

**WASHINGTON STATE
GAMBLING COMMISSION MEETING
THURSDAY, FEBRUARY 14, 2008
MINUTES**

Vice-Chair Bierbaum called the meeting to order at 1:40 p.m. at the Best Western Tacoma Dome Hotel located in Tacoma and introduced the members present, noting that she was Acting Chair in the absence of Chair Janice Niemi who was unable to attend the meeting.

MEMBERS PRESENT: **Commissioner Peggy Ann Bierbaum, Vice Chair, Quilcene**
Commissioner Alan Parker, Olympia (arrived at 2:20 p.m.)
Commissioner John Ellis, Seattle
Commissioner Keven Rojecki, Tacoma

STAFF PRESENT: **Rick Day, 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

Partnership Program Participants:

Director Day explained the agency's Partnership Program and introduced Special Agent Jon Godfrey who works in our Tribal Gaming Unit.

1. Review of Agenda and Director's Report

Director Day reviewed the agenda for Thursday and Friday, noting there were no staff recommended changes to the agenda. Staff has been informed there may be a family-related medical issue that may prevent the petitioner from attending on Friday for the Petition for Review under Item 6 a). Bruce Marvin will probably take that up in the morning, but staff has no objection to delaying the Petition for Review.

a) **Legislative Report**

- > SB 6921 – Public Disclosure Exemptions for Licensees' Records
- > Agency Request Legislation
 - HB 2749/SB 6316 – Retaining Interest on Gambling Revolving Fund
 - HB 2862/SB 6441 – Fees
- > Carry-Over Legislation – Agency Request Bills
 - HB 1345/SB 5375 – Penalties for Underage Gamblers
 - SHB 1346/SSB 5374 – Barring List
- > 2008 New Bills
 - HB 2489/SB 6829 – Increasing Price of Raffle Tickets
 - SB 6597 – Increasing Age to Gamble

- HB 3220 – Local Government Raffles
- HB 3292 – Recording Executive Sessions

> Other New Bills

Ms. Amy Hunter explained that because it is a short legislative session, deadlines are coming and going very rapidly. The first cutoff for bills to make it out of the original committee was Friday, February 8. The deadline if it was a fiscal committee was Tuesday, February 12. The next deadline requires bills to make it out of the house of origin by Tuesday, February 19. Except for two bills, most of those included in the agenda packet are still alive. Staff will be recommending that the Commission take a position on two bills. Commissioner Ellis had his confirmation hearing yesterday and gave a great overview of the changes he has seen and the issues he sees coming up in the future. Substitute Senate Bill 6316, allowing the Commission to retain the interest on the gambling revolving fund, was changed since last month. The Treasurer's Office is estimating this would be \$82,000 a year, instead of the original estimate of \$92,000. The Senate Ways and Means Committee heard the bill and it was passed out. A very small amendment was made changing the effective date to July 1 instead of 90 days after adjournment, making it easier for the Treasurer's Office to administer. The bill got its second rules pull at a meeting yesterday afternoon and Ms. Hunter thought the Senate would be listening to the bill and, hopefully, voting favorably on it this coming week. The House Bill died without a hearing. Senate Bill 6441, companion to House Bill 2862, is our fee bill, and neither made it past the cutoffs. The Labor, Commerce, Research and Development Committee had a hearing on the Senate Bill and referred it to Ways and Means without a recommendation. The bill died without a hearing in Ways and Means, and the House Bill also died. Staff continues to work on other options, so the bill is dead but the concept and discussions are still ongoing.

Substitute House Bill 1346, the barring list bill, passed the House 94 to 0 and has a hearing a week from today in the Senate Labor, Commerce, Research and Development Committee. The Senate Bill died in Rules. House Bill 1345, dealing with penalties for underage gamblers, passed by a vote of 96 to 1, and has been referred over to the Senate Committee. James Williams, with the Second Amendment Foundation, sent the Commission some emails last year asking that those under the age of 18 be allowed to participate in raffles. At fundraisers he has attended for the Rocky Mountain Elks Foundation he has witnessed parents buying raffle tickets and letting their children redeem them. Staff's goal with this bill was to mimic what the current law and rules are as they deal with the age to gamble across the board. Currently, children cannot participate in raffles, so Mr. Williams would like to see an amendment made. Ms. Hunter has talked with Mr. Williams and provided him with some technical suggestions on his original language, which would have gone farther than what he intended and impacted bingo. Currently, minors can play bingo if accompanied by an immediate family member. Mr. Williams is proposing an amendment that states that persons under the age of 18 may participate in bingo, amusement game activities, and raffles when conducted by bona fide charitable or nonprofit organizations and when accompanied or authorized by an immediate family member or a legal guardian. If the Senate is

inclined to add the amendment to the bill, the bill would have to go back to the House for concurrence because the House did not pass it with that version. Staff would be okay with the change, keeping in mind there is a policy change with allowing those under 18 to participate in raffles. Ms. Hunter would like to hear the Commissioners thoughts about the change and if they feel it is a bad idea. If the Commissioners would like to think about it a bit, Ms. Hunter would continue with her report and come back to it later.

Director Day asked whether the amendment would restrict amusement game activities further than what they currently are because this requires an immediate family member to be present when the underage person is participating – it could impact carnival games. **Ms. Hunter** affirmed this would take care of the bingo problem but create a problem for amusement games. That was a very good point that she had not thought about.

Commissioner Ellis construed this to mean that a minor participating in an amusement game activity would not only have to be accompanied by an immediate family member or legal guardian, but the game would have to be conducted by a bona fide charitable or nonprofit organization, but thought there were a lot of amusement games that are not conducted by charitable/nonprofit organizations. **Ms. Hunter** affirmed there are, so that would be a second problem with the amusement game portion of the amendment. **Commissioner Ellis** noted he had not gone back to look at the statute that currently authorizes people to participate in amusement games, but assumed it does not have this limitation in it, which would be a conflict between the two provisions. **Ms. Hunter** affirmed.

Director Day explained this discussion was the exact problem staff tried to avoid and why the legislative proposal just incorporates existing rule and statute. It has been vetted and has worked together for some time with the Commission's age limits and rules. When someone attempts to change one section of that age limit, there is the potential to unintentionally impact many other sections, and creates problems for the bill as it moves forward. It is problematic and is one reason why staff did not propose trying to change the age limit in this bill, which is about establishing a civil penalty for underage people that attempt to gamble and is not really about age limit.

Vice Chair Bierbaum stated her reaction was that it says minors can participate in these activities when they are accompanied or authorized by an immediate family member or legal guardian, but what about an unaccompanied child who is playing bingo and says his brother told him he could play. The whole thing seems to be unworkable language. **Ms. Hunter** explained that "immediate family member" is a term that is defined in Commission rules, and includes grandparents, aunts, uncles, and parents. **Vice Chair Bierbaum** felt sure that if the child was already there, the parents would just say they had said it was okay. **Director Day** asked about the context of "authorized" and whether that meant a note from home. **Vice Chair Bierbaum** agreed.

Ms. Hunter sensed there was not great enthusiasm over the proposal and would let Mr. Williams know there are additional problems with the language and he can go from there. Ms. Hunter has to let Mr. Williams know that staff was trying to stick with what is currently allowed and have that be what the bill says. Mr. Williams' concern is that a child will do this and then get a civil infraction. Ms. Hunter has let Mr. Williams know staff's focus would be on card rooms and other activities more than on raffles.

