

**WASHINGTON STATE
GAMBLING COMMISSION MEETING
THURSDAY, SEPTEMBER 13, 2007
MINUTES**

Chair Niemi called the meeting to order at 1:30 p.m. at the Hilton Garden Inn located in Yakima. She then introduced the following members and staff present, noting that Commissioner Parker was not present today because he had a heart attack; he is doing well.

MEMBERS PRESENT: **COMMISSIONER JANICE NIEMI, Chair**, Seattle
 COMMISSIONER PEGGY ANN BIERBAUM, Vice-Chair, Quilcene
 COMMISSIONER KEVEN ROJECKI, Tacoma
 SENATOR MARGARITA PRENTICE, Seattle
 REPRESENTATIVE GEOFF SIMPSON, Covington

STAFF PRESENT: **RICK DAY**, Director
 SHARON REESE, Deputy Director
 MARK HARRIS, Assistant Director – Field Operations
 DAVID TRUJILLO, Assistant Director – Licensing Operations
 AMY HUNTER, Administrator – Communications & Legal
 JERRY ACKERMAN, Assistant Attorney General
 GAIL GRATE, Executive Assistant

1. Review of Agenda and Director’s Report

Director Day reviewed the agenda for Thursday and Friday and noted changes and inserts added to the agenda packet since publication. Director Day requested that the scheduled default, Porterhouse Restaurant in Moses Lake, be held over to the October meeting at the joint request of staff and the Porterhouse attorney. **Chair Niemi** agreed. **Director Day** explained that Bruce Marvin, who normally handles our cases before the Commission, and was listed on the agenda, had another legal matter to attend to. Assistant Attorney General Jennifer Elias will present our case in Mr. Lawless’ Petition for Review. Director Day noted that the rules up for discussion would be heard today.

Director Day explained the pull-tab games presentation is to familiarize the Commission with various types of games in play in Washington, including some of the larger concepts involved and the rules. Director Day introduced David Guhlke, Special Agent from Spokane, who will provide the overview.

Pull-Tab Games Presentation (PowerPoint)

Special Agent Guhlke, Spokane Regional Office, said he had been with the agency for the past eight years and has experience working as a liaison between pull-tab manufacturers and the Gambling Commission. Agent Guhlke pointed out that the PowerPoint presentation will be posted on our website next week. Agent Guhlke reported that the maximum price for a pull-tab is \$1 and all games must have a least a 60

percent payout. He then described different pull-tabs games (jar tickets, bundle tickets, window tickets), showed a fishbowl game, and a flare, and explained that the flare is the information sign that shows the winning symbols, the price of each tab, and how many tabs are in a game. Agent Guhlke discussed the types of dispensing devices (fish bowls, wall machines, electro-mechanical machines, and electronic pull-tab dispensing devices with video display). There are also different types of pull-tab games (merchandise games, event games, carryover games, bonus games, seal games, and progressive games. Merchandise games are generally put together by a distributor, and use a substitute flare attached to a defaced manufacturer's flare. The substitute flare for merchandise games is put on an existing flare and includes the Gambling Commission Identification Sticker. **Senator Prentice** asked at what point the Gambling Commission Identification Number was attached. **Agent Guhlke** replied that the manufacturers put the identification stickers on the games then send them to the distributors. Agent Guhlke explained that event games can only be used by nonprofit or charitable organizations and are operated during a bingo session. Carryover jackpots have a prize that is carried over from one game to the next, with a maximum prize of \$5,000. Because a carryover jackpot game could go 30 games before somebody finally opens up the winner, plus all the tabs, the flares, and the winners have to be retained, there are not very many of these type games in play. Bonus game is a game where the player has the opportunity to advance to a higher prize than already won. Seal games have cash prizes and will include another window the player can open for the chance at a higher tier prize. Agent Guhlke stated that any prize over \$20 must be defaced from the flare, and the winner not paid until after permanent deletion from the flare.

Representative Simpson asked whether the payout percentage listed on the back of the flare was based on the number of tabs in the jar being played. **Agent Guhlke** replied it was based on all the tabs, the price of the tabs, and has to be at least 60 percent payout. **Representative Simpson** asked if that was based on if every last ticket was drawn out. **Agent Guhlke** affirmed. **Representative Simpson** asked whether that usually happened. **Agent Guhlke** replied no, that it was up to the licensees to decide when they will pull a game. So what is listed is just what would happen if every tab was sold and every prize was paid. **Representative Simpson** asked if there was any way for the person playing the game to know what the percentage was. **Agent Guhlke** responded the players just know it is over 60 percent. The players don't usually ask, because they are looking at the flare to see the available prizes or at the fishbowls to see about how many tabs are left. Agent Guhlke explained that it is required to keep a record of any winner over \$20, to include the winner's name, date of birth, amount won, date paid, and the employee's initials who sold the tab. The employee must verify winning tickets by looking at the winning tab and checking the series number. Some flares have a win-code verification number on the back of the flare for the higher tiered winners. If the winning pull-tab is legitimate, the series number on the pull-tab will match the series number on the flare. If the numbers don't match, they have a problem. **Representative Simpson** asked what the player would be guilty of; if it would be fraud of some sort. **Agent Guhlke** replied it would be theft.

2008 Agency Request Legislation

Ms. Hunter provided a brief overview of the two proposals. The first proposal is to keep the interest from the Gambling Revolving account in the Gambling Commission account, rather than in the State General Fund where it currently goes. The amount of the interest depends on the Working Capital Balance and the rate of return, which staff estimate would be approximately \$93,000 a year. The second proposal is an exemption from the 601 Fiscal Growth Factor, which would allow the Commission to increase some small fees that have not been increased for over ten years. When the house-banked card room fees were initially set, they were based on the number of tables the card room had, which made sense at the time – other license fees are based on the amount of gross receipts. The Horseracing Commission received an exemption last year, so staff are hopeful of being successful. Staff project this would bring in about \$200,000 per year in revenue. The Office of Financial Management suggested this proposal be submitted as a Decision Package to the State Supplemental Budget, rather than as agency-request legislation. We have met with Senator Prentice, the Chair of the Senate Ways and Means Committee; with Representative Sommers, the Chair of the Appropriations Committee; with Senator Kohl-Welles, the Chair of the Labor, Commerce, Research and Development Committee; and with Representative Conway, the Chair of the House Commerce and Labor Committee. Because these bills would go before the Ways and Means Committee and Appropriations, staff will also be meeting with the members of those Committees over the next few months. In total staff are attempting to meet with about 70 different Legislators. At this point, we are asking for a formal vote of approval to proceed with agency-request legislation for retaining the interest on the Gambling Revolving Fund, and approval to move forward with the Decision Package for the exemption from the Fiscal Growth Factor. Since they are two different proposals, the Commission may want to handle them with two separate motions.

Senator Prentice advised these proposals should probably go straight to the Ways and Means Committee or to the House Revenue Committee because these proposals are straight taxation issues, and are not gambling policy. **Ms. Hunter** responded that her explanation may have been unclear; staff is working with those committees, but also briefing the Committees that hear the gambling issues.

Chair Niemi asked if any other Commission member had a question, then called for public comment.

Chris Kealy, Iron Horse Casino, testified that the Recreational Gaming Association (RGA) is not supportive of the pursuit of the 601 exemption relating to the fees for card rooms. Ten years ago when the fee structure was put in place it was undetermined what revenue level any of the card rooms would achieve, and the Gambling Commission chose to license on a per-table fee structure. There is a proportionality to the fee structure, yet there is a base charge concept because, whether you have 2 tables or 15 tables, there are tests (modules) the agents do on a bi-annual basis at the facilities. Whether a card room has 2 tables or 15 tables, the agents still need to run the same process to see if the soft count is adequate and whether the internal controls are meeting the standards of

protecting the public. So the structure lacks some – what could be looked at as facilities making lots of money are paying close to the same amount as facilities that are not making a lot of money. But the requirements for the Gambling Commission are the same in each case. Mr. Kealy was certain this proposal was not meant to lessen the burden on the smaller facility, but was aimed more at increasing the burden on a larger facility. The proportionality comes in when you have 200 employees licensed through a Card Room Employee (CRE) license. Those license fees, if I have 200 employees, then the Gambling Commission does not receive 200 license fee renewals a year. So the amount of money collected from the Iron Horse Auburn is about twice as much as the Iron Horse Everett because of the difference in the size of the facility, so there is proportionality to the structure. And there is enough money going to the Gambling Commission to support the checks and rechecks. The loss of revenue at the Gambling Commission has more to do with the shrinking of our industry, the shrinking of the pull-tab revenue, the shrinking of the other revenue sources. This is just an attempt to increase a different side of the ledger when there is no new work being performed. The work that is being performed is being compensated for on the current structure, and Mr. Kealy was opposed to the 601 exemption for that reason.

Chair Niemi asked whether Mr. Kealy had a sense of how progressive, or not progressive, this would be as far as the smaller tables and the larger tables. Chair Niemi assumed there were three or four present who would be paying the bulk of the fee. **Mr. Kealy** replied there were 80-85 facilities. **Chair Niemi** said there were three or four that do very well. **Mr. Kealy** responded there were 20, but that was as a collective group, and then you add in the CRE licenses. When you add up the bundle of fees associated with that, it meets the budgetary need to check in on that, which is what this agency is supposed to be. **Chair Niemi** asked if Mr. Kealy's argument was that it does not require more FTEs for the Commission. **Mr. Kealy** affirmed; the agency has enough money to do the mission, and the industry pays for the mission, which is what we continue to want to do.

Gary Murrey, Great American Gaming Corporation, testified that his take on what 601 was originally intended for was to to keep government agencies from arbitrarily raising fees without an appropriate means or reason to do so. If the enforcement or the regulatory work being done has not changed on the card room side, why does the 601 requirements need to be changed on that? Mr. Murrey understood that the lower fees cannot be raised because of the low amount of inflation every year. But ten years ago when the card room structure was set up, the structure met the levels of need by the regulatory body and there has been no change in the structure, and we have all gotten better at our jobs and do it more efficiently. To change the 601 structure does not make any sense, since the way we do business has not changed as far as the regulatory concern goes. Mr. Murrey said if he was wrong about the reason for 601 to begin with, then he would love to be educated.

