

**WASHINGTON STATE
GAMBLING COMMISSION MEETING
THURSDAY, APRIL 10, 2008
MINUTES**

MEMBERS PRESENT: **Commissioner Janice Niemi, Chair**, Seattle
Peggy Ann Bierbaum, Vice Chair, Quilcene
Commissioner John Ellis, Seattle
Commissioner Alan Parker, Olympia
Commissioner Keven Rojecki, Tacoma
Senator Jerome Delvin, Richland
Gary Alexander, Olympia

STAFF PRESENT: **Rick Day**, Director
David Trujillo, Assistant Director – Licensing Operations
Jeannette Sugai, Agent in Charge – Field 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 Bill Russell, Customer Service Specialist in our Licensing Operations Division.

Staff Accomplishments:

Director Day and **Chair Niemi** presented a certificate to Ms. Joanne Graley for 10 years state service.

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. **Director Day** reviewed the inserts to the agenda packet, which included pages one and eight of the Governor's veto message, a letter to Frank Miller regarding the coalition of rules proposals, the letter and summary regarding the Snoqualmie Compact, a response from the Attorney General's office acknowledging receipt of our request for an Opinion, a few news articles, a copy of March meeting minutes, a copy of the letter Andy Kimmerle sent to various law enforcement agencies, and a summary of the agencies where Mr. Kimmerle sent the letter. **Director Day** noted that Commission officer elections were scheduled for this month, with an effective date of July 1, because all five Commissioners would be present and because there is no June Commission meeting.

Chair Niemi explained the Commissioners have decided to move the election of officers to the end of the meeting today before the executive session, because Commissioner Bierbaum may not be in attendance on Friday.

a) Bingo Adjusted Cash Flow Status Report

Director Day drew the Commission's attention to the Bingo Adjusted Cash Flow Status Report for calendar year 2007, pointing out that all of the licensees, except Ruth Dykeman, are exceeding the required cash flow. **Chair Niemi** asked if staff knew what the problem was with Ruth Dykeman – was it because their gross receipts were so high. **Director Day** was not sure what the problem was, adding that staff would be following up with the organization.

b) Budget Status and 2009-2011 Biennium Process Review (PowerPoint)

Mr. Terry Westhoff, Business Operations Administrator, reported that in August 2007 the Commission approved a budget for the current biennium that included internal steps to maintain a balance in the revolving fund that would ensure the agency had financial resources to meet its mission today and into the future. This presentation provides an update on this fiscal year's budget management plan and on other budget related items.

Commissioner Parker noted the first page shows the decline in working capital and a number of bullets explain why this balance has declined. The first bullet indicates that in 2003 and 2004 the Commission transferred approximately \$5 million to the State General Fund. Commissioner Parker thought that was done because the agency had an excess in its balance – that the money came to the legislators' attention because the agency was carrying what was thought to be a large balance. **Mr. Westhoff** affirmed that the Legislature directed the transfer of funds because of what they had defined as excess balance. Staff explained at that time that those monies would be used as a cushion for things like the \$1.9 million increase in expenditures. **Commissioner Parker** asked if the legislators had been reminded of the transferred amounts. **Mr. Westhoff** affirmed that the topic was brought up during the legislative session and some consideration and support was received but, in the end, the money was not included.

Director Day explained that a fee bill was proposed because the agency is responsible to generate its own revenue. When it did not look like that bill would be moving forward, staff began discussions with several legislators about options. Initially, the concept of some type of general fund transfer was warmly received, but when the revenue projections for the State reflected a downturn, the transfer discussions died. **Commissioner Parker** asked about the projected picture of State revenues. **Mr. Westhoff** replied that the most recent projection was almost \$500 million below the previous projection in February.

Representative Gary Alexander explained that, although he did not have a lot of participation in that process, he knew that the majority party was sweeping a lot of

balances to help bring money into the general fund to reach their goal and maintain their reserve amounts, and this appeared to be one of the funds they decided to sweep. Representative Alexander apologized for not being able to get support for the \$93,000 interest; although it was close.

Mr. Westhoff reviewed the agency's working capital balance history, some FTE trends as they relate to licensing levels, the current fiscal year management plan, the 2008 legislative session budget initiatives, and some new developments that may assist in improving the agency's financial condition. The working capital balance has been in decline since 2001 and without doing anything the agency would go into a cash deficit in fiscal year 2009. There were no fee increases planned in the 2005-2007 biennium. During that biennium, staff started to see a flattening of revenues that has carried through to the current biennium. In addition, there were back-to-back annual salary increases, hikes in both pension rates and the employer portion of medical rates, and other things that increased our budget by about \$2 million. The Commission approved a fee increase effective June 2007. Other administrative fee increases were planned in fiscal year 2008 and 2009 but were impacted by the passage of I-960.

The Commission approved a fiscal year 2008 management plan that was to provide time to take steps to ensure the long-term financial health of the agency. The plan included managing expenditures at \$500,000 below the authorized level and 6.5 FTEs under the budget level. Through February the agency spent \$714,000 below the budgeted level and FTEs have been managed at about 10 under the authorized level. Our working capital balance was temporarily adjusted below the two-month average expenditures to a level that would maintain a positive cash balance. The hourly rate paid by the tribes for regulation was increased to get closer to full cost allocation for our tribal regulation. During the legislative session, staff worked on several alternatives, one of which included a general fund transfer of about \$1.8 million to the gambling revolving fund to partially replenish the money that was removed. Another was an alternative fee schedule for manufacturers that had the top fee amount of \$100,000 instead of the 3 percent flat rate, which would have significantly decreased the fee for larger manufacturers. The Senate budget allowed the agency to go into a deficit of up to \$1 million, but although language changed from the Senate version the statutory reference was not changed, so the Governor vetoed the proviso. The veto should not have any impact because the statute does not require legislative approval, so the Office of Financial Management (OFM) has the ability to authorize agencies to temporarily go into cash deficit.

A joint internet gambling investigation was conducted with the U.S. Department of Treasury and bank accounts were seized and funds were forfeited. The agency anticipates getting 30 percent of the proceeds seized, which would be about \$4.2 million. The use of these funds is restricted and must be used to enhance law enforcement agency budgets. The money cannot be used on existing positions, but can be used for new items and equipment. It is not sure when the funds will be provided,

but expect to receive the money some time next fiscal year. Mr. Westhoff summarized that in the short term the agency will not have to drastically reduce FTEs, but through efficiency and workload reduction can draw down on staffing. Fee and billing structures need to be revised to ensure that the agency has the revenue necessary to cover its costs as required by statute. The Commission has been able to reduce FTE levels over the past five years as shown through reorganization, simplification of processes, technological improvements, and innovative ideas that have saved both time and money. Staff will not lose sight of the need to look for ways to be more effective and efficient.

Representative Alexander pointed out that the \$2.4 or \$2.5 million draw downs for two consecutive years that Mr. Westhoff mentioned, drew the working capital balance down to about the level where it seems the agency's minimum working capital needs to be. Representative Alexander asked what had happened since that point in time; have there been further extractions of the agency's working capital balance to other uses or has the agency just been spending more money, bringing the working capital balance down further? **Mr. Westhoff** explained that when those transfers occurred, the working capital balance was actually around \$4 million. Staff discussed this with OFM and tried to draw the working capital balance down closer to the two months expenditure, which was close to where the agency was last year. Part of it was by design – to draw the working capital balance down about another \$1.5 million – but this biennium the agency was hit with expenditures greater than what could be recovered through revenues, which is why the agency put the large fee increase bill before the Legislature.

Representative Alexander suggested that a directive from the Commissioners explaining the agency needs to maintain at least a two-month working capital balance to operate efficiently might send a message that could help restore or keep that balance from going below that level. **Mr. Westhoff** appreciated the suggestion.

Chair Niemi commented that the agency has done a very good job in dealing with this problem, but she felt it was a pretty shaky way to run an agency that receives no general funds. Maybe Representative Alexander's suggestion was for the Commission to deal with OFM and try to get them to change some of these things. Chair Niemi said she was at the earlier meeting when the money was taken and noted the Commission had explained that the agency does not receive any general funds and needed the balance. Chair Niemi had asked why they were doing this to the agency – it is the agency's money and the agency does not get general funds. The answer was, "because we can." There was nothing in the statute that allowed this to be done; they just needed the money and so they took the money. Now they are saying that if the agency is in a deficit problem, they might help us. Chair Niemi said that made her very uneasy and thought Representative Alexander's suggestion would be a start.

Representative Alexander added that it is a position that is fiscally very unsound and if the principal is there that the agency needs to maintain at least a two-month working

capital balance maybe OFM and others would not look to reduce it below that level but would look to restore it to that level. **Mr. Westhoff** agreed, noting that what staff has heard is that a lot of other funds are not at two months either even though that is our agency's guideline. The cash deficit situation is that it was not the optimal thing to do because, obviously, if the agency goes into cash deficit, even if authorized, that just makes it harder to get back up to a healthy working capital balance. OFM does not prefer that our agency go into a cash deficit in our working capital balance either, but what remains is how to work together to get that accomplished. **Chair Niemi** said it was fine to say that a lot of other agencies do not have a two-month working balance either, but the other agencies happen to be funded by the general fund. Consequently there is always a way for those organizations to get the money – that is not the same with the Gambling Commission. **Mr. Westhoff** pointed out that agencies funded by the General Fund can get an appropriation when there is a salary increase and do not have to worry about where the revenue comes from. As a non-appropriated agency, when that happens the agency has to either absorb the expense through our working capital balance, reduce expenditures, and/or pass along fee increases.