Ms. Hunter reported that Senate Bill 5927 dealing with public disclosure was still alive. Senator Delvin has been working on this. Last year the Commission supported a bill to create a public disclosure exemption for financial statements. The House version passed and there was a similar bill in the Senate. Because it was not identical, the Senate bill could continue to be alive. The hope by those working on it is that there will be a floor amendment that would create a public disclosure exemption for internal control documents and supporting documents of licensees, which will look like what is in the agenda packet (5927 AMS). Ms. Hunter's memo noted language in the proposal that would require Commission staff to notify a licensee of a request and only release the records with the licensee's consent has been removed. Staff had suggested the language follow normal language for public disclosure exemptions. For the past several months staff has been talking with the Recreational Gaming Association (RGA) about an exemption for internal controls, which could include some very detailed and sensitive information. Staff let the RGA know that, if there was a bill related to internal controls, staff would recommend the Commission support it. Ms. Hunter noted that no public disclosure requests for internal controls have been received for at least five years. This language has since been revised and includes the financial statements, internal controls, or independent auditor reports that are submitted by tribes that have a Compact. Staff supports this amendment and would like to have the Commissioner's support.

Commissioner Rojecki made a motion seconded by **Commissioner Ellis** to support Senator Delvin's amendment to Senate Bill 5927. *Vote taken; the motion passed unanimously.*

Ms. Hunter reported that House Bill 2489, increasing the price of raffle tickets from \$25 to \$100 or more if allowed by Commission rule, passed 95 to 0 with three members excused. The Senate version died in committee without a hearing. At last month's meeting the Commissioners decided to take a neutral position on the bill. Senate Bill 6597, increasing the age to gamble from 18 to 21, died in committee. House Bill 3220, defining nonprofit organizations to include local government, passed out with a do pass recommendation and is in Rules. Cities, counties, and towns would be allowed to conduct raffles, as long as all of the net receipts, revenue minus prizes, are used for "community activities or tourism promotion activities." Staff recommends the Commission taking a neutral position, which is consistent with the position taken last year on the bill allowing state employees to conduct raffles. When the Commissioners

take a neutral position, staff usually point out the pros and cons of the bill. A pro of this bill is that it may increase receipts for local government. Having a dedicated cause for something like tourism may increase the public's willingness to buy the tickets. A con is that local government, just like any other nonprofit organization, runs the risk of not selling enough tickets to cover the prizes. Staff does not feel this would have any impact on tribal gaming. If the Commissioners do not agree with the neutral position and want to oppose or support the bill, then a motion would be helpful; otherwise a motion is not needed.

Vice Chair Bierbaum asked if the Commissioners wanted to oppose or support the bill. No one did.

Ms. Hunter reported that House Bill 3292, dealing with recording executive sessions, was requested by the Attorney General and the State Auditor, and would require that a verbatim audio recording be made of executive sessions and kept for two years. House Bill 3292 is out of committee, passing with a do pass recommendation and is in Rules. The other carryover bills from 2007 noted in the memorandum are all officially dead because they did not make it out of committee. Ms. Hunter noted that the prime sponsor of the internet gambling bills, Representative Chris Strow, is no longer in the Legislature. The Legislature is scheduled to adjourn on March 13, which is the day before the March Commission meeting. **Director Day** added that a related issue on Senate Bill 6441 is that staff is trying to work out a plan in order to balance the Commission budget and is attempting to find different options to move forward. There has been some debate about the Commission's fee increase that the Commissioners passed in 2007, and whether that can be moved forward. There is no formal legal opinion around that topic. Director Day asked if the Commissioners would consider requesting a formal Attorney General's Opinion (AGO) on whether the fee increase that was already approved could be implemented without a formal type of approval under Initiative 960. **Commissioner Rojecki** said he did not think it would hurt to have the formal AGO. **Commissioner Ellis** said he would be interested in Jerry Ackerman's recommendation or comments on the strategic value of seeking an AGO.

Assistant Attorney General Jerry Ackerman replied that a lot of state agencies are addressing questions under Initiative 960 and trying to figure out exactly what is required of them at this point. One of the options would be to seek a formal AGO. This agency, if it chose to do that, would be presenting the Attorney General's Office with a very narrow issue, which might make a response easier to draft. It may be something that the office could respond to more quickly, since I assume that the Commission would not be seeking an AGO as to the broad applicability of I-960 to a number of situations, but just as to your particular fact pattern. It certainly is within the Commission's discretion and would allow you to know what options were open to you, given the uncertainty of the legislative process. Mr. Ackerman did not see a particular downside to doing it, but ultimately it remains the Commission's policy call as to

whether to ask staff to prepare a letter defining the question and request for an AGO and present it to the Chair, or to the Commission as a whole.

Commissioner Ellis agreed with Commissioner Rojecki that it sounded like a good thing to do. **Vice Chair Bierbaum** agreed, and asked if Mr. Ackerman was suggesting something needed to be drafted and then brought back to the Commission. Vice Chair Bierbaum wondered if there was some other way to do it without having to wait for another meeting. **Mr. Ackerman** replied that the Commission could take a vote authorizing the Chair to request an AGO through a letter that would be drafted by staff, with Mr. Ackerman's help. The Commissioners have a very specific, narrow fact pattern. It is important to ask the question the Commission wants answered when trying to get a response via a formal Attorney General Opinion. The question needs to be asked as succinctly but as completely as possible so the issue gets appropriately addressed and answered. Mr. Ackerman said it would be appropriate for staff to draft something and present it to whomever the Commissioners dictate; technically it should probably be signed by either the Director or the Chair. **Director Day** added that staff could prepare a draft for consideration at the next meeting when staff would have a better idea on the success with any of the other solutions in bills that are still alive. If the Legislature deals with all the fee issues, the AGO may not be necessary, but at least staff would have it ready for the Commissioners to review at next month's meeting.

Vice Chair Bierbaum asked Mr. Ackerman if a motion was needed. **Mr. Ackerman** said he did not believe one was needed because the Commissioners have given the Director the sense of what they want. **Vice Chair Bierbaum** instructed Director Day to draft the letter and bring it to next month's meeting. **Director Day** agreed.

b) Correspondence

- > Letter from M. Bruce Anderson regarding late gambling taxes and our response
- > Letter from Crazy Moose Casino II regarding problem gambling and our response
- > Letter from Skokomish Indian Tribe regarding regulatory fees and our response
- > Letter from Stillaguamish Indian Tribe regarding regulatory fees and our response
- > Letter from Washington Indian Gaming Association and our response

Director Day addressed the correspondence included in the agenda packet, pointing out staff has responded to various requests from the tribes about the billing rates. Director Day reported that on the January 31 he had a very effective and beneficial meeting with the tribes, which was organized by the Washington Indian Gaming Association. Many good suggestions came forward to help clear up communication and the foundation of our various billing rates, and Director Day was pretty confident of a positive conclusion.

Vice Chair Bierbaum opened the meeting to public comment on the Director's Report.

Ms. Dolores Chiechi, on behalf of the Recreational Gaming Association, thanked the Commission for its support in exempting internal control documents and other supporting documents with the amendment being presented to the Legislature.

2. New Licenses and Class III Certifications

Assistant Director David Trujillo reported that, based on the licensing investigations conducted, staff recommends approving the new licenses and Class III certifications listed on pages 1 through 18. **Commissioner Ellis** asked if a representative of Rascals Casino was present. **Assistant Director Trujillo** responded he did believe anyone from Rascals had planned to appear.

Commissioner Ellis made a motion seconded by **Commissioner Rojecki** to approve the list of new licenses, changes, and tribal certifications as listed on pages 1-18 in the agenda packet. *Vote taken; the motion passed unanimously.*

3. Defaults

a) Treasure Casino, Renton, Revocation

Lead Staff Attorney Melinda Froud reported that Treasure Island Casino violated a 2007 settlement order on two separate occasions by failing to have sufficient cash on hand or funds available on deposit to pay out the highest prizes for each of the card games offered. Treasure Casino did not respond to the charges, and by failing to respond, the licensee has waived its right to a hearing, and the Commission may enter a final default pursuant to RCW 34.05.440.

Vice Chair Bierbaum asked if anyone was present on behalf of Treasure Island Casino. No one stepped forward.