Chair Niemi noted it has been a long time since we changed this fee structure, and the FTEs are being paid a lot more also. **Mr. Murrey** agreed, but the fees have increased

year over year, missing only one year. **Chair Niemi** pointed out that staff costs are going up. **Mr. Murrey** agreed, adding their fees have gone up with it. **Chair Niemi** said not on the tables. **Mr. Murrey** said the fees have gone up every year except for one. **Director Day** thought the last fee increase in June was the first general fee increase in four years, and asked Mr. Trujillo if that was correct. **Mr. Trujillo** affirmed that was correct. **Mr. Murrey** said that over the past ten years there has been five fee increases to match the cost of inflation, which is to match the Commission's increased costs of doing so. This proposal is asking to restructure the burden from the small licensee, who only makes \$400 a table, and take the cost of enforcement from that licensee to the licensee who makes \$1,000 a table and switch the burden. Even though it takes the same amount of manhours from the Commission to regulate both tables, the club that is making more money per table would pay a higher burden of that labor cost. The intent of the change, as far as I understand, is not necessarily to raise a lot more money from the card room industry, but to change who pays which side of the bill.

Commissioner Bierbaum heard what Mr. Murrey was saying, but thought after reading the materials staff provided, their observations were different. Staff says the reasons fee schedules are structured this way is the greater risk to the public in larger gambling operations because of the greater amount of money running through there. Therefore the Commission generally uses more staff resources, licensee regulating, and enforcing gambling laws in the larger establishments. What our staff is telling the Commission is that what you are saying is not true; they do use greater staff resources in establishments that have higher revenue. And that is why staff thinks the change is fair. **Mr. Murrey** said that was the first he had heard of that statement – he knew every licensee has an agent who performs certain checks using the same number of man-hours that it takes to do a card room of 15 tables, whether the amount of money is \$50 across the table or \$500. Whether there is extra investigation hours and manhours, I can't answer that. **Commissioner Bierbaum** asked whether the public gets the same package the Commission does – it was in the materials. **Mr. Murrey** said he did not get that information. **Ms. Hunter** said the packet the Commissioners received is the same packet that the Director of the RGA would have been sent as part of the work staff do for interested parties of agency request legislation. Ms. Hunter clarified the exemption would be a one-year exemption for only fiscal year 2009 – it is not indefinite.

Commissioner Rojecki asked if the Commission pushes this forward and the Legislature passes it, do we still have to come back here to raise any other fees; would they be addressed through study sessions at the Commission meetings? **Ms. Hunter** affirmed that was correct. **Chair Niemi** believed the Commission should move separately on these two proposals, adding that most of the comments have been on the latter one, not the interest one.

Commissioner Bierbaum made a motion seconded by **Commissioner Rojecki** to authorize staff on behalf of the Commission to submit agency request legislation allowing the Gambling Commission to retain the interest on the Gambling Revolving Account.
Vote taken; the motion passed unanimously.

Commissioner Bierbaum made a motion seconded by **Commissioner Rojecki** to authorize staff to submit the agency request legislation allowing the Gambling Commission to obtain an exemption to exceed fee increases beyond the 601 Fiscal Growth Factor. **Commissioner Rojecki** asked for clarification on whether the motion was supposed to be for agency request legislation or as part of the Supplemental Budget. **Ms. Hunter** clarified it would be through the budget process rather than as agency request legislation. **Commissioner Bierbaum** amended her motion. *Vote taken; the motion passed unanimously.*

Revenue Enhancement Timelines

Director Day explained that when the Commission approved the budget in August, the Commission was alerted to a series of potential revenue and regulatory enhancements being proposed. For those who might be interested in the schedule, this is directed toward the equipment stamp timeline and the new licenses we are looking at for regulatory purposes. Staff are planning to bring those proposals to the Commission. As **Commissioner Rojecki** mentioned, the rules would probably first be seen at the Study Session at the January Commission meeting. If we are successful in that process, staff hopes to be able to bring the proposals to you in March of 2008, which is the last opportunity to have the Commission act on the proposals and have them effective for the fiscal year. The schedule is tied to the fiscal year because staff is planning on these additional revenue sources to help fund the 2009 budget.

Correspondence

Director Day noted that at the August meeting Senator Delvin provided a letter requesting cost information relating to litigation between the Commission and ZDI Gaming. Senator Delvin's letter and our response are included under the correspondence tab.

Monthly Updates/News Articles

Director Day drew attention to one news article that he thought may have puzzled the Commissioners. It is from Washington Post.com and titled "Terrorism's Hook into your Inbox." As you might recall, the Commission is part of an informal National Task Force to address Internet Gambling, which distributes various news articles and items of interest. When I received this article, I read it and wondered why the Chair of the Task Force was forwarding this article. The first full paragraph on page 4 refers to a conspiracy that was laundering millions of dollars through 350 transactions at 43 different online wagering sites using stolen credit cards and identities in order to accomplish that purpose.

Commissioner Bierbaum commented on one of the articles, noting her sadness about the article about the Vick dogs. She did not think the dogs should be euthanized and wished the court would impose substantial fines on Michael Vick that would allow these dogs to be taken care of for the rest of their lives, even if they are not in homes or places where they could hurt someone.

Deputy Director Reese heard there had been a lot of calls to the Humane Society about adopting the dogs. **Commissioner Bierbaum** said she and Brett are going to try, but know they are not going to release the dogs. **Director Day** thought the article gives a better picture of the extensive nature of the operation and what was going on than what is often given from the news media. **Chair Niemi** noted that from what she had read in the New York Times, there are quite a few people objecting to euthanizing the dogs. **Commissioner Bierbaum** said it was horrible. **Director Day** commented it was helpful to know the Commissioners read the articles staff include in the agenda packet and find them interesting.

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

Dolores Chiechi, Executive Director of the Recreational Gaming Association (RGA), clarified the position the RGA has taken on the two agency-request legislations. The RGA is opposed to the exemption from 601, and will express that as it moves its way through the Legislature, and then work with the Commission should it pass on any rules that would be promulgated that would change the way that house-banked card rooms are assessed fees. And on the interest for the revolving fund account, the RGA would support that because we believe those dollars should remain within the agency that collects them. You are not an appropriated agency; you are solely supported by the fees that the industry pays to regulate the industry and we believe those fees should remain within the account to which they were paid. Thank you.

Max Faulkner, Service Supplier Consultant for Nob Hill Casino in Yakima, introduced Susan Whitman, a long time employee of about six years. **Susan Whitman** testified that Nob Hill Casino is her bread and butter; it is where she makes her living as a promotions director. But her other job, and her passion here in the city of Yakima, is as a public official. Ms. Whitman is on the Yakima City Council. So that's the capacity she wanted to speak to the Commission here today, as well as an employee of a card room here in town. Ms. Whitman welcomed the Commission to Yakima and the 300 days of sunshine we have here. Ms. Whitman wanted to talk a little bit about the four casinos in town; three in the city proper and one in Sunnyside. Ms. Whitman wanted to let the Commission know that these casinos, as small or large as they may be, bring in over \$800,000 to Yakima and to Yakima County. That can be a big chunk of taxes that we, as a city, put back in to public safety, parks and recreation, or put into our general fund to pay for the safety of the rest of the citizens in Yakima. These four places do not drain our police force; they all have their own security and they take care of their own. But if they do need to call us, it is a wonderful situation where they have surveillance photos, they have surveillance video, we have eyewitnesses that are willing to testify to anything that happens either in our establishment or on our grounds. The casinos in Yakima Valley contribute to the wellbeing of the rest of our community. Nob Hill Casino contributes to the Y-Pal program, which is the Yakima Police Athletic League,. The Thunderbird Casino contributes to the Yakima Parks and Recreation. The Caribbean contributes to the Yakima Bears, which is our baseball team. RC's in Sunnyside contributes to the American Cancer Society. They give back to their communities. There is much more

that I could list that these casinos bring back to our community. And when we talk about employees, Ms. Whitman said she knew that the employees, at least at Nob Hill Casino, have given of their time, not just of their finances or the casino's finances, to help things. They have actually gone downtown and helped plant in the springtime in different areas, so they feel an ownership to the area. And speaking of the employees, we have of the four casinos about 250 employees that live, work, play, and shop here. If you talk about investment back into the community, that is over a million dollars brought back into our community; living here, shopping here, eating here, and buying their things here. Ms. Whitman closed with a thank you for keeping your eyes open to new ideas from those people who come to you every month, and for keeping the gambling establishments on the straight and narrow. Also thank you for having gambling agents like Travis Watkins, who takes care of us. I can say that because not only being on the City Council, I work in one of these establishments and have first-hand workings with your Commission, as well as the gambling agents that are in our area. So again, welcome to Yakima. And thank you for your time and hope you enjoy your time here in Yakima.

2. **New Licenses and Tribal Certifications**

Assistant Director Trujillo explained that on page four of the list, there shows two new house-banked card rooms that were approved and opened. One is out of Bremerton and the other one is in Spokane. Normally the pre-licensing report has been included at the end of the list. The pre-licensing report for the Bremerton house-banked card room is included, but not the second report. With your permission, the missing report will be included with next month's Commission Approval List. Staff recommends approving the new licenses and class recertifications on pages 1 through 25.

Chair Niemi asked if there were any questions.

Commissioner Bierbaum made a motion seconded by **Commissioner Rojecki** to approve the list of new licenses, changes, and tribal certifications as listed on pages 1-25.
Vote taken; the motion passed unanimously.

3 **Default – Porterhouse Restaurant, Moses Lake, Revocation**

Chair Niemi pointed out that the default for Porterhouse Restaurant has been moved to October.

Chair Niemi called for a recess at 2:35 p.m. and reconvened the meeting at 2:50 p.m.

4. **Petition for Review – Brynn Lawless, Card room Employee, Revocation**

Assistant Attorney General Jennifer Elias was present for the State, as well as **Petitioner Brynn Lawless**. Mr. Lawless and Ms. Elias provided their testimony in the matter for review. A recording and transcript of the hearing is available upon request.

At the conclusion of the testimony (3:05 p.m.), **Chair Niemi** asked if there were any questions and called for an executive session to deliberate the matter; she recalled the public meeting at 3:15 p.m.