Commissioner Parker thought the agency was constrained from passing along fee increases by referendum 960. **Mr. Westhoff** affirmed the agency was first restricted by Initiative 601, and then 960 restricted it even more. The agency no longer can do an administrative fee increase, which was previously allowed within the fiscal growth factor – everything has to go through the Legislature. **Commissioner Parker** thought it made sense, as Representative Alexander suggested, for the Commission to actually move on a motion to send a communication back to OFM expressing the agency's situation more directly so that at least the Commission is on record and has other options to attempt to work this out. **Chair Niemi** agreed it was a good idea. It is an election year but OFM probably is not, or should not be, that involved with the elections, so may have more time to think about this problem this year. Chair Niemi asked if Representative Alexander would work with the Commission on this. **Representative Alexander** replied he would be glad to.

Chair Niemi asked if Director Day needed any further directions. **Director Day** did not think so at this point, noting the Commission would be adopting its final proposed budget for the new biennium and making any adjustments for 2009 between July and August and that would be the time to incorporate the motion in the entire package. The Commission has not increased fees for four out of five years because it did not make sense for the Commission to increase fees and have a working capital balance that was later transferred to the General Fund. The Commission has been between a rock and a hard place when trying to balance the fund at a reasonable level and maintain staffing, while dealing with those multiple influences. **Chair Niemi** did not think it made sense to wait until the Commission proposed a budget, but thought they should start to work on it now. Once a budget is proposed, they might say, well you can do this so why should we help you.

Commissioner Parker asked if the budget would be acted on at the May meeting. **Director Day** replied no, the 2009 adjustments and preliminary review of staff recommendations would be at the July meeting, with final approval needed in August. The concept of where the Commission wants to be with the working capital balance and a motion establishing directions to send notification to OFM helps from the agency's budget management standpoint. It would be up to the Commission to decide when it would be most appropriate. **Chair Niemi** thought it should be done as soon as the Commission can because the figures are there that show the agency is in trouble. **Director Day** pointed out that something to consider on the other side is that if the Commission mandates your administrative side to maintain that \$2.5 million then staff would be in a position where if it were seen that we were going to have to, the agency would have to take dramatic reductions in staff. **Chair Niemi** said she did not think that was what the Commission was saying. **Director Day** said there is a plus side and a down side in the fluctuation. **Director Day** thought that if Representative Alexander would work with the agency, staff would prepare a proposed motion and bring it back to the Commission next month. It does help with staff planning to know where the Commission wants to be as far as the bottom line in the gambling revolving account.

Commissioner Ellis asked, when looking at the downward projections in state revenues, if the Governor's office or OFM has given those state agencies that are working on their budgets for the next biennium any instructions on how those agencies are to plan for potential reductions in budget and staff. **Mr. Westhoff** replied, no, not at this point. **Mr. Westhoff** explained he was meeting with budget staff at OFM tomorrow and part of the discussion is to talk about next fiscal year. There has not been any official information out to OFM at this point, and **Mr. Westhoff** did not expect anything until probably next legislative session. That information usually does not come directly through OFM, although they may provide us some informal information.

Commissioner Ellis asked when the agency budgets normally reach OFM and go through the Governor's office. **Mr. Westhoff** drew attention to the budget planning memorandum included in the agenda packet, which explains the timelines. The final budget for next biennium will be brought to the Commission in August and will be required to get to OFM by September 2. Any revisions or changes in allotments made to the Fiscal Year 2009 budget would be brought to the Commission in July and then to OFM by the middle of August. The Governor's budget usually does not come out until December.

Commissioner Bierbaum felt that when thinking forward to putting together information for the budget, one of the charts that should be flushed out a bit more to be helpful is the net gambling receipts growth compared to FTEs. The vast majority of the growth in net gambling receipts has been from the tribal casinos, so this chart is really mixing apples and oranges to a great extent since the Commission's role in the regulation of the tribes is only ancillary to their primary tribal regulatory function. **Commissioner Bierbaum** thought it would be more meaningful and useful to break out the tribal receipts from the non-tribal receipts in terms of FTEs. **Mr. Westhoff** affirmed

staff could do that. **Commissioner Bierbaum** added the changes would be helpful on the next chart also.

Director Day explained that the plan Mr. Westhoff has put forward is just a plan and the Commission can change anything in it they want. Director Day asked if the Commissioners would like to have something specifically relative to working capital balance at the May meeting. **Chair Niemi** responded that she had not suggested anything specific, except that it was pretty bad that the agency's working capital balance was taken away. But Commissioner Bierbaum's suggestion was very good that when we talk to them, it would be helpful to break down the FTEs as regards to the tribal gambling and to the licensees. Chair Niemi did not think they understood it and if it were more specific maybe they could see there is a large problem. **Director Day** replied staff would have the information Commissioner Bierbaum requested and would provide additional information on our working capital balance in May.

Commissioner Bierbaum commented that it is always useful when presenting budgeting to identify for the Commission what would have to be done to reach a goal for the working capital balance that the Commission would like: what steps would have to be taken, how many FTEs would have to be cut, how many other expenses would have to be cut, etc., in case the agency cannot get fee increases or in case it cannot get additional money from the general fund. The Commission is going to have to make decisions about what to do. **Mr. Westhoff** agreed that type of information would be in the budget presentation in July. The Commissioners can then provide staff with anything further they would like, and staff will have everything ready in August for a final decision on the budget. Mr. Westhoff added that in May the Commission would be getting a draft strategic plan for approval, which has to be submitted to OFM in June.

c) Customer Service

Ms. Amy Hunter reported that the agency has two ongoing surveys. The licensing survey is available online and in a paper format and about 60 responses to those surveys were received last year. For the most part, positive comments about individual staff are noted on the survey. If the survey shows that some follow-up needs to be done by a specialized unit, those surveys are passed along to that unit. The tribal gaming survey is an email survey that was started in 2005 and done by the Tribal and Technical Gaming Division. The survey is sent to the directors of the Tribal Gaming Agencies, who are basically our partnering agencies at the tribal casinos. Of the six responses received in 2007, most of the ratings were good or excellent, with a few as average.

The other type of survey the agency has done in the past is the public opinion survey, which the Commission decided to do in 2005 through an interagency agreement with Washington State University (WSU). It was a phone survey of basically 500 people in Washington, selected randomly. The two highest ranking areas of concern noted in the survey were underage gambling and the lack of internet gambling regulation. Staff took that information and used it for the agency request legislation about underage gambling

and used it for internet gambling investigations. This survey cost \$42,000 and another identical survey would again cost about \$42,000. A telephone survey of about 200 licensees targeting commercial pull tab operators, manufacturers and distributors; charitable/nonprofit organizations, and house banked card rooms would also cost about \$42,000.

When the agency developed its strategic plan five years ago, staff met with licensees during a study session and had a separate meeting with Tribal Gaming Agency Directors asking for ideas. Although there were good discussions, very few ideas lent themselves to projects that could be incorporated into the agency's strategic plan. One option was for our strategic planning team to do some type of outreach again during our next planning session for the 2008-2009 strategic plan, but because the strategic plan is due to OFM in June, staff would not have time to do a survey, get results back, and have the suggestions incorporated in the strategic plan.

Commissioner Ellis thought the study and survey results that WSU did were extremely valuable, noting that he has gone back to that survey a number of times just to remind himself of what public attitudes were on different questions. Commissioner Ellis also thought the Commission and staff get a lot of input from the industry, much more than many agencies do, just because of the frequent public meetings, the study sessions, and other forms of input like the work the industry does on things like the rules simplification project. Commissioner Ellis did not have a strong feeling there was a real need for another significant survey, and asked if staff was proposing a survey be done of the industry segments and if there was a strong feeling by staff that it is something that is really valuable to do right now. **Ms. Hunter** explained it was more that staff wanted to make sure the question raised by the Commissioners had been answered. Ms. Hunter noted that staff receives a lot of input from the people that are present at the Commission meetings, but that does not necessarily include the small pull tab operators. Staff is not recommending the agency do one thing or another, but wanted to provide options for the Commissioners. **Commissioner Ellis** noted that at the last meeting when the word survey came out he was curious to know whether staff had the results of that survey. His question was answered and he could see that staff are getting the results and using them.

d) Legislative Update

> ESB 5927 - Public Disclosure Exemptions for Financial Statements, Auditor's Reports, and Internal Controls

Ms. Hunter reported that the Governor signed Engrossed Senate Bill 5927, which was the public disclosure bill exempting internal controls for house banked card rooms and also exempting financial statements, auditor's reports, and internal controls for compacted tribes. Senator Delvin was the prime sponsor on this bill, which becomes effective June 12, 2008.

e) Correspondence

- > Apology letter to Frank Miller, Miller Malone & Tellefson – Coalition
- > Snoqualmie Tribe Amendment Cover Letter and Summary of Amendment
- > Informal Attorney General Opinion request letter to Attorney General McKenna

Director Day referred to the letter dated April 4 to Frank Miller. The Coalition for Responsible Gaming and Regulation is a group that has been seeking changes in our administrative penalty process. We have been in discussions for at least a year on any possibility of a joint rules proposal to clarify the administrative penalty process. Director Day had reported last month that we had agreement from the Coalition to move forward on a compromise; however, we discovered staff had sent the wrong version of the rules, so our impression that we had come to an agreement was based on a faulty premise. Staff still feels that we have a package of rules that would be a good compromise proposal to move forward to the Commission. Our error has caused some frustration, which we apologize for. The question is whether we apply these mitigating/aggravating circumstances and penalty limitations to the settlement process or to the entire adjudication process. The Coalition has not provided a formal response on whether they are still interested in moving forward. If the Coalition chooses not to move forward with the joint proposal, they would still be free to move forward with the petition on their own.

