

**COMMISSION MEETING
THURSDAY, OCTOBER 12, 2006**

Chair Ellis called the meeting to order at 1:30 p.m. at the Inn at Gig Harbor located in Gig Harbor. He then introduced the following members and staff present (Alan Parker was absent until just before the executive session):

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

Director Day introduced Special Agent Jeanine Sugimoto who was attending the Commission meeting as a participant of the agency’s Partnership Program – which provides staff an opportunity to participate in each section of the agency’s operations to see how they operate and their various duties and responsibilities.

1. Review of Agenda and Director’s Report:

Director Day highlighted inserts added to the agenda packet since publication and reviewed the agenda for Thursday and Friday. Under the Petition for Review, Petitioner Dave Swyter has requested a continuance to November due to medical conditions. Staff has no objection to the petitioner’s request if the Commissioners concur. **Chair Ellis** granted the continuance.

Director Day reported the only other change to Thursday’s Agenda was that the House Banked Room Criminal Analysis Report would be presented first. On Friday’s Agenda, staff is requesting the Gambling Service Suppliers Rules, item number eight, up for final action on

Friday, be held over until November. Director Day explained that some late communications have been received regarding the possible need to change some language in the rule proposal and staff would like time to review the suggestions for merit and provide accurate information at the November meeting.

Chair Ellis asked whether any Commissioners were concerned about the continuance. There were no concerns and the item was held over to the November meeting. Chair Ellis pointed out that with of the number of items on Friday's agenda and because the room must be vacated by noon, the session will begin at 9:00 a.m. on Friday, an hour earlier than normal.

Director Day introduced Special Agent John Farrow, who will be presenting the House Banked Criminal Analysis Report. Director Day reported that about four years ago, the agency reviewed its policy pertaining to firearms, use of force, and a number of training concerns for special agents. In that process staff gathered data regarding law enforcement calls to selected House Banked Card Rooms and decided that staff would continue to track related information and periodically perform comparisons.

House-Banked Card Room Criminal Incident Analysis

Special Agent John Farrow explained that the information portrayed reflects comparisons of data for two-year periods. Initially staff expected the study to be a one-time evaluation, and entered two years worth of information into one spreadsheet. In 2001, rather than attempt to collect data from all the card rooms that were operating in the state, staff chose 30 card rooms based on gross revenue receipts generated. The 30 card rooms that were selected were producing the highest gross receipts, and staff speculated that on a day-to-day basis those card rooms had more people in and out of their facilities and possibly more crime occurring. Over the past five years, two of those businesses no longer were operating, and were removed from the study, leaving 28 businesses from Clark, Cowlitz, King, Kitsap, Pierce, Snohomish, and Spokane Counties. Staff contacted the police departments that respond to those facilities and evaluated the calls those departments received for service on a year-to-year basis. Data on non-relevant calls (follow-up investigations and calls that were unfounded) was extracted in an attempt to accurately represent an actual number of calls for service.

Mr. Farrow explained that when comparing 2004 to 2005, calls for service to those 28 card rooms were up about 14%. He clarified that those statistics do not accurately reflect the entire industry. This year staff attempted to collect data on all the card rooms that were operating at the time the process was started, about 92 of the 100 businesses. Overall, when taking those numbers into consideration, calls for service were up not quite 5%.

Mr. Farrow went on to report that property crimes (theft, fraud, etc.) account for the majority of the calls for service to those businesses, about 55 percent of calls. People crimes, (assault, etc.) account for about 26 calls per year per card room (35%), compared to 26 calls in the preceding four years. The remainder of the calls were for miscellaneous crimes not fitting in any particular category (liquor violations, warrant arrests, etc.). In 2004-2005 calls for service averaged about 73 calls per card room per year, as opposed to 65 calls per card room

per year for the preceding four years. Over the past five years, the breakdown has consistently been property crimes, then people crimes, then miscellaneous crimes. In the past two years, staff calculated 130 misdemeanor assaults, 11 felony assaults, 183 misdemeanor theft violations, 20 strong arm robberies, 5 armed robberies, 79 warrant arrest, 16 weapon violations, 168 disturbances, 83 disorderly conducts, 3 burglaries, 70 fighting incidents, and 66 fraud incidents.

Mr. Farrow pointed out that of the 28 card rooms that were evaluated, the casinos that had the highest total crime-related calls for service in 2004-2005 were Skyway Park in Seattle (245), Silver Dollar in Tacoma (230), Cadillac Ranch in Longview (153), Freddie's in Renton (115), Royal Club in King County (106), and Iron Horse in Auburn (118). When comparing the 2000 to 2003 period to the past two years, calls for service relating to criminal misconduct at the 28 card rooms had increased about 11%.

Mr. Farrow shared information on some incidents that were reported. In July 2005: (1) one man assaulted another person at a casino in Federal Way causing permanent injury to that individual; (2) a couple were robbed in a car stopped at an intersection by a man who had followed them from the casino in Spokane; (3) a gentleman exiting a restroom at a casino in Spokane dropped a pistol from his waistband, kicked it across the floor, picked it up, stuffed it in his pants, and then ran out of the casino; (4) an intoxicated employee who was playing cards on a day off was causing problems at the casino in Pullman and was asked to leave. The person returned to the casino with a meat cleaver and attempted to decapitate the floor supervisor. In the summer or fall of 2005, a group of people approached a security person at the casino and asked pointed questions about security procedure, whether security stuff was armed, how money was handled, etc. The security person was concerned that the group was casing the casino and contacted the police who turned the information over to a gang unit at the local police department.

Mr. Farrow pointed out that the information collected did not include data not reported to the police, like crimes that occur and are handled locally by the security surveillance staff of the casino by removing perpetrators and permanently barring them from the facility.

Chair Ellis asked whether there was available data on the number of patrons present at the casinos included in this study. He questioned whether that 14% increase over the past two years could reflect to an increased number of people or whether it shows a trend of greater crime on a static number of customers.

John Farrow replied that staff was not able to track that information and Mr. Farrow did not know whether the businesses track the number of customers on a day-by-day basis. When the request for this report was made five years ago, the purpose was to determine how much crime was occurring at the casinos, so staff could evaluate agency use-of-force policies.

NIGC Hearing Testimony – Follow-Up Report

Director Day provided some background information for the September 19 National Indian Gaming Commission (NIGC) Class II Rules Hearing in Washington D.C. and related

testimony by Deputy Director Reese. The Commission had requested a more detailed description of Class II machines. Director Day explained that the NIGC has been involved in a rule making process to establish standards for Class II bingo machines, for approximately three years. The Commission, through the Director, sent letters to the NIGC in 2004 and 2005 commenting about the agency's concerns with the third and fifth drafts. This year the Commission sent another letter reflecting some of the same concerns. The various drafts had different technical references regarding specifics of the machines. The letters all included two sentences that frame the content of the letters themselves: "We acknowledge and respect the Tribal and National Indian Gaming Commission's jurisdiction relative to Class II gambling" and "However, as the State Gaming Agency we do have an interest in ensuring electronic gambling devices referred to as Class II are not merely a guise for what is actually a Class III gambling device." After the NIGC received the 2006 letter, Director Day was contacted by the attorney from the NIGC and asked the Commission to consider delivering comments in a panel format in Washington D.C. Deputy Director Sharon Reese is prepared to provide the Commission some follow-up information on that topic and about Class II machines.

Deputy Director Reese reported that she represented the Gambling Commission and testified at the National Indian Gaming Commission Hearing in Washington D.C. regarding proposed rules for Class II gaming machines. She explained that Washington State was the only state represented in the all day hearing held at the auditorium at the Secretary of Interior Building. There were four speakers on each panel. The Government Panel that Deputy Director Reese was on included only one other government representative, the Executive Director of the Western Conference of the Attorney General. The other two members were industry representatives from two labs that review the machines. There was primarily Tribal testimony on the NGIC rules. The primary themes of concern from the Tribal representatives, nationwide not just Washington State, was the significant loss of revenue should these rules be passed as proposed. There was also some concern regarding the absence of the Department of Justice at the hearing. On October 3, a letter was received from the NGIC requesting response on two follow-up questions. The follow-up questions were difficult to respond to because they asked about the economic impact to the State and whether there was an appeal process and how information would be protected. Deputy Director Reese pointed out that her testimony included the fact that Washington State has about 1,093 Class II games operating and about 16,781 Class III machines.

Chair Ellis inquired about the major points made by other colleagues on the Governmental Panel. **Deputy Director Reese** explained there was only one other colleague, who was actually from the Western Attorney Generals' Conference group, and he basically supported the direction the Commission was headed with the rules. He had some issues regarding the specifics on how bingo was described and seemed concerned that the Commission had not gone far enough but thought that these rules were headed in the right direction.

Chair Ellis asked what the testing labs had to say. **Deputy Director Reese** responded that the testing labs were going to actually be contractors under these rules and would be reviewing these machines. The testing labs explained what their role would be under the

terms of these agreements, so it was more of a vendor industry discussion. Deputy Director Reese passed around an example of Gaming Laboratories International (GLI), showing what the labs do.

Deputy Director Reese explained that obtaining a visual video to provide more information about Class II devices was difficult, so additional information was included in the agenda packet under Tab 1(a). Using a PowerPoint presentation, Deputy Director Reese explained the Indian Gaming Regulatory Act (IGRA) definitions point out that Class II, the game of chance commonly known as bingo, encourages technical aids, is played for prizes, and played with cards. The holder of the card, the player, covers numbers or designations on the card and the numbers are, or can be, drawn electronically and the game is won by the first person covering a previous designated pattern. Class II also includes pull-tabs, punchboards, and any non-banking card game.

Deputy Director Reese directed the Commission to the list of Class II games included in the agenda packet, showing the approved Class II games NIGC has posted on the web. Ms. Reese passed around some information on 3 of the 26 games to illustrate the approval process used by the NIGC: Cadillac Jack, Mystery Bingo, and Rocket Bingo. These are all bingo games approved as Class II bingo devices in various states. The device shown on the next slide is an advertisement of a Class II bingo device that includes alternate displays. The device has reels in the center, resembling some Class III devices, and has buttons for play that can be pressed from one to three times in order to complete the game cycle. The bingo balls are drawn off location and players are all over the country.

Chair Ellis asked for clarification that the players around the country are electronically hooked up to the bingo game. Deputy Director Reese affirmed that the players are playing from the same draw of the balls.

Commissioner Niemi asked what the difference was between the Bringing Home the Bacon device shown on the PowerPoint and Class III devices. **Deputy Director Reese** responded that the difference is that the device on the screen depicts a method of playing bingo. The next slide shows the machine larger and notes the bingo card on the upper left hand side. The bingo card and balls are actually being drawn from another location and the game shown is a bingo game; the reels are an added feature for the fun of the player. Ms. Reese directed the Commission to look closely; the device will have a bingo card somewhere on the front of it. The slot themes are to engage the player. **Director Day** added that the key difference in these devices, or at least in the central theme of a Class II machine, is the bingo game itself. There are balls being drawn or generated and the players are essentially much like being in a bingo hall. The graphics are demonstrating a slot-like game in order to be more attractive to players, but a true Class II game is associated or directly connected with the bingo ball drop. **Mr. Ackerman** clarified that whether you win or lose on one of these devices is based upon whether you win the particular bingo being drawn at another location, and the graphics on the device are another way of informing the players that they won a bingo. The graphics are entertainment and do not determine whether a player wins or loses; as opposed to the old

fashioned slot machine that had a random number generator inside that determined whether a player won or lost.

Deputy Director Reese added that the reels can also win the player additional prizes. Some of the creativity in the games and the differences that the players like is they can be played cash in/cash out, particularly if you gauged them against what Washington does (ticket in/ticket out (TITO)). Deputy Director Reese stated that there are a number of things that the NIGC was grappling with, including where the bingo balls are drawn, are the balls drawn in real time or are they drawn and then stashed; for instance, could the balls be drawn for a number of games, stashed, and then played back, so it is not a real-time game. Another item was whether the player daubs the cards themselves or does the machine daub? One concern of the NIGC was that these games could be adjusted, so an approved game like a two touch or a three touch game, implying a type of bingo game where it takes longer to play bingo than a traditional slot, could be adjusted to just a one touch. The games being played across the country are not always being played the way they were initially approved.