Commissioner Bierbaum made a motion seconded by **Commissioner Rojecki** to adopt the Findings of Fact, Conclusions of Law, and Initial Order issued by the Administrative Law Judge and revoke the license to conduct gambling activities of Brynn Lawless. *Vote taken; the motion passed unanimously.*

Chair Niemi explained to Mr. Lawless that the Commission had reviewed all the issues, the transcripts, and the arguments and his license would be revoked at this time, as soon as the Commission has signed the order. **Mr. Ackerman** clarified that he would prepare a written order, which would be signed by the Commission and then forwarded to Mr. Lawless. At that point Mr. Lawless' license will be revoked. **Commissioner Bierbaum** explained to Mr. Lawless that the Commission is revoking his license for the remainder of the time left until the license expires on October 6, 2007. Mr. Lawless can reapply subsequently and have staff evaluate his application. But the Commission's hands are tied because the Legislature has mandated that one of the duties of the Commission is to keep the criminal element out of gambling. Mr. Lawless was convicted of a Class C felony; a crime involving moral turpitude in the sense that Mr. Lawless was assaulting another human being. The Commission understands it is a first offense, and hopefully it will never happen again, but the Commission does not have much leeway in these cases.

5. **Rules Simplification Project – Hearings**

New Chapter WAC 230-17 – Hearings Rules

Ms. Hunter explained that the Hearing Rules for the Rules Simplification Project are up for discussion; they were filed at the last meeting. Ms. Hunter noted that part of the rewrite process was to have subject matter experts in addition to staff and she thanked the two attorneys who reviewed this package: Gabe Galanda and Dave Malone. Many of the Hearing Rules were written in 1973, shortly after the Commission was authorized and became an agency. Unlike the other rules that have been rewritten, this was probably the least reviewed and least changed Chapter. Ms. Hunter highlighted five rules, which are on blue paper in the agenda packet. On page 12, staff proposed repealing the forms that a licensee or applicant is mailed as part of the legal process. The forms will be posted on the Gambling Commission Website, along with information about the administrative process. Staff attorneys also spend a lot of time with licensees on the phone explaining the process to them. The next two are rules where agreement was not reached with the review team. Included on pink paper in the agenda packet is a letter drafted by Gabe Galanda, who is here today and will want to address the Commission. Of the 41 rules in this Chapter, there have only been disagreements over three of the rules. On page 63, the rule deals with official notice, and staff added tribal compacts as something that the presiding officer may take official notice of. The small group asked staff to add contents of licenses and certifications to the list of licenses and certifications. There was disagreement about adding the tribes' codified gaming laws and the contents of licenses that are issued by tribal gaming agencies to the list. These are addressed on page three of

Mr. Gabe Galanda's letter. Under the evidence rules, official notice is proper when facts are capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned. Staff does not feel that tribal laws are currently readily available. There really is not one source that staff can simply go to. Westlaw, through our discussions with them, are looking at adding tribal ordinances and case law, and the small group has been informed that, if and when the laws are more available, we are open to adding that into the rules. Ms. Hunter noted that the rule does not limit a party's ability from introducing these things as evidence. So just because the presiding officer is not going to take official notice of them, it does not mean they can't get into the record.

The rule on protective orders is very long, yet only four sentences; the first sentence alone has 200 words. It was very difficult to understand, and the rules simplification project hopes to make the rule understandable. The rule has basically just been shortened, with references back to the Administrative Procedures Act (APA), which is the law that governs all of our cases, and to say that presiding officers may issue appropriate protective orders. In the current rules is language regarding business secrets and the small group wants it added back in. Staff does not feel it is necessary and that adding in business secrets is somehow elevating that particular language. A presiding officer can issue a protective order if they feel that it is appropriate. On page 119 is a rule staff overlooked. Language was accidentally dropped regarding when a summary suspension is issued; a hearing on the merits is held within 90 days after the notice has been served; that language was added back in.

On page 131 is another rule where agreement was not met with the small group. This rule deals with the review of initial orders of summary suspensions, which were being brought before the Commission for quite a few months until we were successful in getting the law changed. When immediate action is taken because there is some level of public harm, the licensee has to stop operating once they are served the order, and the licensee is entitled to two different hearings; the first is the stay hearing and the second is the hearing on the merits. This rule deals with the hearing on the merits. The rule says that if a Commissioner acted as a Presiding Officer at the stay hearing, he/she is not necessarily disqualified from considering the case on a Petition for Review. Normally a stay hearing is heard by an Administrative Law Judge (ALJ), but an individual Commissioner would also have the power to hear that if he/she wanted. Ms. Hunter was only aware of one time, about 13 years ago, where a Commissioner did a stay hearing. Staff felt the language should remain the same since it has not been a problem and rarely comes up. We do not anticipate a problem with an ALJ having a hearing, but do know there are times when all five Commissioners are not present and times when there are only three commissioners present. It does not seem that a Commissioner should automatically be disqualified if he/she heard the case sitting at the stay hearing level. The language still provides that if the person has grounds to say that one of the Commissioners should be disqualified, the person may make that request. **Chair Niemi** asked if, in effect, Ms. Hunter was saying that someone can file an Affidavit of Prejudice. **Ms. Hunter** affirmed.

Chair Niemi called for public comment

Gabriel Galanda, a lawyer with Williams Kastner, testified he was here on behalf of Bally Technologies with David Wiley, his senior colleague, who has been practicing administrative law in the state of Washington before other agencies for about 27 years. It was our honor to be a part of the rather accelerated rules simplification process for Chapter 17. At my count, we were invited to the table on June 15 and by July 20 the team had slogged through the 145 pages that the Commission has before it. We are very pleased there were only three rules, or parts of rules, where consensus was not met. Mr. Galanda said they were here today to advocate on behalf of the industry, in particular on behalf of Bally Technologies, with respect to three rules that remain of concern, both from an industry point-of-view, and from a tribal point-of-view. Mr. Galanda stated that at the outset you will see a courtesy copy of the Washington Indian Gaming Association. We have been in communication with the Washington Indian Gaming Association with respect to two rules that are of particular tribal concern, and Mr. Galanda anticipated they may be offering comments to you at the Spokane meeting. The three rules that remain of concern to us have to do with official notice; protective order criteria; and appearance of fairness as it pertains to summary stay suspension proceedings. Mr. Wiley will handle that. We would welcome your questions at any point in our short presentation. Turning first to official notice, which is proposed as new Section 500; essentially the current rule contemplates a presiding officer being able to take official notice of federal and state law and even agency law. The Commission staff, to our pleasure, has recommended addition of agency licensees as something that could be officially noticed, as well as tribal state compacts and any amendments or appendices thereto. However, we were hoping to add additional types of documents that could be officially noticed from a tribal primary regulatory point-of-view. And not to recite to you our language that you are abundantly familiar with, but under Section V of the State Compacts, the tribes have reserved their primary gaming license authority; and the agency is conferred, of course, certification power. As Amy suggested, official notice, if you look to ER 201(b)(2) by analogy is appropriate when adjudicative facts are capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned. We see the need in a license suspension hearing perhaps, for accurate and ready determination of the facts that a tribal license or a tribal law, as the predicate for the agency certification or license at issue. We would see the need to officially notice simply that fact; the fact that there is a predicate. It is tribal law and tribal license as the predicate for the state license or certification that is under threat of suspension. And that's really all we ask. And we would, respectfully, see the issue a little different than Ms. Blume does. It is not the point in time where a lawyer is in his or her office, be it an agency lawyer or a licensee lawyer, trying to find tribal law or tribal licensing. It is at that point in time when that lawyer needs to step forward in front of a presiding officer and present to the other side a copy of that law and a copy of that license. At that point, it is capable of accurate and ready determination that there is, for example, a tribal licensing predicate with respect to the state certification or license that is at issue. So we believe that it is not only consistent as a matter of law and official or judicial notice by analogy to ER 201, but we think it strikes a well balanced policy that, of course, is represented in the tribal-state

compacts, a government-to-government policy, a policy essentially, a full faith and credit as it pertains to licensing and certification power. It is embodied in its court, it is embodied in rules like Civil Rule 82.5, and it is also embodied in a host of agency laws, be it laws in front of the Department of Revenue or the Department of Licensing, that recognizes the legitimacy and to some extent the primary regulatory power of tribal governments with respect to commercial activities on the reservation. And so stepping back from the law on judicial or official notice, we think the policy that this rule change and these additional criteria serve is very sound. Now we recognize the viable concern about officially noticing something that you can't get your hands on. You certainly can't get your hands on an oral fishing code with some ease. But what we were focusing our efforts on is codified tribal gaming laws. Not oral laws of tribal governments that you could not take ready and accurate determination of, and certainly not laws that don't pertain to gaming proceedings. So we are very precise in suggesting it should be codified tribal gaming laws. And the other thing that should be available for official notice would be the contents of tribal gaming licenses, again which are the predicate for state certification or licensure, much like the staff has added the contents of state licenses as a topic of official notice.

Chair Niemi suggested talking about the first one before going on with the other two. Is this what you want, just those two new words on page 3 of your letter. **Mr. Galanda** responded they were looking for a few more than those few words, but it is the underlying language. They are looking at, in addition to compacts, appendices, and amendments, the contents of licenses issued by a Washington tribal gaming agency and a Washington tribe's codified gaming laws. **Chair Niemi** asked Ms. Hunter what it was that the Commission was proposing. **Ms. Hunter** responded that, basically, it was the language about tribal compacts; a Washington tribe's compact with the State. **Chair Niemi** said it seems that our argument is that these are not written down much of the time and that no one has access to them. **Mr. Galanda** clarified that he was not talking about any sort of oral laws. **Chair Niemi** said she understood that, but the different tribes have different rules. When someone does this in court for non-tribal issues, they bring up a book or a pamphlet or something and refer you to it. Why can't the tribes bring up whatever kind of paper they have, as long as you are not talking about oral things? And if it is different, why does it have to be this definitive when, in fact, they are not equal across the board. **Mr. Galanda** thought in some respects they were agreeing with each other. It is not the point in time prior to a hearing where someone is trying to research Westlaw and figure out whether there is a law. **Chair Niemi** pointed out that during the hearing, a judge has to make that decision. **Mr. Galanda** agreed. **Chair Niemi** asked why they couldn't just give the paper to the judge and let the judge decide? Why do we have to have licenses issued by these people? They can prove in court on a one-to-one basis that this is what their tribe has always used, or this is what it is. **Mr. Galanda** asked if there is a recommendation that you allow for state license content, or state certification content. **Chair Niemi** affirmed. **Mr. Galanda** said we are looking for some parity with respect to tribal license content, and likewise, you could officially notice WAC 230. **Chair Niemi** said a lot of them don't have it. **Mr. Galanda** said no, but they have to, under the Indian Gaming Regulatory Act (IGRA), have their own tribal gaming

ordinance. **Chair Niemi** asked whether they were different with different tribes. **Mr. Galanda** affirmed that each tribe is different. But at that moment in time you would have maybe a state license suspension with respect to a Nisqually licensed employee. And so what would come to bear would be the Nisqually Gaming Code that they must have as a matter of the Indian Gaming Regulatory Act. And at that point in time in the hearing, they would then present the Nisqually Gaming Code, much like they would present WAC 230 or the license; much like they would provide the state certification. **Chair Niemi** wondered what the problem was then. **Mr. Galanda** suggested there should be some parity within the rule; if you are going to recognize state certification and licensure in the contents of those things as a matter of official notice, the predicate for that is tribal law and tribal licensure. And it would make sense that there should be parity between state license content and, in turn, tribal license content; and likewise, state law and agency decisions, and thus, tribal codified gaming laws.