Commissioner Bierbaum said it sounded like the project was working fine and making progress, then because somebody provided the wrong attachment, all of a sudden people do not want to play anymore. That cannot be right, is it? **Director Day** replied he was pretty confident that our error did not cause that, but that it was actually the difference in the two proposals. There is a significant difference in the two directions – whether it applies to the settlement process or to the entire adjudication hearing and Commission process. The Coalition’s decision will probably be that our proposal does not go far enough and that they need to move forward independently.

Chair Niemi strongly advised against specific mitigating and aggravating circumstances being detailed in a WAC about settlement conferences – that seems to be a really bad mistake. Chair Niemi said that in looking at the way legal settlement conferences in civil cases are handled, you are not allowed to even refer to that, and to set up mitigating and aggravating circumstances is always a difficult thing.

Director Day added that the letter said we had legal advice on this side, but he thought Mr. Ackerman might have agreed to be neutral on our compromise proposal and held some of the same concerns that Chair Niemi expressed regarding the adjudicative process. Staff thought there were some positives with having public clarity to the kind of things staff considers, and that we could find a common ground to bring forward to the Commission. Staff was skeptical on whether the Commission would end up going along with the proposal, but wanted to provide that opportunity.

Commissioner Bierbaum understood where Chair Niemi was coming from regarding the aggravating and mitigating factors because in criminal sentencing it was a quagmire. But on the other hand, in this kind of enforcement work there does need to be an opportunity at some level to take into account the circumstances surrounding the alleged violation. Some violations are inadvertent and some happen despite all the best efforts of the licensee. Commissioner Bierbaum did not know how it would be done to both get rid of the things that Chair Niemi mentioned and also have flexibility at the enforcement level. **Chair Niemi** added that the whole point of a settlement conference is to throw out those things and to have staff react to them, but not to enumerate them. The problem is when saying, I have “x” number of mitigating circumstances so you can only do “x” amount to me. **Chair Bierbaum** agreed.

Commissioner Ellis said he was confused; there is nothing that is being discussed in connection with this proposal that would foreclose either staff or the Commission from hearing evidence of mitigating or aggravating circumstances, is there? Is it just a question of whether they are going to be codified and Commission rules? **Chair Niemi** and **Director Day** both affirmed.

Director Day pointed out the notification letter addressed to Chair Niemi regarding the Snoqualmie Compact Amendment hearing and a summary of the amendment. The letter, complete Compact Amendment, and a summary were also mailed. Director Day informed the audience that the complete version of the Compact proposal will be on our website. There will be a legislative hearing on the Compact Amendment on April 29 in the afternoon, and then it will be up for Commission consideration next month in Pasco.

Director Day drew attention to the letter from Deputy Solicitor James Pharris acknowledging the receipt of the Commission’s request for an informal Attorney General Opinion and informing the agency that it will be about 60 days before an Opinion is issued. The response should settle the issue on whether the Commission can proceed to implement the approved fee increases.

- f) Monthly Update Reports
 - > Administrative Cases
 - > Federal Cases

- g) News Articles

Director Day briefly explained the news release from the Department of Justice entitled “Leader of the Casino” about a casino cheating scheme that targeted 16 casinos across the nation. Both tribal gaming and our staff played a critical role in the case, and at this point the leader of that group has pled guilty. Also, one of the dealers at the Emerald Queen casino was specifically implicated and pled guilty as well.

Commissioner Parker asked Director Day if recognition had been given to our staff who played a role in the case. **Director Day** affirmed that in addition to our staff, tribal and other state officials had been acknowledged at one of our Commission meetings.

Comments from the Public

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

Mr. Gary Murrey, Great American Gaming Corporation, testified that with regards to the budget discussion and presentation, one of the things to keep in mind is that the \$2.5 and the \$2.4 million draw downs were in effect a fee increase. If that extra \$5 million was still in the fund, the agency would not be looking at fee increases in 2008, 2009, and so on. So what happened was a fee increase that was beyond the limits that should have been there. We wouldn't have been paying more fees had that money still been available to us. So the legislature has actually put a fee on the licensees inadvertently, or in a roundabout sort of way; increased our fees not through the process that would be a normal hearing process. If you look at the graphs in the increase in the gaming between 1995 and 2007, you will see a 700 percent increase in the gaming net receipts. In that time, if you look at the next graph down below, we've seen a 30 percent decrease in the number of organizations. So those two numbers stick out at me is – how can we have a 700 percent explosion in the amount of gambling, but lose 30 percent of the entities that drive that business. And in the same time period, if you look at the same number at the bottom, you will see that the staff level increased by 10 percent, even though the number of organizations declined by 30 percent. So I'm not sure what has changed drastically to change the number of people per organization that we look at and we say wait a minute, there's all this more gaming going on, we need more people. But if you look at the number of organizations and stuff, the numbers don't seem to pan out. Looking at it from the outside – I am not inside looking at FTEs and what they do. I'm just saying if I look at graphs and charts, numbers seem to jump out at me that they don't seem in correlation.

Chair Niemi responded that was exactly what Commissioner Bierbaum has asked to be given to the Commission next time. Chair Niemi assumed Mr. Murrey heard and understood the increase was due to the increase in tribal gaming.

Mr. Murrey affirmed, adding he also understood the policy has changed on the FTEs; that the money spent for the Gambling Commission FTEs on tribal regulation is 100 percent reimbursement. So any time that is used by the agency for tribal use, the agency is refunded 100 percent. Any growth in the activity or expenses that come with the Commission has to be for non-tribal expenses and non-tribal revenues that counteract that expense, so the growth in tribal should have nothing to do with the growth or the decline in revenues or expenses. Mr. Murrey pointed out that one of the things the industry hears when putting out rules for consideration is what is the fiscal accounting for this; what is going to be the expense to the agency for putting in a new rule, and what effect will there be on FTEs. Mr. Murrey looks at it and says we almost have a problem with how we are going to balance the two sides. If we have had a decrease of 30 percent of the organizations in bingo/pull tabs/card rooms and do not allow for new activities to help revive those industries, those will continue to decline at that rate and soon there will be no

organizations to regulate, or to have that revenue generation from new individual license fees and organizational license fees. So if we do not try to stimulate the industry by giving them new stuff, there will be no industry left. And so, even though it costs more to regulate some of those things, some of the times we have to pay the regulatory costs in order to bring those back up to a level that is sustaining and not declining. Mr. Murrey liked it to if we did not improve the car we would be all driving Model Ts, or still be talking on a rotary phone instead of a cell phone. We have to invest in that infrastructure and we have to invest in new technologies and desires of our customer base, which are the citizens of the state of Washington. If the customers did not want to have these things, they would not be going to our establishments and enjoying themselves. There is a demand, which can be seen by a 700 percent increase. We just have to give the customers what they are asking for, and do it responsibly with regulatory oversight. In order to have that regulatory oversight, we need to have license fees but we need it from a broad base.

Commissioner Parker asked what the time period was for the 700 percent increase. **Mr. Murrey** thought it was from 1995 to 2007; about 12 years.

Commissioner Ellis pointed out that one point that sometimes gets overlooked when reviewing all these numbers is the fact that on the one hand there has been a significant reduction in the number of organizations involved in gaming and on the other hand there has been a tremendous increase in the average revenue per organization when looking at house-banked card rooms. Commission Ellis thought the average house-banked card room today is making many, many times the amount of revenue they made back in 1995. **Mr. Murrey** agreed, adding that was true for both the house-banked card room industry and the tribal industry, but it is the reverse for every other entity out there. What has not been done was to look seriously at things that could have been done to help save bingo halls, and now we see the number of bingo halls that are not there. What was not done that the public was asking for at the time that devastated the bingo industry? What has happened to pull tabs that they have gone down continually because we are not keeping up with available technology trends that the public desires for those industries? Are we going to see the same decline in every other sector because somebody else or something else is more attractive to the public? The point is, can we see from our past actions what has happened to those segments of the industry? Mr. Murrey said he was trying to save this segment of the industry from not following down that same trail.

Commissioner Parker noted it was just a function of market place and the people's taste. **Mr. Murrey** agreed, and if we do not give the public what they want – if we are not allowed to give them what they want – the customers will go someplace where they can find it. Mr. Murrey thought his job was to ask the Commission for permission to offer to the public what they are demanding. And Mr. Murrey looks at the Commission to ask can you regulate it properly. If the regulatory compliance is there, Mr. Murrey felt there should be no reason why we cannot have what the public wants. **Commissioner Parker** responded it was not the Commission's function or responsibility to do that; the Commission is not in existence to stimulate or play a role in the function of the market. **Mr. Murrey** agreed, noting that was his job, but when he comes to the Commission and asks for those permissions, Mr. Murrey believed it was the Commission's duty

to make sure that, as long as the regulatory function was still there and it was in the public's interest, there was no reason not to grant the request.