Commissioner Ellis made a motion seconded by **Commissioner Rojecki** to enter a default order revoking Treasure Island Casino's license to conduct gambling activities substantially in the form of the findings, conclusions, decision and final order in default submitted by staff. *Vote taken the motion passed unanimously.*

Mr. Ackerman clarified for the record that the motion states Treasure Island Casino, but the Default Order in the agenda packet refers throughout to Treasure Casino.

Vice Chair Bierbaum asked if there was anyone in the audience appearing on behalf of Treasure Casino. No one stepped forward.

Commissioner Ellis asked Ms. Froud for the correct name of the organization, noting the subject line on the cover memorandum indicates Treasure Island Casino. **Ms. Froud** apologized for any misunderstanding, noting it was an error on the cover memo, and affirmed it was Treasure Casino. *Commissioner Ellis amended his motion to indicate Treasure Casino.*

b) Somoeurn In, Card Room Employee, Revocation

Ms. Froud reported Mr. Somoeurn In admitted to taking about \$2,500 to \$3,000 over a month's time from his employer, Cascade Lanes Restaurant and Lounge in Renton. Evidence contained in Cascade Lanes Restaurant and Lounge's surveillance video corroborated most of Mr. In's admission. The licensee did not respond to the charges and by failing to respond, Somoeurn In waived his right to a hearing and the Commission may enter a final order in default.

Vice Chair Bierbaum asked if Mr. Somoeurn In or a representative was present. No one stepped forward.

Commissioner Ellis made a motion seconded by **Commissioner Rojecki** to enter a default order revoking Somoeurn In's license to conduct gambling activities substantially in the form of the findings, conclusions, decision and final order in default submitted by staff. *Vote taken the motion passed unanimously.*

c) Meriya N. Schilperoort, Card Room Employee, Revocation

Ms. Froud reported that on October 14, 2007, while gambling off-duty, Ms. Schilperoort took an envelope containing at least \$500 that she knew was not hers, and did not return it to the casino for the rightful owner. The licensee did not respond to the charges and by failing to respond waived her right to a hearing.

Vice Chair Bierbaum asked if Ms. Meriya Schilperoort or anyone on her behalf was in attendance. No one stepped forward.

Commissioner Ellis made a motion seconded by **Commissioner Rojecki** to enter a default order revoking Meriya Schilperoort's license to conduct gambling activities substantially in the form of the findings, conclusions, decision and final order in default submitted by staff. *Vote taken the motion passed unanimously.*

Vice Chair Bierbaum welcomed Commissioner Alan Parker who had just arrived (2:20 p.m.).

d) Jess E. Stewart, Card Room Employee, Revocation

Ms. Froud reported that Mr. Stewart was convicted of a hit and run, attended vehicle, on or about May 23, 2006, and failed to show proof of alcohol assessment to the trial court as required by his Judgment and Sentence. Mr. Stewart also has an active warrant for Failure to Appear, and failed to provide Commission staff with any documentation that the warrant was quashed. The licensee did not respond to the charges, and by failing to respond Mr. Stewart waived his right to a hearing.

Vice Chair Bierbaum asked if Mr. Jess Stewart or anyone appearing on his behalf was in attendance. No one stepped forward.

Commissioner Ellis made a motion seconded by **Commissioner Rojecki** to enter a default order revoking Jess E. Stewart's license to conduct gambling activities substantially in the form of the findings, conclusions, decision and final order in default submitted by staff. *Vote taken the motion passed unanimously.*

e) Michael S. Albanese, Class III Certification, Revocation

Ms. Froud reported that while working as a cage supervisor, Mr. Albanese took tribal lottery system vouchers in the amount of \$950 from the Nooksack River Casino. On October 18, 2007, Mr. Albanese pleaded guilty to Third Degree Theft. The licensee did not respond to the charges and by failing to respond waived his right to a hearing.

Vice Chair Bierbaum asked if Mr. Michael Albanese or anyone appearing on his behalf was present. No one stepped forward.

Commissioner Ellis made a motion seconded by **Commissioner Rojecki** to enter a default order revoking Michael Albanese's Class III certification to conduct gambling activities substantially in the form of the findings, conclusions, decision and final order in default submitted by staff. *Vote taken the motion passed unanimously.*

f) Dickson A. Moevao, Class III Certification, Revocation

Ms. Froud reported this case involves complimentary tracking tickets that are used to receive free meals and merchandise from the casino. Ms. Moevao admitted to falsifying comps and giving extra credit to patrons on seven different occasions, thereby defrauding the Puyallup Tribe. The licensee did not respond to the charges and by failing to respond to the charges Ms. Moevao waived her right to a hearing.

Vice Chair Bierbaum asked if Ms. Dickson Moevao or anyone on her behalf was present. No one stepped forward.

Commissioner Ellis made a motion seconded by **Commissioner Rojecki** to enter a default order revoking Dickson Moevao's Class III certification to conduct gambling activities substantially in the form of the findings, conclusions, decision and final order in default submitted by staff. *Vote taken the motion passed unanimously.*

g) Keith W. Stevenson, Class III Certification, Revocation

Ms. Froud reported that Keith Stevenson violated the terms of his conditional certification agreement when on February 3, 2007, he allegedly assaulted an individual with a knife. On September 12, 2007, a Second Degree Assault charge was filed in King County Superior Court. Mr. Stevenson had a conditional certification for five prior assault convictions. The licensee did not respond to the charges and by failing to respond, Mr. Stevenson waived his right to a hearing.

Vice Chair Bierbaum asked if Mr. Keith Stevenson or anyone appearing on his behalf was present. No one stepped forward.

Commissioner Ellis made a motion seconded by Commissioner Rojecki to enter a default order revoking Keith Stevenson's Class III certification to conduct gambling activities substantially in the form of the findings, conclusions, decision and final order in default submitted by staff. *Vote taken the motion passed unanimously.*

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

Director Day addressed something that was overlooked in the discussion on age limits and raffles. When the Commission decides to support a piece of legislation, staff usually prepares a letter of support. Staff's normal process is to work with the Chair to develop a letter and then obtain the Chair's signature. **Director Day** asked if that practice would work for Vice-Chair Bierbaum. **Vice Chair Bierbaum** affirmed. **Director Day** added that the question staff did not ask was relative to the questions dealing with age limits and raffles. One question that might be asked by the Legislature is whether the Commission has any objection to the concept of underage people participating in a raffle, because that is actually the heart of what this individual has been requesting. Even though his language causes some problems in a number of other areas, **Director Day** thought the Commission may be asked whether they have a particular opinion one way or the other.

Vice Chair Bierbaum asked if any Commissioners wanted to voice their opinion.

Commissioner Ellis asked **Director Day** if underage, in this context, would mean under 18 years of age and if the Commission was assuming the cost of a raffle ticket may go up to a maximum of \$100. **Commissioner Ellis** asked if people under the age of 18 are currently prohibited from participating in a raffle. **Director Day** affirmed, adding staff also assumes that part of his proposal would stay the same; that it would be with a parent or guardian.

Commissioner Ellis asked if staff have developed a recommendation to the Commission on this topic or if it has been discussed at all. **Director Day** replied no, but noted the limited exception is for underage people to sell raffle tickets, not to purchase tickets. The only recommendation staff would have is that it would be best, as said last session, that the Commission not support any amendment because this is the current statute. The purpose of this bill is not to make a policy decision about whether there should be different age limits. In that context, there may be a position for the Commission as well – not so much opposed to a decision on whether underage people should raffle, just that it is not the purpose of this bill.