Commissioner Bierbaum said she had two observations about this entire section, and some of it reiterates a comment she made six or seven months ago. She had agreed with Mr. Galanda's letter from the outset, and thought it was inappropriate to use the Rule Simplification Project as a way to make substantive changes in the WACs. And that was the point at the beginning of Mr. Galanda's letter. The fact that we are having this back and forth discussion suggests that these changes are substantive, because if all we were doing was clarifying existing language, that would be the nature of the discussion. That is not the nature of the discussion we are having today, so I have a problem with this whole section. As Commissioner Bierbaum read through the section, she thought that these were substantive changes, not just changes to make existing words clearer. Commissioner Bierbaum believed these were substantive changes, and felt they should be submitted as substantive changes. These are really important rules; they have to do with due process rights and hearings, which is the very nature of what the Commission does. Commissioner Bierbaum asked that the changes be put forward as substantive rules, not masked as Rule Simplification Project rules. She also noted that two Commission members were not here and this was our time for discussion. Commissioner Bierbaum added that she was not going to be at the meeting next month in Spokane, so you are going to have this mix of Commissioners that did or did not participate in what was a truly substantive discussion. Those are my observations about these changes. **Mr. Galanda** thought that was a point well taken and said they would be happy to look at this in the context of a petition for rule making

Chair Niemi suggested that the chances of having the most Commissioners present was better for the November meeting than any other meeting, and possibly may even be better for the meetings early next year. **Commissioner Bierbaum** asked how crucial, using a scale of 1 to 10, it was that these rules get filed. **Director Day** answered a '9'. Through this process, we have done our best to stay true to the simplification and, basically, not try to invent new language. But when there are suggestions in the process about something that may make the language clearer, we have tried to keep that limited, not go very far with it; largely, Commissioner Bierbaum, because of your reminder when this process started to make sure we stayed away from substantive issues. But adding the

contents of licenses and certifications, I believe was Mr. Galanda's suggestion in the first place. We are trying not to change what the rule meant as we try to make it easier to understand. And in the process change small things as long as the parties didn't have any big disagreement over it. So I'd hope that was the same with all these administrative rules and the RSP that we have been going forward with. Director Day thought that, if you look at the whole context, there is very little substantive change in the dramatic sense of the rule. There are a few things that have been added or clarified, but overall the changes are not very significant. Director Day said he hated to see the Commission set aside the whole RSP chapter, and encouraged setting aside just the individual rule to be dealt with at another time. We are on the last chapters for adoption, and for them to be effective January 2008, we have no spare months left in the process. If we set this chapter aside, we are probably not going to get this done on schedule with the rest of the rules process. **Commissioner Bierbaum** felt where anything looked like a substantive change, the staff should go back and rewrite the rule in a way that just simplifies existing language. Then the substantive changes could be dealt with at a later time.

Commissioner Bierbaum indicated this was a huge package that she only recently received and she would like to spend more time figuring out in her own mind which changes to view as substantive. The first one Mr. Galanda referenced was clearly a substantive change where existing language was deleted from a rule. Commissioner Bierbaum did not know how someone could suggest it was non-substantive when language was being deleted instead of just being rewritten for better understanding. Commissioner Bierbaum said she was just asking that any substantive changes be reviewed and given the kind of discussion they deserve.

Commissioner Rojecki asked Mr. Galanda about the tribal compacts and specifically the need to make that change regardless of whether it was substantive or not. Does Mr. Galanda have an example of tribal members being denied the ability to present this type of information? **Mr. Galanda** said he did not, noting the thought is if you can do it with state law, federal law, agency law, or other states' laws, as a matter of policy, be it the centennial accord, the tribal state compacts themselves, or any host of other laws peculiar to Washington State tribal relations, that you should have that parity; you should recognize in the four corners of this rule code, the third sovereign and the primary regulator. **Chair Niemi** suggested this one rule be pulled and discussed in November when we would have more Commissioners present. **Mr. Galanda** agreed and offered to commit on behalf of his client to work with the staff to come up with a joint proposed rule making, if that would be of any help to the agency.

Chair Niemi noted these rules were only up for discussion at this time anyway and asked if he was okay with setting this one rule aside. **Mr. Galanda** agreed. **Director Day** pointed out that since it is only up for discussion at this point, the Commission does not have to take any action. Staff can look at the area that is new and consider just taking it out of the proposal in its entirety, since that is what the debate is about. **Commissioner Bierbaum** agreed, since this was only up for discussion, but she was concerned that it was not just this rule, there may be other rules within the Hearings chapter. We are discussing it today, but if in October or November one of the Commissioners wants to

move to remove it from the process, then we can do it at that point. Commissioner Bierbaum needed to spend more time reading these rules.

Mr. Galanda asked whether that would pertain equally to the protective order language. **Chair Niemi** said no, just this one rule, so go ahead on the protective order one. **Commissioner Bierbaum** disagreed, explaining that she was talking about the entire chapter; she wanted to take a closer look at it, because there may be other rules that have been changed in a way that would merit greater discussion. **Chair Niemi** said she would like to hear about the other two rules. **Mr. Galanda** explained that the proposed rule would seek to simplify away language about business secrets or secret processes, development, or research. That language creates criteria for protective orders that is very unique to the Washington gaming industry, which is wrought with very sensitive technological, cutting edge gaming information, be it card room, gross gaming revenue information, or tribal net win information. There are all kinds of sensitive information that we believe is potentially protected under the current rule, and it is that rule that is so specific to gaming in Washington that we believe that language should not be simplified away. And as Mr. Wiley will now explain, having practiced before other cutting edge regulatory agencies like the UTC, it is something that is not particularly peculiar to the Gambling Commission in terms of having that very unique and specific cutting edge protective order criteria.

Dave Wiley, a lawyer with Williams Kastner, echoed the appreciation for the long hours the staff devoted to this chapter. Mr. Wiley thought the protective order rule was exactly what the Commission was saying; which is under the guise of simplification, we don't want to remove substantive protections. We think that the current rule is totally antiquated and is very cumbersome, but under the guise of rule simplification, we don't want the removal of the recognition of the protection for business secrets, which in today's environment is all the more important. We want to retain a reference to business or trade secrets that would be routinely protected by protective orders in hearings or administrative processes. We do this at other agencies routinely, as a matter of standard course at the start of a hearing. We want to work with the staff to develop that type of automatic protective order language that will protect proprietary secrets from disclosure and public records requests. You will see in our proposed language, a very Spartan description in the rule, but otherwise we are willing to have that held in abeyance so that it can be addressed because this is a critical issue for the licensees that you regulate. Mr. Wiley commented on the third rule, noting how unique this situation is. We were just struck by the fact that, even though a licensee would theoretically benefit by the hearing officer who granted the stay being involved in the review of that action, it smacks under the Appearance of Fairness Doctrine as somewhat strange for the decision maker on the stay to also participate in the review of his or her own decision. Mr. Wiley had not seen that in any other agency before, so it seems like it would be an automatic recusal, and to reserve the right that it would not be is unusual. As Chair Niemi said, the judge does have the ability in Superior Court to do an Affidavit of Prejudice and, as you know, practicing attorneys don't like to do those as a matter of course. Mr. Wiley said he was struck today by the opaqueness, the transparency of your process, that he had never seen

a petition for judicial review on the record in a public hearing. Usually that is on paper with the administrative agencies, and he was impressed by that. Carrying that kind of transparency forward, it would be a good change just to do an automatic recusal. **Chair Niemi** replied that sometimes the Commission wears two hats, and that concerned her also. Chair Niemi asked whether Mr. Wiley had heard that the last time this happened was 13 years ago. **Mr. Wiley** affirmed. **Chair Niemi** asked what the difference would be between an Appellate Court three-judge panel, for example in the Ninth Circuit, and then somebody requests that the entire Ninth Circuit look at it, and those three judges would look at it also. **Mr. Wiley** thought his distinction would be if the U.S. District Court judge was on the three-judge panel reviewing his or her own decision, that would be strange. **Chair Niemi** said that was not what she was talking about; the three-judge review panel. **Mr. Wiley** said it was just a smaller group. **Chair Niemi** asked why not let that smaller group go with all the other ones when the whole panel is in. **Mr. Wiley** said he was okay with that, if the decision maker who was in the initial group was not a part of that smaller panel. **Chair Niemi** thought that everybody looked at it, even the three-judge panel. Mr. Wiley said he would defer to Chair Niemi on that, but noted that in administrative agencies, he had not seen the fact finder on the temporary permit suspension be a part of the process. That is why ALJs are much better assigned for that and it sounds like that is typically the course, but Chair Niemi thought you would want to automatically recuse somebody who was the fact finder, before reviewing his or her own decision. It just seems strange that they would be involved. But again, we are not putting paramount importance on this rule change; we care much more about the protective order. **Chair Niemi** said that if Mr. Wiley was talking about a fact finder, that was a little different than the appellate review. **Mr. Wiley** agreed, adding he thought it was not good for the Appearance of Fairness Doctrine.