Commissioner Bierbaum noted that she was in agreement until Mr. Murrey said the Commission should stimulate portions of the industry. Commissioner Bierbaum's reaction to that statement was she did not think Mr. Murrey was ever going to get a majority of the Commission to acknowledge or agree their role is industry stimulation. Commissioner Bierbaum suggested that Mr. Murrey might want to avoid suggesting that role to the Commission. Commissioner Bierbaum agreed that the Commission does not have a right to arbitrarily put barriers in the way of the industry's ability to innovate, but thought Mr. Murrey should be very careful about suggesting that the Commission has an obligation to stimulate the industry. **Mr. Murrey** appreciated the suggestion, noting he did not intend to say it was the Commission's job to do that, but that it was his job to ask for that.

Mr. Chris Kealy, Iron Horse Casino in Auburn and Everett, testified that his business had \$457 million worth of market share, which the Gambling Commission receives the primary source of funds in license fees. Since the smoking ban he has seen a decrease of about 13 percent, which if adjusted to inflation is probably closer to 17 or 18 percent decrease. When Mr. Kealy hears that the Commission is struggling, or staff saying they are almost to getting the money from the tribe for the work done, well if they are almost getting the money, that means the industry side funds the rest and any activities outside of those barriers. Mr. Kealy pointed out that the Gambling Commission is doing a terrific job at protecting the state of Washington against illegal gambling, which of course does not pay a fee. So, in effect, the agency protects the market share, which is a \$2 billion market now, and the card room industry's role in that is \$400 million. It does not seem right that the industry is going to fund three-quarters of the fees related to that effort. Mr. Kealy has been saying over the last few months that he is sure the tribal organizations are not interested in over-funding the Gambling Commission because they are very self-regulatory and they do not have the role to protect the entire state from illegal gambling, which the Gambling Commission is doing a terrific job of protecting. Mr. Kealy thought it was something that through Appendix X2 there probably was a failure to obtain the proper negotiation in getting some of that money. Mr. Kealy hoped that either through the manufacturing licensing process or some other way some of those funds could be rebalanced, because they are continuing to have debates, whether in work study or otherwise, that if there is an activity such as expansion of hours, there is an increase in cost related to that. Mr. Kealy said they were trying to maintain an activity that the industry pays for, and if for every hour the card rooms are open they create a profit for this Commission to protect the citizens of the state of Washington, then closing these hours is not going to benefit that process.

Mr. Dave Malone addressed the Coalition's proposal, explaining there is a substantive difference in what we have. Nearly two years ago they were approached by a group of licensees seeking penalty standards because, as it stands right now, the licensees do not know what they face if charged administratively. The Coalition surveyed different regulatory gaming agencies throughout the United States and British Columbia and other Washington State agencies. Licensees of the Liquor Control Board know what penalties they face for certain infractions;

Gambling Commission licensees do not. If licensees are charged with an infraction, they face either revocation or a 30-day license suspension, regardless of the infraction. The licensees are seeking some sort of delineation to understand what they would face at a hearing because not every infraction is worth 30 days. The Commission will settle these matters out with a suspension for three days, five days, ten days, 15 days, but if the case is taken to a hearing, it is 30 days regardless. The licensees are faced with a criminal analogy that it is either life in prison or the death penalty if they take it to a hearing, but they would be settled for much less. The licensees are frustrated; the process takes far too long because the only way Mr. Malone knows what the licensee is going to get in a case is by filing discovery; he has to do interrogatories and has to question what is going on. The Coalition was not looking for penalty standards that were a rigid matrix, but were looking for guidelines that the Commissioners would set through a public process, so that people would be informed and knew what they were going to face. And from that, the attorneys, much as in a criminal case, could work out, not plea bargains but settlements that would work under that rubric that the Commissioners would have set up. What the agency came back with was it was limited to settlements only. Mr. Malone shared Chair Niemi's concern, noting he has advocated against this since it was brought up to us.

Chair Niemi noted that plea bargaining does not have any guidelines. **Mr. Malone** agreed they do not, adding plea bargaining was not wanted in the settlement conference specifically for that reason. Mr. Malone argued that it would be barred by Evidentiary Rule 408 were he to try to bring it before the Commission. Commission staff has said they do not share that opinion with me and Mr. Malone was happy to hear that Chair Niemi and he were of the same mind on that rule interpretation. The Coalition responses that have been received to date are not favorable of a joint proposal. Mr. Malone thought the system needed to be addressed; it is not broken by any stretch of the imagination, but Mr. Malone thought it could be much more efficient. Settlements could move much more quickly if the licensees were aware of what they faced. Mr. Malone commended Commissioner Bierbaum to the Liquor Control Board matrixes and guidelines that she is probably familiar with, which does list aggravating and mitigating circumstances. The Liquor Control Board does not limit them, but say they will be taken into consideration as the facts warrant. So Mr. Malone will be going back and consult with the Coalition members, which include manufacturers, card rooms, nonprofits, and service suppliers from not just in Washington State but from around the country who deal with other regulatory agencies. Mr. Malone said the Coalition will get the agency a response next week on whether it can go forward jointly, but Mr. Malone was not optimistic that will happen. The Coalition will evaluate its options after that, but it is their goal in coming forward.

Commissioner Bierbaum asked how long this process had been going on. **Mr. Malone** replied the negotiated rule making process started in August or September of 2006, and in October of 2007, the Coalition thought we had an agreement in place. The Coalition was told at that point that the Attorney General's office needed to review the proposal for APA compliance and similar issues. What were received back were rule changes that affected only settlement conferences. Director Day met with the Coalition and said staff was going to review some things. The confusion over the letter came because the Coalition was provided a set of rules that contained wording changes that were unique to the letter that was provided to the Coalition. The Coalition

thought a compromise had been reached; then around the end of March, the Coalition was contacted saying the Commission had provided the wrong set of rules. The Coalition members were kind of shocked by that, and there is a huge amount of frustration from Mr. Malone's clients on this part. The members felt that for 18 months they have been doing this negotiated rule making process in good faith. Mr. Malone's clients did not believe it was any sort of nefarious conspiracy on the part of the agency staff to do this, but Mr. Malone does not believe that. The Coalition is just trying to establish penalty standards or guidelines that everyone is aware of, to know what is happening when they go into the process.

Commissioner Bierbaum asked what Mr. Malone's next step would be if no agreement was reached. **Mr. Malone** responded that if there was no joint proposal to go forward with, the Coalition would file its own petition of a rulemaking package with standards or guidelines as the case may be.

Ms. Dolores Chiechi, Executive Direction of the Recreational Gaming Association (RGA), thanked Senator Delvin for his tremendous efforts in helping the RGA get Senate Bill 5927 through the Legislature in a 60-day session. When the Sunshine Committee of the Legislature was taking a look at all the public disclosure exemptions, Senator Delvin helped the RGA get that the bill through. It was very important that internal control documents be kept safe within the Commission and the RGA members' facilities. Ms. Chiechi noted that when the issue of the surveys was brought up, it was stated that the agency gets a lot of input from the members based on the attendance at these meetings. Ms. Chiechi thought the Commission would be surprised with the extremely different response they would get should the survey be anonymous and allow members and licensees from all segments of the industry to answer the questions online versus what is heard in these hearings and meetings. Ms. Chiechi encouraged the Commission to consider a watered down version of the \$42,000 expensive survey, which could be done at a lower expense to really glean the input from licensees on an anonymous basis. Thank you.

2. New Licenses and Class III Certifications

Assistant Director Trujillo presented the list of new licenses and Class III certifications for approval.

Commissioner Bierbaum made a motion seconded by **Commissioner Rojecki** to approve the list of new licenses, changes, and tribal certifications as listed on pages 1-17 in the agenda packet. *Vote taken; the motion passed unanimously.*

(Item #8 taken out of order – moved from Friday's agenda)

8. Commission Officer Elections

Chair Niemi called for a motion for the position of Chair of the Commission.

Commissioner Ellis made a motion seconded by **Commissioner Parker** nominating and electing Commissioner Peggy Ann Bierbaum as Chair of the Commission for the period July 1, 2008 through June 30, 2009. *Vote taken; the motion passed unanimously.*

Chair Niemi called for a motion for the position of Vice Chair of the Commission.

Commissioner Parker made a motion seconded by **Commissioner Ellis** nominating and electing Commissioner Keven Rojecki as Vice Chair of the Commission beginning July 1, 2008 through June 30, 2009. *Vote taken; the motion passed unanimously.*

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

Chair Niemi called for public comments.

Ms. Tryna Norberg, managing member of Hawks Prairie Casino house-banked card room in Lacey, stated she was previously an educator, who in 1999 started thinking about retirement and actually retired in 2004. Ms. Norberg had an opportunity to enter the card room industry, which seemed like a fairly good deal at the time because it was a pilot program, but it has not been an easy road and the card room has only had two profitable years. Half of last year's profits were put back into savings, because no one knows what might happen. The smoking ban and the expansion of gambling around Hawks Prairie hurt her business tremendously.

Ms. Norberg's dream of opening the card room was to have somewhat of a steady stream of money to start a foundation for children. Ms. Norberg's current goal is to keep the card room going; to be able to keep the employees working who have been with the card room almost since the beginning. Ms. Norberg explained she has 90 full-time employees and 45 part-time employees who are being paid minimum wage – a living wage of \$30,000 plus most of her employees earn more with tips. The business is operating at its leanest, yet they still offer their employees benefits, including a flexible work schedule to help those employees with children.