Commissioner Ellis stated that, at this point, his personal feeling would be that he would like to hear more before supporting a bill that would allow people under the age of 18 to be buying \$100 raffle tickets. **Vice Chair Bierbaum** commented that, abstractly, she was not in favor of lowering the age for raffles. Raffles are gambling. In the absence of other things, Vice Chair Bierbaum would be opposed to just start carving out little pieces where underage people can gamble, because it really hampers enforcement and starts whittling away at the regulatory protections. **Commissioner Rojecki** agreed with Commissioner Bierbaum. One of the things previously discussed is the limits on crane games with a

proposal to go to \$2, and there is another one tomorrow for \$1. Yet this proposal would allow potentially \$100 raffles for somebody under 18, if the Commission approved it – it just does not make sense. **Commissioner Parker** said he was not in favor.

Vice Chair Bierbaum asked if Director Day had gotten the sense of the Commission. **Director Day** affirmed he had and thanked the Commissioners.

Vice Chair Bierbaum opened the meeting to public comments. No one stepped forward.

Executive Session to Discuss Pending Investigations, Tribal Negotiations and Litigation; and Adjournment

At 2:20 p.m., **Vice Chair Bierbaum** called for an Executive Session to address pending investigations, tribal negotiations, and litigations. At 4:05 p.m. Vice-Chair Bierbaum called the meeting back to order and immediately adjourned.

**WASHINGTON STATE
GAMBLING COMMISSION MEETING
FRIDAY, FEBRUARY 15, 2008
MINUTES**

Vice Chair Bierbaum called the meeting to order at 9:35 a.m. at the Best Western-Tacoma Dome Hotel located in Tacoma and introduced the members present, noting that she was acting Chair at this meeting due to the absence of Chair Niemi..

MEMBERS PRESENT: **Commissioner Peggy Ann Bierbaum, Vice Chair, Quilcene**
Commissioner Alan Parker, Olympia
Commissioner John Ellis, Seattle

STAFF PRESENT: **Rick Day, 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

5. Approval of Minutes – Regular Meeting, January 10 – 11, 2008

Commissioner Ellis made a motion seconded by **Commissioner Parker** to approve the minutes of the regular meeting of January 10-11, 2008, as presented. *Vote taken; the motion passed with two aye votes – Vice-Chair Bierbaum abstained because she did not attend the January meeting.*

6. Petitions for Review

a) Andrea Breithaupt, Card Room Employee

Vice Chair Bierbaum read from a letter received this morning from Petitioner Andrea Breithaupt requesting a continuance because her son is seriously ill and she is unable to attend this meeting. Vice Chair Bierbaum asked the Commissioners how they wanted to handle Ms. Breithaupt's request. **Commissioner Ellis** replied he would be interested in hearing from Assistant Attorney General Bruce Marvin, who is representing the Commission in this matter.

Assistant Attorney General Bruce Marvin affirmed he was representing the Commission staff in this matter. Ms. Breithaupt did establish during the hearing that she has a son who has some type of chronic lung condition. Mr. Marvin thought there may have been some medical records submitted into the record. Under the circumstances, the Commission staff would not object to a continuance being granted.

Commissioner Ellis made a motion seconded by Commissioner Parker to continue the Petition for Review submitted by Andrea Breithaupt until the March Commission meeting. Vote taken; the motion passed unanimously.

b) Wu Huang, Class III Employee

Assistant Attorney General Bruce Marvin was present for the State, as well as **Petitioner Wu Huang** and **Alan Lai**, Interpreter for Mr. Huang. Mr. Huang and Mr. Marvin 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 (10:25 a.m.), **Vice Chair Bierbaum** asked if there were any questions and called for an executive session to deliberate the matter; she recalled the public meeting at 10:45 a.m.

Commissioner Parker made a motion seconded by Commissioner Ellis that the Commission suspend Wu Huang's Class III Certification to conduct gambling activities for one month, taking into account that Wu Huang's employer is supportive of him. The Commission affirms the ALJ's findings otherwise. Vote taken; the motion passed unanimously.

Mr. Ackerman explained that he would be drafting an Order that reflects the Commission's decision. The suspension for 30 days will take effect when the Commission signs the order and it is provided to Mr. Huang. Mr. Ackerman noted that whether or not Mr. Huang continues to be employed by the Muckleshoot Casino is a decision that the Muckleshoot Tribe makes, not a decision that the Commission makes.

Vice Chair Bierbaum called a recess at 10:50 a.m. to attend a telephonic hearing, reconvening the meeting at 11:45 a.m.

7. Petition for Rule Change – Increasing Card Room Hours of Operation

a) Amendatory Section WAC 230-15-025 – Hours of Operation

Assistant Director Mark Harris reported this petition for rule change was submitted by Andrew Kimmerle, a poker player, who is requesting the Commission allow card rooms to use their premises for card playing 24 hours a day for 5 days a week, and 20 hours a day for the 2 remaining days of the week. Currently card rooms are authorized to operate 20 hours a day and the card room must be closed between the hours of 2:00 a.m. and 6:00 a.m., unless staff approve other closing hours. Card rooms must observe a four-hour period of closure at the end of each business day. Before allowing the change of hours, staff consults with local law enforcement agencies to get their input. The four-hour closure requirement is maintained to allow a cool-off period for gamblers; however, card rooms next door to each other often stagger their hours of operation to accommodate the players. Tribal casinos in Washington are authorized to operate 24 hours a day, 7 days a week, but many observe a four-hour closure twice a

week for accounting functions and general maintenance. Staff notified local authorities through the Washington Association of Sheriffs and Police Chiefs (WASPC), and WASPC responded as being adamantly opposed to the rule change. Their members cited understaffing problems, concerns with having to deal with additional issues, and having to fight the change of hours repeatedly every time there was a proposed change of hours. There is the potential for card rooms to be open an additional 20 hours a week, and additional staff time may be needed if the card rooms operate more hours. The ability to operate card rooms 24 hours a day, 5 days a week, may also be perceived as an expansion of gambling. Due to concerns raised by WASPC about the need for additional staff time to monitor the additional hours of operation, and the uncertainty of our budget situation, staff recommends the petition be tabled until after the 2008 legislative session. At the April 2008 Commission meeting, staff will have a better idea of what resources will be available to address the potential law enforcement impact and monitoring card rooms that are open additional hours. The petitioner is present to answer any questions.

Mr. Andrew Kimmerle testified that Don Pierce from the WASPC makes some statements in one of his emails that Mr. Kimmerle questioned, for instance, who did Don Pierce contact? Mr. Kimmerle said he spoke to Auburn Police Chief Jim Kelly, who was never contacted; Assistant Police Chief Lori Sutter of Tukwila said she was never contacted; Seattle Police never responded back; and Shoreline Police City Attorney Ian Sievers made no mention of any contact from Don Pierce. Don Pierce sent another email on January 12. The sheriffs and police chiefs were pretty clear that they did not support this change. Although, the provisions of law enforcement consultations were not specifically discussed, Mr. Kimmerle was certain of their answer. He was not trying to be mean, but did not think Don Pierce was a mind reader or knew what other people were thinking or what and how they wanted to answer. The cities of Auburn, Tukwila, Renton, and Shoreline are some of the biggest players in the Washington State gambling circle and Mr. Kimmerle wondered why Don Pierce never contacted those people. Another statement from Mr. Pierce was on December 20, stating the WASPC was adamantly opposed to this proposal. How can Mr. Pierce make this kind of a statement if he did not contact the five members from Auburn, Renton, Tukwila, Longview, and Shoreline? The WASPC name carries a lot of weight and Don Pierce's emails alone caused quite a stir. Mr. Kimmerle asked the Commissioners to think of some of the positive sides. Mr. Kimmerle did not think Safeway, 7-11, or any other food store that stays open 24/7, 365 days a year, that sell beer and wine caused such a stir with the WASPC. He could only guess there has been a lot more trouble in these places than card rooms. Mr. Kimmerle stated that, on the positive side, the greatest security for the people in the area is usually supplied by the card rooms, there will be more money for local taxes, and people who drink too much have a place to sit and sober up. Thank you.