Commissioner Bierbaum asked Mr. Ackerman when that would ever happen; when would one of the Commission ever serve as a fact finder. **Mr. Ackerman** replied that in this day and age the Commission probably never would; however it is possible to do so. Mr. Ackerman pointed out that Ms. Hunter had indicated that about 13 years ago it did happen with a former Commission member, but it was just a determination as to whether or not a stay would be issued. Mr. Ackerman said this was a policy issue for the Commission; whether they want to do it or not. There is no legal impediment. The State Supreme Court ruled on this issue a couple decades ago – the Board of Health v. Johnston; the propriety of having a member of a multi-member board or commission rendering preliminary rulings and then sitting on the full, Board of Health in that case, to make the final decision. There is no appearance of fairness issue in the legal sense; although there certainly could be one in the policy sense. But the Appearance of Fairness Doctrine essentially runs to land-use decisions with some exceptions, and this is not one of them. Mr. Ackerman said he did not mean to at all diminish the policy argument that Mr. Wiley is making, or that Mr. Galanda has made, but he would advise the Commission at this point not to believe they were legally required to change what is, in fact, an existing rule. To go to Commissioner Bierbaum's point, the Rule Simplification Project, if it is doing anything to the rule, is simplifying it; it is not changing it. This is the existing rule and it was something that was apparently done once 13 years ago. **Mr.**

Wiley indicated that, by our advocacy, we do not mean to give more weight to this whole issue, but he thought the modern trend with administrative agencies was to reinforce the ex parte wall and to do everything in the agency's power to uphold the fairness and impartially to outsiders. Mr. Wiley did not think this was consistent with that policy.

6. Rules Simplification Project – House-Keeping/Clean-Up Package

Chapter 01 – About the Commission

Chapter 03 – Licensing

Chapter 05 – Fees

Chapter 06 – Rules for All Licensees

Chapter 07 – Charitable and Nonprofit Organizations

Chapter 09 – Fund-Raising Events

Chapter 10 – Bingo

Chapter 11 – Raffles

Current Chapter 12 – Rules of General Applicability

Chapter 13 – Amusement Games

Chapter 14 – Pull-Tabs

Chapter 15 – Card Rooms

Ms. Hunter explained the reason the clean-up package is on the agenda again is because it was a bit disorganized when it was before the Commission for filing in September. The administrative team, which is Deputy Director Reese, Assistant Director Harris, Assistant Director Trujillo, and myself (and previously included Beth Heston), made some minor formatting changes and improvements to some of the rules, which have been highlighted. Ms. Hunter noted that since the rules being presented today were not exactly what the Commission filed, staff would explain what was changed. Seven rules are on blue paper, and fall into two different categories. Three of the rules were adopted at the last meeting, but due to Code Reviser filing requirements they are on the agenda again. The other four rules deal with activity reports, making them consistent with other rules about activity reports; the substance was not changed. These rules are for discussion today and will be up for final action at the October meeting. Ms. Hunter explained that there will be a second, very small clean-up package, being called Clean-up Package Part 2, which will include about ten rules that needed a few more tweaks. About half are rule interpretations that were missed. Ms. Hunter pointed out that the Commission has considered about 654 rules, so it is not too bad that there may be about ten rules in a Clean-up Package Part 2. Ms. Hunter indicated that staff have not received any comments from the public on this Clean-up Package.

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

Chair Niemi asked if anyone in the audience had any general discussion or comments they wished to make.

Gary Murrey testified that as he listened to the arguments today on policy, he recalled that the audience was previously asked during the 400 rules we spent seven months going through to bite our tongues and not talk about policy; only focus on simplification. If we go beyond that, everybody has not been given the same opportunity to use this forum to

change something that we knew was in the rule before. So, we are coming back later with a package of rule changes we learned during the Rule Simplification process that we wanted to address. We listened to the Commission staff and took their request to step back and wait for the rules simplification to be done, which was a two-year process, before coming forward with policy changes. We hope the Commission extends that request all the way through the process, and as Commissioner Bierbaum suggested, put those issues aside that are a change, and make it a policy discussion that everybody can be a part of from the start.

At 4:00 p.m. **Chair Niemi** called for an Executive Session to discuss pending investigations, tribal negotiations, and litigations. She called the meeting back to order at 5:00 p.m. and immediately adjourned the meeting.

**WASHINGTON STATE
GAMBLING COMMISSION MEETING
FRIDAY, SEPTEMBER 14, 2007
MINUTES**

Chair Niemi called the meeting to order at 9:35 a.m. at the Hilton Garden Inn located in Yakima and introduced Representative Richard Curtis from La Center who was not present at Thursday's meeting.

MEMBERS PRESENT: **COMMISSIONER JANICE NIEMI, Chair**, Seattle
COMMISSIONER PEGGY ANN BIERBAUM, Vice-Chair, Quilcene
COMMISSIONER KEVEN ROJECKI, Tacoma
SENATOR MARGARITA PRENTICE, Seattle
REPRESENTATIVE RICHARD CURTIS, La Center
REPRESENTATIVE GEOFF SIMPSON, Covington

STAFF PRESENT: **RICK DAY**, Director
SHARON REESE, Deputy Director
MARK HARRIS, Assistant Director – Field Operations
DAVID TRUJILLO, Assistant Director – Licensing Operations
AMY HUNTER, Administrator – Communications & Legal
JERRY ACKERMAN, Assistant Attorney General
GAIL GRATE, Executive Assistant

8. Approval of Minutes

Commissioner Bierbaum made a motion seconded by Commissioner Rojecki to approve the minutes of the August 9-10, 2007, regular commission meeting as presented. Vote taken; the motion passed unanimously.

RULES UP FOR FINAL ACTION

9. Rules Simplification Project – Chapter 16

New Chapter WAC 230-16 - Manufacturer, Distributor, Gambling Service Supplier Rules.

Ms. Amy Hunter reported that staff has received no comments on these rules since they were filed by the Commission at the July meeting. There was one minor change to the last rule in the packet, which is on blue paper, and deals with activity reports. Staff recommends passage of Chapter 16 with an effective date of January 1, 2008.

Chair Niemi asked if anyone had any questions; there were none.

Commissioner Bierbaum made a motion seconded by Commissioner Rojecki to adopt Rules Simplification Project Chapter 16, as presented by staff, with an effective date of January 1, 2008. Vote taken; the motion passed unanimously

10. Rules Simplification Project – Chapter 21

New Chapter WAC 230-21 - Public Disclosure Rules

Ms. Hunter reported that staff has received no comments on these rules since they were filed at the July meeting, and no changes have been made to them. Staff recommends passage of Chapter 21, with an effective date of January 1, 2008.

Chair Niemi called for public comment. There were none.

Commissioner Bierbaum made a motion seconded by Commissioner Rojecki to adopt Rules Simplification Project Chapter 21, as presented by staff, with an effective date of January 1, 2008. Vote taken; the motion passed unanimously.

Commissioner Bierbaum noted that the second page says Chapter 21, Public Disclosure Rules, but the index refers to Chapter 16, and asked Ms. Hunter if that was a typo. **Ms. Hunter** affirmed it was a typo, and assured it would be fixed in the final filing with the Code Reviser's Office.

RULES UP FOR DISCUSSION AND POSSIBLE FILING

**11. Cashier's Minimum Bankroll for House-Banked Card rooms
Rules Simplification Project Rule – Amended Section WAC 230-15-050**

Minimum cash on hand requirements.

Assistant Director Harris reported the change to this rule would require house-banked card room licensees to maintain a minimum amount of cash in their cage when they open for a business day. The minimum amount of cash requirement would help to ensure that funds are available to pay out prizes. The rule would require house-banked card room licensees to have at least \$1,000 for each table they are licensed to operate, plus the amount of the largest prize offered, which would be capped at \$20,000. The current rule states that licensees must maintain a sufficient amount of cash on hand; this sufficient amount of cash on hand could be a subjective amount and open to interpretation. Staff recommends changing the language to make it a more objective measure. Both New Jersey and Nevada have similar type rules. At the Commission meeting study sessions there was industry support for this rule change. Staff recommends filing the rule for further discussion with an effective date of January 1, 2008.

Chair Niemi asked if there were any questions or comments from the audience.

Max Faulkner, speaking as President of the RGA, testified that the RGA supported this petition for minimum bankroll when it was being discussed before, and supports it now. The industry wanted something that was cut and dried and easy to interpret, and this fulfills that bill.

Commissioner Bierbaum made a motion seconded by Commissioner Rojecki to accept for filing and further discussion Amendatory Section WAC 230-15-050, as presented by staff, with an effective date of January 1, 2008. *Vote taken; the motion passed unanimously.*

12. License and ID Stamp Fee Increase

Proposed Amendment to:

WAC 230-04-202 - Fees-Bona fide charitable/nonprofit organizations

WAC 230-04-203 - Fees-Commercial stimulant and other business organizations

WAC 230-04-204 - Fees-Individuals

WAC 230-08-017 - Control of gambling equipment – Use of identification and inspection services stamps

Companion Rules Simplification Project Rules:

WAC 230-05-020 - Charitable or nonprofit organization fees

WAC 230-05-025 - Commercial stimulant fees

WAC 230-05-030 - Fees for other businesses

WAC 230-05-035 - Individual license fees

Assistant Director Trujillo reported there were four current fee rules and four companion RSP rules that propose to increase fees by approximately 5.5 percent. This increase is consistent with the limitations of 601 and the Fiscal Growth Factor. The 2007-2009 biennium budget the Commission approved included a reference to fee increases; the first was effective June 30 and this is the second of the fee increases. The rule summary provides a history of fees going back to 1995. Fees for all licensees were increased effective December 31, 1999. A few years later, fees for only commercial organizations and individuals were increased effective January 1, 2002. Fees for all licensees were increased June 30, 2003, and then four years later to the fee increase that was effective earlier this year. Staff has not received a written opposition to this fee increase. Staff recommends filing for further discussion the proposed Amendments, with an effective date of December 31, 2007, and Companion RSP rules with an effective date of January 1, 2008.

Chair Niemi asked if there were any questions; there were none.