Chair Ellis asked whether there was any meaningful information on the average time it takes to complete a game like the one described; how fast are they played? **Deputy Director Reese** responded that she did not have that information, but the rules discuss what would be a reasonable amount of time for a bingo game to be played. **Director Day** added that the Class II machines have generally been slower than the TLS machines, and one of the challenges has been that the game can be shifted. The Commission has struggled with this challenge as baseball card machines and pull-tab machines have been looked at, to know when you are crossing the line to machine gambling and Class III style gambling and when you are within the statute. NIGC is struggling with the same concept. **Deputy Director Reese** believed many of the Tribes were also struggling because the rules have changed across the country. Many of the tribes that testified were from other states and talked about having complied with the rules initially and now finding that those rules have changed. The Tribes are used to this revenue stream and are concerned that if NIGC passes these rules their Tribe may have to warehouse or get rid of its Class II machines to comply, depending on whether they are in a state that has either refused to negotiate with the Tribes or the Tribe preferred to play Class II games. It could be a huge economic impact.

Senator Prentice thought these machines had been evolving over time, and wondered why they were attempting to sort it out now, what triggered this discussion today at the federal level - did it just get ahead of the NIGC. It would seem they should have been aware of what was happening, and yet did not rein it in. There does not seem to be any basic fairness – talking about warehousing machines and impacting the revenue the Tribes are dependent on, including their considerable investments. Senator Prentice wondered why we were the only State that chose to participate. **Deputy Director Reese** replied that while she was in Washington DC, she made the same inquiries to NIGC staff, who told her that requests had been sent out for States to participate. The Northwest Region NIGC agent suggested that Washington State be contacted, and we accepted. Ms. Reese agreed that it appears the rules have taken a long time to get into place, adding that some people have been trying to take advantage of an economic opportunity. That is the point where the creativity of the industry

plays into it – do you end up with an electronic facsimile or do you have a game that aids bingo. Senator Prentice stated that it appeared impressive. **Mr. Ackerman** said he had the impression that for a number of years various groups have been urging the NIGC propagate rules to address the issue; other groups have urged the NIGC not to do so. Of course technology continues to become more sophisticated, and the concern has arisen that the line between Class II and Class III devices is continually being blurred by things like the amount of time it takes to play these games is decreasing, and other issues regarding the use of computer programs that may affect the overall nature of the game. Mr. Ackerman said he believed that the Department of Justice’s concern was one of the things that had pushed the NIGC. The Justice Department has over the years consistently expressed concerns about whether devices of this type may violate the Johnson Act prohibition on the interstate transportation of gambling devices. The department may have gotten more forceful in expressing its concern about the blurring of the line between Class II and Class III. There has also been a push by Congress encouraging the NIGC to address this issue, which has resulted in hearings like the one Ms. Reese attended. Mr. Ackerman added that one reason Washington may have been invited to address the NIGC is that the Commission has consistently commented, when requested, on proposed rules the NIGC has put forth as it considers how to regulate this segment of the industry. NIGC may view this Commission as having worthwhile input. **Deputy Director Reese** commented that NIGC staff made it very clear that our participation at the hearing was appreciated.

Correspondence

Director Day reported that on October 3 Chair Ellis, Director Day, and staff appeared before the Joint Committee on Gambling Policy of both sides of the Senate and House Commerce. The topics of that meeting were an update on problem gambling and the instrumentation of the Problem Gambling Legislation Treatment Program. The purpose of the Commission being invited to attend and to respond to questions was an update on the review of the Legislature’s role on setting gambling policies. Director Day understood that the committees hoped to have at least one more meeting. Chairman Ellis represented the Commission and was part of a Commissioner Panel that included the Lottery and Horse Racing Commissions. The Legislative staff presented information regarding the concept of delegated authority, which might include items like the betting limits or how the compacting process works. Chairman Ellis responded to several questions after the presentation on Legislative Authority. There were several questions about the previous Spokane compact, but the majority of the questions were on policy setting and governments, and whether there would be any interest in setting a more formal process to bring the Commissioners, Legislature, and Governor’s Office together in some type of a group or committee. Director Day thanked Chair Ellis, and expressed how well the Chair had represented the Commission and effectively responded to the questions. **Chair Ellis** stated he thought it emphasizes the direction the working group of the two Committees may be headed. The Chair of the House Commerce and Labor Committee, Representative Conway, was clear that he is very interested in the concept of the Legislature having more of a role in aiding and addressing tribal compacts before they are to the point in the process where they are pretty much cast in stone. Representative Conway was also interested in the idea of perhaps quarterly meetings with representatives of the Legislature, the Governor’s Office, and the Commission or the

three Commissions for more input into the Legislature's matters of policy. He was quite impressed by the fact that Director Day and others in the Gambling Commission are meeting with representatives of the Lottery Commission and the Horse Racing Commission to look at potential areas of overlap. He added that Representative Conway specifically requested that each of the Commission representatives go back to their Commissions and inform them of his and the two Committees' interest in this Government issue, and to get further input and reactions from the Commissions on how this might work. Chair Ellis thought that these topics should be on the agenda for the Commissioners' working session, which is scheduled for November 15.

Director Day drew the Commission's attention to the memorandum from Staff Attorney Arlene Dennistoun regarding the barring legislation proposal. The Commissioners had previously asked about career professional offenders and how people might get off the list. Director Day pointed out that the phraseologies of career criminals/professional offenders are terminologies used consistently in similar statutes and are defined by the Commission. What staff did not find were factors that would justify a person getting off a barring list; although that does not generally happen. If this legislation does move forward it would be appropriate to list those criteria.

Director Day pointed out the correspondence from Frank Miller, regarding the process penalties and the Director's response letter. Mr. Miller's letter expresses concerns about the agency's possible penalties relative to the administrative process. The response letter to Mr. Miller stated that while Director Day does not necessarily agree with all of Mr. Miller's representations in the letter, it is worth the agency's time to meet and discuss any potential improvements and suggested to Mr. Miller that an informal committee be formed to come up with some areas where we might jointly agree and bring forward to the Commission for improvement. If an informal committee does not work out, the parties are welcome to bring forward any kind of rule making petition they choose.

Monthly Updates:

Director Day pointed out that although the Internet gambling legislation made it through the Senate on the Port Security Bill, it was primarily directed towards financing of instruments used to pay for the gambling online and restrictive gambling transactions relative to that. It was a very significant federal step, although not as much as the agency would have liked. Regarding Senate Bill 2078 which dealt with NIGC's jurisdiction in Class III gambling, Director Day commented that his last update stated that the bill had not made it out of the Senate and thought it probably still had not. **Senator Prentice** commented that her concern with all the discussion about Internet gambling as it came out of Congress was that it was obvious people do not think about what is actually gambling. They think gambling is just gambling. Senator Prentice added that the defense she has always made for the activities in this State is the agency knows who is doing what and the agency scrutinizes everybody. Before a computer, a person has no idea who is out there and it surprised Senator Prentice that the Economist Magazine had a piece saying this was unworkable and she thought the magazine was more responsible than that. Senator Prentice wondered whether the Commission may not have shown the depth of the activities of this agency; although the

meetings are open to the public and are occasionally on TVW. Somehow that fact is not grasped by the people who are still expressing themselves and who ought to know better.

Director Day commented on a news article he had seen regarding a couple states that were considering legislation to make Internet gambling illegal received an eco-terrorist threat to pour some form of infectious mussel into the lakes in an attempt to intimidate the states from passing the Internet gambling legislation. Director Day found it interesting that the article said the states were taking the threat seriously.

Chair Ellis followed up on Senator Prentice's point, stating that one of the arguments made by proponents for Internet gambling is that the federal government or the state should be the one regulating Internet gambling and receiving the tax income. Chair Ellis thought the technological abilities to effectively regulate Internet gambling on an international basis would be very difficult.

Director Day acknowledged it would be a tremendous challenge, even with the technological improvements that have come forward. With the machines in-play today and the software involved, the game is approved and the software tested for compliance and pay out percentages. Each time the game is changed, it is retested to ensure continued compliance. Staff does not get into that argument, because Internet gambling is illegal. The agency's job at this point is to enforce that particular law, which is a federal, congressional, or legislative policy decision. The ability to block Internet transactions from areas that do not allow Internet gambling has been improved. Technology is effective in allowing a company that supplies Internet gambling to block certain web addresses from placing wagers over the Internet; although, it is not being done at this point.

Washington State Personnel Reform

Phyllis Halliday, Administrator for Human Resources and Training Division, described the impacts and progress the agency has gone through with the new Civil Service Reform, also known as Personnel Reform. This legislation allows state agencies to create greater efficiency and flexibility in many of the agency's human resources. Throughout the agency's implementation, the objective has been to establish a performance-based culture. There are three key components to the Legislation. The agency does not participate in two of the components: Competitive Contracting and Collective Bargaining. Ms. Halliday reported that the Gambling Commission has no bargaining agreement and is designated as a non-represented or non-union agency. Because of the agency's non-representation, the area of Civil Service Personnel Reform has the most significant and direct impact on our agency staff. The personnel rules implemented in July of 2005 apply totally to our agency's general government staff and in part to all staff. The rules allow individual agencies to make decisions on how to conduct their business. The centralization of programs and decision points create better flexibility in the new performance-based management style. Following the rule changes, agencies were required to develop a number of new policies and procedures, which our agency has completed for all essential programs.

Ms. Halliday explained that the new Personnel System integrates competencies across all human resources processes, including retirement, assessment, selection, development, performance, management, compensation, lay off, and succession planning. Competencies are defined as those measurable or observable knowledge, skills, abilities and behaviors critical to the success of the job role or function. In our agency we have developed agency-wide competencies; leadership competencies for supervisors, managers, administrators, and above; occupational-wide competencies; and position-to-position competencies. These competencies are supported by new position description forms and new evaluation processes.

Ms. Halliday reported that the 2,004 state job classes within state government are being consolidated into broad occupational categories. Some of the larger groups of generic job classes are being phased in over the next several years, focusing on requirements of specific positions rather than generic job classes. The more broadly-defined job classes will provide the managers greater flexibility in making changes to duties and responsibilities with changing business needs. Employees will be able to gain broader skills that will enhance mobility and career enhancement opportunities. Two thirds of our agency's 57 general service positions have been phased in. All of our classified staff were previously recruited by the Department of Personnel (DOP) for applications, screening, and testing. The agency would receive and select from a short list of about seven names that DOP sent. These recruitments are now decentralized and DOP is only one sourcing tool our agency will use. Our agency can now conduct broad recruitments based on position competencies, certify our own registers, and conduct our own testing and hiring, using a larger more diverse candidate pool that helps managers locate the best candidates for each of the positions.

Ms. Halliday explained that seniority had previously been the sole basis for determining layoffs. As a non-represented agency, once performance confirmation is achieved, rules allow considering factors such as performance, competencies, and other legitimate business factors. Managers often need scheduling flexibility to be responsive to changing demands and to better manage workload. All previous work periods were designated as either overtime eligible or overtime exempt. The new work schedules can be readjusted as needed without the restrictive notice periods. The new compensation rules in WAC 35-728 required agencies to develop a salary determination policy for general government employees. Previously restricted to rigid standards, our policy now allows us the flexibility to set base salary for current employees. The agency is also able to request authorization for premiums for recruitment or retention purposes, and the agency now has four different compensation plans: Washington Management Service, Exempt Management Service, Special Agent Compensation, and General Government. The new Human Resource Management System (HRMS) implemented in July of this year contains full information on all state employees, and has the ability to support all personnel functions and be accessed electronically. Transitioning to the new system has been a dedicated activity of technology integration and training that has formed a true partnership between human resources and the business office because the database supports all personnel and position functions as well as payroll and leave.

Ms. Halliday described E-Recruiting as a great addition for both agencies and employees, providing another resource tool. E-recruiting is the new competency-based tool administered by the Department of Personnel and enables employees the opportunity to work with one application on the Department of Personnel website. Employee Self-Service provides employees the ability to change their own addresses and phone numbers online, to download their earning statements, and potentially be able to access the training and other areas within their own personnel system. Performance Management Confirmation is one of the leading benefits to non-represented agencies. Performance management is an on-going process of creating and sustaining a work place environment where both the agency and staff succeed in fulfilling business objectives. Performance management aligns with our performance and our mission, vision, and values. The Confirmation Authority lies with the Department of Personnel, but the work is done by our staff. Starting in January 2007, our agency will undertake a lengthy application process with multiple requirements. One of the benefits of having Performance Management Confirmation is the ability to receive performance-based recognition pay, which includes lump sum payments for those individuals achieving high performance. Leave time could be awarded as another form of recognition. The Attorney General's office has gone forward as a pilot for Performance Management Confirmation.

Chair Ellis called for public comment on the Director's Report.