Mr. Chris Kealy, Iron Horse Casino in Auburn and Everett, testified that he finds the staff's position on this rule change to be incorrect. Mr. Kealy stated that the assertion

this is going to cause more staff time bothers him a lot because card rooms pay an annual license fee not for constant monitoring but for checking in on a process. That process is running a card room. Whether the card room has 15 tables or 9 tables, whether it has 17 hours of operation, 20 hours, 15 hours, or 12 hours, that license fee is set. The variable in the license fee comes through table count and the number of employees. There are two significant revenue sources from card rooms: one is the annual license fee and the second is the number of employees that are licensed by the Gambling Commission. In Auburn, Mr. Kealy has 176 licensed employees who are paying over \$200 a year for a license. The increase in hours of operation would, in fact, create more dealer time, more surveillance time, and more licensed personnel. So there would be more fees to the Gambling Commission to measure the activity. But the process, the annual license fee itself, is the agents have an obligation to verify the card room is closed for four hours a day, seven days a week. If this rule went forward, the agents would only have to verify the card room is closed for four hours a day, two days a week. It is less verification, not more. Mr. Kealy has made this point over and over again and it has not gone anywhere in the work studies.

The second thing everyone has heard cited today is the old expansion of gambling scenario – this is a possible expansion of gambling. By definition, which has been discussed over the years and Jerry Ackerman can verify, if the Commission can approve it, by definition it is not an expansion of gambling. Appendix X-2 had the Governor and other people approve this process in the state of Washington. So, as policy goes, it is out there that this is acceptable for the product line we carry. Mr. Kealy competes against it seven days a week and would like to compete on the product mix he has at this level. There are 323 customers on Andy Kimmerle's petition, which took him less than three weeks to gather. If Mr. Kimmerle thought he needed more signatures, he would have gotten them. There are a lot of people in a lot of locations who cannot get to a tribal casino but would like to play on different hours. In Everett, Mr. Kealy's casino is 14 miles from the Tulalip Tribe that runs the other hours. Boeing employees are working 24/7/365 at the Boeing plant; a guy working 12 hours a day, seven days a week, who has no money on Friday, comes in when he wants and when he wants to play. Mr. Kealy would like to provide that service closer to his house and requested the Commission to provide him that opportunity. Mr. Kealy does not see the need for delay as the budget has nothing to do with this outcome. Thank you.

Commissioner Parker noted the difference, from his point-of-view, between the tribal casinos and other non-tribal casinos has to do with the fact that tribal casinos, in effect, have a tribal law enforcement staff that is available to deal with any issues of law enforcement during these additional operating hours. Commissioner Parker asked how Mr. Kealy's business would provide additional law enforcement of a caliber of a tribal government. **Mr. Kealy** responded that the current situation is that out of 76 facilities that applied for alternative hours, not one was ever disputed by the local government, correct? **Assistant Director Trujillo** replied that over the past three years, staff has issued all change of hours' requests because no written objections were received.

Assistant Director Trujillo believed there was one request prior to that time that was not approved, based upon written objection.

Mr. Kealy stated that he currently operates in the hours that this gentleman from WASPC thinks he is not and knows so little of what the card rooms are doing. That is the fact; the card rooms are operating in those hours that the police forces are technically down on count. The card rooms are, in all cases that Mr. Kealy has dealt with, to the benefit of law enforcement because, once again, the card rooms are not throwing everybody out at 2:00 a.m., but are holding the players until 4:00 a.m., sobering them up a little bit because no alcohol is involved, and then the customers are getting on the road or are doing whatever. That is the actual outcome of what is being done. Currently almost every organization is working alternative hours – that is an irrelevant, or not irrelevant but it is not the rational point because a lot of places are closed 6:00 a.m. to 10:00 a.m., not 2:00 a.m. to 6:00 a.m.

Commissioner Ellis said it seemed a bit simplistic to imply that the only role of Gambling Commission special agents in monitoring the industry for compliance would be to count tables and determine whether casinos are open or closed. Commissioner Ellis asked Mr. Kealy if he did not think there was a substantially greater workload going beyond just that which the agents would potentially encounter with the expanded hours. **Mr. Kealy** responded no, he did not think there was any further workload related to the expanded hours. The license fees relate to the individuals doing the work, the dealer, the surveillance person, and those additional 20 hours times about 7 employees. The additional FTEs become license fees that translate into revenue for the Gambling Commission. That is the measurement of the activity. But ultimately it is still the responsibility of the operator, not the Gambling Commission, to make sure they are doing it correctly, because in the end the Commission would shut us down and it could cost \$12 million to run illegally. Mr. Kealy said he had a pretty good ante in the game to make sure he is not. Mr. Kealy hoped the purpose of the annual fees was going to eliminate nefarious gambling throughout the state. Mr. Kealy hoped that half of the fees would be going for things other than monitoring the card rooms, because the card rooms spend tens of thousands of hours and dollars making sure they are operating correctly – otherwise the card rooms do not exist. Mr. Kealy wanted the Commission to understand that it is the Gambling Commission's obligation to make sure the card rooms are closed just as much as they are open in the current environment. The card rooms are under scrutiny 24/7/365 because gaming equipment is at the facilities, and they need to not be operating when it is not and it needs to be operating properly when it is. The only link to the expansion or cost to the Gambling Commission is that the operating level of that equipment during those 20 hours would need to be verified. Mr. Kealy would not dispute that, but it is not an extraordinary amount because this is not a one-to-one relationship. The card rooms do not have 168 hours a week of surveillance, but are entrusted with that responsibility themselves and are required to do it. Thank you.

Mr. Kimmerle testified that if this was such an important issue with the WASPC, he would think that Don Pierce would have come to the meeting and addressed the issue, or sent somebody else to bring into light a bit more about what WASPC's position was in this situation.

Commissioner Ellis asked Mr. Kimmerle whether he had considered having any of the police officials in the five jurisdictions he mentioned attend the hearing or to submit something. **Mr. Kimmerle** said no, they are completely behind the Commission 100 percent. Whatever the Commission's opinion or ruling is, that is what they go by. **Mr. Kimmerle** said he had asked them specifically if they were contacted, because they are involved. There are roughly 700 members involved in the WASPC and, as stated before, these people have a number of card rooms and they were never contacted. Don Pierce said he was 25 years in the police business and is the Executive Director, and so not to say anything against him, the guy accomplished a lot of stuff. **Mr. Kimmerle** was only questioning because Mr. Pierce did not make the calls, which **Mr. Kimmerle** can verify. If it was needed, **Mr. Kimmerle** would go to these people and get a written statement that he had talked with them and what they discussed. If it is not needed, then **Mr. Kimmerle** did not know what else to tell the Commission. Thank you.

Vice Chair Bierbaum asked Assistant Director Harris if he could identify with specificity what he thought the increased staff costs would be associated with this rule change. **Assistant Director Harris** responded he could not speak for Assistant Director Trujillo in Licensing, but assumed there would be increased hours for licensing review of the increased number of employees to fill in for the additional hours. **Vice Chair Bierbaum** thought that if there were more people needing licenses, the agency would get the fees for that and those fees would cover the cost of licensing the employees, which would not cause a budgetary problem. **Assistant Director Harris** affirmed that was correct, but as far as with the regulatory standpoint, when hours of operation of an activity are increased, the number of potential complaints and investigations to follow-up on complaints also increases. As the hours increase and the more volume of people going through the activity, there is a potential for increased investigations and more records that have to be reviewed for compliance inspections. There would be an increased number of licenses that have to be reviewed to verify that the employees are licensed. It is just an exponential increase in the volume based on the number of hours that are increased and the increased amount of activity. **Vice Chair Bierbaum** asked if that has been Mr. Harris' experience since tribal casinos were authorized to operate 24 hours a day. **Assistant Director Harris** replied he does not have any involvement in the regulatory part of the tribal casinos.