Commissioner Bierbaum made a motion seconded by Commissioner Rojecki to accept for filing and further discussion proposed Amendments to WAC 230-04-202, WAC 230-04-203, WAC 230-04-204, and WAC 230-08-017, as presented by staff, with an effective date of December 31, 2007, and the Companion Rules Simplification Project 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.*

13. Electronic Pull-Tab Dispensing Devices

Rules Simplification Project Rules:

a) Amendatory Section WAC 230-14-045 - Authorized pull-tab dispensers.

b) Amendatory Section WAC 230-05-030 - Fees for other businesses

Assistant Director Trujillo reported the proposed amendments would add limiting language to the authorized pull-tab dispenser rule prohibiting video displays and a dispenser opening a pull-tab and/or reading encoded data. The rule change would also remove language that authorizes the agency to charge \$106 annually for Identification stamps for the dispensers. These proposed amendments would prohibit the use of two pull-tab dispensers currently being operated in the state; the Gold Crown dispensing device manufactured by Trade Products and first approved by the Commission in 1997, and the VIP dispensing device manufactured by ZDI and first approved by Director Day in 2002. In 2005, ZDI filed a petition for a declaratory ruling seeking approval to add a gift card acceptor to the VIP dispenser, which would allow players to purchase pull-tabs and for prizes under \$20 to be placed back onto the card. In 2006, an Administrative Law Judge, and later the Commission, found the device did not agree with current WAC rules. Last month, a Superior Court judge issued a Declaratory Judgment remanding the matter to the Commission for action consistent with the Court's Findings of Facts and Conclusions of Law. In July and August of this year the Commission had expressed concern about the point in which a video pull-tab dispensing device becomes a gambling device as defined in RCW 9.46.0241. The Commission also expressed concern about the potential impact of an adverse ruling in regards to the Commission's ability to define pull-tabs as authorized by the Legislature in RCW 9.46.0273.

It is fairly apparent that the rules have not been updated to account for the features that advance the dispenser from a vending-type machine, like that shown in yesterday's PowerPoint presentation, to the Gold Crown or VIP dispensers. For example, the current rules do not account for the function of the pull-tab dispenser opening or reading encoded data before it has been opened by the player. Staff believes that the inconsistency in subsection (1) of WAC 230-30-103 should have been addressed back in 1997 when the Gold Crown machine was first approved. Also, the current rules do not expressly allow video displays to be used on electronic video pull-tab dispensers, which can be demonstrated in WAC 230-30-097, which has standards for approving pull-tab dispensing devices. These proposed amendments would clear up any confusion about the application of the current laws and rules to electronic video pull-tab dispensers by clearly prohibiting their use. A description of how the dispenser is operated is included under the history of the rule. Progressive pull-tab game rules would need to be changed if video displays are no longer allowed because progressive pull-tab games are dispensed from an electronic device that keeps track of pull-tabs sold and updates the amount of the progressive pies in a video display. The proposed change would impact pull-tab licensees who own electronic video pull-tab dispensing devices because they would no longer be able to operate or possess these devices; the devices would have to be disposed of, and the licensees would be out the cost of their investment. Pull-tab licensees that operate electronic video pull-tab dispensing devices may see a decrease in revenue.

Manufacturers of electronic video pull-tab dispensing devices would no longer be able to manufacturer, sell, or lease the dispensing devices in Washington State.

The Commission must decide if electronic video pull-tab dispensing devices are consistent with the definition of pull-tabs, with the legislative intent described in the Gambling Act, and with existing Commission rules. If the number of these electronic video pull-tab dispensing devices increases and the similarity in appearance to slot machines continues, it could be perceived by the public as bypassing the initiative process that recently voted down electronic gambling devices by a two-thirds vote. Staff has received at least 16 written or e-mailed statements opposing these changes, which are in the agenda packet. Mr. Trujillo was aware of at least one more that was faxed late Wednesday afternoon. The written and e-mailed oppositions come from commercial businesses, nonprofit businesses, employees, licensees who have the machines, and licensees who are considering obtaining the machines. These proposed changes would impact manufacturers, distributors, and all pull-tab licensees. Staff recommends filing for further discussion with a proposed effective date of January 1, 2008.

Chair Niemi asked if there were any questions.

Representative Curtis asked whether the Gold Crown machines approved in 1997 and the VIPs approved in 2002 by Director Day were video-type machines. **Assistant Director Trujillo** affirmed that was correct; the original version of the VIP was approved in 2002. **Representative Curtis** noted we have had video machines in this state for almost ten years, overall, since 1997 when the initial Gold Crown, and asked if that was correct. **Assistant Director Trujillo** replied that was correct. **Representative Curtis** pointed out that we have had them and seen a decrease in pull-tab revenue over that period of time, and asked if that was correct. **Assistant Director Trujillo** affirmed that staff has seen a decrease. **Representative Curtis** said the projection was that if we continue to allow these videos, we are going to see a rapid increase in gambling. That is what Representative Curtis has heard; that if these machines are allowed, we are going to see a rapid increase in gambling throughout the proliferation of these machines utilized in different areas. **Assistant Director Trujillo** agreed it was a possibility. **Representative Curtis** asked if that was based on speculation, not fact and past experience. **Assistant Director Trujillo** affirmed that was correct. **Representative Curtis** said he just wanted to make sure he was clear on what staff was recommending and why it was being recommended.

Chair Niemi called for public comment.

Max Faulkner, President of the Recreational Gaming Association, testified the RGA was opposed to this rule change to not allow the machines. Mr. Faulkner has had a number of pull-tab sellers steal pull-tabs in his businesses; sweetheart dealers give away pull-tabs (there is a case right now in Ellensburg), but he has never had a machine cheat him yet. So from a security aspect, we really prefer the machines to the fishbowls where there would be a pull-tab dealer or seller. Secondly, Mr. Faulkner has talked to some of

the smaller clubs and some of the bigger clubs about this pull-tab machine issue, and it is more of an issue for the smaller clubs. Some of them are looking to possibly make another \$500 a month, which is important to them. It is not really that big of an issue to the big clubs. After all, it is still pull-tabs and the house edge or the payback is 60 to 70 percent and it is not a very good gamble. And so the future of pull-tabs is somewhat limited in that respect. For some of the big clubs it is more of an issue of losing something; we are all in the business to protect and grow our businesses, we are responsible to our employees and stockholders to do the best we can, and when we see something possibly being taken away, it sets kind of a bad precedent.

Commissioner Bierbaum said that what she understood this rule to be proposing was not that you cannot have dispensers. Pull-tabs can still be dispensed through a machine; all this proposal is doing is eliminating the video displays and opening the pull-tabs other than manually. **Mr. Faulkner** agreed that was true, but there are still those lucky picks. Mr. Faulkner thought the Gold Crown and the ZDI machine have some auditing and security features that are better than say the lucky pick, the other machines.

Commissioner Bierbaum noted that Mr. Faulkner's argument was about security issues, like persons giving away winning tickets to their buddies, but the dispensing machines can still be used to get that kind of security. **Mr. Faulkner** agreed the lucky pick machines are good for eliminating a person that can steal or sweetheart deal. These machines do have some added auditing features, though, that are beneficial.

Commissioner Bierbaum asked if those auditing features could be incorporated into the dispensers without the video displays and without the feature of opening the pull-tabs and reading them. **Mr. Faulkner** replied possibly, but he was not sure. Maybe somebody who is in the machine business could answer that. Mr. Faulkner asked if this proposal could be held over for a three month agenda so they could have testimony in Spokane.

Commissioner Rojecki asked how many of these machines are out there. **Assistant Director Trujillo** responded the rules right now say about 150, but he thought there were more than that. We can ask a representative from the industry to come up and provide a better number, if you would like.

Representative Curtis asked whether with 150 of the devices out there, could the RGA provide an estimate of what the average cost would be to the individuals to just trash those machines. Representative Curtis thought the Commission had been told the cost would be borne by the individuals, just to get rid of them. **Mr. Faulkner** responded he was not sure, but he thought it would be thousands of dollars, possibly \$8,000. He knew the machines were very expensive and some of the licensees own their machines.

Representative Curtis asked whether the ones that lease the machines have contracts that are binding for a period of time, and would they be responsible for honoring those contracts if the machines were disallowed. **Mr. Faulkner** replied he has a couple in one of his locations, the Gold Crowns, that are on a month-to-month lease.

Assistant Director Trujillo informed the Commission that Jay Gerow has offered to demonstrate the machines for the benefit of those who have not seen them or for those

who are unfamiliar with them. **Chair Niemi** asked if any member of the Commission wanted to see the machines demonstrated. **Representative Curtis** said he would like to see them demonstrated. **Chair Niemi** said to go ahead.

Jay Gerow, ZDI Gaming, demonstrated two machines; one which is currently out in the field and the machine that is being proposed. There are approximately 65 of the machines being demonstrated and about 125 Gold Crown machines currently in the field that people have either purchased or are leasing from Trade Products. One thing that Mr. Gerow did not remember being mentioned in the report was the impact on the licensees and the manufacturers. There is also an impact on the agency, because there are a total of about 300 machines that may be in the field, which could mean about a \$30,000 decrease to the agency in ID stamp fees alone. That does not include the games that go through the machines. Mr. Gerow demonstrated how the machine works; a customer walks up, inserts the money, the credit amount shows up on the display to show how much money was put in the machine. Then the player would press the button and a ticket would be dispensed. The first play pops up on the screen. At this point the customer could either take this ticket to the cashier for cash, or the customer could take the entertainment value and play out the rest of the plays that are on the ticket. It happens both ways. A lot of pull-tab players that do not care about the entertainment value, but like the prize value, will take the ticket up and cash it in right away. Those players who want to be entertained will continue to play each spin. The important thing is there is a ticket regardless, so it is strictly entertainment value. The demonstration provided on Thursday gave a good idea of how pull-tabs work, but one thing that was not explained was that the pull-tab industry has changed from three-window and five-window tickets demonstrated yesterday that used to primarily be sold. The marketplace has changed and operators needing to squeak out more dollars went to the single-window tickets. A lot of pull-tab players were lost because they liked the three-window and five-window tickets for the entertainment value. Otherwise the player is opening one window on the pull-tab and then is done. That is why we have put so many plays on these; to give an entertainment value to the customer. The bonus screen gives free spins and the players have something else to look at, and it is fun. But everything that is represented on the screen is actually represented in the ticket. The bottom line is that it does not matter what comes up on the screen; it all works out to what is on the ticket.

Chair Niemi indicated the only difference between slot machines and these machines was that the players have to take their tickets to a cashier to get their money. Aside from what Mr. Gerow called entertainment value. **Mr. Gerow** replied there was a huge difference. These machines have a predetermined set of pull-tab tickets that are loaded into the machine; a slot machine has no tickets but uses a random number generator. So each time the player presses the button, it is putting up a different sequence or combination. With slot machines the players never know what they are going to get, but with these machines players always get a ticket. **Commissioner Rojecki** asked if the credits/winnings are actually on the tickets, and the screen showing the number of credits corresponds with the ticket that the player has in his/her hand. **Mr. Gerow** affirmed.