Kelly Croman, Attorney with the Squaxin Tribe, on behalf of Chairman Jim Peters, provided comments on the NIGC testimony provided by Deputy Director Sharon Reese, adding that she understood that other tribes may ask for an opportunity to address Ms. Reese's testimony jointly and more in depth at the November meeting. Ms. Croman provided the Commissioners with a letter from Chairman Peters emphasizing the potential damage done by the impression Sharon Reese's testimony left with members of the audience, that there was either illegal or questionable activity by tribes in Washington State. Ms. Croman said she had been approached and asked exactly what was going on in Washington State and why the tribes in this state were jeopardizing Class II gaming for tribes around the country. It is easy for harsh words and rationalization when the written testimony is read. The comments need to be looked at in the context they were heard and in a hearing setting where a person does not have time to think about what might have been meant by the statement. Ms. Croman sensed that where there was the possibility an impression might be left that there was illegal or inappropriate behavior going on, the utmost care needed to be taken in the choice of words used. The tribes and the state have to respect each other as co-regulators of the industry. The compact itself requires notice of suspected violations. Washington tribes should not be hearing for the first time at a public hearing that it is the impression of the Washington State Gambling Commission that there may be illegal or inappropriate behavior going on. The tribes should first be provided with a notice of suspected violation and then given the opportunity to discuss it. In the absence of such a notice, Ms. Croman felt the Gambling Commission should be able to clearly state there are no violations going on in Washington State and should have said as much to the National Indian Gaming Commission. Ms. Croman asked that the Commission take all reasonable and appropriate steps to clarify to the NIGC that there are no suspected violations in Washington State and there is no illegal activity going on in Class II gaming to the best of the

Commission's knowledge, to correct any false impressions that may have been left by Ms. Reese's testimony.

Commissioner Bierbaum asked Ms. Croman to give an example – was there something in the testimony that the Commissioners had not seen. **Ms. Croman** responded that Ms. Reese reported today that some people were taking advantage of an economic opportunity existing currently under the rules applying to gaming. But at the hearing, the phrase she used was that folks are possibly taking advantage of unclear regulation, lack of adequate or knowledgeable enforcement, or outright illegal activities. In that context, what a listener was left with was that there are folks that may be taking advantage of unclear regulations who are engaging in illegal activities. Ms. Croman concluded by stating that people had a strong reaction to Ms. Reese's testimony. **Commissioner Niemi** asked Ms. Croman to be more specific – which page and paragraph in Ms. Reese's testimony. **Ms. Croman** replied that she had a print out from the NIGC web site, not the same version as the Commissioners, so the page numbers would not match. Ms. Croman thought the phrase or sentence she had read came from near to the end of the testimony. **Ms. Croman** commented that working together, the business enterprise and the regulator may not always see eye to eye but there are some basic values. In the absence of a suspected violation and a discussion between the affected tribe and the Gambling Commission, Ms. Croman said she was happy to say that no one was compromising on those.

Deputy Director Reese commented that she had the opportunity at the hearing to respond on record that she was making a generic comment and was not speaking specifically about Washington tribes. Ms. Reese had not yet read the NIGC record, but said her response should be on record clarifying that she was not speaking about Washington tribes. Ms. Reese clarified that she was speaking about the need for the regulations to preclude illegal activities and that she was talking in a general sense about the specific regulations being proposed. **Ms. Croman** commented that she was unsure that sense was shared by Washington tribes, adding that the topic should be discussed in greater depth at another time when other tribes can also comment.

Jhan Smith, Executive Director, Stillaguamish Tribe, testified that he was at the same meeting in Washington D.C. and felt Ms. Reese was the sacrificial lamb. Mr. Smith thought that a person from the Chippewa Tribe made the comment that the panel Ms. Reese was on was considered the "Red Flag Panel." Of all the people that testified, Ms. Reese was right. There were four to six people from each of the six panels that testified, and there were only two that testified in favor of the NIGC standards. Mr. Smith said he was proud of the fact that the Stillaguamish Tribe and Washington State Gambling Commission work very well together. Mr. Smith stated that when he stood in support of Ms. Reese on a couple of issues, one statement she made was that it was felt the intent of the drafters of IGRA or the current wish of NIGC in the promulgation of rules was not to allow misrepresentation of the games or to submit language distortions. At the last Northwest Indian Gaming Conference, a gentleman by the name of Frank Gosheno, who helped draft the Indian Gaming Regulatory Act, said it was the intent of IGRA to leave this open ended, mainly because of technology, and that the intent of IGRA was very clearly defined and reinforced by Mr. Gosheno. Also

Ms. Reese's letter said the Commission must show it is willing to enforce those provisions provided by IGRA with rules that enforce a standard. Class III enforcement is performed in good faith and in conjunction with the tribal regulators. Class II is the responsibility of the tribal regulators, which Mr. Smith thought were doing a very good job, so well that they work with the Washington State Gambling Commission on the new agent training. Another comment Ms. Reese had was that machines do not always meet specific requirements under IGRA's definition. Mr. Smith referred to a letter that Director Day had written to Penny Coleman of the National Indian Gaming Commission that stipulated the requirements of Class II machine. The letter stated that the game is played for prizes, including monetary prizes, with cards bearing numbers or other designations (which exist on the machine). The holder of the card covers such numbers or other designations when objects similarly numbered or designated are drawn or electronically determined (which the player does). And the game is won by the first person covering a previously designated arrangement of numbers on designations of such cards (which is done). Mr. Smith stated their machines were meeting all of the NIGC requirements listed. Mr. Smith's concern was why the State was getting involved in the Class II regulation. He pointed out that the Silver Dollar Casino in Tacoma has a pull-tab machine that includes reels that spin, which must be a Class II machine because Class III machines are not allowed in commercial casinos. The Stillaguamish Tribe has a bingo machine that has spinning reels, which is Class II, so what is the difference? Mr. Smith believed there needed to be better definitions, and suggested that the Washington State Gambling Commission look into what is a Class II bingo. Mr. Smith added that he had testified in Washington D.C. that bingo, whether a rock with a bunch of stones on it making the alignment or an electronically-aided system, was still bingo.

Kent Caputo, on behalf of the Kalispel Tribe, noted that he had spoken with the Deputy Director while she was in Washington D.C., adding that Ms. Reese was placed on a panel not of her choosing and sat next to the Executive Director with the Western Attorney Generals' Association who has been a speaker on a number of panels about reservation shopping, state's rights vs. tribal rights, etc.. Mr. Caputo stated that Ms. Reese had inherited a lot of history and assumptions that are going to color everything being heard from tribes for awhile. Mr. Caputo commented that one thing Ms. Reese offered while we were at the hearing was to ensure we engaged in the dialogue of what has been going on. Ms. Reese has been away from the Commission for awhile and Mr. Caputo said he enjoyed their conversation. He thought that whether the Commission chose to have the conversation in an official setting or staff-to-staff, there was a lot of background that Mr. Caputo thought had nothing to do with Ms. Reese's testimony. Mr. Caputo pointed out that the Commission would be hearing from various tribes regarding their concerns about what has been going on with Class II gaming. Mr. Caputo explained that what was discussed at the NIGC hearing was whether the Class II devices should be regulated based on what the player sees or what the device actually is inside (a pari-mutuel bingo game or a facsimile of a game of chance), which is where the policy or political debate that leads to speculation and perception begins. This is about state rights vs. tribal rights – a negotiation tool with Class III where states have greater control vs. Class II where the states are concerned they have no real oversight from a regulatory or policy standpoint. Mr. Caputo closed by saying the Commission has walked into a very long, very heated debate.

Chris Kealy, Iron Horse Casino, testified that he has owned and operated card rooms for about six years in Washington State and some areas, by nature, are tougher than other areas. Mr. Kealy thought Senator Prentice could probably attest that there are a lot of calls made in Skyway and Senator Delvin could also help the Commission understand that calls are made for a lot of reasons. The Iron Horse Casino property was mentioned in the report as number 6 with 118 calls to the police. Mr. Kealy explained that a typical call could be when a person showed up at the door intoxicated, staff call the police and report “This person has been refused service, they are leaving in a blue Ford Pinto” and the police go get him. That is considered a call from the casino and although we are not the epicenter of that activity it is still reported as a call. Another example would be in Tacoma, the Silver Dollar was hiring off-duty police officers to patrol their areas and when the off-duty police officer reports in, that is considered a call so, statistically, the numbers shown are faulty. Mr. Kealy commented he would love to see Mr. Farrow’s report and dive into it. Mr. Kealy said he had, for his own benefit, looked into the Iron Horse statistics last year and was interested in why the Iron Horse was having so many calls. Mr. Kealy pointed out that to-date there were 127 cars stolen from the Tacoma Mall, but he would still go to the Mall. He added that people will still do the things they like to do, including going to a card room. Mr. Kealy stated that hourly statistics are kept on how many people are at his place and offered those statistics to the Commissioners.

Chair Ellis asked how many calls were left after Mr. Kealy screened out the ones that do not represent the type of incident staff are trying to capture. **Mr. Kealy** replied that he would be guessing; that he had reviewed his report in 2005 when he noticed that the number had almost doubled from 2004. Mr. Kealy offered to provide the exact numbers at the next meeting. **Chair Ellis** thanked Mr. Kealy.

Senator Prentice stated that over the years people have heard her comment that Skyway Park has actually helped clean up gang activities in that area of town, which probably include quite a number of the reported calls. Senator Prentice added that the Skyway Park security staff can be seen in the parking lot all the time, and Freddie’s security staff are also very visible. There are a number of calls that start in the parking lot or elsewhere – the incident happened but had nothing to do with gambling or the casino. Senator Prentice added that one of the arguments she uses to protect the Gambling Commission and prevent budget transfers is that the Gambling Commission is a law enforcement agency. **Mr. Kealy** explained that he was the owner of the Jimmy D’s property before it became Chips and when he took over the property it was in a very bad state. The police commented regularly on how our surveillance system gave them the ability to get the evidence to convict criminals – the police ran police chases into Chips parking lot on purpose, letting staff know when it was being done so everything that happened with that individual as they were arrested could be video recorded. **Senator Prentice** commented that Chips in Tukwila had their screens visible at police department. There was also a camera and notification was given that you were on camera. Senator Prentice said it helped clean up prostitution along that strip, which is just north of the airport, adding that she defends the industry because of the pluses.

Senator Delvin said that originally the numbers were compiled because of questions regarding the arming and safety of the agents and what kinds of incidents were taking place. Senator Delvin explained that in his experience as a police officer in Richland, there are more problems in the bar area than at the casino or bowling alley. The taxes collected from some of those casinos more than offset any issues of police response –not much comes from the bars. **Commissioner Niemi** agreed that the issue was brought up because of the requests for arming of the agents and had nothing to do with the fact that the casinos weren't properly run.

With no further comments or questions, **Chair Ellis** called for a recess at 3:15 p.m. and reconvened the meeting at 3:25 p.m.

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 1-18. *Vote taken; the motion passed unanimously.*

3. Defaults:

Amy Hunter, Administrator for the Communications and Legal Division explained that behind tab 3 are five default orders. Four are for individuals and one is for an organization. Ms. Hunter noted that none of the individuals were currently working in gambling. The agency had jurisdiction over the individuals when the charges were issued and the individuals have the ability to transfer their licenses, which is why staff requests default orders be entered.

Debra K. Brown, Card Room Employee, Revocation (not present)

Ms. Hunter advised that Debra K. Brown, while working as a cage cashier, “force balanced” her reconciliation by putting \$120 into the cashier cage tip pool rather than performing an accurate reconciliation. Ms. Brown admitted to the charges, which were sent by certified mail and regular mail. Staff left Ms. Brown a phone message reminding her of the deadline to request a hearing. Ms. Brown called back and left a message that she did not want a hearing and also returned the request form. Ms. Brown waived her right to a hearing and staff is requesting a default order be entered revoking her card room employee license.

Chair Ellis asked if Debra K. Brown or her representative was present. No one stepped forward.

Commissioner Niemi made a motion seconded by **Commissioner Bierbaum** that Debra K. Brown’s license to conduct licensed card room activities be revoked by this default hearing. *Vote taken; the motion passed unanimously.*

Jose L. Rodriguez, Class III Employee, Revocation (Not present)

Ms. Hunter advised that Jose Rodriguez took \$100 while working in the video gaming department's cashier's cage at the Muckleshoot Indian Tribe. Mr. Rodriguez admitted to taking the money, and the Muckleshoot Tribe revoked his license. Ms. Hunter explained that with Class III employees, the Tribe licenses the individuals, whether dealers or security officers, and the State issues certifications. The charges were sent by certified and regular mail. The legal secretary called and spoke with Mr. Rodriguez's wife about the deadline to request a hearing. Mr. Rodriguez did not respond to the charges, and so has waived his right to a hearing. Staff recommends a default order be entered revoking his certification.

Chair Ellis asked if Jose Rodriguez or a representative was present. No one stepped forward.

Commissioner Bierbaum made a motion seconded by **Commissioner Niemi** that the Commission enter a default order revoking Jose L. Rodriguez's certification to conduct Class III activities. *Vote taken;* the motion passed unanimously.