Commissioner Parker indicated he was not really clear from what Mr. Harris had just said what the costs to the Commission are associated with – if Mr. Harris was saying the additional hours of operation mean there are additional functions the Commission would have to perform for this additional time. Commissioner Parker said it would be helpful if Mr. Harris could be more specific, not necessarily now, but as a follow-up. It

seems like if licenses petitioned to operate these additional hours, their fees could be increased to offset what the Commission's additional costs would be. **Assistant Director Harris** replied that was possibly correct, but the turnaround or the time period would be substantially different now that Initiative 960 is in effect – so basically the Commission cannot increase fees. **Commissioner Parker** asked if he meant the legislative restriction. **Assistant Director Harris** affirmed that all fee increases would have to go before the Legislature for approval.

Vice Chair Bierbaum asked Mr. Harris what his response was to Mr. Kealy's observation or argument that the cost of the increased regulatory functions would be covered by virtue of the fact that Mr. Kealy would have more people licensed. That the process of licensing those people, getting the fees for the licensing process, would cover not only the cost of processing the license but the cost of increased regulatory activity as a result of the employees working. **Assistant Director Trujillo** explained that, generally speaking, the cost of the individual license fee pays for the cost of licensing and part will go towards the cost of regulating that licensed individual. So, in answer to the question, yes, some of that fee would go towards the on-sight enforcement. **Vice Chair Bierbaum** asked whether Mr. Kealy's analysis was correct. **Assistant Director Trujillo** affirmed.

Director Day added that Mr. Kealy's analysis was partially correct, if in fact it would result in an increase in employees to the point that would create enough fees to offset an additional monitoring cost. But Director Day thought, from the perspective that the rules summary was written, if there are additional hours that a card room can stay open (which in this case are four hours), there is an additional demand for enforcement staff to be there at least during a portion of those four hours. Director Day understood that Mr. Kealy was saying they may be open 24 hours anyway and staff may have a burden to check to see if they are not open. But the agents do not have a burden during that period of time to monitor something if the gambling activity is not in operation. Director Day believed it was more of an antidotal thing that would be very difficult to itemize, but there would be additional hours required.

Mr. Kealy testified that the idea of more paperwork was also incorrect. Card rooms do a gaming rack once a day, whether it covers 20 hours, 17 hours, or 12 hours, so the additional paperwork is not there. As for the additional monitoring time, the agents have to monitor whether card rooms are closed or open, which is a done deal. Mr. Kealy's audit fees for his two facilities, which have vastly different income streams, are only \$1,000 apart because an audit is an audit and it does not matter what it is. And that is how Mr. Kealy looks at his license fee – it is the fixed cost on an annualized basis to make sure that this Gambling Commission is able to verify everything necessary for Mr. Kealy to be in business. The variable is the individual license fees, which is the system card rooms have been operating on for ten years, and Mr. Kealy would really like the Commission to look at it that way and understand that. Card rooms pay \$1,000 a year for undercover agent work. Allegedly that money gets to his facility through an

undercover agent coming in and gambling at our facility and making sure everything is okay. If this presented an increased cost in that area, and that area alone, Mr. Kealy could understand that. But outside of that, this is very close to what he is talking about with his audit – that the fixed license cost is related to the annual entitlement to do this activity correctly in the state of Washington. Thank you.

Commissioner Parker indicated the question in his mind has to do with the response of the Washington Association of Sheriffs and Police Chiefs. Our petitioner has thrown some doubt out there in terms of the validity of the head of the Association continuing to assert that his membership is united in opposition to the proposal to change the hours. Commissioner Parker asked if there was a way that staff could test those questions and bring more specific feedback to the Commission. **Director Day** replied that if the Commissioners were to postpone taking action at this time and thought it would be beneficial to their decision, staff would be happy to inquire directly with the various jurisdictions. Director Day added that, after the time he has worked with sheriffs' organizations, he felt confident that it was not unanimous. In many of these cases, this particular type of decision is very difficult for chiefs and law enforcement, and Director Day was certain staff would encounter a mixed expression. A lot of times they are just making a decision that there is an activity they do not have to worry about, like a reduction of personnel or people, and may not be making a comment on the overall activity – it is just a resource concern they are expressing. But staff would be happy to follow up if the Commissioners would like.

Vice Chair Bierbaum agreed with Commissioner Parker that the information we have is pretty spotty, at best. But even more importantly in Vice Chair Bierbaum's opinion was that, even if the Commission had every sheriff in every county in every police department saying it would cause budgetary pressures on them and increased law enforcement, the casinos and the card rooms pay taxes, significant taxes as I understand it, and part of those taxes are supposed to go towards law enforcement. And so if there are more revenues coming in from the card rooms, it should presumably cover any resulting increase in law enforcement that results from that. And if it does not, then they have a little taxing problem going on, which is not necessarily within the purview of the Gambling Commission to worry about. Although Vice Chair Bierbaum would be interested in knowing what they said, she suspected Director Day was right that there would be unanimity among that group. Apparently, according to Mr. Trujillo, there have not been any objections over the past three years from any law enforcement official to changing the hours of the casinos. Vice Chair Bierbaum's second observation was that if it was not an expansion of gambling when the tribal casinos were granted that privilege, then she did not see how the Commission can turn around now and say it is an expansion of gambling if the non-tribal casinos are doing it. With respect to Commissioner Parker's observation about the tribal law enforcement, they have revenues that cover tribal law enforcement from their casino operations. The revenue to cover the increased law enforcement, if there is any, presumably is also being paid by the casino owners and should cover that law enforcement. Finally, it

seems that a citizen brings a petition to the Commission in good faith, and Vice Chair Bierbaum thought it would be arbitrary and capricious for the Commission to deny it, just because there are vague statements that it may cost the agency more to enforce it. Vice Chair Bierbaum thought that if that were true, it behooves the Commission staff to come to the meeting with hard and fast information substantiating that position and not just vague comments and opinions. Not that everybody's opinion is not respected – it obviously is – but it may look to the public like the Commission's decisions are not being made based on a factual, substantial basis.

Commissioner Parker noted this was the February meeting and staff's recommendation is to defer action on this until after the legislative session adjourns, which would be the April meeting. Commissioner Parker was inclined to go along with that recommendation, with the proviso that the questions that have been raised seeking additional information and feedback be presented to the Commission at the April meeting so a final determination can be made on this at that time. **Vice Chair Bierbaum** agreed she could go along with that. **Commissioner Ellis** agreed with that also, adding he was very interested in having a clearer statement from WASPC on their position. Commissioner Ellis would be very reluctant to impose additional burdens on local law enforcement without knowing exactly what the law enforcement burdens were, as well as the other things that Commissioner Bierbaum and Commissioner Parker mentioned with regard to the impact on the Commission. But Commissioner Ellis noted that the petition was submitted by Mr. Kimmerle as a private citizen and he did an admiral job in trying to gather information and present it to the Commission. it would be very helpful to see what the Commission receives when staff asks Mr. Pierce of WASPC for a more formal response and lets him know the Commission is taking this petition seriously and would like a more definitive statement on behalf of WASPC,.

Commissioner Parker asked for clarification that the Commission does not want to take any action today, anticipating that in April there would be additional information in front of the Commission, unless a motion is needed accepting the staff recommendation. **Vice Chair Bierbaum** asked Mr. Ackerman for his opinion. **Mr. Ackerman** thought the appropriate way to handle it would be by a motion to simply set this over to the April meeting and to take final action at the April meeting. Basically the Commission would just be setting it over in the same posture that it was here today – it will be up for final action in April, which is within the six-month window from the filing date – and it is clearly within the Commission's prerogative to do so.

Vice Chair Bierbaum asked how Mr. Kimmerle felt about that proposal; if it was okay with him.

Mr. Kimmerle replied he would like to see it go forward today, because he did not see a big financial burden on anyone. The police have to be there anyway and it is not that they doing extra work. It is not like the police are saying they are taking a four-hour

break because the casinos are closing, the police still have to be there on the job. Mr. Kimmerle would like to see it get filed now, but it is in the Commissioner's hands.