Until Lacey's recent business expansion, Ms. Norberg's card room was one of the top 10 employers for numbers of employees for Lacey, and they have a good working relationship with Lacey. Total revenue for 2007 was \$440,000 and \$350,000 was paid to city taxes. For the first half of the year, local police calls to Ms. Norberg's card room were 19 employee calls compared to three other small taverns that had 22–29 calls, there were 313 calls to WalMart and 96 calls to Home Depot.

The card room also donates to the community; although Ms. Norberg has not participated a lot financially, she believes in community service. Her staff helped with Habitat for Humanity, implemented and coordinated its own food drive for the Food Bank, and participated in Toys for Tots and numerous other campaigns. Ms. Norberg and her employees have given \$1,000 certificates to agencies and are part of a road cleaning. They work well with the police and the card room is a good business. Ms. Norberg said her dream was still alive and she still has hope, but there are so many things that are out of her control.

Ms. Norberg's wishes include reasonable city taxes for all cities and a cap bill with a portability clause that would be allowed to pass out of the legislature. Last year we were close, with the cities in agreement and legislative sides in agreement, but it never went anywhere. The city of Lacey, where Ms. Norberg's card room is located, has a moratorium not allowing card rooms, but the city passed an ordinance allowing card rooms to exist in the city at one location. The card room is not allowed to move anywhere else in the city and the city of Lacey could ask them to close their business tomorrow. Ms. Norberg would like to have some clarity at some point to know that she can stay in business; that it is not at a whim of a city to make them leave. Ms. Norberg's lease is up in July 2009 and she has started negotiating, but does not think the odds are very good of decreasing her steep lease under this situation, but hopefully the next legislative session might be a bit nicer. Ms. Norberg understood the Commission does not have a great amount of influence in this.

Ms. Norberg mentioned that agents were at her casino today doing a training for minors gambling. Ms. Norberg did not know if the Commission was to the point for having rules for the businesses to do self-operating stings. The business can operate its own sting for alcohol. If the Liquor Control Board agents come in and sting us, we can fire the employee, but if the business does the sting we cannot. So if the Commission is thinking about writing those types of rules, please give the businesses the same opportunity as the agents because we are doing everything exactly by the books and following the rules. Thanks for listening.

Chair Niemi commented that Ms. Norberg needed a lawyer, that it was illegal what Lacey was doing.

Mr. Max Faulkner, President of the Recreational Gaming Association, congratulated Commissioner Bierbaum and Commissioner Rojecki on their election to Chair and Vice Chair.

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

At 3:35 p.m., **Chair Niemi** called for an Executive Session to discuss pending investigations, tribal negotiations, and litigations. At 4:05 p.m. Chair Niemi called the meeting back to order and immediately adjourned.

**WASHINGTON STATE
GAMBLING COMMISSION MEETING
FRIDAY, APRIL 11, 2008
MINUTES**

MEMBERS PRESENT: **Commissioner Janice Niemi, Chair**, Seattle
Commissioner John Ellis, Seattle
Commissioner Alan Parker, Olympia
Commissioner Keven Rojecki, Tacoma
Senator Jerome Delvin, Richland

STAFF PRESENT: **Rick Day**, Director
David Trujillo, Assistant Director – Licensing Operations
Jeannette Sugai, Agent in Charge – Field Operations
Amy Hunter, Administrator – Communications & Legal
Jerry Ackerman, Assistant Attorney General
Gail Grate, Executive Assistant

4. Approval of Minutes – Regular Meeting, March 13-14, 2008

Commissioner Ellis made a motion seconded by Commissioner Rojecki to approve the minutes of the regular meeting of March 13-14, 2008, as submitted by staff. Vote taken; the motion passed unanimously.

5. Defaults

a. Shannon Easton, Card Room Employee, Revocation

Ms. Hunter reported that Shannon Easton admitted to taking gambling chips from her employer, Ringo's in Spokane, and then having other people cash them. Surveillance video shows that Ms. Easton took between \$900 and \$1,200 on eight separate occasions. So the Director issued a summary suspension in the case, which was personally served on Ms. Easton. Ms. Easton waived her right to a hearing by failing to respond and the Commission can enter a default. Staff recommends the Commission revoke Ms. Easton's license.

Chair Niemi asked if Shannon Easton or a representative were present. No one stepped forward.

Commissioner Ellis made a motion seconded by Commissioner Rojecki to enter a default order revoking Shannon Easton's license to conduct gambling activities, as presented by staff. Vote taken the motion passed unanimously.

b. Justin K. Knutson, Card Room Employee, Revocation

Ms. Hunter reported that while working as a card room employee at the Ponderay Café and Lounge in Bremerton, Justin Knutson took gambling chips from the casino by taking the rake that was intended for the card room and depositing part of it into his token box. Surveillance video showed that Mr. Knutson took at least 18 chips over a 4½ hour period that totaled almost \$50. Mr. Knutson admitted that he used this scheme a couple of different times and took between \$60 to \$70 worth of chips. The Director issued charges to Justin Knutson by certified mail and regular mail. When the legal secretary called Mr. Knutson to remind him of the deadline to request a hearing, Mr. Knutson said he understood the the deadline; however, he did not respond to the charges. By failing to respond Mr. Knutson waived his right to a hearing, and staff recommends the Commission revoke his license.

Chair Niemi noticed that Justin Knutson’s license expires today. **Ms. Hunter** affirmed, adding that as of a couple days ago he had not renewed. **Commissioner Parker** asked if there was a process to make sure that Mr. Knutson was not eligible to renew his license. **Ms. Hunter** responded that staff put a “hold” on his file, and if Mr. Knutson were to submit a renewal application, the Legal Division would be notified.

Chair Niemi asked if Justin Knutson or a representative were present. No one stepped forward.

Commissioner Ellis made a motion seconded by **Commissioner Rojecki** to enter a default order revoking Justin Knutson’s license to conduct gambling activities, as presented by staff. *Vote taken the motion passed unanimously.*

c. Calvin O. Self, Card Room Employee, Revocation

Ms. Hunter reported that Calvin Self was a former card room employee at Bolero Lanes in Lakewood, but the circumstances that led to the charges actually occurred when Mr. Self worked as a security guard at Happy Days card room in Lakewood. At the time, Mr. Self was not licensed, but he allegedly took \$500 from a wallet that he found on the floor, which was caught on videotape. Mr. Self then applied for a license, but failed to disclose he had been charged for the circumstances that were involved with the wallet even though the criminal case was later dismissed. The Director issued administrative charges by certified mail and regular mail. Calvin Self waived his right to a hearing by failing to respond to the charges, and staff recommends the Commission revoke his license.

Chair Niemi noted that Mr. Self’s license has not expired yet and asked if he was still working. **Ms. Hunter** replied that Mr. Self was not linked to an employer in our files. That means Mr. Self does not have an employer right now and does not appear to be

working at a location where Mr. Self would be required to be licensed; although, it does not mean Mr. Self is not working in a capacity that does not require a license.

Chair Niemi asked if Calvin Self or a representative were present. No one stepped forward.

Commissioner Ellis made a motion seconded by **Commissioner Rojecki** to enter a default order revoking Calvin Self's license to conduct gambling activities, substantially in the form presented by staff. *Vote taken the motion passed unanimously.*

d. William J. Mariner, Card Room Employee, Revocation

Ms. Hunter reported that staff requested William Mariner to get an outstanding warrant quashed, which Mr. Mariner failed to do. Staff expects applicants to get any warrants quashed even if the underlying offense is not one that would disqualify the applicant. Once the applicant has an outstanding warrant that they do not get it quashed, staff consider that to be a disqualifying factor. As of a few weeks ago Mr. Mariner still had an active warrant. The Director issued administrative charges to the licensee by certified and regular mail. Mr. Mariner waived his right to a hearing by failing to respond to the charges, and staff recommends the Commission revoke William Mariner's license.

Chair Niemi asked if William Mariner or a representative was present. No one stepped forward.

Commissioner Ellis made a motion seconded by **Commissioner Rojecki** to enter a default order revoking William J. Mariner's license to conduct gambling activities, substantially in the form presented by staff. *Vote taken the motion passed unanimously.*

e. Vanna J. Ou, Card Room Employee, Revocation

Ms. Hunter reported that Mr. Vanna J. Ou was a former employee at Skyway Park Bowl. Mr. Ou failed to disclose his complete criminal history on his card room employee application and also has an outstanding gross misdemeanor warrant. Staff has worked with Mr. Ou a couple times on trying to get that warrant cleared, which Mr. Ou has not done. The Director issued administrative charges to Vanna Ou by certified and regular mail. Mr. Ou waived his right to a hearing by failing to respond to the charges, and staff recommends the Commission revoke Vanna J. Ou's license.

Chair Niemi asked if Vanna J. Ou or a representative were present. No one stepped forward.