Donald Stevenson, Class III Employee, Revocation (Not present)

Ms. Hunter advised that Donald Stevenson took \$300 while working as an assistant security director at the Muckleshoot Indian Casino. Mr. Stevens admitted to taking the money and the Muckleshoot Indian Tribe revoked his license. The charges were sent by certified mail and regular mail. Staff attempted to contact Mr. Stevenson to remind him of the deadline to request a hearing, but the phone number had been disconnected. Mr. Stevenson did not respond to the charges and by not responding has waived his right for a hearing. Staff is requesting a default order be entered revoking Mr. Stevenson's Class III certification.

Chair Ellis asked if Donald Stevenson or a representative was present. No one stepped forward.

Commissioner Niemi made a motion seconded by **Commissioner Bierbaum** that Donald Stevenson's certification to conduct Class III employee activities be revoked by a default order. *Vote taken;* the motion passed unanimously.

Linh T. Ton, Class III Employee, Revocation (Not present)

Ms. Hunter advised that Linh Ton caused shortages of over \$1,900 while working at the Nisqually Tribal Casino by giving customers cash and cash tickets to play the tribal lottery system. Ms. Ton admitted to the charges and the Nisqually Tribe revoked her license. The charges were sent by certified mail and regular mail. Staff attempted to contact Ms. Ton to remind her of the deadline, but the number was disconnected. Ms. Ton did not respond to the charges and staff are requesting a default order be entered revoking Ms. Ton's certification.

Chair Ellis asked if Linh T. Ton or a representative was present. No one stepped forward.

Commissioner Bierbaum made a motion seconded by Commissioner Niemi that the Commission enter a default order revoking Linh T. Ton's certification to conduct Class III employee activities. Vote taken; the motion passed unanimously.

Khmer Theravadin Buddhist/Tacoma, Revocation (Not present)

Ms. Hunter advised that Khmer Theravadin Buddhist Association of Tacoma and Pierce County operated a fund raising activity without a license. Ms. Hunter explained that fund raising events are no longer very popular, with about five this year and six last year. Fund raising events allow nonprofits to offer house-banked card games, roulette, and craps. Fund raising events were very popular in the 80s, before house-banked card rooms and tribal casinos. Staff is requesting the application submitted by this organization be denied because the organization operated a fund raising activity without the license. Staff sent two letters to the organization informing them that the organization did not qualify based on the president's criminal history. The charges were sent by certified mail and regular mail. Staff attempted to contact the organization to remind them of the deadline for requesting a hearing but the phone was disconnected. By not responding to the charges, the organization has waived its right to a hearing. Staff requests a default order be entered denying the application for a license. **Commissioner Bierbaum** asked why the Commission would pursue this – the organization applied for a license, the license was denied, but the organization held the event anyway. The organization probably does not want the license any more since the fund raising activity has already been held. **Ms. Hunter** affirmed that was correct, explaining that the revocation was for closure on the record, so that if the organization applied for another license, staff would have something formal to show it. **Commissioner Bierbaum** asked if there were any consequences to the organization for engaging in the fund raising activity without a license. **Ms. Hunter** responded that technically it was a felony and the case could be sent to the prosecutor, which staff chose not to do. Staff thought that once the organization had been issued charges, it would not hold another event without a license.

Commissioner Niemi asked whether it would have been easier to send this violation to the prosecutor, since one of the reasons for denying the license was because of the criminal history of the person in charge. **Ms. Hunter** agreed that would be another option. If the organization would not withdraw the application and staff was not going to issue the organization a license, the only alternative would be to go ahead with charges denying the application. The criminal case would be a separate matter. **Commissioner Niemi** asked whether the Commission was just denying their application. **Ms. Hunter** affirmed. **Commissioner Bierbaum** observed that if there were no consequences to an organization for holding an activity after being denied a license, what would keep the organization from having another event. **Commissioner Niemi** asked if Ms. Hunter had any paperwork indicating that staff had denied the organization's applications. Commissioner Niemi asked for clarification from Ms. Hunter that the organization had asked twice for an application. **Ms. Hunter** responded that staff informed the organization at least twice that the organization did not qualify for a license because of the president's criminal history, but it was all part of one application.

Mr. Ackerman clarified that, as he understood it, the Commission currently has an application in front of them that does not qualify for a license. Because it is a licensing matter, this Commission has to dispose of the application. In other words, staff can not summarily round file the application, even though the organization did not qualify and held the event without a license. It may seem like a formality but under the statute it is a formality that is required. Mr. Ackerman pointed out that if the organization comes forward in the future and applies for a license, or if the organization continues to disregard the rules and staff decides to approach a prosecutor with the case, a prosecutor might ask what happened to their license. Mr. Ackerman added that in some ways it is not an analogy at all, it is similar to a person driving without a license, for instance for a DUI, and the person does the same thing that caused their license to be suspended in the first place; if the charges were proven, the license would still go into a suspended status even though that person did not have a license at the time. Mr. Ackerman thought it would be absurd to suspend a license that a person has been denied for, but there could be consequences down the road for the individual if they continue to engage in the bad behavior. It is a matter of government going ahead and processing someone in the manner that the statute dictates so that any potential future bad behavior can be addressed. Legally, only this Commission can grant or deny a license, so for staff to be able to close this case, you need to make a decision, even if it appears to be moot at this point.

Commissioner Alan Parker arrived at 3:40 p.m.

Chair Ellis asked if there was anyone present on behalf of Khmer Theravadin Buddhist Association of Tacoma and Pierce County. No one stepped forward.

Commissioner Niemi made a motion seconded by **Commissioner Rojecki** that the Commission deny Khmer Theravadin Buddhist Association of Tacoma and Pierce County's application for a license to conduct authorized gambling activities. *Vote taken;* the motion passed with four aye votes. Commissioner Parker abstained.

4. Petition for Review:

Dave Swyter, CRE, Revocation

Chair Ellis noted that this petition for review would be continued until the November Commission Meeting.

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

Chair Ellis called for public comments. There was none. Chair Ellis reminded everyone that the meeting would start promptly at 9:00 on Friday.

At 3:45 p.m., **Chair Ellis** called for an executive session to discuss pending investigations, tribal negotiations, and litigation. He called the meeting back to order at 4:35 p.m. and immediately adjourned the meeting.

**COMMISSION MEETING
FRIDAY, OCTOBER 13, 2006**

Chair Ellis called the meeting to order at 9:00 a.m. in Gig Harbor at the Inn at Gig Harbor. He introduced the following:

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, Seattle
 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 Parker to approve the minutes of the regular meeting of September 14-15, 2006, as presented. Vote taken; the motion passed with three aye votes. Commissioner Bierbaum abstained (not at meeting).

8. Gambling Service Suppliers

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

Chair Ellis noted this item had been deferred for final action until the November meeting.

9. Allowing Poker at Fund-Raising Events

WAC 230-25-040, WAC 230-25-045, WAC 230-25-050, and WAC 230-25-325:

Jeanette Sugai, Acting Assistant Director, reported that these rules are up for final action. The proposed changes were made on behalf of the charitable nonprofit organizations and consist of three rule changes and one new rule. The proposed changes to WAC 230-25-050 and WAC 230-25-325 add language to the rules that would allow poker tournaments to be conducted at FREs and limited FREs. The proposed changes to WAC 230-25-040 adds language addressing wagering limits in poker tournaments at FREs. The proposed new rule WAC 230-25-045 lists additional requirements licensees would need to follow when offering poker at FREs. The proposed rule changes would allow charitable, nonprofit organizations to allow poker tournaments that are open to the general public as an additional means to raise funds for their organizations.

Ms. Sugai reported that staff does not have regulatory concerns with allowing poker tournaments at fund raising events. Allowing them would be consistent with the recent approval of poker tournaments at Recreational Gaming Events. At this time staff recommends adoption of the rules with an effective date of 31 days after filing.

Chair Ellis called for public comments. There were none. **Commissioner Niemi** asked whether these needed a motion on each rule. **Mr. Ackerman** responded that these rules are up for final action and recommended a separate motion for each rule.

Commissioner Niemi made a motion seconded by **Commissioner Parker** to adopt the amendatory section to WAC 230-25-040 as presented by staff. *Vote taken; the motion passed unanimously.*

Commissioner Niemi made a motion seconded by **Commissioner Parker** to adopt the new section to WAC 230-25-045 as presented by staff. *Vote taken; the motion passed unanimously.*

Commissioner Niemi made a motion seconded by **Commissioner Parker** to adopt the amendatory section to WAC 230-25-050 as presented by staff. *Vote taken; the motion passed unanimously.*

Commissioner Niemi made a motion seconded by **Commissioner Parker** to adopt the amendatory section to WAC 230-25-325 as presented by staff. *Vote taken; the motion passed unanimously.*

10. Rules Simplification Project:

Chapter 230-09 – Fund Raising Events:

Beth Heston, Project Manager, reported Chapter 09, including the amendments that were just adopted in the previous section, is up for final action, with an effective date of January 1, 2008.

Chair Ellis called for public comments. There were none.

Commissioner Parker made a motion seconded by Commissioner Niemi to adopt the Rules Simplification Project, Chapter 230-09 – Fund Raising Events as presented by staff, effective January 1, 2008. *Vote taken; the motion passed unanimously.*

11. Rules Simplification Project:

Chapter 230-18 – Promotional Contests of Chance:

Ms. Heston reported there were no changes from last month's meeting and the rules are up for final action.

Chair Ellis called for public comments. There were none.

Commissioner Niemi made a motion seconded by Commissioner Parker to adopt the Rules Simplification Project, Chapter 230-18 – Promotional Contests of Chance as presented by staff, effective January 1, 2008. *Vote taken; the motion passed unanimously.*

12. Petition for Rule Change – Washington Charitable and Civic Gaming Association

WAC 230-20-059

Ms. Hunter reported this petition was filed by the Washington Charitable and Civic Gaming Association (WCCGA) and is up for discussion and possible filing today. Commission rules require that organizations give a certain amount of money raised from gambling back to the organizations' stated purposes. This required amount of money is called cash flow. State law also requires that the organization be operating to give money back to its stated purposes. The WCCGA represents several bingo organizations and are asking for a two-year moratorium on the cash flow requirements because the organizations are having difficulty meeting the requirements because of the smoking ban that went into effect last December. This moratorium would assist about 16 bingo operators whose bingo and pull-tab operations exceed \$1.5 million in gross receipts. If an organization is under the \$1.5 million in gross receipts, they have to return at least \$1 to their purposes. A couple years ago, the Commission changed the cash flow requirements so that if an organization was within 25%, the Director would automatically give them a reduction of the requirements for one year. If an organization had already received their 25% reduction and still did not meet the requirements, the Director would bring administrative charges to revoke the license.

Ms. Hunter explained that the Commission has three options for petitions, which are outlined in the memorandum from Susan Arland, our Rules Coordinator. The Commission can file the petition, deny the petition and state your reasons for denying, or file an alternative. Staff is recommending filing for further discussion; although staff may have a different recommendation when the petition goes before the Commission next month. The next quarterly reports are due on October 30 and staff will have an additional quarter of information to review and perhaps make a different recommendation at that time. Staff noted some policy considerations in the rules summary. One concern is that a moratorium may reduce the amount of money the organizations return to their purposes. The flip side is that without a moratorium more bingo licensees may close. Seven organizations have stopped

operating this year. At one point the agency had a list of the top 40 bingo licensees who were very large bingo operators. In April 2001, there were 40 bingo operations that would be considered fairly large bingo operators. Three years later, in April of 2004, the large operators were reduced to 28, and in April of 2006 there were only 21. Today there are about 16 large bingo operators.

Ms. Hunter pointed out that another policy consideration was the importance for organizations to have some requirements or they would not meet what the statute intended. The operators will still have the negative cash flow restriction even with the moratorium. The final policy consideration is that a two-year moratorium could allow an organization to be out of compliance for about four years before facing administrative action because the organizations would have the two-years moratorium, then in the third year they could qualify for the 25% reduction, and not until the end of the fourth year of not being in compliance would administrative charges be filed. Staff recommends filing for further discussion.

Chair Ellis commented that as he read the materials he reached the conclusion, perhaps erroneously, that the real purpose of the moratorium and the effect of the moratorium was to relieve operators from having to maintain positive cash flow, but from what Ms. Hunter said, that is incorrect. **Ms. Hunter** affirmed, directing the Commissioners to the Cash Flow Status Report in their agenda packet, which has five organizations highlighted in yellow. The data in the report shows actual numbers for the first and second quarters and estimated numbers for the third and fourth quarters. By next Commission Meeting, staff should have actual numbers available for third quarter. If the estimated numbers end up being close to the actual numbers, five organizations, would not meet the current cash flow requirements. The current 25% reduction that the rules allow would only help one of those five organizations. The other four highlighted organizations would get charges for revocation because they don't qualify for the 25% reduction. **Chair Ellis** asked if the projections in the table for the third and fourth quarters of 2006 were based on 2005 data, which would not reflect the effects of the smoking ban, and if the data used for those projections included both gross revenue and prizes/expenses. **Ms. Hunter** affirmed, adding that staff has concluded that waiting for actual numbers would be the best approach. **Chair Ellis** commented that, to the extent the organizations' gross revenues are reduced by the smoking ban, the issue now is whether the organizations can reduce their expenses and still maintain a positive cash flow.