Director Day explained that staff has contacted Mr. Pierce twice. If the Commissioners set this over to April, Director Day proposed staff would actually go to the direct jurisdictions affected by this rule change and ask them. **Commissioner Parker** agreed that was what the Commissioners would like staff to do. **Vice Chair Bierbaum** added the Commission would also like some detailed information about the cost impacts.

Vice Chair Bierbaum asked if there were any comments from the audience.

Ms. Chiechi, Recreational Gaming Association, had some concern with the way that the question was posed originally to the sheriffs and police chiefs by way of omitting the fact that nothing in the rule change requested changes to the local law enforcement's ability to deny, or ask that the Director deny, those requests for extension of hours. Ms. Chiechi wanted to be sure that any approach to local law enforcement on a jurisdiction-wide basis would include that fact in the initial asking, to eliminate any confusion. Thank you. **Vice Chair Bierbaum** said that sounded reasonable. **Commissioners Parker** and **Ellis** agreed.

Commissioner Parker made a motion seconded by **Commissioner Ellis** to hold the Petition for Rule Change – Increasing Card Room Hours of Operation over to the April 2008 Commission Meeting. *Vote taken the motion passed unanimously.*

8. Petition for Rule Change – Amusement Game Locations

Petitioner's Proposal

- a) **Amendatory Section WAC 230-13-150** – Amusement game locations

Staff's Alternative Proposal

- b) **Amendatory Section WAC 230-13-150** – Amusement game locations
- c) **Amendatory Section WAC 230-13-080** – Operating coin or token activated amusement games
- d) **Amendatory Section WAC 230-13-135** – Maximum wagers and prize limitations at certain amusement game locations

Ms. Hunter reported the petitioner was Sean Englin, who operates Starfire Sports, a multi-sports complex in Tukwila. The petitioner wants to be able to operate two to eight different types of coin or token operated amusement games inside the main facility where several different types of video games are currently operated. When Starfire originally applied for a license, staff did not feel they met the current categories of allowed locations under RCW 9.46.0331. One part of the RCW says that it is at such locations as the Commission has authorized, but in the next part of the statute it lists ten different locations and states that amusement games may be conducted only as part of and upon the site of the listed locations. This has caused confusion and different

interpretations over the years as to whether the Commission can add locations by rule. In 1997 the Commission added skating facilities and department or grocery stores as amusement game locations. The question here is whether this type of sports complex should be added to the list of businesses that can operate amusement games. Staff thought that it could be; however, staff also felt that three rules should be changed to accommodate Mr. Englin's request rather than only one. WACs 230-13-150, 230-13-080, and 230-13-135 need the list of allowable locations added, along with the sports complex. Ms. Hunter noted that because of this long-standing rule interpretation, staff would anticipate looking at some agency request legislation for 2009 to clarify whether the Commission can add to the list of locations or not. Staff recommends filing staff's alternative for further discussion.

Mr. Ackerman noted that in the staff's alternative, proposed amendment to WAC 230-13-080(1)(h), the definition of amusement center was stricken from the proposal and asked if amusement center was defined somewhere else, which was why it was not needed there. **Ms. Hunter** affirmed it was in RCW 9.46.033(1)(i).

Vice Chair Bierbaum asked if Mr. Englin would like to comment.

Mr. Sean Englin, Starfire Sports, testified that as he was going through this process to allow crane games at Starfire Sports, it appeared that the definition of the locations that are allowed to have these crane games was fairly limited. Mr. Englin's stance was that the games are allowed at bowling alleys and skating facilities, and Starfire Sports is very similar to those, it just offers a different sport. Mr. Englin felt Starfire Sports would be within the intent and the spirit behind those previously allowed locations. Thank you.

Vice Chair Bierbaum called for public comment.

Mr. Marv Galante, Music Vend, testified he was a commercial amusement game operator and agreed with the staff proposal. Mr. Galante agreed with Mr. Englin that his location has the same demographic as a skating rink. Thank you.

Vice Chair Bierbaum asked Mr. Englin if he agreed with the staff's alternatives – that it meets his needs and achieves the objectives Mr. Englin was seeking. **Mr. Englin** affirmed.

Commissioner Ellis made a motion seconded by Commissioner Parker to accept for filing and further discussion staff's alternative proposal to amend WACs 230-13-150, 230-13-080, and 230-13-135. Vote taken; the motion passed unanimously.

9. **Petition for Rule Change – Amusement Game Wager Limit Increase**

a) **Amendatory Section WAC 230-13-135** – Maximum wagers and prize limitations at certain amusement game locations

Assistant Director Trujillo reported that the petitioner, Marv Galante with Music Vend, is asking to increase the amusement game wagers from 50 cents to one dollar in areas where school age minors are likely to play. In March 2007, a similar petition came before the Commission to increase the cost to play from 50 cents to two dollars, which the Commission did not approve. In his letter, Mr. Galante says he shares the Commission's concern that too high a limit is irresponsible, but in support of his petition he cites rising costs and uses the Bureau of Labor Statistics Inflation Calculator to compute the value of one dollar today compared to what it was back in 1986 (52 cents). Staff has received no statements opposing or supporting the petition, and staff would recommend filing for further discussion.

Mr. Galante, Music Vend, explained that his company has machines on the market that vend large licensed products that are expensive because of their win ratio and regulations. From a marketplace standpoint, the marketplace wants the larger prizes, and his company would have to charge a dollar for those machines. The machines contain large plush animals that are more costly than the normal products his company handles. These machines are popular across the country and Mr. Galante believed it would be fair for his company to have the opportunity to run these machines. Mr. Galante did not think this was an unreasonable request because of inflation. Mr. Galante felt the marketplace was very efficient and did not believe these machines would proliferate all over the place. There is a certain market segment of people that will play these machines. The 50 cent machines will still be very popular and will still be the majority of the market share. Mr. Galante explained his petition only affects the self-contained machines like the crane machines or those that vend DVD movies, etc. The Skee-Ball or Wackamole type games would still be 25 cents. Mr. Galante noted staff did their homework and did a great job. Thank you.

Vice Chair Bierbaum called for public comments

Mr. Bill Mastromen, Mastromen Vending in Tacoma, testified as a long-term operator of these types of machines, he would reiterate what Mr. Galante said about the inflationary factors and everything that has gone on over the years. Years ago when these machines were started, 50 cent play could award a very nice prize. Over the years, the quality of the merchandise has suffered and gone by the wayside, but there has evolved a whole new generation and breed of machines that are being operated across the country. Mr. Mastromen thought Washington was the only state that was tying their hands on this kind of stuff, and as a result, the interest in playing has been dwindling. Mr. Mastromen explained that if this was approved, two years down the road he might operate about 100 of this type machine on his route of machines. Mr. Mastromen would not estimate more than 10 or 12 percent of his machines would be over 50 cents. But for some of the higher caliber locations, it would be nice to be able

to offer some new types of equipment that vend the higher priced prizes. Mr. Mastromen thanked the Commission for any consideration they could give on this.

Commissioner Ellis made a motion seconded by Commissioner Parker to accept for filing and further discussion the proposed amendment to WAC 230-13-135 as presented by staff, with an effective date of July 1, 2008. Vote taken; the motion passed unanimously.