Commissioner Ellis made a motion seconded by **Commissioner Rojecki** to enter a default order revoking Vanna J. Ou's license to conduct gambling activities, substantially in the form presented by staff. *Vote taken the motion passed unanimously.*

**6. Petition for Rule Change – Increasing Card Room Hours of Operation
Amendatory Section WAC 230-15-025 – Hours of Operation**

Ms. Jeannette Sugai reported the petitioner is requesting card rooms be allowed to use their premises for card playing 24 hours a day/5 days a week and 20 hours a day/2 days a week. Currently licensees are required to observe a four hour closure period at the end of each business day. At the February Commission meeting the Commissioners asked for information regarding additional staff time that may be needed to regulate the extended hours. The Commission also requested that staff contact police departments and jurisdictions that have card rooms to see if they supported or opposed the proposed additional hours of operation. In the agenda packet is a memorandum prepared by Assistant Director Mark Harris addressing the question of additional hours that may be needed if the extended hours are approved. Also in the agenda packet is a list of the police jurisdictions that were contacted and their response as to whether they supported or opposed the extended hours. Twenty-two of the jurisdictions stated they would support the rule change, four stated they would not, nine were neutral; and eight gave no response or something other than the yes/no/neutral response. Staff attorney Roshawna Fudge researched counties and cities and prepared information regarding the restrictions on the use of their gambling taxes, which is also included in the agenda packet. The passing of this rule amendment is a policy decision for the Commission, considering the impact of additional card room hours of operation and the resource impact of staff time during a period when staff is being reduced. The petitioner requests the change become effective 31 days after adoption; however, to be consistent with WAC 230-01-015, staff recommends an effective date of July 1, 2008.

Chair Niemi called for public comment.

Mr. Andrew Kimmerle testified there was not much more he could say that had not already been said. All these changes will be for the consumer convenience and benefit, not the card rooms. Thank you.

Ms. Roxanne Hanson, Diamond Lil's and Freddie's Club Casinos in Renton, testified that Diamond Lil's has been the number one non-tribal poker room for over 24 years. Freddie's Club in Renton was the first non-tribal mini-casino and had always been the number one non-tribal mini-casino. In the past we have done very well and the poker boom helped us to continue that success. We continually change our menus, put in a sushi bar last month, have tournaments and so on to keep our customers. Then the smoking ban took effect and both our casinos took a huge hit. Freddie's Club is no longer the number one non-tribal casino. We have tried diligently to come up with creative ways to keep our customers and earn new customers, but the little we had seen coming back since the non-tribal smoking ban has now left again. Ms. Hanson said her clubs supported the card room operating hours rule change because it would give their patrons the opportunity to continue their play. It would also give their customers who get off work at 4:00 or 5:00 in the morning somewhere in their local community to go for entertainment after work instead of having to go to a tribal casino which is open 24 hours a day. When looking at the staffing issues in our clubs, we find that it would be less confusing to staff in running three eight hour shifts versus the two 10s,

etcetera. The rest of our company is on a 24-hour a day shift; three eight-hour shifts, because our restaurants are all open. Until the non-tribal smoking ban, we were able to absorb these costs, but now every penny is being scrutinized. One year ago we employed 320 employees, but only employ 230 today. These are not employees making a minimum wage, but are the tipped employees, mainly dealers, with an average income of about \$40,000. It used to be more until the economy came in. These are the same people who will have a tough time going out into the workforce and finding that livable wage. By giving the card rooms the opportunity to extend their gaming hours, we hope to be able to at least survive this latest crisis before the next shoe drops. Ms. Hanson noted another place that has been hurt is the community in Renton, because our clubs have had the history of giving back to Renton both financially and in volunteer hours. Ms. Hanson was hired to be the community person, and was born, raised, and has lived and volunteered in the community. Ms. Hanson's mother was a city councilwoman. Now Ms. Hanson is not able to give money to the community, she can just give her time. That does not help our food banks; 3,000 new people that have been served since the first of the year. Ms. Hanson hoped the Commissioners would be able to help the card rooms by approving this rule change. Maybe those four hours would make the difference in Ms. Hanson's poker room. Ms. Hanson did not think they would go with the change in their house-banked Freddie's Club, but would make the change in their poker room. Thank you.

Commissioner Ellis asked what kind of assurance could be given that the people who would be gambling during the extended hours in the early morning hours would, in fact, be people who are getting off a late shift as opposed to compulsive gamblers, who are the ones we should be most concerned about not gambling. **Ms. Hanson** replied there was never an assurance; however, her club has nine poker tables that are not full at 3:00, 4:00, 5:00 in the morning. Most of them change just like the drinking hours change and at 2:00 a.m. or 3:00 a.m., the majority of the players go home. At that time of the morning, there is usually only a table or two. Ms. Hanson could not be sure of the type of people playing, but could better answer that question at another meeting after talking to her floor men. But from what Ms. Hanson could see, she did not think that was a problem. **Commissioner Ellis** thanked Ms. Hanson for her very honest response.

Mr. Faulkner, speaking for the Recreational Gaming Association (RGA), thanked Director Day and staff for their diligence on going out and contacting the different police departments. Mr. Faulkner noticed that of the only four no's one of them was Zillah, where there is a brand new card room that is not even open 20 hours – they are open 16 or 17 hours. Usually with the card rooms in the cities, the longer the city has the relationship with the club, the more comfortable they get. Mr. Faulkner thought that in Yakima County, RC's and Sunnyside are the only clubs and they are not open 20 hours either. Speaking for some of the smaller clubs like Mr. Zs Casino in Pullman and Wild Goose Casino in Ellensburg, a lot are not open anywhere near 20 hours right now, and they would not go 24 hours. For instance, Mr. Zs in Pullman is only open 12 hours a day, from 4:00 p.m. to 4:00 a.m. And the club in Okanogan is only open four days a week and they open at 5:00. The Commission asked a very good question of staff and Mark Harris, but it is very hard to

calculate these staff hours for the investigation. And on the methodology, we are saving the agents 1,700 hours a year right now that we are not open. Mr. Faulkner jokingly said he would talk to Mr. Trujillo about a refund on our license for investigative purposes. There are a lot of clubs that are under-utilizing the hours right now and would never be open 24 hours.

Commissioner Rojecki asked if Mr. Faulkner was saying, basically, that the clubs are open based on market demand and asked if market demand would allow 24-hour clubs. **Mr. Faulkner** affirmed the clubs are open based on market demand and some would be able to be open 24 hours. **Commissioner Rojecki** noted there did not seem to be a significant number of the clubs around the state, or at least they are defined more in a corridor, which we consider the Puget Sound corridor. **Mr. Faulkner** replied that out of the 12 that he is connected with, probably two of them would be open 24 hours and probably only two or three days a week.

Mr. Chris Kealy, Iron Horse Casino in Auburn and Everett testified he had looked at the methodology and thought the staff did a good job in putting this together. Mr. Kealy thought that what got lost in the costing of this was if a club is open additional hours it will also have additional employees. Mr. Kealy reiterate that during these kind of hours of the day, his clubs are running about 13 staff people and nine would be licensed at that time. So every hour his clubs are open as a mini-casino or card room, the Gambling Commission obtains a profit from those hours because that is how they are funding the rest of what they are doing year in and year out. Mr. Kealy did not think additional hours could be looked at in the negative on a cost analysis basis. It just isn't true. A lot of the clubs are already open during the additional hours being open that are being discussed – like Lil's closes at 6:00 a.m. now so the hours they are going to add are 6:00 a.m. to 10:00 a.m. And that will likely only happen two, three, or four days a week. Mr. Kealy thought a lot of clubs will be utilizing this only on Thursdays and Fridays, and did not think it would impact more than just a handful on Thursdays, Fridays, and Saturdays – the hours that were really going to expand.

Commissioner Ellis detected a logical inconsistency between what Mr. Kealy was saying and what Mr. Faulkner said. If the Commission is going to profit from the additional hours that clubs are going to be open, why wouldn't the Commission lose money with respect to clubs that are open fewer hours, and why would Mr. Faulkner be entitled to a refund for those fewer hours? **Mr. Kealy** replied that Mr. Faulkner took the argument and ran the other way with it. Mr. Faulkner still owes the money because the equipment is there 24 hours a day, and Director Day needs to make sure that the equipment is doing what it is supposed to be doing, whether resting or busy.

Commissioner Rojecki made a motion seconded by **Commissioner Ellis** to approved proposed amendment to WAC 230-15-025, as presented by staff, with an effective date of July 1, 2008. *Vote taken; the motion passed unanimously.*

Commissioner Ellis stated for the record that in connection with the motion he was concerned, particularly after hearing the presentation yesterday concerning our upcoming budget situation and the prospect of a substantial reduction in FTEs over the next few years, that any proposal that appears to increase the workload of the Commission without a clear source of funding to cover that work has got to be a matter of concern as long as that red ink is staring us in the face or the need to reduce FTEs to deal with the red ink. But under the circumstances here, the potential increase in workload seems to be fairly modest, and Commissioner Ellis thought this was something good the Commission could do for the industry that employs people and may employ more people. **Commissioner Rojecki** echoed that sentiment.