Commissioner Bierbaum pointed out that it appeared all five organizations were going to make at least the \$1 minimum requirement, but thought Ms. Hunter had said the five organizations were not going to meet the minimum requirements and only one would be helped by the moratorium. **Ms. Hunter** clarified that the moratorium would help all of them, but if the moratorium was not approved, then the 25% reduction the Director could grant the organizations would only help one of them – the others would be out of compliance.

Commissioner Niemi noted that the five organizations highlighted on the list grossed between \$2,100,000 and \$833,000, and asked whether those numbers were only for the first quarter, which would have been a no-smoking quarter. **Ms. Hunter** affirmed.

Commissioner Niemi said it appeared the organizations paid all their employees, their mortgage, their other expenses, and the only thing the organizations did not have money for

was the purposes of their nonprofit status. Ms. Hunter responded that the first organization listed had about \$438,000 to go back to its purposes, and agreed that all of those other expenses would have already been paid. **Senator Prentice** thought that included paying prizes. **Ms. Hunter** agreed, pointing out that prizes are usually between 65-70 percent. **Commissioner Niemi** commented that it appeared the bingo organization was fine, just no longer a nonprofit. **Ms. Hunter** explained that RCW 9.46.0209 requires that the organizations be operating for purposes other than gambling, requiring money be given back to the organizations' purposes, which is part of the reason the Commission has the cash flow requirements.

Senator Prentice stated that the Commission is going on the assumption that the smoking ban was what tipped these organizations over the edge. Senator Prentice said when she first came on this Commission, the organizations were claiming they were losing the market share because of the Lottery. Over the years it has been one factor or another, and the games were disappearing long before the smoke ban. Senator Prentice thought some past statistics would help illustrate how the market share has simply been going down to help determine whether this moratorium would even be viable. Senator Prentice stated that on a past tour she took of one bingo operation, she felt like the youngest person in the room. Bingo is an aging fan base, there are a lot of other games available, and everyone is in competition with each other. **Chair Ellis** agreed that having some history could help with their decision, and wondered how far back the Commission should go. **Senator Prentice** replied that the organizations were already complaining when she started 12 years ago, but the Commission would not need to go back that far because it has been a trend all along. **Ms. Hunter** responded that staff has the information and can prepare a report for the next meeting. **Chair Ellis** asked if staff could gather information back to 1995, about a year before card rooms. **Ms. Hunter** affirmed, suggesting looking at the market share then and the number of games and gross revenue information. **Chair Ellis** agreed and asked if the Commissioners had any other questions. He then called for public comments.

Ric Newgard, representing both the Washington Charitable and Civic Gaming Association (WCCGA) and the Seattle Junior Hockey Association, testified that his organization was the number one game on the list the Commissioners were looking at. Mr. Newgard was proud to say that he has been in this industry for 29 years, pointing out that first and foremost these are charities that are being discussed – it is not about the bingo game, it is what the charities do for the community and the kids. The charities may be a shrinking market share, but still have a very useful place in the communities. The operators try day in and day out to create new clientele but are still shrinking. The charities have been attempting to hold on to the market share they have, but are losing; they just do not have the tools in which to enhance it. Mr. Newgard explained that 60 percent of the clientele were smokers, so the smoking ban had a dramatic effect. As of November 1, 9 of the top 25 bingo games in this state were gone, which is a loss to the community and to the kids. Mr. Newgard testified that the WCCGA is only asking for a window of opportunity to rebuild the charitable businesses. Mr. Newgard said in October 2005 he did research that showed how the smoking bans were implemented in other parts of the country, confirming it took between a year to two years to get the cycle back to where the players were not going to the tribal facilities or changing their

habits. Mr. Newgard said his research showed some growth (about 80%) in other markets during that one to two year period. So what the WCCGA is looking for is an opportunity to rebuild the businesses and clarify that every dime the bingo games make go back to the charities. The organizations run the bingo games; bingo games don't run the charity. Mr. Newgard testified that if his organization continues going in the direction the projection, the bingo game will net \$325,000, which is not enough to meet the qualifications and would be closed. The budget for the hockey association is \$1.2 million, so the organization is attempting to raise funds by holding raffles, auctions, skate-a-thons, etc. to raise money. The \$325,000 from the bingo game is vital to the organization. Mr. Newgard explained that the bingo game made almost \$800,000 last year, and asked the Commission for the opportunity to deal with the impacts from the smoking ban by filing this petition.

Chair Ellis asked Mr. Newgard to clarify that when looking at the provisions related to the payments or the net revenue of the minimum cash flow requirements for large operations, for example there is one set of figures that apply to bingo operations that have grossed above \$2.5 million dollars, 4 percent of the gross receipts needs to go into their charitable purposes. If the operation drops back to the next lower level, which is the first level if the operation is above \$1.5 million dollars, 3 percent of the gross receipts are required to go to their charitable purposes. If looked at in isolation a person might say that the smoking ban is reducing gross receipts. But, if the organization was above \$2.5 million before the smoking ban and then dropped down to \$1.5 million, it only means the operation's requirement for cash flow is reduced, it does not have any other effect. Chair Ellis said his initial reaction was to question what the effect of the moratorium would be by only reducing the requirement the operations made at least \$1 in revenue. Obviously that is not the case and Chair Ellis asked Mr. Newgard to explain briefly why he felt the importance of having a moratorium on the cash flow requirements. **Mr. Newgard** responded that bingo business is not like any other gaming activity in this state. Bingo is not a pari-mutuel; it does not have dollars in and a percentage of dollars out. Bingo facilities have to advertise how much money will be paid out between a certain time period; the schedule is printed, and when players come to play bingo, they know how much will be paid out. There is no variable; the games cannot base the payout on crowd count – it is paid whether there are 60 or 150 players. The games are designed to have a fixed pay out to attract the clientele. It is not like a card room where if there are no players there is no payout. The bingo operations have the dilemma of trying to readjust the payout or structure to be consistent with our customer count, without alienating the clientele. Mr. Newgard explained his customer count is down 47 percent for the period from 2005 to 2006, and the organization is trying to rebuild that customer account – which is why the WCCGA is asking for the moratorium so the bingo operators have time to implement the changes, create the clientele, and adjust the games and expenses to meet their income.

Chair Ellis asked what percentage of Seattle Junior Hockey Association's gross receipts goes into prizes. **Mr. Newgard** replied that 75 percent of every dollar taken in goes back to the customer. And before the smoking ban, 28 percent of the remaining 25 percent went to the charity.

Commissioner Niemi pointed out that if the gross receipts are down, the percentage of the gross receipts amount required to pay is also less. **Mr. Newgard** agreed, clarifying that the expenses or overhead are not necessarily reduced. The requirement does go down, but even to that degree it is not enough. In 29 years, Seattle Junior Hockey's bingo game has never been out of compliance, it has always been the number one game in the state – this year it will be out of compliance. Mr. Newgard stated that with his experience and his staff's experience that was hard to swallow.

Commissioner Parker said it sounded like the big factor was that the bingo operations have not been able to adjust their payouts based on the lower number of people playing at any given time, due primarily to the smoking ban. Proportionately, that number has basically remained the same while there has been a decline in the overall gross. **Mr. Newgard** agreed – the payouts at his bingo operation have been reduced and 11 full-time employees were reduced, but this can only be done at a certain increments without alienating an operation's entire customer base. Mr. Newgard added that the tribal bingo facilities are still advertising their bingo games, so bingo is still a viable business and the charitable operations just need time to recoup. In November 2005 Seattle Junior Hockey's bingo game netted \$85,000 in one month – an increase of 16 percent over the previous year. Then in December 2005 the smoking ban went into effect. The first quarter of 2006, which is routinely the best quarter for bingo, the operation netted only \$52,000 for all three months.

Ronnie Strong, bingo manager for Amvets #1 in Tacoma, reported that Amvets #1 will be out of compliance for the third quarter. His organization has done everything possible to attempt to bring in more clientele, keep its revenue up, and meet the requirements. Amvets payout is over 85 percent being paid back to the customers. Mr. Strong stressed that his organization does not have the two years that studies show is required to recoup – the operation has been negative for two quarters now. When an organization closes, the charities it helped also lose. Mr. Strong encouraged the Commissioners to consider filing this petition for discussion.

Linda Smith, manager of Seattle Jaycee Bingo, testified that their bingo hall had been in existence in the Tukwila area for over 25 years, and in operation for almost 30. This year has been very rough for the bingo hall. The bingo game usually generates from \$80,000 to \$100,000 in the first quarter of a year – this year it barely made \$16,000 in the first quarter. Management is making adjustments, but they have to be done slowly so the customers are not run off. Ms. Smith reported that attendance at Seattle Jaycee Bingo used to be 100 or more until the end of the last year. When management adjusted the games, there were a number of players who told Ms. Smith they were going somewhere else. Every bingo hall has their core group and now those groups are smaller. Ms. Smith explained that because their bingo game has been negative, it is more difficult to recover. Ms. Smith reported that the board of directors has made numerous adjustments by cutting advertising, cutting the payouts, adjusting games, and cutting sessions to where for the third quarter the organization will not be negative, but it will still not be in compliance. But it's improved in that aspect. The time frame is really important to our bingo game, which admittedly has been declining over the years. There are only so many dollars to be spent on gambling – there is more

competition for the gambling dollars out there now. Ms. Smith admitted that many of their customers are elderly and use the bingo game as a social outlet, and have asked the board to do whatever is possible to keep the bingo hall open. Managers of bingo halls and the organizations are trying to do whatever is possible to build the games back up or to find a level where they are in compliance and still give money to the organizations and still survive in the current economy.

Senator Prentice asked Ms. Smith if she was around when the tax was reduced to 5 percent. **Ms. Smith** replied it was her first year with bingo. **Senator Prentice** remembered being blasted by a woman from Bellingham because the reduction had not been more, and in the newspaper because it was not passing the House. Senator Prentice said that when the bingo halls wanted to operate more than three days a week, it was approved to operate for seven, but the bingo halls weren't ready for the extra days. Senator Prentice commented that the Commission and Legislature keep trying to accommodate the bingo industry. At the Joint Legislative Meeting we heard that the request was going to be for no tax at all, which impacts local government when the tax is reduced, and Senator Prentice said she would not support it. Senator Prentice wondered if anything would really save bingo – there always seems to be some problem. **Ms. Smith** said she spoke at the Joint Committee Meeting and agreed that the Legislature was not willing to do more. Ms. Smith understood that each local jurisdiction has its own choice whether to charge a gambling tax and how much. Ms. Smith said she would be approaching her local government, but working with local government is difficult. **Senator Prentice** stated she was currently in a different role and was now trying to protect local governments. **Ms. Smith** stated that bingo is the bulk of her organization's budget. They were only able to send the city \$16,000, which was donated in part to the police department and fire department. The bingo hall means a great deal to the Seattle Jaycees.

Chair Ellis asked Ms. Hunter to provide a before and after picture for a large bingo operation including a break down of their gross receipts, their prizes, and their expenses by major category before and after the smoking ban to help the Commission see in practical terms what Mr. Newgard was describing and why even a reduced percentage adjusted cash flow requirement is not enough to allow the firm to meet its adjusted cash flow requirements. **Ms. Hunter** said staff would be happy to provide that information, asking if the Commission thought it would be helpful to include information on commercial pull-tabs. At the study session commercial operators asked if staff was keeping an eye on commercial pull-tabs. What staff has seen is that commercial licensees are renewing at a lower level than the year before, and some are actually closing. **Chair Ellis** asked if any Commissioners would be interested in going beyond the charitable and nonprofit bingo operations and including charitable pull-tabs. **Commissioner Niemi** said her main concern was with bingo and the impact of the nonsmoking ban, that she was concerned about the pull-tab operations, but felt the Commission is looking at a much larger picture. Commissioner Niemi had no preference either way. **Chair Ellis** agreed. **Commissioner Bierbaum** thought it would be interesting to see the pull-tabs because it would be a control sample to see whether it is bingo that is the problem or if the smoking ban is the problem. Pull-tabs would usually be played in bars and restaurants where smoking is no longer allowed, so if they are not affected, then the argument that it is smoking that is affecting bingo operations would not follow.