Representative Curtis asked if the machine being demonstrated was one of those that have been around for ten years. **Mr. Gerow** replied this particular machine has been out for five years, since 2002. The Gold Crown, which is very similar except for a bit of difference in the screen display, has been out for the past ten years. **Representative Curtis** asked if Mr. Gerow had noticed much public outcry against these, since the initiative did not pass by such a margin and there has been a lot of talk about the initiative. **Mr. Gerow** replied he had not heard or seen any outcry against them; he has not had any complaints, and if the agency has had any complaints, he certainly has not heard it. **Representative Curtis** said he had not heard any complaints. **Senator Prentice** noted that with 150 machines in the whole state, she did not think we would have had a big outcry.

Commissioner Bierbaum asked for clarification on Mr. Gerow's statement about the slot machine having a random number generator, and asked if that was not true of TLS machines. **Mr. Gerow** replied not with a TLS machine, only the slot machines have random number generators. **Commissioner Bierbaum** thought the TLS machine was based on a lottery system, and when played at a tribal casino it was just entertainment, that when the button was pressed it was already determined whether it was a winner or not. **Mr. Gerow** agreed that was correct on a TLS machine. **Commissioner Bierbaum** asked if that was the same thing here; the video display was just entertainment the same as a tribal lottery system game. **Mr. Gerow** affirmed it was on the same premise that the tribal lottery system was designed after pull-tabs. The difference with the TLS machines is they don't have this paper ticket; they basically have electronic tickets that are put in a computer at the back of the House. And as the customer, presses the button, it electronically deals this ticket to this machine. So there is no physical ticket.

Commissioner Bierbaum asked if Mr. Gerow was telling the Commission that the only difference between tribal lottery system game and his machine is that his puts out a paper ticket. **Mr. Gerow** replied yes and no, there are a lot of differences. The premise of the tribal lottery was built on pull-tabs. **Mr. Ackerman** indicated that was not true. The tribal lottery system was built on the premise of scratch tickets not on pull-tabs. **Mr. Gerow** disagreed, noting he had helped put in the first machine. It was his understanding that the scratch ticket system was still based on scratching off a ticket versus a pull-tab that is being opening up. It is based on the fact there is a stack of cards, electronic cards, put into the server, which is served out to each individual unit. **Mr. Ackerman** replied they could have this conversation another time, but Mr. Ackerman did not agree with Mr. Gerow. It is based on a game that the lottery was, at that point, authorized to play, which was the scratch ticket game. And if, in fact, you are telling me the machines are not based on a scratch ticket model, then there is a fundamental legal problem occurring all over the state right now; it is not based on pull-tabs. **Commissioner Bierbaum** asked if Mr. Ackerman did not think scratch tickets were just pull-tabs where instead of opening the window they were scratching off the top. **Mr. Ackerman** replied it was a different type of a gambling medium; if you want to say anything that is a card or a piece of cardboard or a piece of paper that designates a winner are all the same, then you can say that. But pull-tabs and scratch tickets are terms of art in this state and under both the Lottery statutes and the Gambling statutes. So if we want to talk generically and say a

piece of paper that says you win or lose, then you can make that argument. But they are two different things when the terms are used in the way they are defined in the statutes.

Director Day pointed out something that might be helpful was the flare on top of the machine. Perhaps Mr. Gerow could show the Commissioners how to figure out whether the ticket is a winner by comparing the ticket to the flare, without having the machine check the ticket. **Mr. Gerow** responded that if you were not to use the machine the tickets actually have the winning amounts in the ticket, shown here and here. And there is probably more security in this machine than with most pull-tabs because there is not only a primary, a secondary, and a cash code feature, but also a booklet that goes along with the game to show each ticket in the game and what it should pay. Each one of these groups of symbols that have an asterisk by it is a winning play, with the total printed out on the ticket. **Chair Niemi** noted that Mr. Gerow had said the difference between a slot machine and the machine he was demonstrating was the fact that the machine has all those tickets in it. Chair Niemi did not see the difference at all, since every slot machine is set differently so they only pay a certain amount; they are not random, they are set to pay out 70 percent or 60 percent or 75 percent, and the players are always told exactly what they have won or if they did not win anything. So what is the difference? **Mr. Gerow** replied he thought the difference was still a paper pull-tab; if you were to take a set of pull-tabs and say there are 4,000 tickets in that set and you were to open each one, you would know exactly what you have by opening each one. If you were to take 4,000 spins on a slot machine, you have no way of knowing what was going to come up; the machines are set for something like a 70 percent or a 96 percent payout, but you never know when that is going to come up – is that in a million plays, a thousand plays, 10,000 plays. With pull-tabs, it is all predetermined and it is shown on the flare as well as on the machine. It gives the operator and the player the knowledge to know that there are 9,980 tickets in there, plus the player can look at the flare and see how many winners are left on that particular game. With a slot machine the player has no idea whether the big winner is already gone.

Chair Niemi asked what about yesterday when the Commission heard about pull-tab games. It was obvious to everyone that when the prize was crossed off the flare and there was really no money left that people would not play the game. The operator would not keep that game going, they would pull the game. What would they do with this machine? The customer would not want to play the machine anymore because they would know how much had been paid out. **Mr. Gerow** replied that at that point it would be no different than with the paper game. It would be up to the operator whether to go ahead and pull the game and put in a new game – no different than in a pull-tab bowl behind the bar.

Mr. Gerow explained the machine his company was trying to talk about. Cash is inserted into the bill acceptor and the machine spits out a ticket. The difference is the ability to use a cash card or a gift card at whatever location the machine may be located. Instead of putting cash in the machine, a gift card can be inserted – It is just like putting cash in the bill acceptor. When the play button is hit, the machine kicks out the ticket,

and you start to go through the whole process again. The Commission passed the rule stating we can go ahead and purchase with the gift cards. The machine is going to put our winnings back on the machine and show the win on the screen. And if the player chose to, he or she could take this ticket up to the bartender or the cashier and cash it in, or put it back in the machine. **Chair Niemi** asked if the end result will be exactly what is on that ticket. **Mr. Gerow** responded it was going to be exactly what was on the ticket. At that point, if the player chose to put the ticket back into the bill validator, it would go back onto his/her gift card, and the player could start the process over again, or go cash out with the cashier or the bartender. So all we are doing is giving the player the option to be able to put the winnings back on the card, which is more convenient for the player and less labor for the establishment. **Chair Niemi** asked if a player could do that without having to open any of those tickets. **Mr. Gerow** said no, the player would have to open the ticket to know whether it was a winner.

Representative Curtis said he was trying to understand the difference on these two machines and figure out how we were going to have an expansion with these machines. Representative Curtis wondered what the driving thing was that the public was going to see as a difference; what is going to drive them to purchase all these machines, since there is really a minimal difference between these and what they can currently purchase. **Mr. Gerow** replied that was a very good question, and to be honest he was not sure. Mr. Gerow said he was not sure why we were even having this discussion. **Representative Curtis** said he was not sure either. **Mr. Ackerman** indicated that putting the credits back onto the card eliminated the need to go to the bartender or the cashier, which is obviously the difference between the two machines, and asked if the machine would do that automatically or would the player have to physically insert the paper pull-tab into the slot, as Mr. Gerow had demonstrated. **Mr. Gerow** replied the player had to insert the paper pull-tab into the slot. **Mr. Ackerman** asked whether the player could just use the entertainment feature Mr. Gerow described, hit the button, and allow the machine to tell the player whether he or she had won or not without using the paper pull-tab. If Mr. Ackerman understood what Mr. Gerow was explaining, the machine could not credit the money back onto the card without physically inserting the piece of cardboard into the device. **Mr. Gerow** affirmed that was correct, if the customer does not want to have the money go back onto the card, he or she can just stack the tickets and take them to the cashier at the end to be paid. The customer does not have to put the money back on the card if he or she chooses not to.

Mr. Ackerman clarified that his question was if the customer elected not to take the pull-tab to the cashier and have the cashier say whether it was a winner or not, if the customer elected simply to hit the button, have the electronic display tell whether the customer won or not, would the machine credit the winnings back onto the cash card, absent the customer opening the pull-tab and putting it into the device. **Mr. Gerow** replied no, it would not. **Mr. Ackerman** noted that the difference in the two machines appeared to be that the customers could have their winnings put back onto the cash card and eliminate the contact with the cashier. The customers could then play their winnings on the machine through the cash card if they chose to or they could pull out the cash card and

take it to some other game or merchandise vendor that accepts the cash card. **Mr. Gerow** agreed, other than the players still must have contact with the cashier regardless, either by taking the paper pull-tab to the cashier or taking the cash card to the cashier.

Mr. Ackerman indicated that was only if the player wanted to cash out the card and get the money; the player would not have to take the card to the cashier and turn it into bucks if the player wanted to take the cash card to any other vendor that accepts cash cards. The Commission heard a lot about that a few meetings back from Mr. Tackitt on how much more convenient it was to have the plastic money, in essence, to use within his facility. **Mr. Gerow** replied the player would not have to, they could come back and do it later. **Mr. Ackerman** said the player could purchase merchandise with the piece of plastic; there was no need to turn it into dollar bills if the cash card is accepted for uses other than the playing of that game. **Mr. Gerow** said if the player wanted to use the card to buy a hamburger or something, they can do that. **Mr. Ackerman** added they could use the card for anything else that could be purchased with the plastic. **Mr. Gerow** said he supposed if the operator had something else that could be bought with the card, the player could; although Mr. Gerow did not know what that would be.

Director Day asked for clarification that the customer never has to interact with a losing pull-tab; the machine spits out the ticket and reads the bar code, the player can push the button and the machine tells whether the player wins or loses. So the player basically does not have to do anything with the ticket whatsoever if it's a losing ticket. With a current fishbowl pull-tab game, the player has to buy each ticket and physically interact with the ticket by opening it. **Mr. Gerow** said the player would not have to look at the ticket if it was a losing ticket. Mr. Gerow added that the tickets from these machines are being opened, just in a different manner. **Director Day** asked whether the machine was dependent on this ticket and vice versa; it is possible if someone were to use this ticket to define a winner, but that machine will not dispense any other form of ticket, just this one, correct? **Mr. Gerow** affirmed that was correct, noting it was the same with the Gold Crown machine.