10. Petition for Rule Change – No Fee Poker

- a) **New Section WAC 230-18-020** – Promotional contests of chance similar to poker – “No fee poker”

Assistant Director Harris reported the petitioner, Donald Bly, is proposing a new rule that outlines the specific requirements for a business to operate no fee poker as a promotional contest of chance. In 2004, in response to numerous requests from taverns and other businesses to offer free poker tournaments to their patrons, staff clarified that no direct or indirect fee may be charged to play and no professional gambling equipment could be used for this activity, which is usually operated by a third party. Typically the business provides the prizes and the third party operates the activity at the business location. Many businesses are currently offering free promotional poker tournaments as a non-gambling activity and would be required to follow the additional requirements outlined in this new WAC. The new WAC proposal would require the Commission to regulate a non-gambling activity. The petitioner’s proposal states that a direct fee cannot be charged; however, the current RCW requires no direct or indirect fee. The proposal would allow for additional chips to be provided to participants that could be used in a future tournament for purchase of goods or services, as long as there was a free mode of getting the additional chips. The current RCW does not allow chips or additional entries to a future tournament or contest. The proposal would only allow the awarding of merchandise prizes, which would restrict cash prizes that are currently authorized. The proposal would require certified tournament hosts to conduct the no fee poker, and requires them to complete an exam sanctioned by the Commission. This would require the agency to create and administer an exam and implement a new license or permit. Staff would need to create a regulatory program to ensure that the activity is operated in compliance with the WAC and would require additional staff time to regulate. There is also no method for the agency to recoup any costs to license, investigate, or enforce this new activity. The tournament would be limited to six hours a day no more than three days a week, which is a restriction that currently is not in place. The Commission would need to determine if the petitioner’s proposal could be authorized by rule or if it would require a change to RCW 9.46.0356. The petitioner should probably pursue a change to the law to include these unique gambling activities with a list of other activities currently authorized by law, which would also provide the Legislature with an opportunity to establish a fee to cover this new activity. Staff recommends denying the petition.

Vice Chair Bierbaum asked if Mr. Bly were present. No one stepped forward.

Vice Chair Bierbaum did not quite understand what was going on here, noting it appears the petitioner is asking for something to be regulated that is not currently being regulated, and is not gambling. Vice Chair Bierbaum had never heard of anyone asking to be regulated. **Assistant Director Harris** explained that he had not dealt directly with the petitioner, but based on his understanding, the petitioner had some concerns with how the current activity might be operated in certain locations. Maybe there were places that were actually charging someone to get into this activity, or requiring the purchase of food or other items, and the petitioner felt that it might be better as a regulated activity. **Vice Chair Bierbaum** asked who would be called if someone encountered a situation like that where they were running a game that did not comply with current law. **Assistant Director Harris** replied they would call our agency, and staff would investigate it as an unauthorized activity.

Director Day pointed out that the petitioner did not include in his proposal allowing an “indirect fee.” The current rule does not allow any charge at all, including a cover charge, food purchase, etc. **Mr. Ackerman** agreed that was a problem; that currently no direct or indirect fee or consideration can be charged to play no fee poker games. That is the first element of the gambling definition. This new rule does, at least implicitly, allow for indirect fees to play the game, so arguably, it would fall under the gambling definition. It would be an unauthorized gambling activity and, therefore, would violate the statute and be subject to penalties and regulation by the Commission.

Commissioner Ellis indicated there did not appear to be any basis for the proposal. **Vice Chair Bierbaum** noted this was just up for filing and if the Commission does not accept it for filing that is the end of it. The Commission does not have to make a motion to deny it; just not accept it for filing, correct? **Mr. Ackerman** affirmed that was correct – if there is no motion to deny, it would fail for want of the motion, which is tantamount to a denial. The Commission would be obligated to state their reasons for denying the filing. There is no threshold that the Commissioners have to meet, but they should indicate why they are not accepting it for filing.

Commissioner Parker made a motion seconded by **Commissioner Ellis** to deny for filing and further discussion the Petition for Rule Change – No Fee Poker. *Vote taken; the motion passed unanimously.*

Commissioner Ellis indicated his reasons for denying the Petition were the ones that Assistant Director Harris explained, which were based on his enumeration of the problems. It is clear there are a number of problems, including a major statutory inconsistency, with the rule as proposed. The proposer of the rule is not present to explain why the rule is needed. Under those circumstances, it seems there is a lot of work that needs to be done before a petition is presented to the Commission for consideration.

Mr. Ackerman pointed out the other Commissioners were free to adopt Commissioner Ellis' reasoning or to state their own reasons.

Vice Chair Bierbaum adopted Commissioner Ellis' reasons and **Commissioner Parker** agreed.

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

Vice Chair Bierbaum opened the meeting for public comment.

Mr. Tommy Carson, an army veteran of 21 years, shared some of the great things that the Great American Casino is doing for the community. For about the past 10-15 years, Mr. Carson has been very involved with Fort Lewis, McChord, and the local communities. Mr. Carson is the public relations and marketing director for some military newspapers and is active in hundreds of events throughout the year. This area is one of the largest military areas in the entire world and has the second largest veteran population in the United States. This is good for our economy, but what is really good is that we have a military community that covers a huge part of this State, and Lakewood is the heart and soul, or the capital, of this patriotic community. The main reason our military is the strongest in the world is because of the love and support it receives from the local community. This is the great American spirit. Our love, passion, and support for our military and veterans are at an all-time high.

Leading the charge of this great American spirit of service is the Great American Casino in Lakewood. The Great American Casino embodies the same qualities that our military does; selfless service, sacrifice, loyalty, leadership, honor, duty, and respect. They support our military in every way imaginable, and are members of the Air Force Association and the Association of the United States Army. They support golf tournaments that raise money for our military families and they give during the Thanksgiving and Christmas holidays when our military needs it the most. They have spent tens of thousands of dollars on free banquets for spouses of our deployed soldiers – for those soldiers about to leave for Iraq and for welcome home ceremonies when they come back from Iraq. They provide meeting rooms for our military and civilian leaders and support special events such as family deployment fairs. They have never said no to any request that involved our military or veterans. The Great American Casino has set the bar for patriotism, community service, and service to our great American heroes. They have never asked for a story or publicity, but truth be told, they simply want to say thanks by action to those that serve and have served. Their actions speak much louder than words. They are so much more than a casino. Mr. Carson felt it was the only casino he had ever been to where he did not think of gambling, but thought of the best steak house, at the best price, in the entire state; a great place to dance locally with live, quality entertainment free of charge; a five star hotel for a meeting room, reception, or banquet that is affordable, if not free; and a fun, safe, local place to play pool, watch a game, or just get away. Simply put, the Great American Casino improves the quality of life for the military or veterans in the entire community by offering great entertainment, for the most part free of charge. The Great American Casino is at the heart of making the most patriotic

city in this state a better place to live, work, and play for our military, families, veterans, and the entire city. Mr. Carson wanted to thank the Great American Casino for their support of the great American spirit. They are so much more than a casino.

Mr. Carson noted that, just this morning, he received an email from a National Guard family that the husband was going off to military school and had to give up his civilian job, which means a lose of some pay, and his family needed some immediate support. The Great American Casino is in the process, right now, of cutting a check for \$300 to help this family get diapers and food until the first of the month, which is when they will get the support they need. Also, since the scandal broke out with Walter Reed and the way our injured come back from Iraq and the way they are treated and processed, there is a lot of emphasis being put on that right now. Fort Lewis recently established our Warrior Transition Battalion and starting this summer there is going to be a Warrior Transition Olympics where our injured veterans have an opportunity to play sports during a weekend, just like the Special Olympics. This is going to be good for morale, it is going to be good for the state, it is going to be good for everything, and the Great American Casino volunteered to host them two nights free dinner at their casino. The bottom line is a lot of people think of casinos as just a place to spend money gambling and get addicted to things that are not good. But truth be told, the Great American Casino is really much more than a casino, they are a huge part of our community. Without their support, our military in this area would not be as strong as it is.

Commissioner Parker asked where the Great American Casino was located. **Mr. Carson** replied they have four of locations, but the one in Lakewood is the one supporting McChord and Fort Lewis.

With no further business, **Vice-Chair Bierbaum** adjourned the meeting at 12:55 p.m., noting the next meeting would be held on March 13 and 14 at the Red Lion Hotel in Olympia.

Minutes prepared by:

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