Commissioner Bierbaum felt those numbers might be useful. **Chair Ellis** added that for the overview for pull-tabs, gross receipt information without any breakdown of expenses would be sufficient. **Ms. Hunter** said she would have a report prepared for the next meeting.

Chair Ellis closed the public hearing and called for a motion on the proposed moratorium.

Commissioner Parker asked what the timeline would be if this petition were filed as a proposed rule change – when would it be up for final action. **Director Day** said in January. **Commissioner Parker** asked about the enforcement rule because some of the organizations are already out of compliance. **Director Day** responded that if there are two negative quarters, staff move forward with a summary suspension. But the quarterly reports for the end of this calendar year are not due until the end of January. In effect, if an organization had two negative quarters during 2006 staff would move forward in 2007 to summarily suspend the license. If the organization did not meet its adjusted cash flow but had a positive revenue, staff would move forward for revocation action. The third option, was if the organization did not meet its adjusted cash flow requirements but were within 25 percent, the organization would automatically be granted a waiver for 2006. With the moratorium, it would be a retroactive relief because the first year of relief would be 2006, which is the year that would most likely have the most significant impact from the smoking ban.

Commissioner Niemi declared that although there is no motion, she would vote against filing the petition, partly because of the date business, and because the Commission will have more information by the November meeting. The information collected from the October reports will be available giving the Commission a closer look at what is happening from the smoking ban. Commissioner Niemi said another thing the Commission and staff should be thinking about the charities and how we can manage a soft landing for bingo. As someone mentioned, the smoking ban is just one of many problems. Commissioner Niemi added that she was familiar with the national statistics on non smoking showing the big drops in clientele and that they usually come back over a year period, but Commissioner Niemi did not think that was going to happen, and she looked forward to hearing more at the November Meeting.

Commissioner Parker agreed, stating it was premature to file the petition; although, normal Commission practice has been to file a petition for rule change unless there was clear conflict with existing law. Filing the petition basically puts it on the table for discussion, but in this instance Commissioner Parker thought deferring to file seemed to make more sense because of the other questions in the air. This rule change, or some version of it, can be filed at the next meeting, so Commissioner Parker said his instinct was to hold off on filing. Once it is filed, the clock has been set running in terms of action.

Commissioner Bierbaum declared she was going to vote for filing to have the opportunity to discuss the rule. As she read the materials and listened to the speakers, Commissioner Bierbaum started thinking about the wisdom of the net cash flow rules and felt this would not be her standard in terms of determining if an organization was in compliance. Commissioner Bierbaum felt that so long as an organization was making a profit and their profit contributes

some percentage of a not-for-profit organization's budget, she felt that organization should be extended. For example, Mr. Newgard testified that his bingo hall provided 25 percent of the organization's operating budget, which is a huge amount. Commissioner Bierbaum explained that she would couch the compliance more in terms of whether a bingo hall provided 10 percent or more of its organization's budget. There should be minimum requirements for profit and contributing to an organization's budget but not in terms of gross revenues or net revenues.

Mr. Newgard explained the reason for filing now was because of the requirement for a rule change to be heard for 90 days, and then if the petition is passed in January the bingo operators would have that window of opportunity. If it is not filed today, the games that will be out of compliance in January will be closed. **Director Day** clarified that from a practical standpoint, if the Commission is inclined at all to seriously consider a moratorium, it would be better to file it now so that the moratorium would be in effect by the end of the calendar year. If the Commission decided to let the discussion go and decided not to approve a moratorium, staff would have a clearer direction as to when to take enforcement action against operations that are out of compliance for calendar year 2006. If the petition was not filed until November, it would not get final approval until February. **Chair Ellis** pointed out that, technically, if the rule is filed today and approved at the January meeting, it would become effective 31 days after filing, which would be in February. **Director Day** said that staff would know the Commission's decision on the moratorium and when the rule would be going into effect and would not take any action on the organizations.

Commissioner Parker pointed out that prior to Commissioner Bierbaum coming on the Commission, he recalled numerous discussions about the minimum adjusted cash flow rule. Commissioner Parker asked if this petition were filed and while it was on the table, if a Commissioner wanted to amend the minimum adjusted cash flow, could that be an amendment to this proposed rule? **Mr. Ackerman** replied no. **Chair Ellis** thought that with a two year moratorium, there would be no urgency to revisit the adjusted cash flow requirements. The effect of changing those percentages and establishing the moratorium would mean the percentages would not have any affect for two years. **Commissioner Parker** commented that an alternative approach, rather than a flat moratorium, would be to have some type of adjustment based on the economic realities of the situation. **Director Day** thought an example might be a reduction in the percentages, which would be filed as an alternative because of the substantive different approach. That way both rules would have been officially filed and the Commission can move forward with discussions and, in the end, adopt the moratorium or the alternative.

Commissioner Niemi said the idea of a moratorium for two years concerned her a great deal. Those percentages have been lowered multiple times just since I have been on the Commission. Then the Commission approved the adjustments to cash flow. Commissioner Niemi felt the Commission needed to look closely at the amount of gross receipts less prizes and the amount of money going towards the charitable purposes before considering lowering the percentages further.

Mr. Ackerman addressed Commissioner Parker's question, explaining that if the desire of one or more of the Commissioners was to change the percentages then it would not be appropriate to do so as an amendment to the petition before the Commission. Mr. Ackerman thought it would be a substantive change of the APA. However, the Commission can direct staff to prepare a rulemaking proposal to affect the changes that the Commission wants and then file it as a separate rule making proposal. Mr. Ackerman wanted to make sure the Commission did not think they could simply file this petition and then amend it to affect the change to percentages. Mr. Ackerman asked why the 25 percent waiver rule would not kick in if these bingo operators missed their adjusted cash flow requirement for 2006. He thought that if it was still available then the timing would not be crucial. **Director Day** explained that for some it would have an impact.

Senator Delvin asked if there had ever been a moratorium for bingo. **Ms. Hunter** responded that there was a moratorium six or seven years ago on, she thought, net return.

Commissioner Bierbaum made a motion seconded by **Commissioner Parker** to accept for filing and further discussion amendatory section WAC 230-20-059, as presented by staff.

Commissioner Bierbaum clarified that even though she made the motion, it was unlikely she would approve the moratorium, but she was willing to give people time to try to come up with something different. **Commissioner Parker** added that he seconded the motion just to get it on the table.

Chair Ellis said that his attitude was basically the same, particularly given staff's recommendation that the Commission should consider this issue. It is a serious matter and although he understood the attitude of Commissioner Niemi and Senator Prentice, he intended to vote in favor of the motion. **Director Day** clarified staff's perspective was that the agency has seen a significant impact from the smoking ban relative to the charitable and nonprofits that is greater than what has historically occurred to bingo operations. Staff was also concerned about the length of the proposal of the moratorium. It has appeared from information staff received that some of the operations are making somewhat of a comeback. This petition provides organizations the chance to present their case: that this was a specific event that occurred; that the organizations still have the ability to meet requirements; that the organizations return cash to their charitable operations; and that the solution was a short term fix.

Commissioner Bierbaum asked if it would be considered a substantive amendment if, when it came time to adopt the change, the Commission changed the length of the moratorium?

Mr. Ackerman responded that he thought the time period would be an appropriate subject for an amendment.

Vote taken; the motion was defeated with two aye votes and two nay votes by Commissioners Parker and Niemi.

Chair Ellis asked if there were any alternative motions regarding this proposal. There was none.

Mr. Ackerman pointed out that the Commission is required to state its reasons for denying the filing. Mr. Ackerman asked if there were any additional comments that Commissioners Parker and Niemi wished to make for the record. **Commissioner Parker** stated his view that the existing rules provide information with the flexibility to give temporary relief and he felt the Commission needed to study this situation and the additional information requested as it goes forward, but he was not prepared to put a rule change on the table that then set the clock running. **Commissioner Niemi** thought she had given her reasons when she opposed the filing. She would like to wait until next month when the Commission will be provided with actual figures for the large organizations' gross receipts less prizes and the amount of money going to their charitable projects.

13. Petition for Rule Change – Seattle Jaycees

WAC 230-20-055 - Use of proceeds from authorized activities by charitable or nonprofit organizations.

Assistant Director Trujillo reported that this petition for rule change was submitted by the manager of the Seattle Jaycees Bingo and is up for discussion and possible filing. The proposed change will add language to the current rule that all net income from gambling activities must be used for lawful purposes. In 1999, the IRS issued a Technical Advice memorandum that allowed for a 100 percent deduction of the tax on punchboard and pull-tab income. The IRS memorandum relied on WAC 230-20-110, which at that time required gambling income to be used exclusively for the lawful purposes of the organization. In 2000, the rule was repealed because, for staff purposes, the meaning of the language was the same as in WAC 230-20-055. Mr. Trujillo directed the Commission to the proposed amendatory section in their agenda notebook. The new language on net income incorporates language that was previously relied upon for the Technical Advice Memorandum. This year, Seattle Jaycees had the unfortunate experience of being the subject of an IRS audit. That IRS agent discovered that because the rule had been repealed, the IRS would only allow a 60 percent deduction of the income tax on pull-tabs. The petitioner included three options and staff recommends filing option number two for further discussion.

Chair Ellis called for public comments.

Linda Smith, manager of the Seattle Jaycees, testified that Seattle Jaycees was audited by the IRS because it had taken the deduction. The IRS could not find the WAC in the rules manual in the Seattle Library. Ms. Smith explained that she found the rule had been repealed that the IRS had referenced. In July, Ms. Smith submitted the letter expecting it would go in as a rule change. Since it will not be effective this year, the organization will only get a 60 percent deduction. Currently only Class III can take the 60 percent deduction. According to the IRS, Class Is and IIs that qualify as nonprofits should not be taking any deductions.

Commissioner Niemi asked Ms. Smith whether her organization was taking the 100 percent deduction for the federal government. **Ms. Smith** affirmed it was the federal IRS.

Commissioner Niemi asked why 60 percent – an organization can either deduct taxes or they can't. What is the 60 percent taken from? **Ms. Smith** replied that in the WAC rule it stated that Class III and above had to use 60 percent of pull-tab income towards its stated purpose. **Director Day** thought that what the IRS may have been focusing on was the significant progress rules for charitable/nonprofits that have a 60 percent requirement, but there are also suggested cash flow requirements and a net return requirement that 60 percent goes back to the charitable/nonprofit organization. **Mr. Ackerman** added that he thought the IRS may have been saying that the organization is partially a charitable/nonprofit organization and partially not – and the income has to be divided along those lines. The IRS is drawing the line where the Commission mandates a set percentage of return to the charitable/non-profit purpose. **Commissioner Niemi** asked why our WAC allows 60 percent deduction and not 100 percent. **Director Day** explained that the only reason the charitable bingo can be in existence is to support the nonprofit organization – it has to be a 100 percent operation. **Director Day** added that the other part being discussed goes to expenses to run the bingo operation and then goes to administrative expenses for the charitable organization. **Director Day** thought the IRS was taking a rule that does not apply to the whole operation. All of the funds that come from a bingo operation should be for the support of the charitable operation. **Commissioner Niemi** asked whether this change was about pull-tabs and, if approved, the organizations would be able to deduct 100 percent. **Director Day** affirmed.

Commissioner Parker made a motion seconded by **Commissioner Niemi** to accept for filing and further action amendatory section WAC 230-20-055, as presented by staff. *Vote taken; the motion passed unanimously.*

14. **License Fee Increase**

WAC 230-04-202, WAC 230-04-203, WAC 230-04-204, WAC 230-05-020 (*Rules Simplification Companion*), **WAC 230-05-025** (*Rules Simplification Companion*), **WAC 230-05-030** (*Rules Simplification Companion*), **WAC 230-05-035** (*Rules Simplification Companion*)

Assistant Director Trujillo reported that the proposed changes will increase license fees by approximately 3 percent across the board beginning June 2007. The Commission is a non-appropriated agency and must set fees to generate the funds necessary to cover the costs of licensing and enforcement. The last fee increase was in June 2003. In 2002, fees were increased for commercial licensees and individuals only. Staff recommends filing these rules for further discussion.

Commissioner Parker asked whether staff could prepare a similar pie chart to those that were included in the Commissioners notebooks that would lay out expenditures of the Commission. For example, how much of your budget is spent regulating house-banked card rooms, as compared to this information. **Chair Ellis** said the question sounded similar to the one staff got from Legislative sources on why the license fees were not directly related to the cost of enforcement to or revenue generated by the various segments. **Mr. Trujillo** replied that information is available and staff could prepare the chart to show the Revenue by Source, and then in place of the Gambling Receipts by Source staff could include a similar pie chart for expenditures. **Director Day** pointed out that the agency has about 20 employees

in our entire tribal gaming regulatory unit, compared to about 60 agents in our non-tribal regulatory units, which gives an idea of the different equation. Agents play a different role in each of those segments – with non-tribal the agency is the primary regulator, but in the tribal arena the agency acts as a co-regulator.