7. **Petition for Rule Change – Gambling Promotions**

Amendatory Section WAC 230-06-030 – Restrictions and conditions for gambling promotions

Amendatory Section WAC 230-15-141 – Additional merchandise or cash prizes for card games

Assistant Director Trujillo reported Harmon Consulting Incorporated, a licensed gambling service supplier, is asking for two changes to WAC 230-06-030: an increase in the value of a promotional item operator's can give their customers from \$500 to \$5,000; and to allow licensees to provide additional entries to a promotional contest of chance to customers based on their time or betting levels while participating in gambling activities. The petitioner is also asking for a change to WAC 230-15-141 to remove the restriction limiting the dollar amount for additional merchandise or cash prizes in a non-proprietary game to \$500. In the original letter of February 12, the petitioner discusses using customer tracking and reward systems for awarding entries into a promotional contest of chance. WAC 230-06-030 allows gambling promotions to encourage players to participate in a gambling activity and is tied to the activity itself and is currently capped at \$500. Promotional contests of chance are authorized to promote a business. Gambling promotions are allowed to promote a gambling activity. Promotional contests of chance are not allowed to be combined with a gambling activity. This change could benefit licensees by attracting new players or increasing gross receipts. By allowing the licensees to offer larger promotional prizes, players may spend more money. In addition, licensees would be able to award additional chances to enter a promotional contest of chance based on the level of play or time. The Commissioners may want to consider whether the modification to WAC 230-06-030(6) is a change in gambling policy as it would allow licensees to provide additional entries into a promotional contest of chance to customers based on their time or betting levels while participating in gambling activities. Staff believes the change may be problematic in its application because the rule does not allow combining gambling activities or promotions with a promotional contest of chance. Staff recommends filing this petition for further discussion. Staff does not oppose increasing or removing the \$500 limit on gambling promotion items, but does oppose combining gambling promotions with promotional contests of chance because of the policy consideration and because a gambling activity is intended to stimulate food and drink sales. Staff does not believe promotional contests of chance were authorized to promote a

gambling activity. The petitioner is requesting the change be effective 31 days from adoption, but staff is asking that it be effective January 1, 2009, if approved.

Chair Niemi proposed the Commission vote separately on WAC 230-06-030 and WAC 230-15-141, unless a Commissioner objected, because staff has different recommendations. **Commissioner Rojecki** asked whether this could be filed for further discussion and then be amended at a future point. **Commissioner Ellis** asked if this was one petition or if the petition could be divided by the Commission at this point in time into two separate petitions. **Chair Niemi** said she did not want to cause a lot of trouble with the petition. **Assistant Attorney General Jerry Ackerman** replied the short answer was yes, the Commissioners could vote to file a portion of the petition and decline to file the amendment that is proposed to a separate section of the WACs and state the reasons for declining to file that section.

Chair Niemi suggested hearing from Mr. Harmon.

Mr. Monty Harmon, Harmon Consulting, thanked Mr. Trujillo for a professional presentation and summary of the proposal. In working with Mr. Trujillo's staff, Mr. Harmon has enjoyed nothing but professionalism and respect from them, which is a sign of good leadership. Mr. Harmon was very grateful for the work that Mr. Trujillo has been doing in the Licensing section. Mr. Harmon thanked the Commissioners for their commitment today. Mr. Harmon explained he was not a gambling promoter, that his service supplier business does not go out and provide advertising; although, Mr. Harmon does help with regulatory compliance with the licensees and with their license applications. When Mr. Harmon is out in the market place and sees some of the struggles of the licensees he comes before the Commission with a rule change based on feedback from staff in the field and the environment. Mr. Harmon believed that the regulations as they stand present an unfair barrier to the market and prevents licensees from being able to promote their business as intended in the RCW when it comes to the ability to have a promotional contest of chance. Key to this discussion is whether gambling is a service or not because with a promotional contest of chance a business can provide the free entry, which would be the scenario in this case, and can provide additional entries to patrons that enjoy the goods and services provided at the business. Mr. Harmon's proposal is to reward those patrons who are loyal to the business, whether they are gambling or participating in food and drink. There is a player tracking system, or customer tracking system, that allows the licensees to control how many free entries are given. In reading staff's presentation, Mr. Harmon had a few questions regarding the way the rule was worded and whether it does focus on the gambling aspect. Mr. Harmon thought it was fairer to ask whether these businesses could promote using a promotional contest of chance using the player tracking system. The reason that staff in the field had difficulty allowing the use of the player tracking system had to do with the way that section (6) of the rule was worded with regard to combining promotions in any way with gambling operations. Mr. Harmon did not see a player tracking system as being combined with the gambling activities. The question was whether they are involved in a service that is taxed by the Department of Revenue as a service. Those persons participating in a gambling activity should be entitled to an additional entry the same as anyone who is

enjoying the food and drink at that location. Mr. Harmon requested that the Commission file this for further discussion, noting that he would enjoy meeting with staff to discuss the particular wording within the petition. For example, staff has no problem with eliminating the proposed limit to increase for gaming promotions from \$500 to \$5,000. And if the limit is eliminated, why bother to have additional rules to follow? Mr. Harmon thought the purpose of the promotional contest of chance (PCOC) was to help businesses promote, which was the intent of the Legislature. And Mr. Harmon believed that the licensees should be able to use these player tracking systems for that purpose.

Commissioner Parker said he was interested in hearing further discussion by staff, and asked if staff's concern was that this would transform the promotional games of chance into an actual form of gambling that ought to be regulated more directly, as gambling is regulated, because of the fact that a player gets more chances to play – or if there was some other concern in terms of the policy discussion. **Director Day** responded that staff's primary concern was that WAC 230-06-030 has two separate policy issues involved in it. One issue is the question of whether there should be a limit around the dollar value of promotions, and the other issue is subsection (6). The real limits staff sees are in the Commission's interpretation of 010 about limiting the scope and nature of gambling and how much should be used to promote it. From an enforcement regulatory position, staff does not see any reason why the limits could not be eliminated in today's market. A consistent regulatory position that the Commission has taken by rule for several years is that the promotional contest of chance can be used to promote the underlying business that the gambling activity is designed to stimulate. Staff would say that a service, as identified in this particular statute, is not gambling – the gambling is a stimulant or a promotion. It is really a question of interpretation for the Commissioners as to whether they continue to agree with that long-standing position. This proposal would allow a promotional contest of chance to be used to promote the gambling activity. From staff's perspective it is more a question of whether in the Commission's application of that law it is or is not intended for that purpose. Staff's biggest interest is that the rules either say yes or no – clarity is very important. At this point, the Commission has kept it very consistent; promotional contests of chance are intended for the food and beverage service business; gambling promotions for the gambling business.

Commissioner Parker asked if the Commissioners choose to separate these, can they just move to raise the limits from \$500 to \$5,000 and put off for further consideration the second part of this proposal. **Chair Niemi** asked if Commissioner Parker meant for the Commission to move to file for discussion the raising of the limits and not file the other WAC for discussion. **Director Day** clarified that both of those issues are in the one WAC that is proposed; the second WAC is one that refers back to the other one. As a matter of fact there may actually be another WAC that has the same problem because of the same limits. So, for simplistic purposes, if the Commission were interested in continuing the discussion around either or both of these issues, they could file this proposal and consider an alternative as it moves forward.

Mr. Ackerman thought one of the problems, not politically or societally, was legally the Legislature has made it clear that gambling is a disfavored activity with some limited exceptions for charitable purposes. The statutes make it very clear the Commission is not here to encourage gambling and in fact gambling is to be strictly and narrowly construed by this Commission. One of the problems with this proposal is that when talking about house-banked card games, RCW 9.46.0325 says that gambling is only allowed to stimulate the sale of food or drink, so gambling at card rooms is to promote the sale of food or drink. This Commission has never drawn the hard line, but could make a legal argument that if a business is obtaining a majority of its income from gambling, rather than the sale of food or drink, the business is not primarily engaged in the business of selling food or drink and, arguably, it is not entitled to a gambling license. The Commission has never gone there, and Mr. Ackerman was not suggesting that they go there; his point was that gambling itself is a promotion – a promotion of the sale of food or drink legally. So when you take the promotional contest of chance statute, which was lobbied and passed for the McDonald's game type of purpose, if the Commission goes the route that Mr. Harmon is suggesting, the Commission is authorizing a promotion of a promotion. The rationale that has been put forward in support of this is to keep people at the tables gambling so they will get additional chances at whatever the prize will be, whether it is a \$5,000 prize or a \$1 million prize if the Commission lifts the cap altogether. Mr. Ackerman thought those were the policy considerations that probably drove the creation of 030 in the first place; to separate it out from the promotional contest of chance category. And that is what the Commission is now being asked to revisit and decide on whether they want to continue. Mr. Ackerman thought the issue of whether gambling is a service was an interesting question. It really is determinative of the issue that the Commission has before them. Staff visited with Department of Revenue staff to see how they classify it and came to a different conclusion. According to the Department of Revenue, if a person is obtaining more than \$50,000 in income they go into a gambling category and are taxed accordingly. If they are obtaining less than \$50,000 of income from gambling activities then it goes into a catch all category that includes other services. Just as a point of clarification, the Department of Revenue does not classify gambling as a service. Mr. Ackerman did not think it drives the Commissioners decision one way or another.