Chair Niemi noted that several people have to leave the meeting very shortly, so I hope everyone's questions were answered, and we need to let other people comment.

Commissioner Bierbaum asked if there was any way to extend the time to receive public comment to give more opportunity to discuss this. We are talking about making it effective January 1, 2008, which seems too soon, especially since we only have three Commissioners here today and may only have three Commissioners in Spokane next month. Commissioner Bierbaum felt this was important to enough people that we would want to have as much discussion as possible so no one felt they were not being heard. What can we do to make sure that it is discussed enough times so everybody understands; there seems to be a lot to understand. **Mr. Ackerman** explained how the process works; what we call the CR 102 has not yet been filed in this matter, but should be filed within the next week. Once the CR 102 is filed, this rule proposal can be on the Commission's docket for up to six months. There is no rule that limits consideration to three monthly

meetings. The Commission could consider it every month if it chose to do so. If the Commission were to ultimately decide to promulgate this rule, there is the option to set a delayed effective date on the rule change. It would not have to be the January 1, 2008 effective date as suggested in the rule summary; the Commission could delay the effective date for a year or 18 months, or whatever date you chose.

Chair Niemi asked the Commissioners present whether, if that were the case and they voted to file the rule change, would the Commissioners wish to keep it on the agenda each month until everyone gets a chance to comment? **Commissioner Bierbaum** added: until the Commission feels fully informed enough to make a good vote, and everybody who wants to have an opportunity to talk, has the chance to address all of the Commissioners. Mr. Gerow has just talked to the three Commissioners present and the other two Commissioners are not here.

Commissioner Rojecki felt that the Commission should not file this, and actually ask staff to bring an alternative addressing everything so we are not taking half the testimony this meeting and half the testimony at the next meeting. Then if we are going to take testimony, we take it at all the meetings to further educate ourselves. **Commissioner Bierbaum** asked what would happen if the Commission did not make a motion on this change. Can staff bring it back next month when there are more of us and then ask for it to be filed next month? **Mr. Ackerman** affirmed the Commission could absolutely set this over a month and consider it on the next month's calendar. The Commission would table it to next month.

Director Day added another option would be that the Commission could file the rule change, and then ask staff to prepare an alternative for the next meeting. **Chair Niemi** said it looked like the three Commissioners needed to decide whether to table the rule change to the next month or file it – and then we would still have plenty of options for discussion. **Commissioner Rojecki** asked if what Chair Niemi was saying was the Commission could actually file this rule change today and specifically ask staff to prepare an alternative; there would be two proposals running at the same time. **Mr. Ackerman** affirmed. The Commission could vote to file it today and ask staff to prepare an alternative, but you would need to provide staff with some direction as to what you would like that alternative to look like. Or the Commission could simply not vote to file the rule change today, table it until next month, and then make a decision next month whether to file it, and/or what type of alternative, if any, you would like to have staff prepare for your consideration.

Chair Niemi said she was concerned about asking staff to do more. Chair Niemi would like all the Commissioners to hear from the people who do not want this filed, but she did not think staff should have to do anything more. Chair Niemi thought that if there were any suggestions about changes, or anything the Commission can do, it should come from the people who do not want this filed. **Representative Simpson** had a question that was unrelated to tabling the rule change or an alternative. One of the things that occurred to Representative Simpson from the discussion yesterday about pull-tabs in general was that

with a fishbowl, the customer could see and sort of gauge how many tickets there were left in that bowl versus how many winnings had been paid. Representative Simpson was curious if there was a way for someone to gauge how many tickets are left in this machine. **Assistant Director Trujillo** responded that he thought the machine had a counter that displayed the decreasing number on the screen, and the player was able to see the available prizes on the flare, which were deleted as the prizes are won. **Mr. Gerow** agreed that was fairly accurate; there is actually a countdown on the machine that shows exactly how many tickets are left in the machine, the players could look at the flare and decide whether they wanted to play the game.

Director Day asked if Chair Niemi wanted to move forward with public comment, since we are running short on time. **Commissioner Bierbaum** wanted to make sure the Commissioners are able to deal with this issue before one of them has to leave, which is imminent. Commissioner Bierbaum felt the Commission should decide the question of whether to table the rule change; do we need a motion to table it or do we just not do anything? **Mr. Ackerman** replied that the Chair has the discretion to table this without a motion. If the Chair made such a decision, it would be subject to a motion by either of the other Commissioners to override that decision and to take a vote at this meeting. But if neither Commissioner Bierbaum nor Commissioner Rojecki objects, then the Chair can, of her own accord, table this to the next meeting. There is also the option for any Commissioner to make a motion to table the rule change. **Commissioner Bierbaum** asked if the Commission decided to table the rule change right now, could public comment continue until one or more of the Commissioners had to leave. **Director Day** replied that Chair Niemi could set a time for public comment and staff would make sure there was enough time to make the motion at that point. **Chair Niemi** set the time for public comment to 15 minutes, to end at 10:55.

Michael Marquess, speaking on behalf of himself as a citizen, passed around photographs of some arcade games to make the point that if resembling a gambling device was an issue, then in some of these kiddie arcades there are arcade games designed after Las Vegas gambling devices. The first page shows a Wheel of Fortune, which is one of the most popular slot machines in Las Vegas. The customer puts money in these machines and gets redemption in tickets that can be taken up to a counter and redeemed for a prize depending on the different points. On the last page is a picture of a roulette-style game, and there is a progressive jackpot with progressive meters on these games. The last picture shows a coin drop; although the picture is not very descriptive, these are the kind of games that have a horizontal platform with a bunch of coins on it. When the players put a coin in this type machine in Las Vegas, the coin will land on a platform and a paddle will push the coins and if it pushes some of the coins over the edge, the players get to collect those coins. In this case, if the players push the tokens over the edge, they get tickets that are redeemed for prizes. Mr. Marquess said he had taken his two-year old and five-year old to one of these arcades and he would not go back; he considered it a kiddie casino. Mr. Marquess felt if resemblance to gambling devices was a concern then these arcades should be addressed as well. **Mr. Marquess** added that he owned the Caribbean Casino here in Yakima, but was not representing the

card room industry on this issue. As a card room owner, though, in five years of operation, the only prosecutable case we have had was in pull-tab theft.

Ric Newgard, Washington Charitable and Civic Gaming Association, testified the Association was opposed to filing this rule change. Mr. Newgard said we could talk about audit control, and theft, and everything, but how come this machine has been okay for five, six, seven, eight, nine years and now it is evil? Mr. Newgard said he, personally, was having a hard time understanding why. He has 80 tanks and has been selling them for 30 years out of a fishbowl. Now all of a sudden this machine that was legal ten years ago is now evil. So as the Commission considers this for next month, or the month after, Mr. Newgard just wished they would ponder that question. **Chair Niemi** noted that the Commission had briefly discussed that in Executive Session, and the response was, and this happens in the law all the time, the Legislature and the Judiciary both say these laws that have been on the books for five or ten years are illegal, or they do not want them, or we want to change them. Chair Niemi said she thought the bottom line was that she did not feel it was a really good argument. **Mr. Newgard** asked why, if they are legal, what is making them now illegal? **Chair Niemi** replied with what her mother would have answered; because she said so.

Dolores Chiechi, Recreational Gaming Association, testified that one of the things brought up in staff's analysis was that because the people voted against Initiative 892, which would have authorized slot machines or tribal lottery systems in non-tribal facilities, it is argued that these machines are slot machines, essentially, and so why are they being allowed. If these machines were slot machines, our industry would not have banded together to get an initiative passed to allow us to have the machines that are being operated in tribal facilities. This is an opportunity for us to operate Atari; right now we are playing Pong with paper pull-tabs. This is Atari; the tribal lottery systems are the Wii machines that are what your kids are playing out there. We are just asking to be advanced to the technology that is operating out there, so we are not playing with paper pull-tabs and playing Pong.

Bill Tackitt, Buzz Inn Steakhouses, testified that if the Commission would just table this proposal for now, it would give the opportunity to get the industry together and bring back a better proposal for the Commission; something that everyone could live with. Mr. Tackitt said he received the August 30 letter from the Commission on about September 4 and immediately had his son get on the Gambling Commission's website to find out what this was about. Mr. Tackitt said he did not find anything on the website. We really need the opportunity to sit down with the industry and the staff to come up with a better proposal for the Commission.

Gariet Brooks, Vice-President of the Thunderbird Casino in Yakima, testified that the Thunderbird is a small casino and has three of the Gold Crown machines that they own and which cost \$8,000 each (\$24,000 total). If the machines are not going to be allowed any longer in Washington State, then his casino would have to eat that cost. The Commission talked about entertainment value; although, not everybody here is going to

agree there is entertainment value there are people that do view it as entertainment. It affects our business in two ways; a person who comes in with his wife, who does not want anything to do with blackjack but will sit down and play the electronic pull-tab machine while her husband is playing cards. If we do away with that, not only is the Commission taking away the revenue from the pull-tabs, but are also taking away the revenue from blackjack. Now we are talking about thousands of dollars, which does seriously affect us as a small casino.

Dan McCoy, McCoy's Distributing, testified his company distributes pull-tabs and has about 20 of the Gold Crown machines; although, he was not very familiar with the VIP machines. Mr. McCoy said he had a stake in this, in the lost revenue perspective. Mr. McCoy also wanted to make it clear that these machines are really no more than pull-tab dispensing devices; there is a ticket required. Money is put into the machine and the machine kicks the ticket out, which is no different than a mechanical machine. Then that ticket must be taken to a cashier to be redeemed for cash. Mr. McCoy was not very familiar with the card reading device, but as far as the Gold Crown machine goes: cash in, ticket out, ticket to cashier, the players get their money. It is no different than what is going on with a fishbowl, and Mr. McCoy wanted to make sure that was real clear and thanked the Commission for their consideration.

Commissioner Bierbaum made a motion seconded by **Commissioner Rojecki** to table this proposal until the October Commission meeting. *Vote taken; the motion passed unanimously.*

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

Chair Niemi asked if there were any other comments.

Senator Prentice commented that yesterday someone came up and praised one of the local agents and we all kind of joked about it. Senator Prentice said that it was very gratifying to hear that kind of feedback from the industry; that this is a representative of our government and that local people respect him.

With no further business, **Chair Niemi** adjourned the meeting at 11:45 a.m.

Minutes prepared by:

Gail Grate
Executive Assistant