Chair Ellis called for public testimony. There was none.

Chair Ellis recommended addressing the rules in two groups, first the three amendments and then the companions to the simplification project rules. **Commissioner Niemi** asked if it was allowable to do these rules together. **Mr. Ackerman** replied that since they were up for filing they could be handled as a group.

Commissioner Niemi made a motion seconded by **Commissioner Parker** to accept for filing and further discussion amendatory sections WAC 230-04-202, WAC 230-04-203, and WAC 230-04-204 as presented by staff with an effective date of June 30, 2007. *Vote taken; the motion passed unanimously.*

Commissioner Niemi made a motion seconded by **Commissioner Parker** to accept for filing and further discussion the rules simplification rules WAC 230-05-020, WAC 230-05-025, WAC 230-05-030, and WAC 230-05-035 as presented by staff with an effective date of January 1, 2008. *Vote taken; the motion passed unanimously.*

15. Scheduling Reconsideration Hearings

WAC 230-50-562

Ms. Hunter reported that this is a procedural rule dealing with petitions for reconsideration. Petitions for Reconsiderations are filed either when the Commission has issued a final order in its role as an appellate body or when the Commission enters a default order. And under the Administrative Procedures Act, the petitioner must take action on petitions within 20 days or the petition is considered denied by operation of the statute. The Commission has two options when you have a petition for reconsideration; either deny the motion or set the matter for a hearing. Past practice has been to hear the petition and set a date. Because of the requirement to act within 20 days, sometimes a special meeting has to be scheduled to hear the petition. There were actually three petitions for reconsideration before the Commission this year, which staff received within the 20-day time frame. There is a lot of scrambling going on behind the scenes to get the petitions before the Commission because agendas are set and the majority of the work done about two weeks before each meeting to ensure the agendas are received in a reasonable time. What staff is requesting is to have a rule that ensures the scheduling is done automatically in accordance with the rule. If the petition is received at least 15 days prior to the next Commission Meeting, it would be scheduled at that upcoming meeting, but if the petition was received less than 15 days before the Commission Meeting, it would be scheduled at the subsequent meeting. Staff recommends filing for further discussion.

Commissioner Bierbaum asked if RCW 34-05 requires the Commission to hear petitions for reconsideration within 20 days, can the Commission change that statutory requirement

with a WAC rule change. **Mr. Ackerman** responded that the rule is a little misleading. What the APA requires is that the Commission act on a petition for reconsideration within 20 days, which could be by setting it for hearing. It does not require a disparity's hearing within 20 days. The rule is intended to prevent an agency from receiving a petition for reconsideration and sitting on it for months, and by doing so depriving the petitioner the opportunity to go to Superior Court on a petition for Judicial Review.

Chair Ellis called for public comments. There was none.

Commissioner Parker made a motion seconded by **Commissioner Niemi** to accept for filing and further discussion amendatory section WAC 230-50-562, as presented by staff.

Vote taken; the motion passed unanimously.

16. Card Room Tip Procedures

WAC 230-40-855

Acting Assistant Director Jeannette Sugai reported the proposed amendment to WAC 230-40-855 on the acceptance of tips from patrons for house-banked card rooms was proposed by staff and is up for discussion and possible filing. The proposed rule will require more detailed procedures for the accountability of tips received by card room employees. Under the amendment tip drop boxes must be locked and be under camera coverage at all times. Tips must be redeemed under surveillance. Card room employees must accurately report all tips to their employer and tips received by cage cashiers must be counted and documented by a shift or floor supervisor or by security. Since this rule was implemented with all the other housekeeping rules in 2000, agents have noted incidents of inaccurate tip reporting by house-banked card room employees. The proposed rule change will codify tip accountability requirements and provide consistent enforcement by staff and will ensure that both the licensed operators and the licensed card room employees have a consistent understanding of what is required for tip accountability. The primary regulatory concern prompting the rule change was that of ensuring that income derived from the card room employees from gambling activities is controlled and accounted for. Staff has not received any statements opposing the proposed rule and recommend filing for further discussion.

Chair Ellis called for public comments.

Max Faulkner, speaking as Vice President of the RGA, thanked the staff for working with the RGA on this rule change to make the requirements more clear. Some of the members have some issues about extra costs in accounting for these tips and whether it is uniform.

Commissioner Niemi requested Mr. Faulkner and Ms. Hunter discuss the RGA concerns and provide revisions to the rule before final Commission approval.

Commissioner Niemi made a motion seconded by **Commissioner Parker** to accept for filing and further discussion amendatory section to WAC 230-40-855 as presented by staff, effective 31 days after filing. *Vote taken; the motion passed unanimously.*

Chair Ellis asked Mr. Ackerman if it was necessary to specify the rule would be effective 31 days after filing with rules that are up for potential filing and further discussion. **Mr. Ackerman** responded that it would not be necessary, because the date would be specified when the Commission takes final action in favor of the rule, but there would be no harm in including the effective date at this time.

17. **Rules Simplification Project:**
Chapter 230-15 – Card Room Rules

Ms. Heston explained that many members of the staff have put an enormous amount of time on these rules and met 13 times over the past six months with the small group, which included the stakeholders Gary Murrey and Steve Griffith. The administrative group met 15 times over the same period and has scheduled a 16th meeting.

Ms. Heston reported there are a number of rules summaries in this chapter that are necessary, but not substantive. Many of the rule summaries within the chapter are repealers to eliminate redundancies; others are inclusions in the rules of existing rule interpretations, which are practices that the agency has been enforcing for some time. Chapter 15, General Rules, includes two rule summaries that staff are calling global changes because the changes are made to all newly rewritten rules in the rules simplification project and add consistency throughout the chapters.

The first changes the language referring to approval or exceptions by the Director or the Director's designee to read "approval or exception by staff or by us" – "us" meaning staff. Because staff have been delegated in the past, it was recommended the language be changed to not say only the Director can approve it.

Chair Ellis noted that the general overview of the rules is very helpful. Chair Ellis if Ms. Heston planned to discuss each chapter individually, and if so, when would she like the Commission to ask questions about one of the points. **Ms. Heston** replied the Commission could ask questions of her at any point. **Chair Ellis** noted that on one hand it makes very good practical sense to shift the focus of approvals or exceptions from the Director or designee to staff, but on the other side of that coin is the concern that there have been several instances where questions have been asked about the authority of a staff member of the Commission who made a decision. One question Chair Ellis recalled was when a field agent in Spokane approved the concept of cards that had money added to them. When a rule refers to staff generally having the authority to approve something or to grant an exception, there may be questions as to who is really authorized to make the decision. Chair Ellis asked if it was something the group had focused on and whether the language change concerned Director Day. **Ms. Heston** responded that the working group felt that because these actions had been delegated in the past by agency directors that the change would not cause significant problems. **Director Day** agreed with Ms. Heston, adding that several of the rules had the language "unless the Director makes an exception" so did not seem appropriate that once the Commission passed a rule that the Director would make an exception. Director Day felt that part of what the rules team was looking for and what part of this applies to was actually moving some of those exceptions to those who routinely make the approvals; for

example card game approvals are routinely approved by designated agents in the Field Operations Division. Director Day understood the concerns Chair Ellis had, and that the Director was ultimately responsible.

Commissioner Niemi recommended language that said “Director or the Director’s designee.” **Ms. Heston** explained that the previous rule said the “Director or the Director’s designee” and was changed to “we,” “our,” or “us,” which is defined in Chapter 03 as referring to the Commission”.

Director Day stated in the particular case Chair Ellis was referring to, it was not an authorized approval period. **Commissioner Niemi** asked how someone would know who was authorized if the rule just refers to “staff”? **Chair Ellis** said there was no place in the rules authorizing the Director to approve gift cards or the ZDI machine that staff approved. **Commissioner Bierbaum** agreed with Chair Ellis and Commissioner Niemi that even though it has been the practice because the Director has the authority under the rule to delegate, it was the Director’s choice to do so, which is fine, but the buck stops there and not just with staff generally.

Ms. Heston pointed the Commissioners to page 13 in their agenda packet, WAC 15-045 - Withdrawing Approved Card Games, to illustrate one of the newly derived rules in the general section. If approval of a card game is withdrawn, staff will provide written notice to licensees offering the opportunity to object. This section previously said, “the Director withdraws approval for a card game” when in actuality the Assistant Director of Field Operations would be the person withdrawing the approval because the Director delegated that authority. The rule was changed to remove the idea that only the Director could withdraw approval.

Commissioner Bierbaum felt that by codifying the language in a WAC, it removes the Director’s ability to change his mind and decide to make decisions he had previously delegated. **Commissioner Niemi** asked what the Commissioners are referred as in the new rules – isn’t Director Day’s office “Commission”? **Ms. Heston** replied that “we,” “our,” and “us” refers to Commission staff. When it is a duty or a privilege of the Commission or the Director or some other named person in the statute then a capital C for Commissioners and capital D for Director are used. **Commissioner Niemi** thought WSGC would be better and was concerned that “we” are just floating out there. **Commissioner Parker** stated he was not convinced it was wise to make this word change. It is more than just simplifying things, it opens up the question of who is “we.” When working with public policy, when language says the Commissioner or Director, and it is actually a staff person, it has always been understood that person was acting with authority, but the buck stops with the Director and the Commission. **Mr. Ackerman** asked Ms. Heston whether staff has a general definition of the word “we” that encompasses or applies to all the rules that will be coming forward. **Ms. Heston** affirmed. **Mr. Ackerman** suggested changing the definition to say “‘we’ being the Director or the Director’s designee” and then elsewhere in the rules where the intent is for the Commission to act you refer to “Commission” or “Commissioners.” **Ms. Heston** pointed out that language is currently in Chapter 03, which is the first chapter put forward in the rules

simplification project. **Mr. Ackerman** asked if Ms. Heston believed that language would reach the concerns of the Commissioners when they asked to bring forward a rule proposal to amend the definition of “we.” **Ms. Heston** agreed it would be very simple to fix. **Director Day** said Mr. Ackerman made a good point, because statutorily the Director is the administrative designee, and Mr. Ackerman’s suggestion may be a good solution. **Chair Ellis** did not know if there were appropriate instances for indicating that something can be done by the staff or whether all the decisions should be made by the Director or the Commission. **Commissioner Niemi** asked whether the code reviser uses the word “we” in the rules. **Ms. Heston** affirmed, adding that all of the Labor & Industries rules use “we” – they were one of the first agencies to switch to the plain talk. **Commissioner Bierbaum** said that just changing the language to use the word “we” would not bother her, but changing all the language where it says the Director or the Director’s designee to either staff or a specific division of the agency does. Commissioner Bierbaum asked to see every instance where it was changed to evaluate whether the change was appropriate in that specific circumstance. Just making a global change would be difficult to approve, without knowing specifically everywhere the language was changed. **Ms. Heston** said she would have to go back quite a ways to show every place where the language was changed and asked if that was what Commissioner Bierbaum wanted, or bring forward a rule change to change the definition of “we.” **Chair Ellis** suggested Ms. Heston do a global search on the old rules and prepare a list with one column showing whether it is the Director or designee or whether it is the Commissioner or who it was that had originally had the authority. Then in some fashion briefly indicate what the authority was for and indicate the changes proposed to be made to “we.” It would be helpful for focusing on exactly what authority is being referenced. **Ms. Heston** said she would have the information for the November Commission Meeting. **Chair Ellis** felt this issue would be addressed as the rules are going forward and need not hold up the acceptance of these rules, if the Commission decides they should be accepted for filing.

Ms. Heston reported that the next “global change” removes areas where the rules restate items that are provided on a separate agency form, simplifying the process both for staff and the licensees. Next a definition was added defining “guests” for charitable and nonprofits, which was originally tied to Liquor Control Board guest cards that no longer exist. WAC 15-050 is a minimum cash on hand requirement that was formerly in the house-banked section and was moved to the general section because it is a general requirement for all card game licensees. Language was changed in WAC 15-065 to emphasize the order of priority and how the rules of play would be enforced if there was a question. WAC 230-40-140 is repealed because staff felt the rule was unnecessary as there were alternate ways enforcing this concept and a game would not be approved where wagering methods could be changed in mid-hand or mid-game. Language was removed in WAC 230-15-080 authorizing the Director to approve other alternative methods of collection because there are no other authorized methods. WAC 230-15-100 adds Class B and C charitable/nonprofit card game licenses to the rule because in the original writing those classes were accidentally omitted. WAC 230-02-415 is repealed because card room employee is defined elsewhere in the rules. WAC 230-15-170 requires photos of card room employees be kept on the premises but the requirement that they be posted was removed for privacy concerns and the safety of the card

room employees, plus it was impractical for some card rooms to post 80 or 90 pictures on their walls.