Commissioner Ellis said Mr. Ackerman had gotten his attention on that one. Commissioner Ellis was looking at the RCW 9.46.0356(4)(b), and it appears that upon the purchase of service, goods, wares, or merchandise, it is permissible so long as the promoter or sponsor provides an alternative method of entry requiring no consideration. Commissioner Ellis read this statute as, in order to justify a promotional contest of chance, it had to fit within the categories of service, goods, wares, or merchandise. Since it is really a stretch to call gambling goods, wares, or merchandise, the success of a promotional contest of chance in the context of gambling would hinge upon whether gambling can properly be considered a service. That struck Commissioner Ellis as a bit of a stretch, notwithstanding the fact that Revenue may have decided that was a convenient catch all to stick a tax. **Mr. Ackerman** explained that, typically, gambling is referred to as an activity; it is a gambling activity. The term "services" as used in RCW 9.46.0356 has never been defined. And since it is in the

gambling chapter, if the Commissioners chose to define the types of gambling activities that they regulate as a service, they probably could do so. The Commissioners have not done so, thus far, to the best of Mr. Ackerman's knowledge and, typically, gambling is referred to as an activity, not as a service, goods, wares, or other things. Department of Revenues definition would not be dispositive; it would not control what the Commissioners do. Moreover, Revenue does not claim to define gambling as a service – it is a taxable event, so they have to pigeon hole it into different categories.

Commissioner Ellis indicated another part of the background to remember is that this statute is not a statute that specifically authorizes gambling. It is a statute that authorizes what it declares to be not gambling, which is probably based on the Reader's Digest decision, State v. Reader's Digest that goes back to about 1972 where the State Supreme Court said that in order to participate in the Reader's Digest lottery, if that was how they denominated it, a person had to purchase a subscription in order to qualify. That was held to constitute an illegal lottery under the State Constitution and, therefore, a violation of the State Consumer Protection Act. And this statute obviously would have solved that problem, so long as a person was not required to buy a subscription to the Reader's Digest or any other similar venue in order to participate in a lottery. **Mr. Harmon** explained the Department of Revenue's classification of gambling and the designation. The first \$50,000 break, and then taking the rest of gambling after that and taxing it under a different category, it does have a specific line on their tax return. That was never the case until the problem gambler tax was imposed, so up until that point, gambling was considered by the Department of Revenue under that service category. Then they broke it out for the purposes of collecting the additional .01 percent tax.

Commissioner Parker wondered if that meant that a person who was winning less than \$50,000 was not a problem gambler. **Mr. Harmon** responded that maybe it would not be contributing to the problem if the person was a small pull-tab licensee. **Mr. Ackerman** commented that, legally, the policy question for the Commission is what the Promotional Contest of Chance Statute was actually set up to do. Clearly, when someone is doing a promotional contest of chance to promote the sale of the food or drink that is taking place on the premises, that is one thing, but the policy question for the Commission – and again Mr. Ackerman thought it was the question that the Commission faced to some degree when they enacted 030 in the first place – is do they want to provide an incentive for people to stay at the tables and to keep gambling. Is that something the Commissioners wish to do? WAC 230-06-030 currently does not provide that incentive in the form of the promotional contest of chance framework, and it currently limits to \$500 the amount of gambling promotion that has been allowed historically through the gambling promotion WAC. The Commissioners have to decide whether or not they want to change either or both of those prior positions the Commission had adopted.

Commissioner Parker asked if it would be helpful as far as getting to the nub of it if the Commission considered separating the simpler question about raising the limit from the more complicated question about having multiple chances. **Mr. Ackerman** replied that was

for the Commission to decide, adding he could understand how the Commission could not have to deal with some of these concerns if they make the suggested break. The Commission would not have to address creating or revising a WAC that interprets the promotional contest of chance statute and what is allowed under the statute. The Commission could simply make the decision as to whether or not they have the appropriate dollar limitation on the gambling promotion portion of the WAC.

Commissioner Ellis said it struck him in a very crude sense that player supported jackpots serve a purpose that is similar to what a promotional contest of chance would promote in the context of the gambling side of the business as opposed to the food and beverage. **Mr. Harmon** responded that the player supported jackpot is actually a trust fund that the players have developed in order to play for a specific outcome, and promotional contests of chance have nothing to do with the outcome of the activity. **Commissioner Ellis** thought that, in the general sense, the longer players sit at the table, the more likely they are to get a hand that would entitle them to the player supported jackpot. **Mr. Harmon** affirmed that was correct, noting that the longer players sit at a table, or eat food and drink, they would get additional points to enter into this promotional contest of chance. One specific point of clarification is staying at the table is not what gives the players more chances; it is staying in the business. When talking about a player reward system, it is developed to keep that player in that business as opposed to going elsewhere and has nothing to do with the outcome of the activity. **Mr. Harmon** asked **Mr. Ackerman** whether it was true that if the Commission was to take the position today that a player rewards tracking system is not anything that they are concerned with regarding the promotional contest of chance, because it is not a gaming promotion, if there was a determination today that these player reward systems really are not based on the outcome of a gambling activity and, therefore, not a concern of the Commission, and establish the policy that when looking at player tracking systems that are not based on the outcome of an activity that award points, this is not an issue for the Commission to worry about and get staff focused on gambling more or less. Would that be an opportunity today? **Mr. Harmon** explained that when he came to staff and asked why this tracking system is part of a gambling promotion, several staff said it was because in the rule it says they cannot be combined in any way. **Mr. Harmon** was trying to say it was not combined; other than incidentally, the customers are in his business, and if they stay in his business they will be given more opportunities to win in this promotional contest of chance. If customers walk in, register, and walk out, they get one chance, but if they walk in and stay, the business will keep track of them by this player reward system and give them more chances to win. **Mr. Harmon** did not understand how that works into a gambling promotion, and he asked the Commissioners to consider that as a policy shift.

Mr. Ackerman responded that the proposal before the Commission is to amend WAC 230-06-030, both subsections (1) and (6), and when **Mr. Ackerman** read this he focused on both. But in partial answer to **Mr. Harmon's** question, when looking at subsection (6) the new language that would be put in says this restriction shall not prevent licensees from providing additional entries to a promotional contest of chance to customers based on their time or betting levels while participating in gambling activities. It does not say providing additional

entries based on how long the customers are in the business. Mr. Ackerman presumed that if a business was selling food and drink it probably did not want customers sitting at their dinner table not buying more food and not buying more drink, just hanging around the facility. This proposal is specifically addressed to time or betting levels while participating in gambling activities. Given that gambling is a disfavored activity except for those limited charitable purposes that have been discussed, this Commission is absolutely interested in whether or not it is promoting additional gambling.

Mr. Kealy, Iron Horse Casino in Auburn and Everett, pointed out that a lot of these promotions are not designed to keep people there exclusively; it is kind of a top of mind awareness thing. And actually a lot of the promotions are designed to just get the customers there – when potential customers are going out of their driveway they have a choice to go to place “X” or “Y”. The business has to create some interest to it and the games themselves – the creativity in promoting or creating an interesting game – is really just eggs. So how that is formatted and promoted is something that the businesses all compete on regularly. And who thinks of the next better idea is the one that has got the cars in the driveway. It is not always just weld the door shut once the business got the customers in; it is to get the customers in the door at all. Thank you.

Commissioner Rojecki asked a question regarding splitting the rules up; he heard from Director Day that if the Commission filed this for further consideration today, staff’s preference would be for the Commission to address it all together. **Director Day** replied he had not indicated any preference, he was just trying to re-emphasize that the Commission could choose to file its own alternative that only takes one of the amendments. Staff does not have any problem with consideration of the first amendment; it is the second amendment that staff has problems with. **Commissioner Rojecki** was thinking specifically back during the discussion to the references to other WACs, that if it was together it would be clearer to address and the differences that may need to be addressed in the other WACs.

Commissioner Ellis made a motion seconded by **Commissioner Parker** to file for further discussion proposed amendments to WACs 230-06-030 and 230-15-141 to the extent that it proposes to increase the maximum value of promotional items and to deny the filing of the petition to the extent that it proposes to modify the provisions of WAC 230-06-030(6). *Vote taken; the motion passed unanimously.*

Commissioner Ellis explained the purpose of the motion is simply to approve for further discussion the increase in the total value of the prize, but not address the question as to whether licensees may offer additional entries to promotional contests of chance to customers based on their time or bidding levels. Commissioner Ellis understood the point that Chris Kealy made, but felt that it begs the question because they are not only talking about customers getting in the door, but talking about the customers getting more chances in the promotional contest of chance based on the length of time or their betting levels while they are in the door. That was the obvious part of concern for Commissioner Ellis and he thought by staff. **Mr. Ackerman** clarified that the effect of the motion was to approve the

filing of an alternative that encompassed Commissioner Ellis' motion, and staff would prepare the alternative and submit it at the next meeting for the Commissioners.

Commissioner Ellis replied he would consider that consistent with his motion.

Commissioner Rojecki commented that in regards to WAC 230-06- 030, it would be nice if staff could get together with Mr. Harmon and see if there are other alternatives that would address his issue. Commissioner Rojecki was not sure this would be the specific WAC to address it; there may actually be a third issue to deal with. **Director Day** responded that it seems the primary target we are trying to address is utilization of player tracking systems, and thought staff could focus on that with Mr. Harmon. **Commissioner Rojecki** agreed. **Director Day** added it looks like staff may need to have a coordinating amendment on WAC 230-06-035(2).

8. Commission Officer Elections

Election of Officers was taken out of order – moved to Thursday's agenda

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

Director Day informed everyone that the hearing for the Snoqualmie Compact has been scheduled for 1:30 p.m. on the April 29 in Olympia at the John L. O'Brien Building.

With no further business, **Chair Niemi** adjourned the meeting at 10:45 a.m., noting the next meeting would be held on May 8 and 9 at the Red Lion Hotel in Pasco.

Minutes prepared by:

Gail Grate
Executive Assistant