885, as presented by staff. *Vote taken; the motion was adopted unanimously.*

20. Rules Simplification Project

WAC 230-15-319 – Retaining video recordings.

Ms. Heston explained that in the process of putting together the packet, WAC 230-15-319 was inadvertently removed and needed to be put back into the packet. A rule summary was written for WAC 230-15-319 and was later determined not to be necessary. **Chair Ellis** called for public comment – there was none.

Commissioner Niemi made a motion seconded by **Commissioner Rojecki** to accept for filing and further discussion new section WAC 230-15-319, as presented by staff, to be effective January 1, 2008. *Vote taken; the motion was adopted unanimously.*

21. Business/General Discussion/Comments from the Public/Adjournment

Chair Ellis opened the meeting for public comments – no one stepped forward.

Director Day extended appreciation to Gail Grate for jumping in at the last minute to take over and provide support for this meeting, adding that she has done an excellent job.

Chair Ellis noted that the next meeting is scheduled for January 11 and 12 at the DoubleTree Suites in Tukwila and adjourned the meeting at 10:40 a.m.

Minutes submitted by,

Gail Grate
Administrative Assistant