Commissioner Bierbaum was concerned because she understood the rules simplification project was to rewrite the existing rules to simplify the language not to take the opportunity to make changes in the process. There is a rule making process that is to be used for rule changes. Even though this particular change is insignificant, the WAC currently says you post them publicly. Commissioner Bierbaum did not think that actual changes could be made in the rules simplification process other than just rewriting the rules in clear language. **Ms. Heston** explained that in this particular case staff had stopped enforcing the rule, which is why the language was changed. **Commissioner Bierbaum** did not disagree, but thought the rules simplification process may not be the venue by which they should be changed. **Mr. Ackerman** explained he had discussed that concern with staff and informed them that if it is felt there are changes appropriate to the rules, not just language changes but changes of substance, staff needed to be prepared to address them with the Commission in the same way they would with any other petition that comes before the Commission for a substantive rule change. The decision was to proceed in this manner, but abide the Commission's pleasure in attempting to do it this way.

Director Day explained that the concept of rules simplification is to rewrite the rules so they are more readable and part of that concept involves modernizing the rules and recognizing areas that are outdated, not enforced, or do not match statutory authority, which is what staff have attempted to do. Staff has also found circumstances where sections in the rules did not connect back to statutory authority, which would not have been found without the rules simplification process. Staff recognizes the argument regarding substantive changes and has attempted to eliminate any changes except for what were minor changes that reflected an extinct practice or modernized the wording. Staff have taken a conservative approach to singling out substantive changes and wanted the Commission to be aware of them, which is why any changes are being specifically identified under separate rule summaries. The changes are there where anybody can see them and have public discussion, but they are set up so if the Commission want to take the changes separately, they can be removed from the package and moved forward on its own. The reason staff took this approach was to provide the Commission and the public with notice of any changes. **Director Day** concluded that some changes may appear more substantive in nature, but he did not feel they were substantive.

Commissioner Niemi had the impression that what the Commission was doing was to approve or not approve these specific sections for filing and the Commission can deny approval of any that are of concern. **Director Day** agreed that was the idea. **Chair Ellis** said he understood Commissioner Bierbaum's concern, as well as Mr. Ackerman's, but it appears to be an efficient process. It would be unfortunate for staff to spend time rephrasing language describing a rule that is not being, nor is intended to be, enforced. Staff is not failing to correct other relatively modest deficiencies in the rules; there are changes that need to be made and those changes are being flagged for the Commission. **Chair Ellis** said it was a cumbersome process for the Commission no matter what way it was approached. It will be

most cumbersome when the rules are ready to be adopted and Mr. Ackerman informs the Commission that each rules summary needed to be moved on separately.

Commissioner Bierbaum noted that in the past with the rules simplification the Commission did not see the old rule with the new one, so she would read the new rule to determine if read well because her assumption was that the changes were only simplifying the language that was already in the rule. Commissioner Bierbaum said that now she is realizing that changes are actually being made to the language, so it would be helpful to see the current rule. Commissioner Bierbaum asked if this were the first time staff was making substantive changes. **Ms. Heston** responded that these are not the first rule summaries, but there are more in this chapter because it is very complicated and complex. Ms. Heston assured the Commission that staff had industry watch dogs at every step and worked hand-in-hand with them. Many of the same questions the Commission is asking were raised during the meetings. **Commissioner Parker** commented having industry participation was certainly important but notice still needs to be provided to the public at large with the opportunity to comment. Although that may be more of a theoretical consideration because the Commission does not often have issues with a lot of public interest behind them, the Commission has the responsibility to provide notice and opportunity to the public at large. Commissioner Parker did not think the process should be stopped, but the changes need to be identified more clearly and flagged in some way when the chapter is presented.

Ms. Heston explained that previous versions included the old rule directly below the new language. Because this chapter was so large, it was prepared differently for this presentation. If the Commissioners think it would be more helpful, this chapter can be prepared with both the old rule and new language. It will make your packets much larger, but may be more helpful. **Commissioner Parker** was in favor of including both versions. **Director Day** ask whether the Commission wants the old rule under every rule or only for those where there are substantive changes. **Commissioners Parker and Bierbaum** replied that they only wanted it done where there were changes. **Commissioner Bierbaum** understood this project was something the Governor mandated for all agencies throughout the state, but thought it was for the purpose of making the rules more readable. When Commissioner Bierbaum read the mandate, the intent did not appear to include cleaning up obsolete rules or changing unreasonable rules. It was simply to make the rules more readable. Commissioner Bierbaum was concerned that the Commission was using the process to go beyond the Governor's mandate. **Commissioner Niemi** noted that the Commission was not really changing laws, just the way the laws were applied. Commissioner Niemi agreed that it was important to be able to see the old one rule with the new. **Senator Prentice** was concerned that staff had the latitude to stop enforcing a requirement in a rule without first notifying the Commission. **Director Day** agreed, but explained that staff has attempted to bring those situations to the attention of the Commission within the simplification process. When there is an impractical rule that does not work well, what happens is that the rule is not actively enforced. Staff's goal is to find those defects where no statutory authority from the legislature can be found or where the rule has been impractical to enforce, to bring to the Commission a package of rules that can effectively be enforced. **Commissioner Niemi** said there is no statute that requires displaying the employees' pictures, only a WAC rule. **Director Day** clarified that the

question he raised about statutory authority did not connect to this specific rule and apologized that he may have gotten the Commission on the wrong track. **Ms. Heston** informed the Commissioners that this chapter in particular has been posted in various forms throughout the whole process on the Rules Simplification page on the agency's website,

Ms. Heston continued with WAC 230-15-175, reporting that the number of days required to notify the agency about card room employees no longer working was changed to ten to make the timeframe consistent with other rules. WAC 230-15-185 was changed to state that licensees have report cheating to us within 3 days. They have always had to report it to local law enforcement immediately. WAC 230-40-315 is repealed because the rule is no longer necessary. WAC 230-15-190 changes the requirements to require data to be backed up at least monthly. Ms. Heston reported that WAC 230-15-225 and WAC 230-15-235 relate to card tournaments and adds language from a rule interpretation that is being enforced. There was some ambiguity in the current rule that led to questions from licenses. The rule interpretation was used to provide answers to the questions. If the current rule had an ambiguity that staff needed to answer, staff thought it would be useful to include the answer in the new rule. Ms. Heston explained that rule interpretations have been folded into this simplification process to remove that ambiguity. WAC 230-40-500 is being repealed because the restrictions are in RCW 9.46.0351 and do not need to be repeated in the WAC. WAC 230-40-050 is repealed because the assessment of the fees is handled in the fee schedule, which is in Chapter 05.

Ms. Heston explained that our current surveillance rules overlapped and were redundant, so they were combined to clearly delineate the requirements of Class F card room surveillance and house-banked card room surveillance. WAC 230-15-325 combines the visitor's log and the surveillance sign-in log, requiring anyone going in or out of a surveillance room to sign their name. WAC 230-15-335 sets requirements for internal controls that were currently only implied. WAC 230-40-830 is repealed. WAC 230-15-385 clarifies the language, using consistent card room terms. WAC 230-40-610 is repealed. WAC 230-15-400 clarifies the language for consistency. WAC 230-15-405 removes language regarding "unless an agent released you from this burden you had to keep the winning hand for seven days" because agents never release licensees from that burden. WAC 230-15-410 clarified language that is currently implied. WAC 230-15-415 adds language from an existing rule interpretation concerning taxing authorities seizing bank accounts. WAC 230-15-420 was changed to allow the Director to decide whether to become involved in resolving a dispute over player-supported jackpots. Previously the Director was obligated to issue a written decision on any dispute. This rule states that the Director may become involved if he feels it is necessary. Most times, disputes over player-supported jackpots are resolved without the need for the Director to intervene; in fact a Director has only been involved in one resolution in seven years.

Ms. Heston quickly reviewed the changes to the house-banked card rooms section. WAC 230-15-425 requires that licensees keep a copy of their internal controls on sight at all the times, which was only implied in current rules. Language was also added requiring licensees to follow all the restrictions included in the Gambling Act, which currently is only implied.

WAC 230-15-430 requires Surveillance to report any suspicious or illegal acts, Security to destroy damaged chips, and Accounting to control the count room and the cashier's cage. WAC 230-15-440 adds an existing rule interpretation allowing verbal approval to changes to card room and agents will view the changes on their next visit to the card room; for instance, a card room has three black jack tables and four poker tables and decides to change to four black jack tables and three poker tables. WAC 230-40-554 and WAC 230-40-800 are repealed.

Chair Ellis interrupt to point out that there was only ten minutes left before the meeting had to be adjourned. He believed that each Commissioner had reviewed these materials prior to the meeting, and asked if it was acceptable to the members of the Commission to end Ms. Heston's presentation at this point to allow time for public comment on these proposed rules, then proceed to decide whether the Chapter should be filed. Or would the members of the Commission rather continue Beth's change-by-change descriptions, the public hearing, and the Commission's action until the November meeting – delay everything by a month? **Ms. Heston** pointed out that she would not have to go through each change again next month.

Chair Ellis called for public comment.

Chair Ellis acknowledged and thanked Gary Murrey and all of the other members of the industry who contributed so much to this product.

Gary Murrey commented the group worked through sixteen or seventeen drafts of these rules, which several members read at least half of those drafts word for word, including checking all WAC references, which involved a lot of technical reading and understanding the intent. Mr. Murrey understood the concerns of the Commissioners, adding the industry had some of the same concerns, but after talking with staff and working through the rules, the group got down to only including those changes that seemed to be a reasonable approach. Mr. Murrey appreciated all the time staff took, knowing it was difficult getting the groups together. Words and issues may not be clear yet, so the group plans to continue to add its input; hopefully to have a good product at the end of the next few months.

Chair Ellis indicated that unless any of the Commissioners preferred any individual rules be set out for separate action and consideration by the Commission, since these rules are up only for filing and further discussion, Mr. Ackerman had said it would be appropriate to proceed and vote on them as a group.

Commissioner Niemi made a motion seconded by **Commissioner Parker** to accept for filing and further action the Rules Simplification Project, Chapter 230-15 – Card Room Rules as presented by staff. *Vote taken; the motion passed unanimously*

Commissioner Parker commented that his questions earlier in this discussion were not intended to reflect on the quality of staff's efforts, which he thought were very commendable. By putting this on the table, the Commission has the opportunity to remove any issues that may be considered more substantive in nature and treat as a separate rule.

Director Day added that part of the reason staff were targeting to have all of these rule revisions effective January of 2008 was designed so the Commission would have time to take another look at the entire package of WACs as they had been reassembled, which will provide another opportunity to revisit anything that does not seem to fit or going the direction the Commission wants.

Chair Ellis thanked Ms. Heston for the work that went into her presentation and into the proposed rules.

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

Chair Ellis called for public comments.

Nathan Herzog, recreational player, reminded the Commissioners that he had the opportunity to come before them at the April Meeting in Vancouver where he spoke about some of the different issues surrounding the promotions being placed out by many of the house-banked card rooms. Mr. Herzog was very encouraged to see the minutes from the June Meeting; however, after six months there are still significant issues surrounding some of the dealings between the operators, the consumers, and the interaction with many of the agents in the field. Mr. Herzog testified that there are some real challenges still present. **Chair Ellis** recommended that Mr. Herzog provide his information to the staff.

Linda Smith, manager of Seattle Jaycee Bingo, asked whether a decision made during a Gambling Commission Meeting could be brought back up for reconsideration. Ms. Smith stated that to vote to file a petition or rule for discussion does not mean the Commission accepts the rule as final, but there is a timeline issue with the Code Reviser's Office. The Commission may find that when the third quarter reports come in some bingo operations are starting to improve and the fourth quarter may show more improvements. Some of the operators will not make that hurdle and will not have the opportunity at all without the moratorium. Ms. Smith said her operation needs its first quarter back, which was lost this year. Ms. Smith asked the Commissioners to reconsider their decision on the moratorium.

Chair Ellis explained part of the intent of the Commission in not proceeding to accept that petition at this point, was to look at the next quarter's results and see if the equation changes. **Ms. Smith** declared that if the petition does not get filed at this meeting, her operation is out of time for anything to happen in this time period. **Chair Ellis** said the Commission will be open to reconsideration at the November meeting if anything changes after seeing next quarter's reports.

With no further business, **Chair Ellis** adjourned the meeting at 12:05 p.m., and noted the November 16 and 17 Commission meeting will be conducted at the Double Tree in South Center.

Minutes submitted by,

Gail Grate
Administrative Assistant